

1988

THE PARLIAMENT OF THE  
COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

HIGHER EDUCATION FUNDING BILL 1988

EXPLANATORY MEMORANDUM

(circulated by authority of the Minister for  
Employment, Education and Training,  
the Hon J S Dawkins MP)



## Higher Education Funding Bill 1988

### OUTLINE

The purpose of this Bill is to provide an Act for the provision of grants of financial assistance to the States, the Northern Territory and institutions of higher education for the 1989-1991 triennium. The Bill reflects Government decisions arising from the full review of the Commonwealth's policies for higher education, details of which were announced in "Higher Education - a Policy Statement" (the White Paper) released in July 1988 and the "A New Commitment - to Higher Education in Australia" released as part of the 1988/89 Budget.

The Government's reforms provide the basis for long-term expansion of higher education opportunities with greater equity of access to the system and its benefits, while ensuring that high standards are maintained and efficiency is enhanced.

The decisions announced in this year's Budget, which this legislation will implement, provide the resources for a substantial expansion in higher education over the 1989-91 triennium. The decisions include the injection of an extra \$843 million (in December 1987 prices) in real terms over the triennium, creation of over 40,000 new places, and substantial increases in capital funds including a special injection of capital funds in 1989 for urgent renovation of unsatisfactory buildings and the introduction of two new programs to enhance equity of access.

In the interests of a fairer system of financing and to help provide extra resources for future growth, provision is made to introduce the Higher Education Contribution Scheme (HECS). The Scheme will require those who obtain the benefits from higher education to contribute a small portion of the costs of its provision, thereby alleviating some of the burden that falls on all Australian taxpayers, the majority of whom do not directly benefit from higher education. At the same time it is intended to abolish the Higher Education Administration Charge, which on latest estimates of price movements would have been set at \$273 for 1989.

The Bill comprises seven Chapters consisting of the normal introductory provisions, grants for higher education assistance similar to sections of previous States Grants legislation, additional funding for institutions conditional on the introduction of HECS, provisions for the introduction of HECS, contingent provisions providing for recurrent grants additional to those contained in Chapter 2 and the continuation of the Higher Education Administration Charge (HEAC) if there is any impediment to the introduction of HECS, miscellaneous provisions, and provision to supplement 1988 recurrent grants in line with agreed Government procedures.

# FINANCIAL IMPACT

The Government's Budget decisions announced in "A New Commitment to Higher Education in Australia" mean that higher education institutions will have available an additional \$843 million (in December 1987 prices) over 1988 levels for the 1989-91 triennium. The Higher Education Contribution Scheme (HECS) is expected to raise some \$307 million of this increase; \$83 million in 1989, \$98 million in 1990 and \$126 million in 1991. This compares with an estimated \$107.4 million revenue from the Higher Education Administration Charge (HEAC) in 1988.

These decisions, when converted to estimated December 1988 prices which are the price levels of the grants being legislated in this Bill, will provide higher education institutions with resources in the triennium as follows:

## RESOURCES AVAILABLE TO HIGHER EDUCATION INSTITUTIONS 1989-1991 (estimated December 1988 prices)

	1989 \$m	1990 \$m	1991 \$m
<b>RECURRENT GRANTS</b>			
Operating Grants	2,713.4	2,774.4	2,660.7
plus Projects of National Priority	26.2	26.8	27.6
<b>Total Operating Grants</b>	<b>2,739.6</b>	<b>2,801.2</b>	<b>2,888.3</b>
Teaching hospitals	3.8	3.8	3.8
Drug & Alcohol Co-ordination	0.6	0.6	-
Special Research Assistance	15.6	36.5	62.5
Equality of Opportunity	3.4	3.4	3.4
Aboriginal Participation	13.1	17.4	21.8
Superannuation	108.1	116.7	125.6
<b>Total Recurrent Grants</b>	<b>2,884.2</b>	<b>2,979.6</b>	<b>3,105.4</b>
<b>CAPITAL GRANTS</b>			
Major Works	112.0	151.2	184.3
Renovations	19.8	-	-
<b>Total Capital Grants</b>	<b>131.8</b>	<b>151.2</b>	<b>184.3</b>
<b>SUB-TOTAL</b>	<b>3,016.0</b>	<b>3,130.8</b>	<b>3,289.7</b>
<b>EVALUATIONS &amp; INVESTIGATIONS (funds provided via Appropriation Bill No 1)</b>	<b>1.0</b>	<b>1.0</b>	<b>1.0</b>
<b>TOTAL</b>	<b>3,017.0</b>	<b>3,131.8</b>	<b>3,290.7</b>

Please note, any variations in Tables are due to rounding.

Provided there is no impediment to the introduction of HECS as detailed in Chapter 4, this Bill will appropriate some \$7,557 million for the three years of the triennium via Chapter 2 plus estimated expenditure of \$1,470 million from the Higher Education Trust Fund (Chapter 4). In addition, the \$243 million provided for in Chapter 3 of this Bill will be appropriated by the *Higher Education Funding Amendment Bill 1988* which is being introduced concurrently. Because detailed allocations to individual institutions have not yet been possible, the amounts included in this Bill cover total resources to be made available to all higher education institutions (both State/Territory and Commonwealth). Chapter 7 will appropriate \$7.8 million

to meet the costs of supplementation of 1988 grants in line with Government procedures.

In addition to the estimated expenditure of \$1,470 million from the Trust Fund to be established by Chapter 4, institutions are estimated to receive \$166 million from students who elect to pay their liability under HECS on enrolment rather than through the taxation system.

If Chapter 5 is required to be proclaimed \$876 million will be appropriated with institutions obtaining an additional estimated amount of \$309 million from students which represents 90% of the estimated revenue from the continuation of HEAC during the triennium.

The Bill is structured to provide two options for funding higher education for the 1989-91 triennium. Under the Government's preferred option, decisions announced in the 1988/89 Budget relating to the provision of additional resources over the triennium will be provided together with the introduction HECS. Under this option the level of resources available to institutions for each year of the triennium will be as follows:

RESOURCES AVAILABLE UNDER GOVERNMENT'S PREFERRED OPTION  
(estimated December 1988 prices)

	<u>1989</u>	<u>1990</u>	<u>1991</u>
	\$m	\$m	\$m
Chapter 2	2,443.7	2,509.0	2,604.2
Chapter 3	53.8	76.2	113.1
Chapter 4 - Trust Fund payments	465.8	490.0	514.6
- "Up-front" payments by students	52.6	55.4	57.8
Total resources provided to institutions	<u>3,015.9</u>	<u>3,130.6</u>	<u>3,289.7</u>

Should the Government's estimate of expenditure from the Trust Fund as provided by Chapter 4 and payments by students who elect to pay their HECS liability "up-front" vary, then in subsequent legislation the level of funds for operating grants under Chapter 2 will be varied so that institutions receive, in real terms, the total level of funds as indicated for each year of the triennium.

The second option for funding would be activated if Chapter 4 introducing HECS were not passed. Under this option institutions will receive, in total, the same real level of funds provided to institutions in 1988 together with funds for the pipeline for funded intake increases prior to 1989. In addition HEAC would be retained for each year of the triennium. The level of resources to be provided to institutions under this option would be as follows:

RESOURCES AVAILABLE UNDER ALTERNATIVE OPTION  
(estimated December 1988 prices)

	<u>1989</u> \$m	<u>1990</u> \$m	<u>1991</u> \$m
Chapter 2	2,443.7	2,509.0	2,604.2
Chapter 5			
- States Grants payments	358.0	297.3	220.5
- 90% of estimated HEAC revenue from students	<u>101.7</u>	<u>103.3</u>	<u>104.0</u>
Total resources provided to institutions	<u>2,903.4</u>	<u>2,909.6</u>	<u>2,928.7</u>

Should the Government's estimate of the HEAC revenue, which is based on estimated relevant enrolments for each year of the triennium vary, then in subsequent legislation operating grants provided by Chapter 5 would be varied to ensure institutions receive, in real terms, the total level of resources as indicated for each year.

In accordance with Government policies the total resources to be provided under either option will be supplemented to take account of cost increases.

## DETAILED DESCRIPTION OF THE BILL

### Chapter 1 - Introductory

Chapter 1 is in an introductory Chapter, which contains the interpretative provisions that are applicable to all the provisions of the Bill. Some provisions of the Bill, in particular Chapter 4, have special additional interpretative provisions.

