

1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

HIGHER EDUCATION FUNDING LEGISLATION AMENDMENT BILL 1993

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Minister for Employment, Education and Training,
the Honourable Kim C. Beazley MP)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE
HOUSE OF REPRESENTATIVES TO THE BILL AS INTRODUCED

OUTLINE

The purpose of this Bill is to amend the Higher Education Funding Act 1988 which provides grants of financial assistance to higher education institutions and other bodies for higher education purposes.

The current Act provides funding for higher education for the 1993-95 funding triennium. This Bill provides funding for higher education in 1996, the third year of the new funding triennium, amounting to some \$4111 million.

The Bill reflects Government decisions on higher education announced in the 1993 Budget: to provide funding to continue the Research Infrastructure Program beyond 1994 at an enhanced level; to provide access to a deferred payment facility for eligible clients of the Open Learning Agency of Australia; to amend the Higher Education Contribution Scheme to ensure that the present amount of public support for higher education is used by as many Australians as possible; to modify repayment arrangements under the Higher Education Contribution Scheme; to provide funding to meet spare teaching capacity in higher education institutions; and to provide funding to support the introduction of workplace bargaining in higher education.

The Bill reflects the Government's decision to consolidate the amounts of some recurrent grants to make funding for specific purposes more flexible.

The Bill also provides for a number of other minor changes and for cost supplementation of Commonwealth grants for higher education to offset movements in prices.

FINANCIAL IMPACT

The Bill provides for \$4111.497 million in 1996 and, in relation to current legislated amounts, for an additional \$50.811 million in 1993, \$273.470 million in 1994 and \$321.746 million in 1995. Measures in the Bill will also generate additional revenues of \$123 million in 1994, \$183 million in 1995 and \$126 million in 1996.

DETAILED DESCRIPTION OF THE BILL

Part 1: Preliminary

Part 1 of the Schedule provide for the short title and for the commencement of the various Parts.

Part 2: Amendments of the Higher Education Funding Act

Part 2 of the Bill and Parts 1 and 2 of the Schedule to the Bill provide funds amounting to some \$4111 million for higher education in 1996, the third year of the new funding triennium 1994-96, in accordance with the Government's triennial funding arrangements for higher education. An additional \$56 million is provided in 1995 and \$60 million in 1996 to fund the continuation of the Research Infrastructure Program. Annual funding amounting to some \$177 million is provided in 1994, 1995 and 1996 to enable the Commonwealth to assume full responsibility for financing higher education courses leading to an undergraduate award that provides an initial qualification in nursing.

Part 2 of the Bill and Parts 1 and 2 of the Schedule to the Bill provide funds to support the development of a national framework agreement on workplace bargaining in higher education. These funds, in the form of supplementation of recurrent grants in 1993, 1994, 1995 and 1996 will enable universities to finance economic adjustments for academic and general staff.

Part 2 establishes the Open Learning Deferred Payment Scheme which will provide access to a deferred payment facility, similar to the Higher Education Contribution Scheme, for all Open Learning students undertaking at least 75 per cent of a full time load.

The Bill provides for a change to the Higher Education Contribution Scheme to more highly target the public subsidy for higher education. Beginning in 1994, undergraduate students who have already completed a higher education course at the same level or higher than the level of the course in which they are enrolled will be liable for twice the standard rate of HECS. There will be exemptions from this requirement in certain circumstances, as set out in guidelines issued by the Minister.

The Bill provides for modifications to the Higher Education Contribution Scheme's repayment arrangements. From July 1994, the repayment rates for HECS debts will be increased from the present 2, 3 and 4 per cent to 3, 4 and 5 per cent respectively. In addition, the first income threshold for repayments will be realigned with actual average weekly earnings (\$26,402). The two other thresholds will be adjusted to \$30,004 and \$42,005 to maintain existing relativities. The Bill also provides for repayments under both the Higher Education Contribution Scheme and the Open Learning Deferred Payment Scheme to be made through the Pay-As-You-Earn (PAYE) and provisional taxation systems.

