

1995

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

HIGHER EDUCATION FUNDING AMENDMENT BILL (NO.3) 1995

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Employment, Education and Training, the
Honourable Simon Crean MP)



HIGHER EDUCATION FUNDING AMENDMENT BILL (NO.3) 1995

OUTLINE

The Higher Education Funding Act 1988

The *Higher Education Funding Act 1988* (the Act) makes provision for grants of financial assistance to higher education institutions and other bodies for higher education purposes, establishes the Higher Education Contribution Scheme (HECS) and the Open Learning Deferred Payment Scheme (OLDPS) and makes provision for the repayment of monies lent by the Commonwealth to students under those Schemes.

The Higher Education Funding Amendment Bill (No.3) 1995

The Higher Education Funding Amendment Bill (No.3) 1995 amends the Act to:

- vary the maximum grant amounts for operating purposes for higher education institutions for the funding years 1996, 1997 and 1988;

- vary the maximum total amount of financial assistance payable to higher education institutions for superannuation expenditure for the funding years 1996, 1997 and 1998;

- vary the maximum total amount of financial assistance payable in grants to open learning organisations for 1996;

- vary the limit on total funds available for certain grants under the Act in respect of the funding years 1996, 1997 and 1998;

- vary the maximum total amount of financial assistance payable as grants in respect of teaching hospitals for each of the years 1996, 1997 and 1998;

- vary the maximum total amount of approved expenditure for grants for approved special capital projects for each of the years 1996, 1997 and 1998;

- amend the definition of a Qualified Accountant in Section 3 to reflect the name change from the Australian Society of Accountants to the Australian Society of Chartered Practicing Accountants;

- amend Table A and B of section 4 of the Act to reflect current higher education institutions in Australia;

- amend section 20A to allow advances of operating grants to be made for a wider range of purposes to Universities;

- amend sections 21, 23, and 23A to clarify that the Minister rather than the institution seeking funds estimates the expenditure by which grants may be approved.

- amend section 23 to amend section 23 to provide that the Minister may approve a proposal to be undertaken by an institution to conduct research program including research training.

remove the concept of a 'semester' (two consecutive study periods) in relation to the OLDPS, thus allowing students to defer payments on an individual 'study period' basis with a minimum of 2 units per study period;

amend the limit of eight deferred payment units in consecutive study periods to relate to a calendar year;

provide that the Open Learning Agency of Australia (OLAA) make available statistical and other information as required by the Minister;

remove the provision that the OLAA notify the Minister when a client does not have a tax file number;

remove the requirement for tax-payers to include the amount of HECS debt when lodging their income tax return;

FINANCIAL IMPACT

The Bill provides increases of \$233.619m in 1996, \$4,434.859m in 1997 and \$4,420.803m in 1998 on the current legislated amounts.

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NOTES ON CLAUSES

Clause 1 - Short title

Clause 1 allows the Act to be cited as the *Higher Education Funding Amendment Act (No.3)*.

Clause 2 - Commencement

Clause 2 provides that the provisions of the Bill, other than those identified in clause 2(2), commence on the day the Bill receives Royal Assent. Items 1, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32, 33, 34, 35 and 37 of the Schedule commence on 1 June 1996.

Clause 3 - Amendments effected by Schedule

Clause 3 creates the Schedule containing the amendments to the Act.

Clause 4 - Transitional

Clause 4 is a transitional provision that preserves the right of a person enrolled in a study period commencing in June 1996 to continue being an "eligible client" for the purposes of the Open Learning Deferred Payment Scheme, notwithstanding the effect of removing the concept of "semesters", and replacing them with "study periods", effected by **items 18 and 19**.

SCHEDULE

Item 1 - Amendment of several provisions

Item 1 amends the Act to remove the concept of "semester" from the legislation and replace it with concept of "study periods". This amendment ensures the legislation reflects the time unit by which courses undertaken under the Open Learning Deferred Payment Scheme ("OLDPS") are conducted. A further explanation for this change is contained in the explanatory note immediately preceding **item 16**.

The following sections are amended by omitting "semester" (wherever occurring) and substituting "study period" (**Section 99 - Interpretation, Section 105 - Eligible client may join deferred payment scheme, Section 106 - Eligible client who has joined scheme not to pay basic charge 106B - Notice by Agency, 106K - OL semester debt.**)

Item 2 - Section 3 (definition of qualified accountant)

Item 2 amends paragraph (b) of the section 3 definition by omitting reference to the "Australian Society of Accountants" and substituting, "Australian Society of Chartered Practising Accountants". The amendment is necessary following a change in the name of the Society.