This Chapter provides a Table listing the institutions which are eligible to receive funding under Chapters 2, 3 and 5. Also included is a provision enabling funds provided for equipment or minor building projects to be accumulated for expenditure by institutions in later years. This will be made conditional on the funds being put aside on a non-reversionary basis so that they can only be applied for the purposes for which they were accumulated.

Provision is also made to require States to enter into agreements with non-government institutions which are to receive funds under Chapters 2, 3 or 5 such that the institutions agree to be bound by conditions comparable to institutions established under or subject to State legislation.

### Chapter 2 - States Grants for Higher Education Assistance

This Chapter contains provisions similar to those in previous States Grants (Tertiary Education Assistance) Acts. It is designed to provide financial assistance to higher education institutions in accordance with announced Government decisions for 1989-91, but excluding

- . funding provided for initiatives funded by Chapter 3,
- . the funds to be provided through the Trust Fund to be established by Chapter 4, and
- . the estimated amount to be paid by students who elect to pay their Higher Education Contribution Scheme (HECS) liability "up-front" rather than via the taxation system once their personal income reaches the prescribed level.

The funds to be appropriated by this Chapter will be provided to institutions irrespective of the funding option (see Financial Impact Statement).

This Chapter will also provide for institutions to provide an educational profile to the Minister which will be the basis for determining the level of funds to be provided. Provision is made for the Minister to determine the level of funds to be provided to institutions under the category of "operating purposes" or "limited operating purposes".

It has not been possible to include Schedules of institutional grants as in previous legislation, due to time constraints involving the necessary consultative process with the institutions over the distribution of the increased resources for the triennium. However, consistent with previous legislative provisions, the power of disallowance by the Parliament of certain determinations made under this legislation is provided for in the general financial provisions included in Chapter 6.

The following table provides a breakdown of the funds being provided for all higher education institutions by this Chapter.

STATES GRANTS FOR HIGHER EDUCATION ASSISTANCE  
(estimated December 1988 prices)

	<u>1989</u> \$m	<u>1990</u> \$m	<u>1991</u> \$m
<u>RECURRENT GRANTS</u>			
- Operating Grants	2,195.0	2,229.0	2,288.3
- Projects of National Priority	26.2	26.8	27.5
- Teaching Hospitals	3.8	3.8	3.8
- Drug and Alcohol	0.6	0.6	-
- Special Research Assistance	15.6	36.5	62.6
- Specified Grants			
. Equality of Opportunity	1.3	1.3	1.3
. Greater Participation by Aborigines	11.5	12.8	13.3
. Superannuation	108.1	116.7	125.6
<u>Total Recurrent</u>	2362.1	2427.3	2522.5
<u>CAPITAL GRANTS</u>	81.7	81.7	81.7
<u>TOTAL HIGHER EDUCATION</u>	<u>2443.7</u>	<u>2509.0</u>	<u>2604.2</u>

Chapter 3 - Additional States Grants for Higher Education Assistance

This Chapter provides for additional funding (to that provided in Chapter 2) which is conditional on the introduction of the Higher Education Contribution Scheme (HECS). The appropriation of these additional funds is provided via the *Higher Education Funding Amendment Bill 1988* to be introduced concurrently with this Bill.

Included is a new program in 1989 to assist institutions to meet their most urgent needs for the refurbishment of buildings and facilities. Details of the level of funds to be provided by this Chapter are detailed below:



ADDITIONAL STATES GRANTS FOR HIGHER EDUCATION ASSISTANCE  
(estimated December 1988 prices)

	<u>1989</u>	<u>1990</u>	<u>1991</u>
	\$m	\$m	\$m
<u>RECURRENT GRANTS</u>			
- Specified Grants			
. Equality of Opportunity	2.1	2.1	2.1
. Greater Participation by Aboriginals	1.7	4.6	8.4
<u>Total Recurrent</u>	3.8	6.7	10.5
<u>CAPITAL GRANTS</u>			
- New Works	30.3	69.5	102.6
- Renovations	19.8	-	-
<u>Total Capital</u>	50.1	69.5	102.6
TOTAL HIGHER EDUCATION	53.8	76.2	113.1

Chapter 4 - Higher Education Contribution Scheme

The Chapter proposes a new system to supplement funding of the Australian higher education system by requiring contributions to be made by students towards the cost of their higher education when they are in a position, financially to do so. The Scheme is being established under the Commonwealth's benefits to students power in the Constitution and not as a grant to a State.

An annual course contribution of \$1800 (in 1989 prices) will apply for each year of equivalent full time study undertaken at higher education institutions from 1 January 1989, with students making a pro rata contribution according to the actual amount of study being undertaken.

In order to become enrolled each semester, students who are liable to make contributions to the cost of their education will be required to either:

- . pay the institution 85% of their estimated liability for the semester, based on the student load being enrolled for (the Commonwealth will discharge the balance of the liability by payments from the Trust Fund established under this Chapter); or
- . ask the Commonwealth to pay their contribution to the institution and agree to repay the Commonwealth through the taxation system. Students who thereby incur higher education debts to the Commonwealth will also be required to notify the institution of their current tax file number or where they do not have one, make written application for a tax file number.

Liability under the Scheme each semester will be based on the student load being undertaken by the student as at the census date for the semester.

At the census date higher education institutions will calculate each student's semester liability and notify the student in writing. For a student who has decided not to repay through the taxation system, if the final liability is greater than the 85% of estimated liability paid on enrolment the student will be liable to pay the difference to the institution. If the final liability is less than the amount estimated on enrolment, the institution will refund the excess.

Students who opt to make their higher education contribution for a semester through the taxation system will not be required to make any payments until their personal taxable income reaches a specified level. For the year ending 30 June 1989, payments will commence when taxable income reaches \$22,000, and the amount payable will be -

- . 0.5% of taxable incomes between \$22,000 and \$24,999;
- . 1% of taxable incomes between \$25,000 and \$34,999; and
- . 1.5% of taxable incomes of \$35,000 and above.

In future years, those rates will be 1%, 2% and 3% respectively of equivalent taxable income bands which will be adjusted in line with movements in the Consumer Price Index.

Higher education contributions payable on assessment of taxable income will be deducted from a student's accumulated higher education debt. The unpaid balance will be adjusted annually to reflect movements in the Consumer Price Index.

Higher education contributions payable on assessment will be treated in the same way as income tax, and normal taxation collection and recovery mechanisms will apply. To facilitate collection, taxpayers who have incurred higher education debts which remain unpaid at the time of lodgement of their annual income tax returns will be required to state on their returns the total amount unpaid. In assessing the amount payable in the year - measured as a percentage of taxable income - the Commissioner of Taxation will be authorised to apply available P.A.Y.E. instalments, provisional tax and prescribed payments credits against that amount first, in preference to application against the person's income tax liability.

Taxpayers will have the same rights of objection and review against higher education assessments as they have for income tax assessments.

In addition to provision for amendments to various taxation legislation to take account of HECS there is also provision in this Chapter for the abolition of the Higher Education Administration Charge including repeal of the relevant provisions in the various pieces of enabling legislation of Commonwealth institutions.

The following table provides a breakdown of the financial implications of this Chapter.

HIGHER EDUCATION CONTRIBUTION SCHEME  
(estimated December 1988 prices)

	<u>1989</u> \$m	<u>1990</u> \$m	<u>1991</u> \$m
- Trust Fund - payments to institutions	465.8	490.0	514.6
- "Up Front" payments by students to institutions	<u>52.6</u>	<u>55.4</u>	<u>57.8</u>
Total	518.4	545.4	572.4

Chapter 5 - Contingent Provisions

The purpose of the Chapter, which would only be proclaimed should Chapter 4 not be passed, is to appropriate additional recurrent grants which may be added to those already provided under Chapter 2 sufficient only to bring grants to a level comparable to 1988 grants in real terms including pipeline effects for funded intakes prior to 1989 and a reduction for an amount equivalent to 90% of the expected revenue from the Higher Education Administration Charge (HEAC).

Provision is also made for the continuation of HEAC at an indexed rate as provided for under previous States Grants legislation.

Also included is provision for the continuation of the special assistance for students program which has enabled institutions to make loans or grants to students who would otherwise have had their studies interrupted.

