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**John Carter
Secretary
Senate Employment, Workplace Relations and
Education Committee**

RE: Inquiry into the *Higher Education Endowment Bill 2007*

August 28 2007

1. Introduction

The National Tertiary Education Union (NTEU) represents approximately 26,000 staff employed in Australia's higher education industry. The Union welcomes the opportunity to make a submission to the Senate Employment, Workplace Relations and Education Committee Inquiry into the *Higher Education Endowment Fund Bill 2007*.

NTEU welcomes the proposal for a designated long-term fund the returns from which are invested in capital expenditure and research facilities in Australia's universities. The Union acknowledges the Higher Education Endowment Fund (HEEF) does provide additional funding to universities, although we would stress that it in no way makes up for nearly a decade of serious disinvestment by the Commonwealth in Australia's university system.

The Union is constrained in commenting to this inquiry by the lack of detail in the *Higher Education Endowment Fund Bill 2007*. While more information about the HEEF will presumably be contained in subsequent guidelines, the lack of detail currently available about the HEEF is a serious concern. This is especially the case given the amount of discretion currently exercised by the Federal Education Minister in relation to the HEEF.

The Union's other concerns in relation to the HEEF include:

- The potential for the HEEF to make Commonwealth Government research funding to universities further fragment and make even more conditional.
- How the HEEF will be structured to manage Commonwealth contributions, philanthropic funds, and private donations.
- The requirement that a university is able to put up funds to match those provided by the HEEF.

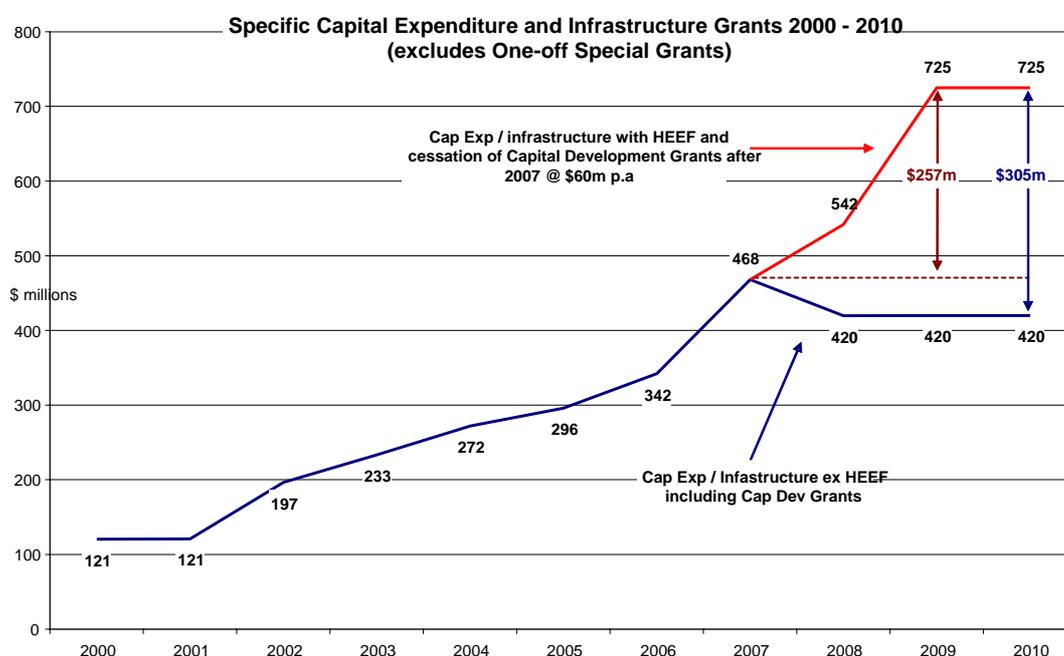
The following short submission will outline the Union's concerns in these areas and put forward some suggestions for the HEEF and how its enabling legislation could be improved.

2. HEEF funding impact

Although caution needs to be exercised in anticipating the annual amount of funding available to universities from the HEEF, NTEU acknowledges it will deliver more funding for capital expenditure and infrastructure to Australian universities.

Diagram 1 shows the level of specific Commonwealth capital expenditure and infrastructure funding available to Australian universities over the period 2000 to 2010, and includes the estimated returns from the additional \$1 billion investment announced by the Minister on 21 August 2007. While there needs to be some caution in the interpretation of this data,¹ it shows that introduction of the HEEF ensures that the trend growth in capital expenditure and research infrastructure grants over the whole period is maintained, even with the Education Minister stated intention to cease the Capital Development Pool funding, (around \$60 million per annum).² Had it not been for the introduction of the HEEF, capital and infrastructure grants would have peaked in 2007 and then effectively plateaued after that.