The Bill reflects the Government's decision to consolidate the maximum amounts of financial assistance available in a year for specific recurrent purposes in order to make funding for these purposes more flexible. The amounts to be consolidated are those associated with grants to maintain or enhance the quality of higher education and grants for projects of national priority, promotion of equality of opportunity, special research assistance and advanced engineering centres.

Increased funding is provided in 1993, 1994 and 1995 in accordance with the Government's cost supplementation arrangements for higher education, taking account of movements in the Department of Employment, Education and Training Higher Education Salaries, Non-salary, Equipment and Building Cost Indexes.

Part 3: Amendments of the Income Tax Assessment Act 1936

Part 3 provides for consequential amendments to the Income Tax Assessment Act 1936 associated with the establishment of the Open Learning Deferred Payment Scheme.

Part 4: Amendments of the Taxation (Interest on Overpayments) Act 1983

Part 4 provides for consequential amendments to the Taxation (Interest on Overpayments) Act 1983 associated with the establishment of the Open Learning Deferred Payment Scheme.

NOTES ON CLAUSES OF THE BILL

PART 1 - PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

PART 2 - AMENDMENTS OF THE HIGHER EDUCATION FUNDING ACT 1988

Clause 3: Principal Act: This clause facilitates reference to the Higher Education Funding Act 1988 which in this Part is referred to as the "Principal Act".

Clause 4: Definitions: The definition of "year to which this Chapter applies" is changed to include the year 1996, the third year of the new funding triennium, and to accommodate a new Chapter 5 which deals with the Open Learning Deferred Payment Scheme.

Clauses 5,6, 7,8&9: Grants to maintain or enhance the quality of higher education, Grants for projects of national priority, Promotion of equality of opportunity, Special research assistance and Grants for advanced engineering centres: These clauses reflect new funding arrangements whereby, from 1994, the maximum amounts of grants in a year for various recurrent purposes are consolidated into one maximum amount in a year (Clause 10).

Clause 10: Limit on total funds available for certain grants: This clause inserts a new section to consolidate into one maximum amount for each year the previously separate maximum amounts of funding provided for specific recurrent purposes: to maintain or enhance the quality of higher education, for projects of national priority, promotion of equality of opportunity, special research assistance and advanced engineering centres.

The clause also increases the maximum amount available in a year for the sum of grants to maintain or enhance the quality of higher education, grants for projects of national priority, promotion of equality of opportunity, special research assistance and advanced engineering centres. The variations to existing legislated amounts are set out following:

| | 1993 \$m | 1994 \$m | 1995 \$m |
|--|--------------|---------------|---------------|
| Quality of higher education | | | |
| . Supplementation | | 0.743 | 0.743 |
| . Salary increases (workplace bargaining) | | 1.177 | 1.177 |
| Projects of national priority | | | |
| . Transfers from grants for expenditure on operating and limited operating purposes | | | 2.786 |
| . Supplementation | 0.195 | 0.385 | 0.385 |
| . Salary increases (workplace bargaining) | 0.049 | 0.609 | 0.652 |
| Promotion of equality of opportunity | | | |
| . Supplementation | | 0.039 | 0.039 |
| . Salary increases (workplace bargaining) | | 0.061 | 0.061 |
| Special research assistance | | | |
| . Pipeline funding for Overseas Postgraduate Research Awards | 0.538 | 3.262 | 4.621 |
| . Infrastructure funding | | | 56.267 |
| . Establishment of Australian Postgraduate Awards Scheme | | -1.819 | -2.728 |
| . Insurance costs for Overseas Postgraduate Research Awards | 0.321 | 0.324 | 0.324 |
| . Supplementation | 1.794 | 2.903 | 2.470 |
| . Salary increases (workplace bargaining) | 0.450 | 4.622 | 4.808 |
| Advanced engineering centres | | | |
| . Supplementation | 0.023 | 0.014 | 0.014 |
| . Salary increases (workplace bargaining) | 0.006 | 0.024 | 0.024 |
| TOTAL | 3.376 | 12.344 | 71.644 |

In total, \$450.974 million is provided for 1996.