CONTINGENT PROVISIONS  
(estimated December 1988 prices)

	<u>1989</u> \$m	<u>1990</u> \$m	<u>1991</u> \$m
<u>RECURRENT GRANTS</u>			
- Operating Grants	353.7	293.0	216.2
- Specified Grants			
Special Assistance for Students	<u>4.3</u>	<u>4.3</u>	<u>4.3</u>
Total Recurrent Grants	358.0	297.3	220.5
Funds to be obtained by institutions - 90% of HEAC revenue	101.7	103.3	104.0

Chapter 6 - Miscellaneous

This Chapter makes provision for imposing additional conditions on grants and other miscellaneous matters. These include requirements for equality for female and male students in the application of funds provided by this legislation; additional conditions and limitations pertaining to determinations and instruments made by the Minister including the requirement for tabling in the Parliament for possible disallowance; payment arrangements; delegation of powers by the Minister, Commissioner of Taxation and Secretary of the Department of Employment, Education and Training; and reporting requirements.

Chapter 7 - Amendments of States Grants (Tertiary Education Assistance) Act 1987

The purpose of this Chapter is to provide adjustments to grants paid under the *States Grants (Tertiary Education Assistance) Act 1987* in line with agreed Government procedures, and to make provision for institutes of tertiary education and non-government teachers' colleges to receive funds connected with the 3% Superannuation Productivity Benefit with effect from 1 July 1988. The additional funds relate to the funding of the recent National Wage Case.

AMENDMENTS OF STATES GRANTS (TERTIARY EDUCATION ASSISTANCE) ACT 1987  
(estimated December 1988 prices)

The amounts substituted by these amendments represent additional appropriations as follows:

	<u>1988</u> \$'000
<u>RECURRENT GRANTS</u>	
- University Purposes	3,654.0
- College Purposes	3,424.4
- Special Research Grants	54.0
- Teaching Hospitals	9.0
- Institutes of Tertiary Education	95.5
- Advanced Education in TAFE Institutions	31.0
- Non-Government Teachers Colleges	14.0
- Specified Grants	
. Promotion of Equality of Opportunity	4.0
. Greater participation of Aborigines in higher education	1.0
. Special Assistance for Students	12.0
. Special Research Assistance	487.0
<b>TOTAL HIGHER EDUCATION</b>	<u>7,785.9</u>

Capital and Equipment programs were fully supplemented in the previous amendment to the 1987 Act.

## CLAUSES OF THE BILL

### CHAPTER 1 - INTRODUCTORY

- Clause 1:     Short title
- Clause 2:     Commencement: This Clause provides for all Chapters, except Chapter 5, to come into operation on Royal Assent. Chapter 5 contains the Contingent Provisions and is to come into operation on Proclamation. It will only be come into force if the Higher Education Contribution Scheme provisions in Chapter 4 are not enacted.
- Clause 3:     Definitions: This Clause defines words and terms used generally in the Bill. Additional definitions are included in later Clauses as required for clarity.
- Clause 4:     Institutions: This Clause contains a Table listing the higher education institutions to which funds under Chapter 2, 3 and 5 can be provided. It also contains provision for the Minister to amend the Table by declaration.
- Clause 5:     References to payments and acts: This Clause makes provision enabling payments and placing administrative responsibility in cases where the administration of an institution is carried out by a body that is not incorporated.
- Clause 6:     Proposed institutions: This Clause enables funds to be provided during the establishment phase of a proposed institution under the same conditions applicable to fully established institutions.
- Clause 7:     Provision for superannuation or long service leave: This Clause enables funds provided to institutions to be placed in a fund in anticipation of expenditure against forward commitments in later years for superannuation and long service leave, with the funds being deemed to have been expended in the year in which they were transferred to the fund.
- Clause 8:     Special fund for equipment and minor building projects: This Clause enables funds provided to institutions to be placed in a fund on a non-reversionary basis in anticipation of expenditure on equipment purchases and minor building works, with the funds being deemed to have been expended in the year in which they were transferred to the fund.
- Clause 9:     Making and variation of determinations etc: This Clause requires any exercise of Ministerial power under this Act to be in writing and for any variation made under the provisions of the Act to have effect in the varied form. It also provides for any guidelines issued by the Minister to be published in the Gazette.
- Clause 10:    References to Northern Territory: This Clause is intended to remove any doubts that any references to a State include a reference to the Northern Territory.

- Clause 11:     Securing compliance by prescribed non-government institutions:  
This Clause makes provision requiring non-government institutions to enter into agreements with the State concerned in order to participate under this legislation, with conditions comparable to those for institutions bound by State or enabling legislation.

## CHAPTER 2 - STATES GRANTS FOR HIGHER EDUCATION ASSISTANCE

### PART 2.1 - PRELIMINARY

- Clause 12:     Institutions to which provisions apply: This Clause provides for the Minister to determine the institutions to which particular provisions of this Chapter will apply.
- Clause 13:     Student fees: This Clause enables institutions to charge, within guidelines determined by the Minister, fees for post-graduate courses for students who are, or have been, established in employment and who wish to return to study to improve their qualifications or employment prospects.
- Clause 14:     Educational profiles: This Clause requires institutions to provide to the Minister, in the approved form, an education profile to be used as a basis for the determination of funding. It also provides for the institution to update or vary the profile originally submitted.

### PART 2.2 - RECURRENT GRANTS

- Clause 15:     Grants for expenditure for operating purposes: This Clause provides for the Minister to determine the level of grants for each year for specified institutions for operating purposes which include general teaching, general research, courses of continuing education, the purchase of equipment and minor building projects at an institution.
- Clause 16:     Grants for expenditure for limited operating purposes: This Clause provides for the Minister to determine the level of grants for each year for specified institutions for limited operating purposes comprising general teaching, and the purchase of equipment and minor building projects related to general teaching at the institution.
- Clause 17:     Maximum grants: This Clause provides for the maximum amounts to be made available under Clauses 15 and 16 for each of the three years of the triennium.

- Clause 18:     Conditions of grants: This Clause provides the conditions pertaining to funds granted under Clauses 15 and 16. Included are conditions providing for payments to institutions by a State without delay, requirements that an institution only spends the funds granted in accordance with education profile provided to the Minister at the time of determining the level of funds payable under Clauses 15 or 16, the requirement for the provision of accounting statements and such statistical information as the Minister requires, and for overseas students to have paid by a date determined and gazetted by the Minister any charges for which they are liable under the *Overseas Students Charge Act 1979* as a condition of their continuing enrolment.
- Clause 19:     Grants for Aboriginal participation projects: This Clause empowers the Minister to approve funding for proposals from institutions offering increased participation for Aboriginals in higher education courses, such amounts to be added to grants already approved under Clauses 15 or 16.
- Clause 20:     Grants for superannuation expenses: This Clause enables funds to be made available to assist higher education institutions to meet certain specified superannuation expenditure. Approved amounts are added to the allocations already approved under Clauses 15 or 16.
- Clause 21:     Grants for projects of national priority: This Clause enables the Minister to provide additional funds to institutions to undertake projects of a national educational priority. Approved amounts are added to allocations already approved under Clauses 15 or 16.
- Clause 22:     Promotion of equality of opportunity: This Clause empowers the Minister to approve proposals from institutions and funding to promote equity in higher education.
- Clause 23:     Special research assistance: This Clause provides grants of financial assistance for special research centres, key centres of teaching and research or on programs of research in higher education. The conditions of these grants recognise that "expenditure" includes approved commitments made during the year of the grant.
- Clause 24:     Grants in respect of teaching hospitals: This Clause provides for grants of financial assistance in respect of an institution's contribution towards the "appropriate costs" of either the teaching hospital of the institution or arrangements entered into by the institution with a separate teaching hospital. "Appropriate costs" include expenditure on medical teaching facilities, equipment and library materials.

- Clause 25:     Grants in respect of drug and alcohol education in teaching hospitals: This Clause provides for additional grants to teaching hospitals to assist in the implementation of the Government's priorities within the Drug and Alcohol Offensive to ensure that medical undergraduates have an appropriate awareness and treatment content included in their course curricula.

#### PART 2.3 - CAPITAL GRANTS

- Clause 26:     Grants for building projects: This Clause enables the Minister to approve projects and determine amounts payable to institutions for building projects.
- Clause 27:     Conditions attaching to capital grants: This Clause specifies the conditions under which grants are provided under Clause 26, which are consistent with conditions imposed under previous States Grants (Tertiary Education Assistance) legislation.

#### PART 2.4 - TRANSITIONAL

- Clause 28:     Adjustments where estimated 1988 enrolments not equal to actual enrolments: This Clause enables adjustments to be made by varying the amounts of an institution's grant under Clause 15 or 16 where actual enrolments at an institution in 1988 are at variance with the enrolments estimated for deductions for the Higher Education Administration Charge. These deductions were made from grants provided in the *States Grants (Tertiary Education Assistance) Act 1987* for 1988.