Diagram 1



3. The need for transparency and accountability

The HEEF must be free of political pressures and influence if it is to meet its aims.

The Bill sets out some of the processes to ensure that the HEEF operates in a transparent and independent manner, including requiring best international practice in investment strategy and policy and the requirement that the Investment Mandate be registered on the *Federal Register of Legislative Instruments* and tabled in Parliament. On the whole, however, the Bill does not go far enough to ensure the HEEF operates in a transparent manner that is at arms length from the Minister of the day.

NTEU is particularly concerned that the Minister appears to have control over all aspects of the grant process, including:

- Selecting the Advisory Board (s40(2))
- Terminating members of the Advisory Board (s40(3))

¹ The data has been compiled to allow for changes to funding arrangements from 2005 for Australian universities that resulted from the *Higher Education Support Act 2003*, and the move away from triennial funding agreements from 2005 to single year agreements

² 'Fund will steer clear of politics', *The Australian Higher Education Supplement*, May 16, 2007

- Giving directions (s40(4)) and authorising grants to eligible higher education institutions (s45)

While directions and grant decisions are to be tabled, these are not disallowable instruments, thus reducing Parliament's capacity to oversight the allocation of funds from the HEEF.

3.1 The make up of the Advisory Board

NTEU understands from media reports and responses to questions asked during Senate estimates in May that the Education Minister has already written to various groups in the sector asking them to put forward nominations to sit on a seven-member Advisory Board, which will include the Chief Scientist and the Secretary of the Department of Education Science and Training. The Bill, however, makes no reference to the make-up or structure of the Advisory Board.

Given previous experience of the use of Ministerial power in relation to areas like the Australia Research Council grants process, 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*. This should include the appointment process, which should be open and transparent.

Recommendation 1

That the *Higher Education Endowment Bill 2007* is amended to clearly set out the functions, responsibilities and appointment process of the HEEF Advisory Board.

3.2 The HEEF grants process

In its current configuration, the HEEF is open to concerns that the grant process may not be independent and based solely on merit. This flows from the lack of clarity surrounding the conditions that institutions will be required to meet to qualify for HEEF funding.

The Minister has stated that the HEEF Advisory Board will make recommendations for grants based on "*strategic investment proposals, which provide quality infrastructure and support Australian Government policy with respect to diversity, specialisation and labour market needs.*"³

While NTEU understands the Government's overall policy position of encouraging diversity and specialisation with respect to higher education, how this will be translated into specific policy objectives and aims in relation to the HEEF needs to be clearly articulated and made public if it is to be used as the basis of allocating in excess of \$300 million of Commonwealth funding per year.

The legislation makes no reference to what the exact terms and conditions will be in relation to accessing HEEF funding, and simply states that financial assistance will be provided within the terms and conditions set out in a written agreement between the Commonwealth and the eligible Higher Education institution. We, therefore, assume that such information will be made available as part of guidelines.

In the absence of further information, there is the potential for the requirements attached to HEEF funding to further restrict university independence. In addition, NTEU along with many in the sector are apprehensive about the potential of any conditions attached to HEEF funding to result in increased bureaucracy and compliance costs for universities, which are already dealing with a plethora of conditional Commonwealth funding programs.

This concern was acknowledged by the March 2007 Productivity Commission *Report on Public Support for Science and Innovation*, which agreed that competitive grants schemes effectively lock up a significant proportion of each university's block funds and that any attempts to increase the proportion of competitive research funding relative to discretionary research block funding is not warranted and would threaten universities' ability to undertake meaningful strategic research.

³ The Hon Julie Bishop, Media Release, May 8 2007

It is also unclear how HEEF funding will operate alongside existing Commonwealth schemes aimed at directly or indirectly investing in capital and research facilities in universities, such as the Institutional Grants Scheme, the Research Infrastructure Block Grant Scheme and the National Collaborative Infrastructure Strategy. Not only does this set up make long-term planning on the part of institutions difficult, but it runs the risk of encouraging an uncoordinated and unfocused approach to the funding of university capital works and research facilities.

This uncertainty will be accentuated by the difficulty in estimating with any accuracy the income from the HEEF that will be available for investment in capital expenditure and research facilities over the long term. This is because the HEEF is to be made up of a variety of funding sources (including funds diverted from the surplus, endowment and charitable donations), from a number of different entities (such as Government, private sector, university and, conceivably, individuals). It is unclear whether some components of HEEF funding, for example university endowments, will be deposited and withdrawn at the discretion of the institution concerned. Further complicating the situation is the question of whether corporations or individuals will be able gift money into the HEEF and request that this be used for specific purposes, in which case will the returns on money gifted also be allocated to that specific purpose.