Clause 11: Interpretation: This clause gives particular meanings, unless there is a contrary intention apparent, to words and expressions used in Chapter 4.

In the definition of "HEC assessment debt", the references to subsections have been changed to relate to Chapter 5A.

In Clause 11(c), paragraph (a) of the definition of "designated course of study" is deleted. This is because, from 1994, the Commonwealth will assume full responsibility for funding courses leading to an undergraduate award that provides an initial qualification in nursing: as a result, students undertaking such courses will be liable to pay contributions under the Higher Education Contribution Scheme.

The definition of "accumulated HEC debt" has been deleted consistent with the repeal of section 65 in Clause 18 and has been inserted in Chapter 5A to accommodate provision for the repayment of loans for both the Open Learning Deferred Payment Scheme and the Higher Education Contribution Scheme.

The definition of "post-graduate scholarship student" is omitted and the definition of "post-graduate award student" is inserted to reflect the Government's decision to integrate the Australian Postgraduate Research Awards and Australian Postgraduate Coursework Awards Schemes and Higher Education Contribution Scheme exemption scholarships into a new Australian Postgraduate Awards Scheme. "Post-graduate award student" means the holder of an award for a particular year where the award is made for a post-graduate course of study in accordance with *Gazetted* guidelines issued by the Minister.

"Basic course of study" obtains its meaning from section 34A.

Clause 12: Basic course of study: This clause inserts a new section to define "basic course of study". This expression is used in Clause 14 to establish the contribution to be paid by a student under the Higher Education Contribution Scheme.

Clause 13: Exempt students: "Award" is substituted for "scholarship" in relation to postgraduates, to reflect the Government's decision to integrate the Australian Postgraduate Research Awards and Australian Postgraduate Coursework Awards Schemes and Higher Education Contribution Scheme exemption scholarships into a new Australian Postgraduate Awards Scheme. The clause provides for post-graduate award students and holders of scholarships funded by the Commonwealth for the professional development of teachers to be exempt students. Such students are not required to make contributions under the Higher Education Contribution Scheme.

- Clause 14: Requirement to pay contributions: This clause amends section 39 which establishes the contribution to be paid by a student under the Higher Education Contribution Scheme in respect of each semester.
- Students undertaking a basic course of study, as set out in Clause 11, will be liable for the standard rate of HECS. Their level of contribution for a semester will be determined by the product of the annual course contribution (section 40) and the student's student load for that semester. Where a student is undertaking a course of study that is not a basic course of study, as set out in Clause 11, he or she will be liable for twice the standard rate of HECS. (The student's level of contribution will be determined by the product of twice the annual course contribution and the student's student load.)
- Clause 15: Requirements before enrolment or undertaking course: This clause relates to a person's liability to make payments which are now dealt with in Chapter 5A.
- Clause 16: Payment to Fund: This clause amends subsection 60(1)(a) to include reference to Chapter 5A and to reflect the repeal of section 72 in Clause 18.
- Clause 17: Application of Fund: This clause amends subsection 61(1)(b) to reflect the inclusion of this provision in Chapter 5A.
- Clause 18: Repeal: This clause repeals sections 62 to 77 (inclusive). The repealed provisions are reinserted as part of new sections in Chapter 5A (Clause 19).
- Clause 19: This clause inserts a new Chapter 5 to establish the Open Learning Deferred Payment Scheme and Chapter 5A to provide for repayment of loans made under Chapters 4 and 5.

CHAPTER 5 - OPEN LEARNING DEFERRED PAYMENT SCHEME

PART 5.1 - PRELIMINARY

(NOTE: proposed section is abbreviated as ps)

ps99 Interpretation: This gives particular meanings, unless there is a contrary intention apparent, to words and expressions used in Chapter 5.

Most definitions are self explanatory. Clarification is provided for the following definitions:

"basic charge", as set out in proposed section 104, the basic charge is the amount which, in accordance with the agreement between the Commonwealth and the Agency for the provision of open learning, the Agency may charge for the provision of materials, services and experiences to enable clients to enrol in and complete units of study.