### CHAPTER 3 - ADDITIONAL STATES GRANTS FOR HIGHER EDUCATION ASSISTANCE

#### PART 3.1 - RECURRENT GRANTS

- Clause 29:     Grants for Aboriginal participation projects: This Clause empowers the Minister to approve funding for proposals from institutions offering increased participation for Aboriginals in higher education courses, such amounts to be added to grants already approved under Clause 15 or 16. These funds are additional to those provided under Clause 19 and will be only payable if Chapter 4 is enacted.
- Clause 30:     Promotion of equality of opportunity: This Clause enables funds in addition to those provided, under Clause 22 to be approved by the Minister for a proposal deserving of assistance. It also specifies the conditions under which funds are paid. These funds will be available only if Chapter 4 is enacted.



### PART 3.2 - CAPITAL GRANTS

- Clause 31: Grants for building projects: This Clause enables the Minister to approve projects and determine amounts payable to institutions for building projects. These funds are additional to those provided under Clause 26 and will be payable only if Chapter 4 is enacted.
- Clause 32: Grants for renovation projects: This Clause provides grants of financial assistance for a one-off program in 1989 for the refurbishment of buildings and facilities in institutions. The grants will be conditional on the enactment of Chapter 4.
- Clause 33: Conditions attaching to capital grants: This Clause specifies the conditions under which grants are provided under Clauses 31 or 32.

### CHAPTER 4 - HIGHER EDUCATION CONTRIBUTION SCHEME

#### PART 4.1 - PRELIMINARY

- Clause 34: Interpretation: This Clause is an interpretative provision which gives particular meanings, unless there is a contrary intention apparent, to words and expressions used in this Chapter.

Subclause 34(1) contains the following definitions:

"accumulated HEC debt" is - in relation to a student who repays the higher education contribution through the taxation system - the total of all higher education contributions that remain outstanding at 1 June each year as calculated under Clause 66. A detailed explanation of this expression is contained in the notes on Clause 66.

"annual course contribution" should be read in conjunction with Clause 40 and the definition of "contribution". The "annual course contribution" for 1989 is \$1,800. This amount will be indexed each year in accordance with cost movements (see Clause 40).

"appropriate officer" when used in this Chapter, means a person, or one of a class of persons, appointed by an institution as an appropriate person to receive from students on behalf of the institution documents and information associated with the Higher Education Contribution Scheme.

"census date", which is defined in relation to a particular semester in relation to an institution, means:

- . where a summer school or term is to be taken as a separate semester
  - the date on which the student commences the course of study; or
- . in any other case, the date specified by the Minister in relation to that particular semester.

Read in conjunction with Clause 39, the definition is relevant to establishing a student's obligation to pay higher education contributions.

"Commissioner" is a short hand reference to the Commissioner of Taxation.

"contributing student" in relation to a designated course of study at an institution means a student other than one who is exempt in relation to that course of study. Because only contributing students have an obligation under Clause 39 to pay a contribution for higher education, the effect of the definition is to free exempt students from liability.

"contribution" is the amount which each contributing student is required to pay towards the cost of a designated course of study. A student's contribution for each semester is calculated by multiplying the annual course contribution by the student load for the semester. Students undertaking less or more than a standard student load will be liable to a proportionately smaller or larger amount of the annual course contribution.

"designated course of study" means a higher education course that leads to a degree, diploma, associate diploma or other award provided by a higher education institution except:

- . a basic nurse education course,
- . a post-graduate course provided in accordance with guidelines issued by the Minister for the charging of fees for such courses,
- . a non-award, recognised bridging or supplementary course, or
- . an enabling (bridging or supplementary) course.

"exempt student" obtains its meaning from Clause 35. Exempt students of the kinds specified in that clause will not be required to contribute to the cost of their higher education under the scheme proposed by this Chapter.

"Fund" in this Chapter means the Higher Education Trust Fund, the establishment of which is provided for by subclause 60(1).

"HEC assessment debt" is the amount payable in reduction of an HEC accumulated debt established under Clause 69 on the basis of an assessment made by the Commissioner in accordance with Clause 72.

"HEC semester debt" obtains its meaning from Clause 63. It is the amount the student is required to repay to the Commonwealth in cases where the student has elected to repay their liability via the taxation system and the Commonwealth has discharged the student's liability to a higher education institution for a designated course of study in a semester.

"overseas student", given the same meaning as in the *Overseas Students Charge Act 1979*.

"overseas student charge" is the charge imposed by the *Overseas Students Charge Act 1979*.

"post-graduate scholarship student" means the holder of a scholarship for a particular year where the scholarship is awarded for the particular post-graduate course of study in accordance with *Gazetted* guidelines issued by the Minister for purposes of the Higher Education Contribution Scheme.

"semester" means a semester in 1989 or a subsequent year as defined by Clause 37.

"standard student load" obtains its meaning from subclause 39(2) and represents an equivalent full-time student unit as determined by each institution for each designated course of study in accordance with guidelines issued by the Minister.

"student", when used in Chapter 4, is a reference not only to a person undertaking a course of study at a higher education institution on or after 1 January 1989 but also to prospective and former students in respect of such a course.

"student load" is the proportion of the standard student load undertaken by a student in a course of study. Special provision is made in Clause 36 to exclude work experience in industry from the load, if applicable.

"tax file number" is simply a reference number which is issued to a person by the Commissioner. Where a person has already had a file number issued prior to enrolling for a course of study at an institution (e.g. because the student is a taxpayer) it will be that number. Where a person has to apply for a file number as part of the enrolment procedures it will be the number notified to the person by the Commissioner.

By Subclause 34(2) expressions used in Chapter 4 that are defined in the *Income Tax Assessment Act 1936* are, unless the contrary intention appears, to have the same meaning as in that Act. The provision enables expressions such as "assessment" and "taxable income", that are defined in the income tax law, to carry the same meaning in relation to a person's obligation to repay to the Commissioner higher education contributions paid on the student's behalf by the Commonwealth.

Subclause 34(3) makes it clear that another person may pay a student's contribution to an institution in satisfaction of the student's liability.

Subclause 34(4) sets out higher education institutions to which the Higher Education Contribution Scheme applies as those referred to in Clause 4, higher education institutions in the Australian Capital Territory, the Australian Defence Force Academy, the Australian Maritime College, the National Institute of Dramatic Arts, and The Australian Film, Television and Radio School.

Clause 35: Exempt students: This Clause provides, specifically for this Chapter, the categories of students exempt from the Higher Education Contribution Scheme. These include post-graduate students receiving scholarships for their course (as defined in Clause 34), non-enrolled students attending or participating in courses, and overseas students who have paid or for whom the overseas students charge has been paid or to whom the guidelines for full-fee paying students apply or who are subsidised under Commonwealth foreign aid programs.

Clause 36: Student load not to include work experience in industry: This Clause provides that the student load for calculation of a student's liability is not to include time spent in obtaining work experience in industry, even though such work may form part of the standard student load.

Clause 37: Semesters: This Clause is included to provide for nominal semesters where an institution's courses are not run on a semester basis, for the purposes of establishing a student's liability under the Higher Education Contribution Scheme. It also provides for any courses run in a summer school context to be considered as a semester course of study occurring in the next year if the course is undertaken prior to the end of December of a year. This will not apply until 1989-90 Summer Schools.

## PART 4.2 - CONTRIBUTIONS

### Division 1 - Additional condition of grant of financial assistance

Clause 38:     Additional condition: This Clause provides that grants made to a State under Chapter 2 or 3 in relation to an institution will be subject to the State ensuring that the institution complies with the requirements of this Chapter in relation to the Higher Education Contribution Scheme.

### Division 2 - Imposition and payment of contributions

Clause 39:     Requirement to pay contributions: This Clause establishes the contribution to be paid by a student in respect of each semester, based on the product of the annual course contribution (Clause 40) and the student's student load (as defined in Clause 34).

Clause 40:     Annual course contribution: This Clause specifies that the annual course contribution for a standard student load for 1989 is to be \$1,800 and provides a mechanism for the future indexation of that amount.