Item 3 - Subsection 4(1)

Item 3 revises the Tables of Institutions contained in section 4 of the Act. The Tables list the higher education institutions recognised for the purposes of the Act.

The revision was needed to reflect minor changes to the titles of some institutions, such as inserting the term "the" before "University of Sydney". Additionally, following a review of the funding of the Australian Maritime College, it was decided to fund that institution on a triennial rather than an annual basis. The College therefore needs to be moved from Table B (listing the institutions funded on an annual basis) to Table A, which lists institutions funded on a triennial basis.

The amendments reflect changes made to the tables by a declaration made by the Minister under subsection 4(2) of the Act on 30 June 1995.

Amendment to section 17 (Maximum grants); section 20 (Grants for superannuation expenses)

Item 4 - Paragraphs 17(h), (i) and (j)

Item 5 - Paragraphs 20(h), (i) and (j)

Section 17 sets the maximum amount that may be paid for the operating purposes of higher education institutions, paid under **section 15 and 16** of the Act. **Section 20** allows the Minister to make grants to higher education institutions for superannuation expenses.

Items 4 and 5 amend the amounts payable under sections 17 and 20 in years 1996, 1997 and 1998 to adjust for price movements.

Item 6 - Section 20A Advances for Operating Purposes

Section 20A of the Act currently allows for advances of operating grant funds payable to higher education institutions to fund staff redundancies. The section was inserted into the Act following a decision by the Government to allow advances of operating grant funds to fund redundancy payments of teacher education staff, as announced in the 1993 statement *Teaching Counts*. The scheme has now been completed.

Item 6 adds a new **section 20A** to the Act to create a facility providing advances of operating grants for a reasonably wide range of purposes. The amended **section 20A** allows advances to be paid for the purpose of funding activities that fall within the Act's definition of "operating purposes" or "limited operating purposes" contained in section 3 of the Act. The item also inserts a new **section 20B** which allows the Minister to issue guidelines setting out the criteria for the advance and recovery of amounts under section 20A. These guidelines will establish the overall amount to be paid as advances as well as the type of activities that will be funded. The determination to advance an amount of money, and guidelines are subject to Parliamentary scrutiny as disallowable instruments see amendments to paragraph 110(b) and 110(c) of the Act by **items 38 and 39**.

Change the process by which the Minister estimates expenditure under sections 21, 23 and 23A of the Act

Item 7 - Subsection 21 (3)

Item 11 - Subsection 23 (2)

Item 12 - Subsection 23A (4)

The abovenamed sections permit the funding of projects of national priority, special research assistance and advanced engineering centres. Each class of grant provides that the amounts of approved expenditure do not exceed the "estimated expenditure for the proposal". It is arguably unclear whether it was the Minister or the institution who had to estimate the expenditure. So as to remove this ambiguity the amendments to be introduced by **items 7, 11 and 12** clarifies that it is the Minister who makes the relevant estimate.

Item 9 - Subsection 23(1)

Item 10 - Subsection 23(1A)

Subsection 23(1) of the Act lists a number of activities for which a higher education institution may receive funding. However these provisions may not necessarily permit the funding of research infrastructure, as well as projects falling under the special research initiatives program. Instead of continuing the practice of adding paragraphs to this section to fund worthy special research projects that are conducted in different ways, it is desirable to amend 23(1) so proposals that permit the conduct of research programs, permit research training or are themselves research programs that are deserving of financial assistance may be funded pursuant to this section. **Item 9** amends subsection 23(1) so as to allow the Minister to approve general proposals to fund activities to permit the conduct of research programs, or that are themselves research programs that are conducted at higher education institutions. **Item 10** makes a similar amendment to subsection 23(1A) which funds research undertaken by bodies other than institutions so that the same proposals made by these bodies may be funded. The structure of section 23 will not otherwise change.

Supplementation of Funds

Item 8 - Paragraph 22A(5)(d)

Item 13 - Paragraphs 23C(2)(c), (d) and (e)

Item 14 - Paragraphs 24(3)(h), (i) and (j)

Item 15 - Paragraphs 27A(6)(c), (d) and (e)

These items supplement the level of grants payable under sections 22A (open learning institutions) 23C (Limits on total funds available for certain grants), 24 (grants to teaching hospitals) and 27A (special capital grants) for the years 1996, 1997, and 1998 to reflect price movements.

Item 9 amends **section 22A** by omitting paragraph 22A(5)(d) and substituting a new paragraph 22A(5)(d) which supplements the level of grants payable to open learning institutions.

Item 13 amends **section 23C** by omitting paragraphs 23C(2)(c)(d) and (e) and substituting new paragraphs 23C(2)(c)(d) and (e) which will supplement the level of grants payable to enhance the quality of higher education, projects of national priority, promotion of equal opportunity, special research assistance or for advanced engineering centres.