"enrol" has a meaning affected by proposed subsection 99(2), that is -

(i) Where a person has withdrawn his or her enrolment from a unit of study on or before the census date, the person is taken not to have enrolled in the unit of study for the semester. In such cases, these units will not be counted as being part of the maximum number of 28 units in respect of which the deferred payment option can be claimed. - see proposed subsection 101(1)(b).

(ii) Where a person who is participating in the deferred payment scheme withdraws from a unit after the census date and the OL semester debt is subsequently remitted under proposed subsections 106L or 106M, the person is taken not to have enrolled in those units in the semester. As in (i) above these units will not be counted as being part of the maximum number of 28 units in respect of which the deferred payment option can be claimed. - see proposed subsection 101(1)(b).

"tax file number" has the same meaning as in Chapter 4, that is 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 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.

Proposed subsection 99(3) enables another person to pay a client's charge to the Agency in order to satisfy the client's liability.

ps100 Object of Part: This proposed section outlines the objective of Part 5.1 which is to make provision for a deferred payment scheme for eligible clients of the Open Learning Agency of Australia.

- ps101 Eligible clients: This proposed section sets out the eligibility criteria for the open learning deferred payment scheme. To be eligible, clients must undertake at least three undergraduate units in a semester and at least two of these units must be undertaken in the first study period of the semester. The maximum number of units for which a client may defer payment is 28 units (ie the number of units required to complete an open learning award - 24 units - plus half a standard student load - 4 units). To continue to be eligible for the deferred payment scheme in subsequent semesters, clients must maintain a pass rate of 50% of units undertaken. (The pass rate will be applied for units where results are known at enrolment for subsequent semesters.) As for the HECS deferred payment option, the open learning deferred payment scheme is only available to Australian citizens, Australian permanent residents living in Australia and New Zealand citizens who have been living in Australia for a period of two years or more.
- ps102 Semesters in a year: This proposed section provides that, where a semester spans two calendar years (eg, the semester comprising the December and March study periods), the semester is considered to occur in the year that the first study period occurs.
- ps103 Standard study load: This proposed section defines the standard study load for an eligible client who is participating in the deferred payment scheme. The standard study load is 4 units in a semester (6 month period) or 8 units over two consecutive semesters (12 month period). (Under proposed subsection 105(2), clients who undertake more than the standard study load - 8 units over a 12 month period - will not be able to seek deferred payment for those units which exceed the standard study load.)

PART 5.2 - CHARGES

Division 1 - Payment of basic charges

- ps104 Basic charge: This proposed section sets out the basic charge to be applied to a unit of study under the deferred payment scheme. The basic charge is the amount which the Agency may charge, in accordance with its agreement with the Commonwealth, for the materials, services and experiences that the Agency must provide to enable the client to enrol for and complete the unit of study. The proposed section provides for the Minister to publish the basic charge for semesters in 1994 in the *Gazette* as soon as practicable after the Act commences, and to publish in the *Gazette* the basic charge for semesters in subsequent years before the beginning of that year.
- ps105 Eligible client may join deferred payment scheme: This proposed section sets out the application procedures for the deferred payment scheme. As for the HECS deferred payment option, an eligible client will be required to complete and sign a form, prepared by the

Commonwealth, and submit the form to the Agency. On the form the client will state that he/she is eligible for the scheme, is enrolled in units for the purposes of an approved course of study and has not paid the basic charges for units within his/her standard study load. The client will ask the Commonwealth to lend him/her the amount of the basic charges and use that amount to pay the charges on his/her account. The client will acknowledge that, if the Commonwealth complies with the request, he/she will be liable to make repayments under Part 5A.3. The client will include his/her tax file number on the form, or if this is not possible, will submit an application form for a tax file number. The Agency must submit application forms to the Commissioner of Taxation within 7 days of receiving them.