Clause 41:     Requirements before enrolment or undertaking course: This Clause sets out a number of conditions which must be satisfied each semester by a contributing student before that student may enrol for, or undertake, a designated course of study. The conditions depend on whether the student decides to:

- pay the institution 85% of the contribution assessed by the institution to be payable for the particular semester; or
- request the Commonwealth to pay the whole of the contribution to the institution and agree to repay the contribution through the taxation system.

Where the student pays 85% of the contribution to the institution, a document in an approved form is to be signed by the student which requests the Commonwealth to pay the institution the remaining 15% and thereby discharge the student's liability.

A student who chooses to make higher education contributions through the taxation system will be required to give the institution, in an approved form, a signed request to the Commonwealth to lend to the student the amount of the contribution and apply the amount lent in discharge of the student's liability. The form will also contain an acknowledgement by the student of a liability to repay the loan through the taxation system.

To facilitate repayment of loans a student who chooses this option will be required to notify the institution of her or his current tax file number. If unable to quote the number either because the student is unaware of it or a tax file number has not been issued, the student will be required to apply through the institution for the issue of, or notification of, a tax file number as provided for in Clause 43.

An institution will be under an obligation to send any such applications it receives to the Commissioner of Taxation within 7 days of receipt.

Clause 42: Power of Commissioner to inform institution concerning tax file number: Clause 41 provides that a student will be required to apply for the issue or notification of a tax file number if she or he is unable to quote a number on enrolment. Clause 42 will permit the Commissioner to notify an institution in writing of a student's file number following receipt of the application. The institution may also be informed if the number is changed or cancelled at any time or if the Commissioner refuses to issue the student with a file number.

The Clause also covers the situation where a tax file number notified by a student to the appropriate officer of an institution on enrolment is the wrong number e.g., it has been incorrectly quoted.

Where the Commissioner is satisfied that the tax file number notified has been cancelled, withdrawn, or is otherwise wrong, the Commissioner may write to the institution and advise the institution of the incorrect notification and inform the institution of the student's correct number. The student will then be taken to have quoted the correct number.

Where a student has notified an incorrect or cancelled tax file number to an institution, however, and the Commissioner is not satisfied that the student has a tax file number, the Commissioner may advise the institution accordingly in writing. The Commissioner will be required to give the student a copy of any such notice given to the institution.

The practical effect of such a notice is that, under enrolment conditions specified in Clause 41, the institution will not permit the student to enrol for, or undertake, a course of study in a future semester until satisfied that a correct tax file number has been notified or unless a written application for a tax file number has been made.

A decision by the Commissioner to give a notice that the Commissioner is not satisfied that a student has a file number is to be subject to a right to review by the Administrative Appeals Tribunal as provided in Clause 50.

Clause 43:     Application for issue or notification of tax file number: This Clause deals with the application for a tax file number. Under subclause (1), a student may apply to the Commissioner for a tax file number or to be notified of a tax file number. The application must be in an approved form and may be lodged at, or posted to, the office of a Deputy Commissioner or lodged with an institution.

Clause 44:     Issuing of tax file numbers: This Clause will give the Commissioner the power to issue tax file numbers to students.

Under subclause (1) a tax file number will be issued if the Commissioner is satisfied that the applicant's identity has been established. As this subclause is subject to Clause 49, the Commissioner must also be satisfied that the applicant does not already have a tax file number.

By subclause (2) the Commissioner may, if not satisfied as to the applicant's true identity, refuse the application.

Subclause (3) requires the Commissioner to issue applicants with their tax file numbers by giving them written notice.

By subclause (4), a decision by the Commissioner under subclause (2) to refuse an application for a tax file number must be given to the applicant by notice in writing. The notice must include reasons for the decision. Clause 50 provides for a right of review by the Administrative Appeals Tribunal against a decision by the Commissioner to refuse to issue an applicant with a tax file number.

Clause 45:     Current tax file number: This Clause makes it clear that once a person has been issued with a tax file number any previous tax file number issued and not cancelled or withdrawn ceases to have effect.

Clause 46:     Deemed refusal by Commissioner: By the operation of subclause 46(1), where the Commissioner has not decided an application for a tax file number within 28 days, the applicant may give the Commissioner written notice advising that the applicant wishes to treat the application as having been refused.

Subclause (2) provides that for the purposes of review by the Administrative Appeals Tribunal, the Commissioner will be taken to have refused the application for a tax file number on the day on which any notice is given by an applicant under subclause (1).

An applicant may apply, under paragraph 50(1)(b), to the Administrative Appeals Tribunal for review of a decision that is to be taken to have been made by virtue of Clause 46.

Clause 47:      Cancellation of tax file numbers: Subclause 47(1) enables the Commissioner to cancel a tax file number if the Commissioner concludes that the number has been issued to a student under a false identity. The person must be given written notice of the cancellation and the reasons for the decision.

By subclause (2), a notice cancelling a student's tax file number must include the reasons for the Commissioner reaching the conclusion that the number was issued under an identity that was not the student's true identity. Paragraph 50(1)(c) (see notes on that paragraph below) provides for a right of review by the Administrative Appeals Tribunal against a decision to cancel a tax file number under Clause 47.

Clause 48:      Alteration of tax file numbers: This Clause gives the Commissioner power to withdraw a tax file number and issue a number to replace the withdrawn one. A notice under this Clause must be in writing.

Clause 49:      Notification of issued tax file numbers: Where the Commissioner is satisfied that a student who has made application in accordance with Clause 43 already has a tax file number, the Commissioner will, instead of issuing a number, notify the person in writing of the existing number.

Clause 50:      Review of decisions: Subclause 50(1) specifies the decisions of the Commissioner in respect of which a right of review by the Administrative Appeals Tribunal is to be available to the person affected by the decision. An application may be made for the review of a decision to:

- .      give a notice under subclause 42(3) to an institution that a tax file number is cancelled or otherwise incorrect where the Commissioner is not satisfied that the student has a tax file number;
- .      refuse an application to issue a tax file number under Clause 44, including a deemed refusal under Clause 46;
- .      cancel a tax file number under Clause 47 where the Commissioner concludes that the number was not issued to a person under that person's true identity.

Subclause 50(2) makes it clear that upon application for review by the Tribunal of a decision to refuse an application for the issue of a tax file number, the orders that may be made under subsection 41(2) of the *Administrative Appeals Tribunal Act 1975* include an order that the Commissioner will be required to issue the appellant with a tax file number pending the determination of the review.



By the operation of subclause (3), the tax file number issued as above ceases to have effect upon the final disposal of the application for review.

Under subclause (4), other than for the purposes of Clause 50, Chapter 4 of the Bill will apply when a tax file number ceases to have effect under subclause (3) as if the number had been cancelled.

Clause 51: Statements to accompany notification of decisions: Where the Commissioner makes a decision of a kind referred to in Clause 50, the Commissioner is required to serve on the person affected by the decision notice in writing setting out the decision and giving the reasons for the decision. By subclause 51(1), the notice must include a statement advising that a person whose interests are affected by the decision may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with the decision, apply to the Administrative Appeals Tribunal for a review of the decision. The notice must also include, except where subsection 28(4) of the *Administrative Appeals Tribunal Act 1975* applies, a statement to the effect that the person may request a statement under section 28 of that Act.

However, by virtue of subclause 51(2), a failure to include the statements as required by subsection (1) will not affect the validity of the Commissioner's decision.

Clause 52: Unauthorised requirement etc. that tax file number be quoted: Subclause 52(1) creates an offence, punishable on conviction by a fine of \$10,000 or imprisonment for 2 years or both, for a person to require or request the quotation of a student's tax file number for the purpose of establishing that student's identity or for any other purpose under unauthorised circumstances.

The situations under which a person will be permitted to require or request a student to quote their tax file number will be:

- . where this Chapter or another Commonwealth law makes provision for quotation of a tax file number in specified circumstances e.g., for enrolment purposes in accordance with subclause 41(1); and
- . where the person requiring or requesting the quotation is acting on the student's behalf in the conduct of the student's affairs. Such an authorisation allows a legal representative of a student to request, as necessary to act on that student's behalf, the student's tax file number.

Under subclause (2) a person may request the production of a document or a copy of a document on which the tax file number is recorded as long as the student to whom the number belongs is not prevented from removing that number if the student so wishes. This will enable students,

should they wish to do so, to, for example, evidence their debt by showing a copy of a notice of assessment.

Subclause (3) provides that a person will be taken to have required or requested the tax file number, and to have committed an offence if the request was unauthorised, where the student could reasonably understand from a statement made by the person that quotation is being required or requested.