Item 14 amends **section 24** by omitting paragraphs 24(3)(h)(i) and (j) and substituting new paragraphs 24(3)(h)(i) and (j) which supplement the level of grants to teaching hospitals.

Item 15 amends **section 27A** by omitting paragraphs 27A(6)(c),(d) and (e) and substituting new paragraphs 27A(6)(c),(d) and (e) which supplement the level of special capital grants.

Items 16 to 37 - Amendments to the Open Learning Deferred Payment Scheme ("OLDPS")

The Open Learning Deferred Payment Scheme was introduced into the Act in 1994. The scheme forms Chapter 5 of the Act. It is a loan facility, with payments contingent on income similar to the deferred payment facility available under HECS. Its objective is to make studying through the Open Learning Initiative more accessible.

The following amendments are designed to make the OLDPS scheme simpler to administer and easier for clients to access. The amendments will enhance the Commonwealth's ability to monitor the scheme's effectiveness in meeting its objectives and ensuring proper accountability of the Open Learning Agency of Australia ("the Agency") in adhering to the conditions of its financial grants from the Commonwealth. The amendments are a result of a Commonwealth review.

Removal of the Concept of Semester from the Act

One of the recommendations of the review was that the concept of "semester" be removed from the legislation, and substituted with the concept of "study periods". A "study period" is the temporal period that courses studied by OLDPS students are broken into. Subsection 104(3) already recognises the concept. These amendments ensure the legislation reflects the time unit by which courses undertaken under the OLDPS are conducted.

The concept of a semester as a unit of time in the Act is removed and replaced with the concept of study periods in the following sections of the Act.

Item 16 - Subsection 99(1) (definition of a OL semester debt)

Item 16 omits the definition of OL semester debt in section 99 and substitutes a definition of *OL study period debt*, "OL study period debt has the meaning given by section 106K"

Item 17 - Subsection 99(1) (definition of semester)

Item 17 removes the now redundant term "semester" from the list of definitions relevant to the Chapter of the Act establishing the OLDPS scheme.

Item 18 - Section 101

Item 18 amends section 101 by omitting the first and fifth reference to "semester" in the section and substituting "study period".

Item 19 - Paragraph 101(a)

Item 19 amends section 101 (eligible clients) by omitting paragraph 101(a) which refers to "semesters" and substituting a new paragraph 101(a) which refers to "study periods" and replaces the requirement to undertake at least three units of study in a "semester" and at least two units in the first "study period" of that "semester" with the requirement to undertake at least two units of study in the "study period" only.

Item 20 - Section 103

Item 20 omits section 103 (standard study load) which refers to "semesters" and substitutes a new section 103 which refers to "study periods". This amendment makes it clear that an OLDPS student may only defer payments of eight units on any calendar year basis. Eight units represents a full time study load for a comparable on-campus course. The proposal will continue to ensure that students studying at a distance do not overburden themselves, while increasing ease of administration.

Item 21 - Subsection 104(3)

Item 21 amends section 104 (Basic Charge) by omitting the existing subsection 104(3). This section already recognises the concept of "study periods" but the new subsection 104(3) removes the references to "semesters" and simplifies the Minister notification requirements with respect to the basic charge.

Item 22 - Subsection 106(1)

Item 22 amends section 106 (eligible client who has joined scheme not to pay basic charges) by omitting subsection 106(1) which refers to "for the semester in which the study period is included" and substituting a new 106(1) which refers to "for the study period".

Item 25 - Subsection 106D(1)

Item 25 amends section 106D (Commonwealth to discharge clients' liabilities) by omitting the first occurring reference to "semester" in subsection 106D(1) and substituting "study period". The amendment removes the concept of semester from the section and substitutes "study period".

Item 26 - Subsection 106D(1)

Item 26 amends section 106D (Commonwealth to discharge clients' liabilities) by omitting the reference in 106D(1) to "a study period included in the semester" and substituting "the study period".

Item 29 - Subsection 106H(1) (definition of "OL semester debt")

Item 29 omits the definition of OL semester debt in subsection 106H(1) and substitutes a definition of *OL study period debt*, "OL study period debt has the meaning given by section 106K".

Item 30 - Subsection 106H(1) (paragraph (b) of the definition of "semester debt")

Item 30 amends subsection 106H(1) by omitting the definition in paragraph 106H(1)(b) of "semester debt" and substituting a new paragraph 106H(1)(b) "an OL study period debt".

Item 31 - Subsection 106M(1)

Item 31 amends subsection 106M(1) by omitting the reference to "semester debt" and substituting "HEC semester debt or OL study period debt".