- ps106 Eligible client who has joined scheme not to pay basic charges: This proposed section provides that the Agency may not require an eligible client to pay the basic charges for units of study if the client is participating in the deferred payment scheme. Proposed subsection 106(2) provides, however, that if the client enrolls in a number of units which exceed the client's standard study load (in other words where the deferred payment scheme will no longer apply) the Agency may require the client to pay the charges for those units which exceed the standard study load.
- ps106A Tax file number of eligible client: This proposed section provides, with appropriate cross-references, for Sections 42 to 53 inclusive of Chapter 4 to apply to eligible clients of the Agency. These are the same Sections which apply to the HECS deferred payment option.
- ps106B Notice by Agency: This proposed section outlines the responsibilities of the Agency in issuing notices to eligible clients about their liabilities under the deferred payment scheme. The notice must set out the units of study in which the client is enrolled for the semester; whether or not the person is an eligible client for the semester; the total amount of the basic charges for the units in that semester; the total number of units for which the client has enrolled (for both previous and the current semester); and, the number of units that, on the census date for the semester, were known to have been successfully completed by the client. As for the HECS deferred payment option, the notice is to be sent to eligible clients by the date specified by the Minister and published in the *Gazette*. The notice must also include advice on how to correct errors in the notice and provides that if, after the issuing of the notice, the Agency is made aware of an error, the Agency must issue a corrected notice. The proposed section advises that the notice is for information only and failure to issue a notice or the issuing of an incorrect notice does not affect the client's liability to pay the charge.
- ps106C Requests for correction of notices: This proposed section provides that, where a client considers the notice is incorrect, he or she may, within 14 days of the notice being sent, ask the Agency in writing to

correct the notice. Making the request does not affect the client's liability to pay the basic charge. Under this proposed section, the Agency is required to consider the request, notify the client of the decision and, if appropriate, issue a correct notice.

Division 2 - Discharge by Commonwealth of clients' liability for basic charges

ps106D Commonwealth to discharge clients' liabilities: This proposed section provides that, where an eligible client has applied to defer payment of the basic charge for a unit or units and has not paid that charge on the census date for the semester, the Commonwealth must, as a benefit to the client, lend the amount to the client and pay that amount to the Agency in discharge of the client's liability to pay the charge. The clause also provides that the Commonwealth may make advances to the Agency for amounts expected to become payable by the Commonwealth to the Agency.

ps106E Agency to provide information to Minister: This proposed section requires the Agency to provide to the Minister if required such statistical and other information as is reasonably required for the purposes of this Part except the names and addresses of clients.

PART 5.3 - MISCELLANEOUS

ps106F Secrecy: This proposed section contains secrecy provisions consistent with those in Commonwealth Acts of which the Commissioner of Taxation 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 proposed section 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 and the Open Learning Deferred Payment 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.

PART 5.4 - SPECIAL PROVISIONS APPLYING TO CERTAIN CLIENTS OF THE AGENCY SEEKING ENROLMENT IN MARCH 1994

- ps106G Enrolment for study period commencing in March 1994: This proposed section provides special provision for clients who enrolled in units in the December 1993 study period. These clients, if they enrolled in at least one unit in the December 1993 study period and then enrol in units in the March 1994 study period, will be able to claim the units completed in the December 1993 study period as counting towards the 'three units in a semester' eligibility requirement for the scheme. The proposed section provides a special semester for these clients comprising the March study period only.

CHAPTER 5A - REPAYMENT OF LOANS MADE UNDER CHAPTERS 4 AND 5

PART 5A.1 - PRELIMINARY

- ps106H Interpretation: This gives particular meanings, unless there is a contrary intention apparent, to words and expressions used in Chapter 5A.

The proposed section contains a number of definitions which are all explained under the heading in Part 5A.2 below:

"HEC semester debt" obtains its meaning from proposed section 106J.

"OL semester debt" obtains its meaning from proposed section 106I.

"Accumulated HEC debt" has its meaning from proposed section 106N and includes debts incurred under HECS and/or the Open Learning Deferred Payment Scheme.

"Semester debt" has the meaning of HEC semester debt or OL semester debt.