Subclause (4) makes clear that Clause 52 cannot operate to oblige any person to require or request a student's tax file number.

Clause 53:     Unauthorised recording etc of tax file number: This Clause states that a person shall not record or maintain a record of a student's tax file number or use a student's number as an identity link or divulge or communicate that number to another person except in authorised circumstances.

The authorised circumstances are:

- .     to the extent necessary to comply with an obligation imposed by this Chapter or another Commonwealth law; and
- .     where the person is acting on the student's behalf in the conduct of the student's affairs.

The penalty for conviction of an offence against this Clause is a fine not exceeding \$10,000 or 2 years' imprisonment, or both.

Subclause (2) applies in a similar manner to subclause 52(4) in making clear that Clause 53 cannot operate to oblige a person to record, use or divulge a student's tax file number.

Clause 54:     Notice by institution: This Clause requires an institution to provide to a student undertaking a designated course of study certain details associated with undertaking the course and liability under this Chapter.

Notices are to be given no later than a date gazetted by the Minister in relation to a particular semester. The Clause also provides for notices given by an institution to a student to be corrected for any material inaccuracy.

Clause 55:     Reconsideration of notices: This Clause enables a student, within 14 days of the sending of a notice referred to in Clause 54, to request the institution to reconsider the particulars of that notice with a view to correcting any significant inaccuracies.

A request made under this Clause does not affect the liability of the student to pay the contribution.

Clause 56:     Review of decision on reconsideration: This Clause provides that a decision by an institution made in accordance with Clause 55, following reconsideration of a notice, will be subject to a right of review by the Administrative Appeals Tribunal.

Clause 57:     Overpayment or underpayment of contribution: This Clause provides for a refund to be made by an institution to a student or a further payment to be made by the student to the institution, as appropriate, where an "up-front" payment made under subparagraph 41(1)(a)(i) differs from the amount of the actual contribution for which the student becomes liable on the census date for the relevant semester.

Division 3 - Discharge by Commonwealth of students liabilities for contributions

Clause 58:     Commonwealth to discharge students' liabilities: This Clause provides for the Commonwealth to pay to the institution the remaining 15% of the contribution in cases where a student has paid the 85% payment up-front, or alternatively to lend to a student who has not made such payment the full amount of the student's contribution and to apply that amount in making a payment to the institution in discharge of the student's liability to pay the contribution.

The loans and payments made by the Commonwealth under this Clause represent benefits from the Commonwealth to the student.

Clause 59:     Institutions to provide information to Minister: This Clause provides for institutions to provide to the Minister when required such statistical and other information as is reasonably required for purposes of Part 4.2 except name and address of a student.

PART 4.3 - HIGHER EDUCATION TRUST FUND

Clause 60:     Establishment of Fund: This Clause will create the Higher Education Trust Fund which is to be a trust account for the purposes of section 62A of the *Audit Act 1901*.

Clause 61:     Payments into Fund: This Clause identifies what shall be paid into the Trust Fund. These are:

- voluntary payments in respect of an accumulated HEC debt (Clause 66) or an HEC semester debt (Clause 63);
- amounts equal to HEC assessment debts under Clause 69 that are assessed under Clause 72. Because these amounts will be collected by the Commissioner of Taxation as if they were income tax and paid into Consolidated Revenue Fund, subclause (2) will authorise their appropriation from the Consolidated Revenue Fund to the Trust Fund;

- . monies necessary to enable payments to be made out of the Fund as authorised by Clause 62. These monies are also appropriated out of the Consolidated Revenue Fund by subclause (2);
- . money paid by any person for the purposes of the Fund;
- . interest from the investment of money in the Fund.

Clause 62:     Application of Fund: The Clause specifies the purposes for which moneys in the Fund may be applied. The principal purpose is to discharge, as provided by Clause 58, students' liabilities to institutions for contributions payable in accordance with Clause 39. A secondary purpose is the repayment of amounts that should not have been paid into the Fund or that are refundable, e.g., on amendment of an HEC assessment debt. The fund may also be utilised to make payments to a State in cases where the Commonwealth collects contributions in respect of courses funded by the State.

#### PART 4.4 - REPAYMENT OF LOANS

##### Division 1 - Nature of indebtedness

- Clause 63:     HEC semester debt: This Clause provides for the establishment of an HEC semester debt by a person where the Commonwealth has made a loan to a student under subclause 58(3) and applied that loan in making a payment to an institution to discharge the student's semester liability. The debt is deemed to be established immediately after the census date referred to in Clause 34. The amount of the semester debt is equal to the amount of the Commonwealth loan to the student.
- Clause 64:     Power of Secretary to remit semester debt in special circumstances: This Clause enables the Secretary of the Department of Employment, Education and Training, following a written approach from a student within 3 months after a semester debt is incurred, to review a student's liability under the Scheme with a view to reducing or remitting the debt if the Secretary is satisfied that there are special circumstances which justify such action. The Clause also provides for advice of the Secretary's decision to be given to the student and, where the semester debt is varied, to the Commissioner.
- Clause 65:     Review of decision of Secretary: This Clause provides that a decision by the Secretary in accordance with Clause 64 will, on application by the student, be subject to a right of review by the Administrative Appeals Tribunal.
- Clause 66:     Calculation of accumulated HEC debt: This clause specifies the amount that a student will owe on 1 June each year on account of higher education contributions paid by the Commonwealth on the student's behalf in accordance with Clause 58. The amount will include any unpaid balance from

the previous 1 June, indexed to keep in line with inflation, plus new HEC semester debts that have arisen in the intervening 12 months. The accumulated HEC debt as formulated under this Clause represents the upper limit that a person can be required to pay on an HEC assessment made under Clause 72.

Subclause (1) deals with the situation where there was no accumulated HEC debt as at the previous 1 June. In such a case the accumulated HEC debt will simply be the total of HEC semester debts incurred during the previous 12 months less any voluntary payments made under Clause 68 in reduction of those HEC semester debts.

Subclause (2), read with subclauses (3) and (4), sets out the calculation of an accumulated HEC debt on 1 June where there was an accumulated HEC debt as at the previous 1 June. In these circumstances the accumulated HEC debt is the sum of:

- . the total of any HEC semester debts incurred during the intervening 12 months, less any voluntary repayments:  
and
- . the adjusted accumulated HEC debt as at the previous 1 June multiplied by the indexation factor ascertained in accordance with subclause (5).

For this purpose, subclause 3 stipulates that the adjusted accumulated HEC debt is calculated in accordance with the formula  $A-(B+C+D-E)$ . The components of the formula are -

- A is the accumulated HEC debt as at the previous 1 June;
- B is any HEC assessment debt or debts under Clause 72 assessed in respect of income tax returns lodged during the 12 months since the previous 1 June;
- C is the total of all voluntary payments (i.e., not payments on assessment) applied in reduction of the accumulated HEC debt during that previous 12 months;
- D is the total amount by which any HEC assessment debt (regardless of when it was originally assessed) was increased on amendment during that previous 12 months;
- E is the total amount by which any HEC assessment debt (regardless of when it was originally assessed) was decreased on amendment during that previous 12 months.

For the purposes of the above calculation an assessment or an amended assessment is to be taken as being made on the date specified in the notice of assessment (subclause 4).

The following example illustrates the operation of the formula and calculation:-

Facts assumed

1 June 1989	Accumulated HEC debt \$500
30 July 1989	HEC assessment debt \$300
30 October 1989	HEC semester debt \$800
30 November 1989	HEC assessment debt of 30 July 1989 reduced on amendment to \$280

Calculation of adjusted accumulated HEC debt at 1 June 1989

Formula :  $A - (B+C+D-E)$

$$\begin{aligned} & \$500 - (\$300 + 0 + 0 - \$20) \\ & = \$220 \end{aligned}$$

Calculation of accumulated HEC debt at 1 June 1990

HEC semester debt of 30 October 1989	\$800
--------------------------------------	-------

add

adjusted accumulated HEC debt as at 1 June  
1989 multiplied by the indexation factor  
(say 1.1)

$\$220 \times 1.1$	= \$242
accumulated HEC debt	\$1042

Where the calculation of an accumulated HEC debt results in an amount consisting of dollars and cents, the cents are to be disregarded (subclause (10)).