The potential lack of transparency relating to the process of Ministerial scrutiny of recommendations by the Advisory Board, would be ameliorated considerably by ensuring funding recommendations made by the Advisory Board to the Minister are tabled in Parliament.

The complexity and lack of clarity relating to the conditions attached to the HEEF would be reduced by allocating a reasonable proportion of its funding in the form of a block grant to universities and the remainder in the form of a competitive program. This competitive program could be awarded against clear criteria that would emphasize the merit and strategic need, both institutional and national, of the proposal. Such an arrangement could provide a greater degree of funding certainty for institutions while at the same time going some way to meet the Commonwealth's policy aims.

These guidelines in relation to HEEF grants should be tabled in Parliament in the form of a disallowable instrument.

Recommendation 2:

That the funding recommendations of the HEEF Advisory Board be tabled by the Minister in Parliament.

Recommendation 3:

That funding available from the HEEF is allocated on the following basis:

- **A portion of it in the form of block grants to universities;**
- **the remainder in the form of a competitive grant awarded against clear criteria that would emphasize the merit and strategic need, both institutional and national, of the proposal.**

Recommendation 4

That the guidelines setting out the conditions relating to HEEF funding be tabled in Parliament in the form of a disallowable instrument.

3.3 Matching funds

NTEU notes the Minister's statement that: *"The Board would take into consideration whether universities had been able to raise matching funds, for example from state or territory government, industry, alumni or members of the public"*.⁴ The requirement that institutions put up matching funding has major implications, including seriously disadvantaging new, small and/or regional institutions.

⁴ Ibid

While it may be a legitimate objective not to spread the limited funding available under the HEEF too thinly, neither should the Government be seeking to attach unreasonable conditions to the Fund that would prevent otherwise worthy projects from receiving grants. The emphasis should be on funding capital expenditure and research infrastructure projects broadly on the basis of merit or strategic need, whether they take place in a stand alone institution or across two or more collaborating institutions.

The Productivity Commission *Report on Public Support for Science and Innovation* stated that the high cost to universities in 'leveraging' competitive research grants is a threat to the quality of educational services that universities are able to deliver, especially in an environment where there have been significant real cuts in university operating grants for government supported students.

There is also a concern that, given the HEEF is specifically targeted towards capital works infrastructure and research facilities, other government sourced funding (both national and state) will decrease or become more difficult to attain. Those institutions which are disadvantaged under HEEF matching funding or collaborative research requirements may also find themselves doubly impacted should other sources for infrastructure and research facilities dry up as a result of the introduction of the HEEF.

Recommendation 5:

That consideration of whether universities had been able to raise matching funds not be made a condition of institutions seeking HEEF funding.

4. Additional questions

In addition to the contribution of \$6 billion in funding made by the Commonwealth, the Government is also encouraging universities and other parties to donate or gift funds to the HEEF.

While a philanthropic culture in relation to higher education is widely practiced in countries such as the United States, it is relatively new in Australia. The status and control of gifts and donations to the HEEF must, therefore, be guided by clear rules if this aspect of the Fund is to be successful in the Australian context. The following list of issues and questions highlight the uncertainty and lack of detail available about the operation of the HEEF, especially as it relates to third party gifts and/or endowments.

1. When a university or third party donates an amount of capital to the HEEF, who retains control or ownership of the original capital? That is, if the university donates \$100 million to the HEEF, does it have the right to withdraw that capital at some time in the future?
2. If the answer to 1 is no, then:
 - Who owns the capital? Is it the HEEF (ie the Commonwealth), the donating institution, or a third party?
 - Can the original capital be allocated (either in whole or as a portion) directly to university capital or infrastructure projects, and if so, over what time period?
 - Can the original capital be re-allocated to other "special" Future Fund accounts that the Government might establish in the future?
 - If the original capital cannot be withdrawn or drawn down by being allocated, then what is the incentive to third parties to donate to effectively what would become government controlled capital, rather than continuing to make donations to a university?
3. If the answer to 1 is yes, the question is whether there is a minimum time period during which the capital must remain in the HEEF? If so, what is that time period?

4. Will the capacity of individual universities to gain access to HEEF funds be in anyway related to the level of gifts or endowments it makes to the HEEF? For example:
 - Will the donating university be guaranteed at least access to its equity share of the HEEF pool?
 - Will the donating university be provided preferential treatment in gaining access to other 'public' share of the income flow?
5. How will the HEEF Special Fund be structured to manage Commonwealth contributions, philanthropic funds, and private donations?

Please do not hesitate to contact Andrew Nette, NTEU Policy and Research Coordinator, on 03-9254 1910 if you have any further questions or require more information about any of the points raised in this submission. The NTEU is happy to further elaborating these concerns through appearance before the Committee.

Yours sincerely,



Dr Carolyn Allport
President
National Tertiary Education Union