- ps106I Object of Part: This proposed section sets out the purpose of Part 5A.2 which is to provide for the repayment to the Commonwealth of loans incurred by persons under HECS or the Open Learning Deferred Payment Scheme.

PART 5A.2 - NATURE OF INDEBTEDNESS

- ps106J HEC semester debt: This proposed section provides for the establishment of an HEC semester debt by a person where the Commonwealth has made a loan under section 57 and applied that loan in making a payment to an institution to discharge the person's semester liability. The debt is deemed to be established immediately after the census date referred to in section 34. The amount of the semester debt is equal to the amount of the Commonwealth loan to the person.

- ps106K OL semester debt: This proposed section provides for the establishment of an OL semester debt by a person where the Commonwealth has made a loan under proposed section 106D and applied that loan in making a payment to an institution to discharge the person's semester liability. The debt is deemed to be established immediately after the census date referred to in proposed section 99. The amount of the semester debt is equal to the amount of the Commonwealth loan to the person.

- ps106L Power of Secretary to remit semester debt in special circumstances:
This proposed section enables the Secretary of the Department

of Employment, Education and Training, following a written approach from a person within 3 months after a semester debt is incurred, to review a person's liability with a view to reducing or remitting the debt if the Secretary is satisfied that there are special circumstances which justify such action. The proposed section also provide for advice of the Secretary's decision to be given to the person and, where the semester debt is varied, to the Commissioner.

ps106M Reconsideration of decision and appeal to Administrative Appeals Tribunal: This proposed section provides that, where a person has been notified of a decision by the Secretary in accordance with proposed section 106L, the person may apply in writing within 28 days of receiving the notice for a reconsideration of the decision. On receiving this application, the Secretary must consider it as soon as practicable and advise the person of the outcome and the right of review by the Administrative Appeals Tribunal. The proposed section provides that, where a person is not satisfied with the outcome of the reconsideration, he or she may, within 28 days of receiving notification of the outcome, apply under the *Administrative Appeals Tribunal Act 1975* to the Tribunal for a review of the decision.

ps106N Calculation of accumulated HEC debt: This proposed section specifies the amount that a person will owe on 1 June each year on account of a semester debt or semester debts paid by the Commonwealth on the person's behalf in accordance with section 57 and proposed section 106D. As explained in 'Interpretation' (proposed section 106H), accumulated HEC debt includes debts incurred under either or both HECS and the Open Learning Deferred Payment Scheme. The amount will include any unpaid balance from the previous 1 June, indexed to keep in line with inflation, plus new semester debts that have arisen in the intervening 12 months. The accumulated HEC debt as formulated under this proposed section represents the upper limit that a person can be required to pay on an HEC assessment made under proposed section 106T.

Proposed subsection 106N(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 semester debts incurred during the previous 12 months less any voluntary payments made under proposed section 106P in reduction of those semester debts.

Proposed Subsection 106N(2), read with proposed subsections 106N(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 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 proposed subsection 106N(5).

For this purpose, proposed subsection 106N(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 proposed section 106T 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 (proposed subsection 106N(4)).

Where the calculation of an accumulated HEC debt results in an amount consisting of dollars and cents, the cents are to be disregarded (proposed subsection 106N(10)).

Proposed subsections 106N(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 calculating the accumulated HEC debt under proposed subsection 106N(2).

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

ps1060 Accumulated HEC debt discharges earlier debts:

This proposed section is a technical measure to ensure that once an accumulated HEC debt is calculated at 1 June in accordance with proposed section 106N, any accumulated HEC debt as at the previous 1 June and any semester debts incurred during the intervening 12 months are discharged. The discharged debts, however, are taken into account in the calculation of the accumulated HEC debt under proposed section 106N.

PART 5A.3 - DISCHARGE OF INDEBTEDNESS

Division 1 - Voluntary discharge of indebtedness

- ps106P Voluntary payments in respect of debts: This proposed section will enable a person to make a voluntary payment to the Commissioner at any time in respect of an accumulated HEC debt or any 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 proposed section 106N)

Division 2 - Requirement to discharge indebtedness

- ps106Q Compulsory payments in respect of accumulated HEC debt: This proposed section is one of the main operative provisions of Part 5A. It defines a person's obligation to pay an HEC assessment debt and establishes how HEC assessment debts are to be determined.