Subclauses (5) to (9) and (11) establish the indexation factor that is to apply in relation to 1 June of a particular year for the purposes of the indexation arrangements detailed in subclause (2). The factor, which is based on the capital cities weighted average of the All Groups Consumer Price Index, is to be determined as at the date on which the Australian Statistician first publishes the index number for the March quarter immediately prior to the particular 1 June. The factor is arrived at by dividing the total of the index numbers for each quarter of the 12 months that ended on that 31 March by the total of the corresponding index numbers for each quarter of the previous 12 months.

The index number first published for each quarter is to be used in calculating the accumulated HEC debt notwithstanding that an index number may be published in substitution for a previously published index number. However, if at any time the Australian Statistician changes the reference base for the Consumer Price Index, any indexation factor calculated after that time will be

determined by reference only to index numbers published in terms of the new base.

The factor, which will be rounded to 3 decimal places, will be published by the Commissioner of Taxation before 1 June each year.

Clause 67: Accumulated HEC debt discharges earlier debts: This Clause is a technical measure to ensure that once an accumulated HEC debt is calculated at 1 June in accordance with Clause 66, this has the effect of discharging any accumulated HEC debt as at the previous 1 June and any HEC semester debts incurred during the intervening 12 months. Those other debts, however, are taken into account in the calculation of the accumulated HEC debt under Clause 66.

Division 2 - Voluntary discharge of indebtedness

Clause 68: Voluntary payments in respect of HEC debts: This Clause will enable a person to make a voluntary payment to the Commissioner at any time in respect of an accumulated HEC debt or any HEC semester debts. Where a payment made prior to 1 June is applied against an accumulated HEC debt the amount of debt to be subject to indexation is correspondingly reduced. (see notes on Clause 66).

Division 3 - Requirement to discharge indebtedness

Clause 69: Compulsory payments in respect of accumulated HEC debt: This Clause is one of the main operative provisions of Part 4.4. It defines a person's obligation to pay an HEC assessment debt and establishes how HEC assessment debts are to be determined.

Subclauses (1), (2), (3) and (4) are complementary measures that impose an obligation to pay an HEC assessment debt on a person who has an accumulated HEC debt at the 1 June preceding the time when the Commissioner assesses the person for income tax. The obligation arises only if the assessed taxable income of that person is \$22,000 or more.

An HEC assessment debt is payable at the rate of:

- . where the person's assessed taxable income is between \$22,000 and \$24,999 - 1% of taxable income;
- . where the assessed taxable income is between \$25,000 and \$34,999 - 2% of taxable income;
- . where the assessed taxable income exceeds \$34,999 - 3% of taxable income.

For the year ending 30 June 1989 only, the relevant percentages are half those applicable in later years. This reflects the fact that the HEC Scheme is to operate from 1 January 1989. The percentages to apply for the year ending 30 June 1989 are:

- . 0.5% of taxable incomes from \$22,000 - \$24,999
- . 1% of taxable incomes from \$25,000 - \$34,999
- . 1.5% of taxable incomes over \$34,999.

In a case where a person's accumulated HEC debt on 1 June is less than the amount determined by applying the relevant percentage of assessed taxable income, the amount payable will be limited to the amount of the accumulated debt. In fixing that upper limit, any variations made to the accumulated balance between 1 June and the date of the assessment (e.g., by voluntary payments or by an intervening assessment) would be taken into account (subclause (2)).

The taxable income bands are to be indexed each year. Subclauses (5) to (11) establish the indexation factor that is to apply in relation to a particular year of income. The factor to be used is identical to that in Clause 66 relating to indexation of accumulated HEC debt and the same indexation method explained in the notes on that Clause will apply. If, after indexation, the taxable income bands consist of amounts comprising dollars and cents, the cents will be disregarded.

#### Division 4 - Returns and assessments

- Clause 70:     Institutions to provide information to Commissioner: This Clause requires an institution to give such student data in its possession to the Commissioner as the Commissioner reasonably requires for the purposes of collecting higher education contributions. This requirement only applies in relation to students who have not paid their higher education contribution for a semester direct to the institution on enrolment.
- Clause 71:     Annual returns: By this Clause, a person is required to set out in her or his annual income tax return the amount of any accumulated HEC debt as at 1 June immediately prior to the furnishing of the return, together with details of any voluntary payments of higher education contribution made since that date.
- Clause 72:     Assessment: This Clause will formally empower the Commissioner to make an assessment of a person's accumulated HEC debt as at the previous 1 June and the amount of any HEC assessment debt required to be paid in accordance with Clause 69.
- Clause 73:     Application of Income Tax Assessment Act: To facilitate the collection and recovery by the Commissioner of HEC assessment debts assessed under Clause 72, those debts are to be treated as if they were income tax assessed under the Income Tax Assessment Act 1936 (the "Assessment Act"). For that purpose, this Clause will extend relevant collection, recovery and appeals provisions of the income tax law so that they apply as necessary to HEC assessment debts.



Subclause 73(1) specifies that Parts IV and V, and Division 1 of Part VI of the Assessment Act apply.

Part IV relates to income tax returns and assessments. Its application will mean that the rules that apply to the making of income tax assessments and amendments including, for example, those relating to the service of notices and the evidentiary status of assessment notices in taxation disputes, will apply to HEC assessment debts.

Part V relates to objections and appeals. Its application will extend the rights of objection and review that are available against income tax assessments to HEC assessments. This means that if a taxpayer is dissatisfied with an HEC assessment he or she may lodge an objection in accordance with the rules set out in Part V. If an objection is made in respect of an income tax assessment that gives rise to an HEC assessment, the objection will be taken, as appropriate, to also be an objection against the HEC assessment.

Where the Commissioner has considered the objection and disallowed it or partly disallowed it, the taxpayer will have the usual right to request reference of the decision to the Administrative Appeals Tribunal or the Federal Court.

Division 1 of Part VI contains rules for the collection and recovery of tax which, by the operation of this Clause, will apply equally to the collection and recovery of an HEC assessment debt, with the following principal effects:

- an assessment debt will be due and payable by the person liable to pay on the date specified in the notice of assessment. In practice this will be the same date on which any income tax assessed is due and payable.
- the Commissioner may grant an extension of time for payment of an HEC assessment debt if warranted by the circumstances.
- late payment penalty at the rate of 20% per annum is payable where an HEC assessment debt remains unpaid after the date on which it becomes due and payable.
- an HEC assessment debt is a debt due to the Commonwealth and may be sued for and recovered by the Commissioner in any Court of competent jurisdiction.

Subclause 73(2) applies sections 222 and 223 of the Assessment Act to HEC assessment debts. Those sections impose penalty tax of up to double the amount of tax

payable in a year of income where, respectively, a taxpayer has refused or failed to lodge a tax return or has made a statement that is false or misleading in a material particular or has omitted from a statement any matter or thing which renders the statement false or misleading. Similar penalty rules will apply in respect of HEC assessment debts where, for example, a taxpayer has failed to disclose the existence of an accumulated HEC debt when lodging an income tax return, or has failed to lodge an income tax return.

Clause 74:     Notification on notices of assessment of tax: This Clause will simplify administration of the higher education contribution scheme by allowing the Commissioner to include the details of an HEC assessment debt assessed under Clause 72 in the person's income tax notice of assessment instead of issuing a separate notice of assessment in respect of that HEC assessment debt.

Clause 75:     Power of Commissioner to defer assessment or reduce assessment to nil: By this Clause the Commissioner will be able to defer making an HEC assessment where the Commissioner considers, on written application, either that payment of that assessment would cause serious hardship or there are other special reasons why an assessment should not be made. If an assessment has been made before the application is considered, the Commissioner may cancel the assessment on those grounds.

Where an HEC assessment debt is deferred or cancelled for those reasons, the amount will not be deducted from the person's accumulated HEC debt and will thus remain a liability for payment in future and subject to increase by indexation as explained in the notes on Clause 66.

Clause 76:     Review of decision of Commissioner: A decision by the Commissioner not to defer or cancel an HEC assessment debt on application made in accordance with Clause 75 will be subject to a right of review by the Administrative Appeals Tribunal.

#### Division 5 - Miscellaneous

Clause 77:     Application of payments: This Clause will have effect where a person makes a payment to the Commissioner in respect of higher education indebtedness and fails to specify or adequately specify whether the payment is for an HEC assessment debt, an accumulated HEC debt or an HEC semester debt.

Where there is an unpaid HEC assessment debt any such payment will be applied first to that debt. If there is no HEC assessment debt, or a balance of the payment remains after discharging an HEC assessment debt, the order of set-off is first to any accumulated HEC debt of the person and then to any HEC semester debt. If there are 2 or more such semester debts, the payment will be applied to them in the order in which they were incurred.