Item 32 - Subsection 106N(1)

Item 32 amends section 106N (Calculation of accumulated HEC debt) by omitting subsection 106N(1) which refers to "semester debt" and "the total of those semester debts" and substituting a new subsection 106N(1) which instead refers to "HEC semester debt or OL study period debts" and "the total of those debts". The amendment removes the concept of semester debt from the subsection and substitutes HEC semester debt or OL study period debts.

Item 33 - Paragraphs 106N(2)(a) and (b)

Item 33 amends section 106N (Calculation of accumulated HEC debt) by omitting paragraphs 106N(2)(a) and (b) and substituting new paragraphs 106N(2)(a) and (b). The amendment removes the concept of semester debt from the paragraphs and substitutes HEC semester debts or OL study period debts.

Item 34 - Paragraph 106N(2)(d)

Item 34 amends section 106N (Calculation of accumulated HEC debt) by omitting paragraph 106N(2)(d) and substituting a new paragraph 106N(2)(d). The amendment removes the concept of semester debts from the paragraph.

Item 35 - Paragraph 106N(2)(d)

Item 35 amends section 106O (Accumulated HEC debt discharges earlier debts) by omitting paragraph 106O(1)(b) and substituting a new paragraph 106O(1)(b). The amendment removes the concept of semester debts from the section and substitutes HEC semester debts or OL study period debts.

Item 37 - Subparagraph 106Y(2)(e)(i)

Item 37 amends section 106Y (Application of Payments) by omitting the reference in subparagraph 106Y(2)(e)(i) to semester debt and substituting "HEC semester debt or OL study period debt". The amendment removes the concept of semester debts from the subparagraph and substitutes HEC semester debts or OL study period debts.

Other Amendments arising from the OLDPS Review

Item 27 - Section 106E

Item 27 amends section 106E. The provision currently sets out the information the Agency must provide the Minister. The item inserts a requirement that the Agency provide to the Minister statistical and other information relating to clients undertaking units of study in a study period. This broadens the current obligation on the Agency, requiring it to gather and provide statistical and other information which may not necessarily be in the possession of the Agency. This is necessary to permit the future development of Australia's Higher Education to be planned and means the Agency is subject to the same obligation as higher education institutions under paragraph 18(1)(g) of the Act.

Item 28 - Part 5.4

Item 28 repeals Part 5.4 of the Act (These provisions applied to certain clients of the Agency seeking enrolment in March 1994) This provision is now spent, and is therefore removed from the Act.

Item 23 - Subsection 106AA(1)

The section currently requires the Agency to notify the Minister when a client of the Agency does not have a tax file number. **Item 23** amends section 106AA (Agency to notify Minister where tax file number not provided) by omitting the requirement in subsection 106AA(1) that the Agency must notify the Minister in writing that the client does not appear to have a tax file number. Instead, the Agency may choose to cancel the client's enrolment in the course.

Item 24 - Section 106AB

Item 24 amends subsection 106AB and has the effect that if a person has not provided the Agency with a tax file number, the person cannot participate in the OLDPS scheme. As previously discussed, OLDPS is a loan facility. The Commonwealth pays on behalf of the student the basic charge payable to the Agency for each unit of study taken on behalf of the student, with the student then repaying the money borrowed from the Commonwealth according to income, through the taxation system. It follows that in the absence of a tax file number, it is impossible for a person to participate in the scheme.

The effect of the combination of **Item 23** and **Item 24** is that where a person fails to provide the Agency with a tax file number, the person is ineligible to participate in the OLDPS scheme. It will then be up to the Agency to determine whether it will accept the enrolment of a person. Alternatively the person may be obliged to pay the basic charge for the unit of study themselves immediately.

Other Amendments

Item 36 - Section 106S

Item 36 omits section 106S from the Act. The repeal of section 106S would mean that taxpayers would no longer be required to provide the amount of their outstanding HECS debt on their Income Tax return. This disclosure is no longer necessary as universities provide this information to the Commissioner of Taxation by 31 May each year.

Item 38 - Paragraph 110(b)

Item 38 amends section 110(b) by inserting a reference to "20A" after "16". **Item 6** introduced a new section 20A which allowed the Minister to make a determination in relation to advances to higher educational institutions for operating purposes. The amendment made by **item 38** recognises the Ministers ability to make a determination under section 20A.

Item 39 - Paragraph 110(c)

Item 39 amends section 110(c) by inserting a reference to "20B" after "section". **Item 6** introduced a new section 20B which allowed the Minister to issue guidelines setting out the criteria for the advance and recovery of amounts under section 20A.