Proposed subsections 106O(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 above \$26,402.

An HEC assessment debt is payable at the rate of:

| | |
|---------------------|-----|
| below \$26,403 | nil |
| \$26,403 - \$30,004 | 3% |
| \$30,005 - \$42,005 | 4% |
| \$42,006 and above | 5% |

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 (proposed subsection 106O(2)).

The taxable income bands are to be calculated each year. Proposed subsections 106O(4) and (5) establish the formula that is to be applied in relation to the minimum, intermediate and maximum prescribed amounts for subsequent years. The prescribed amount is calculated by multiplying the average of five quarters of average weekly earnings for all employees as published by the Australian Statistician by 52 weeks. The intermediate and maximum prescribed amounts are calculated by maintaining the existing relativities between the prescribed amounts.

Proposed subsection 106Q(6) provides for the prescribed amounts to be published in the Gazette before the year of income to which they apply.

Division 3 - Returns and assessments

- ps106R Agency etc to provide information to Commissioner: This proposed section requires an institution and the Agency to give such data in their possession to the Commissioner as the Commissioner reasonably requires for the purposes of collecting contributions in respect of HEC assessment debts. This requirement only applies to persons who have not paid their higher education contribution for a semester direct to the institution on enrolment and to eligible clients of the Agency.
- ps106S Annual returns: By this proposed section, 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 in respect of the person's indebtedness made since that date.
- ps106T Assessment: This proposed section 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 proposed section 106Q.
- ps106U Application of Income Tax Assessment Act: To facilitate the collection and recovery by the Commissioner of HEC assessment debts assessed under proposed section 106T, 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 proposed section will extend relevant collection, recovery and appeals provisions of the income tax law so that they apply as necessary to HEC assessment debts.
- ps106V Notification on notices of assessment of tax: This proposed section will simplify administration by allowing the Commissioner to include the details of an HEC assessment debt assessed under proposed section 106T in the person's income tax notice of assessment instead of issuing a separate notice of assessment in respect of that HEC assessment debt.
- ps106W Power of Commissioner to defer assessment or reduce assessment to nil: By this proposed section 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 proposed section 106N.

- ps106X 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 proposed section 106W will be subject to a right of review by the Administrative Appeals Tribunal.

Division 4 - Miscellaneous

- ps106Y Application of payments: This proposed section 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 a 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 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.

- ps106Z Indebtedness discharged by death: This proposed section operates to discharge a person's accumulated HEC debt and any semester debts on the death of that person. However, a person's death does not discharge an HEC assessment debt.

- ps106ZA Secrecy: This proposed section contains secrecy provisions consistent with those in Commonwealth Acts of which the Commissioner of Taxation has the general administration.

Clause 20: Application of Income Tax Assessment Act: This clause will insert proposed subsections 106U(3) and (4) into the *Higher Education Funding Act 1988* (or Principal Act). The new subsections will enable an HEC assessment debt to be subject to the Pay-As-You-Earn (PAYE) provisions [Division 2 of Part VI of the Assessment Act] and the provisional tax arrangements [Division 3 of Part VI of the Assessment Act].

Clause 21: Disallowable instruments: This clause amends section 110 to include guidelines issued by the Minister under proposed subsections 34A(6) and 34A(7) of Clause 12 to be disallowable.

Clause 22: Further amendment of the Principal Act: This clause increases the maximum amounts of financial assistance available for recurrent and capital grants under Chapter 2.