Clause 78:     Indebtedness discharged by death: This Clause operates to discharge a person's accumulated HEC debt and any HEC semester debts on the death of that person. However, a person's death does not discharge an HEC assessment debt.

Clause 79:     Secrecy: This Clause contains secrecy provisions consistent with those in Commonwealth Acts of which the Commissioner has the general administration. It will impose an obligation of secrecy on officers or former officers of the Commonwealth who, in the course of their duties related to the administration of the Chapter, have acquired information with respect to the affairs of another person. In this context an "officer" also means a person who is or has been an officer or employee of an institution or a person who, although not actually appointed or employed by the Commonwealth, performs services for the Commonwealth.

Officers will be obliged not to make a record of, or divulge or communicate, such information to any other person except in the course of their duties and will, generally, not be compellable to give to any court information relating to the affairs of a person except when it is necessary to do so for the purpose of giving effect to the provisions of the Chapter.

An officer may also communicate information under this Clause to an officer in the Department of Employment, Education and Training in order to receive assistance with the administration of the Higher Education Contribution Scheme. The officer to whom information was so communicated would then be bound to the same confidentiality requirements.

An officer may be required to take an oath or declaration to maintain secrecy in conformity with the secrecy provisions.

In recognition of the serious nature of any breach of this provision, the Bill provides for a fine not exceeding \$10,000 or gaol for a period not exceeding 2 years, or both, on conviction of an offence.

Division 6 - Amendments of Income Tax Assessment Act 1936

Clause 80:     Principal Act: This Clause facilitates reference to the *Income Tax Assessment Act 1936* which in this Division is referred to as the "Principal Act".

Clause 81:     Losses and outgoings: This Clause proposes the addition of a new subsection (6) to section 51 of the Principal Act - the general deduction provision that allows deductions for losses and outgoings to the extent to which they are incurred in gaining or producing assessable income or in carrying on a business for that purpose.

The effect of new subsection 51(6) will be that higher education contributions of a student will not b

PART 4.5 - ABOLITION OF HIGHER EDUCATION ADMINISTRATION CHARGE

Clauses 91  
to 97:

Divisions 1 to 3 of this Part of the Bill repeal those sections of the *Australian National University Act 1946*, *Canberra College of Advanced Education Act 1967*, and the *Maritime College Act 1978* which make provision for the imposition of the Higher Education Administration Charge at those institutions. Division 4 (Clause 97) makes similar provisions in respect of the Canberra Institute of the Arts.

Division 5 - Amount of charge not fixed beyond year 1988

Clauses 98  
and 99:

These clauses amend the *States Grants (Tertiary Education Assistance) Act 1984* in such a way that there is no charge prescribed beyond 1988.

CHAPTER 5 - CONTINGENT PROVISIONS

PART 5.1 - SUPPLEMENTARY STATES GRANTS FOR HIGHER EDUCATION ASSISTANCE

Division 1 - Preliminary

Clause 100: Institutions to which provision apply: This Clause provides for the Minister to determine the institutions to which the provisions of this Chapter will apply. Grants under this provision will be provided if the provisions of Chapter 4 are not enacted.

Division 2 - Recurrent grants

Clause 101: Grants for expenditure for operating purposes: This Clause provides for grants for operating purposes additional to those grants provided under Clause 15 in Chapter 2 of this Bill in the event that Chapter 4 does not come into force.

Clause 102: Grants for expenditure for limited operating purposes: This Clause provides for grants for limited operating purposes additional to those provided under Clause 16 in Chapter 2 of this Bill in the event that Chapter 4 does not come into force.

Clause 103: Maximum grants: This Clause provides for the maximum amounts to be made available under Clauses 101 and 102 for each of the three years of the triennium.

Clause 104: Conditions of grants: This Clause provides the conditions pertaining to funds granted under Clauses 101 and 102. The conditions are identical to those under Clause 18.

Clause 105: Special assistance for students: This Clause provides for the continuation of the program which provides funds to institutions to make loans or grants to students in order to assist them to continue studies that might otherwise need to be abandoned. The main application of these funds in the recent past has been to assist students in meeting their payment obligations under HEAC.

PART 5.2 - HIGHER EDUCATION ADMINISTRATION CHARGE

Clause 106: Reimposition of charge:

Clause 107: Additional condition: These Clauses revoke the repeals connected with the abolition of HEAC provided for in the previous Chapter of this Bill and impose an additional condition on the grants made under Chapter 2 requiring institutions to charge HEAC under the conditions applying under previous legislation.

CHAPTER 6 - MISCELLANEOUS

Clause 108: Benefits of, and opportunities created by, grants to be equally available to female and male students: This Clause specifies conditions relating to equality of opportunity arising from grants under this legislation.

Clause 109: Additional conditions: This Clause empowers the Minister to take action in the event of a breach of the conditions of grants. This includes provision for the Minister to seek recovery of all or part of the relevant grant where there has been a breach of conditions. The Minister may also determine that an unspent portion of a grant may be carried over to the year following the grant year.

Clause 110: Amendments affecting State entitlements to grants: This Clause requires the Minister to consult with the States prior to varying certain grants payable in respect of an institution or institutions and restricts variations such that a State is not put in a position of being required to pay funds to the Commonwealth.

Clause 111: Disallowable instruments: This Clause provides for Parliamentary scrutiny and disallowance if required, to instruments and variations determined by the Minister under specific Clauses of this legislation. There were disallowance provisions in earlier legislation.

Clause 112: Time and manner of payments: This Clause enables the Minister to determine the timing and amounts of payments to the States of grants made under this legislation.

Clause 113: Delegation: This Clause, by subclause (1), enables the Minister to delegate powers under the legislation to officers of the Department of Employment, Education and Training.

Provision is made in subclause (2) for the Secretary of the Department to delegate his powers in respect of Clause 64.

Subclause (3) provides for Chapter 4 of this Bill to be taken as a taxation law for purposes of the *Taxation Administration Act 1953*, which under Section 8 provides for the Commissioner of Taxation to delegate powers under that Act to a Deputy Commissioner of Taxation or any other person.

Clauses 114 to 118:

Financial machinery provisions. These Clauses provide standard mechanisms for the appropriation and payment of monies under the Bill.

Clause 119:

Appropriation: This Clause provides for funds granted under Chapters 2, 5 and 7 to be appropriated from the Consolidated Revenue Fund and the Loan Fund, as appropriate. Subclause (2) provides that the exclusion of Chapter 4 from this Clause does not effect the funding of any of its provisions from any other existing appropriation.

Appropriation for Chapter 3 is provided under the *Higher Education Funding Amendment Bill 1988* which is being introduced concurrently with this Bill, and which will only be brought into effect if Chapter 4 is enacted.

Clause 120:

Report by the Minister: This Clause requires the Minister to table, as soon as practicable after the end of each calendar year, details of determinations made by the Minister under specified Clauses of the legislation.

Clause 121:

Regulations: This Clause enables the Governor-General to make regulations connected with this Bill.

Clause 122 to 124:

These Clauses provide amendments to the enabling legislation of the Australian National University, Canberra College of Advanced Education and the Australian Maritime College for the charging, within guidelines determined by the Minister, of tuition fees for certain categories of students undertaking post-graduate courses consistent with Clause 13.

CHAPTER 7 - AMENDMENTS OF STATES GRANTS (TERTIARY EDUCATION ASSISTANCE) ACT 1987

Clause 125:

Principal Act: This Clause prescribes the *States Grants (Tertiary Education Assistance) Act 1987* as the Principal Act to which amendments in this Chapter will apply.

Clauses 126 to 129:

These Clauses amend the amounts in Sections 11, 12, 13 and 14 of the Principal Act to adjust for cost movements.

- Clause 130: Recurrent grants may be increased to assist institutions in meeting certain superannuation expenses: This Clause amends the amount provided in Section 15 of the Principal Act, and extends the provisions of that Section to institutes of tertiary education and non-government teachers colleges so that funds, in line with industrial decisions relating to the 3% Superannuation Productivity Benefit, may be provided from 1 July 1988.
- Clause 131: Substitution of Schedules: This Clause provides for the substitution of specified Schedules in the Principal Act as a result of adjustments for cost movements and for variations made under relevant Sections of that Act.
- Clause 132: Payments made before Royal Assent: This Clause ensures that payments of grants under the Principal Act are not duplicated by payments under the Principal Act as amended.