PART 1 OF THE SCHEDULE

Section 17: This increases the maximum amounts available for operating and limited operating purposes. The variations to existing legislated amounts are set out below:

| | 1993 \$m | 1994 \$m | 1995 \$m |
|--|---------------|----------------|----------------|
| Commonwealth funding for courses that lead to an initial nursing qualification | | 177.626 | 177.626 |
| Transfers to grants for projects of national priority | | | -2.786 |
| Funding for additional student places | | | 2.509 |
| Transfers to and from the Higher Education Trust Fund | 15.681 | -21.893 | -19.352 |
| Supplementation | 24.454 | 40.669 | 41.880 |
| Salary increases (workplace bargaining) | 6.095 | 62.341 | 48.169 |
| TOTAL | 46.230 | 258.743 | 248.045 |

In total, \$3565.408 million is provided for 1996.

Subsection 20(3): This increases the maximum amounts available for grants for superannuation expenses. It provides for supplementation of maximum amounts of financial assistance in 1993, 1994 and 1995 and for a maximum amount of \$55.026 million in 1996.

Subsection 22A(5): This increases the maximum amounts available for grants to open learning organisations. It provides for additional funds for maintenance and supplementation of maximum amounts of financial assistance in 1993, 1994 and 1995 and for a maximum amount of \$0.204 million in 1996.

Subsection 24(3): This increases the maximum amounts available for grants in respect of teaching hospitals. It provides for supplementation of maximum amounts of financial assistance in 1993, 1994 and 1995 and for a maximum amount of \$4.574 million in 1996.

Subsection 26(5): For supplementation purposes, this increases the maximum amount available for grants for capital projects in 1993.

PART 2 OF THE SCHEDULE

Subsection 27A(6): This increases the maximum amounts available for grants for special capital projects. It provides for supplementation of maximum amounts of financial assistance in 1994 and 1995 and for a maximum amount of \$35.311 million in 1996.

PART 3 - AMENDMENTS OF THE INCOME TAX ASSESSMENT ACT 1936

Clause 23: Principal Act: This clause facilitates reference to the Income Tax Assessment Act 1936 which in this Part is referred to as the "Principal Act".

Clause 24: Loss and outgoings: This clause amends subsection 51(6) 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 the amendment is that Open Learning Deferred Payment Scheme repayments are not deductible.

Clause 25: Deductions for expenses of self-education: This clause contains an amendment, complementary to that in Clause 24, to section 82A of the Principal Act. That section limits the amount of a deduction that is allowable for self-education expenses under section 51 of the Principal Act. The definition of "expenses of self-education" is amended to ensure that payments excluded from deduction from assessable income by the amendment to subsection 51(6) of the Principal Act in Clause 24 are also excluded from the definition of "expenses of self-education".

Clause 26: Objects of this Part: This clause proposes to amend paragraph 202(c) in Part VA of the Principal Act. Section 202 describes the scope of the provisions covering the tax file number system. Paragraph 202(c) refers to the administration of benefits to students in relation to contributions for higher education. This amendment expands the scope to include the administration of charges payable by students for higher education.

Clause 27: Application of deductions in payment of HEC assessment debts and FS assessment debts: This clause proposes to amend section 221ZY of the Principal Act. That section currently requires the Commissioner of Taxation to apply any credits (such as credits for PAYE deductions or provisional tax payments) against HEC and FS assessment debts before other applications (such as tax payable). The amendment will expand the definition of "HEC assessment debt" for the purpose of section 221ZY to include debts assessed under the Open Learning Deferred Payment Scheme.

PART 4 - AMENDMENTS OF THE TAXATION (INTEREST ON OVERPAYMENTS)
ACT 1983

Clause 28: Principal Act: This clause facilitates reference to the Taxation (Interest on Overpayments) Act 1983 which in this Part is referred to as the "Principal Act".

Clause 29: Interpretation: The Taxation (Interest on Overpayment) Act 1983 provides for the payment of interest on certain refunds of tax made as a result of a successful objection or appeal by a taxpayer against an assessment or other specified decision of the Commissioner of Taxation.

This clause amends the definition of "relevant tax" in section 3 of the Principal Act so that an HEC assessment debt, including any debt incurred under the Open Learning Deferred Payment Scheme, will be treated under that Act as if it were income tax assessed to be payable by an assessment made under Part IV of the Assessment Act.

