

ARTHUR ROBINSON & WEDDERBICKS  
LIBRARY

1996

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**HIGHER EDUCATION FUNDING AMENDMENT BILL (NO. 1) 1996**

**EXPLANATORY MEMORANDUM**

(Circulated by the authority of the Minister for Employment, Education, Training and Youth Affairs,  
Senator the Honourable Amanda Vanstone)

78094 Cat. No. 96 4704 X ISBN 0644 436999

1948

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

# HIGHER EDUCATION FUNDING AMENDMENT BILL (NO. 1) 1996

## OUTLINE

### ***The Higher Education Funding Act 1988***

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

### **The Higher Education Funding Amendment Bill (No. 1) 1996**

The Higher Education Funding Amendment Bill (No. 1) 1996 amends the Act to:

- vary the maximum grant amounts for operating purposes for higher education institutions for the funding years 1996, 1997 and 1988;
- vary the maximum total amount of financial assistance payable to higher education institutions for superannuation expenditure for the funding years 1996, 1997 and 1998;
- vary the maximum total amount of financial assistance payable in grants to open learning organisations for 1996;
- vary the limit on total funds available for certain grants under the Act in respect of the funding years 1995, 1996, 1997 and 1998;
- vary the maximum total amount of financial assistance payable as grants in respect of teaching hospitals for each of the years 1996, 1997 and 1998;
- vary the maximum total amount of approved expenditure for grants for approved special capital projects for each of the years 1996, 1997 and 1998;
- amend the definition of "Qualified Accountant" in Section 3 to reflect the name change from the Australian Society of Accountants to the Australian Society of Certified Practising Accountants;
- amend Table A and B of section 4 of the Act to reflect current higher education institutions in Australia;
- amend section 20A to allow advances of operating grants to be made for a wider range of purposes to Universities;
- amend sections 21, 23, and 23A to clarify that the Minister, rather than the institution seeking funds, estimates the expenditure by which grants may be approved.
- amend section 23 to provide that the Minister may approve a proposal to be undertaken by an institution to conduct a research program including research training.

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

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

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

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

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

enable a person to be an "eligible student" under the OLDPS if they fail to provide a tax file number;

supplement grant levels for 1996, 1997 and 1998 to reflect price movements;

adjust the amount of Aboriginal and Torres Strait Islander support funds available for institutions and provide funding to trial the development of an indigenous university network;

instruct the Chief Executive Officer of the Open Learning Agency (OLA) to provide a statement certifying that the Agency has complied with legislation;

move Batchelor College from Table B subsection 4(1) to Table A subsection 4(1);

reflect name change of "Marcus Oldham College";

amend section 18(1)(f) of the Act to refer to a "financial statement" rather than a "statement of expenditure" in order to conform to guidelines issued by the Minister for Finance for the purposes of the National Audit Office;

amend the criteria for client eligibility for OLDPS.

## **FINANCIAL IMPACT**

The Bill provides increases of \$48.049m in 1996, \$44.952m in 1997 and \$35.336m in 1998 on the current legislated amounts, there was a decrease in funding of \$9.25m in 1995.

# HIGHER EDUCATION FUNDING AMENDMENT BILL (NO. 1) 1996

## NOTES ON CLAUSES

### **Clause 1 - Short title**

**Clause 1** allows the Act to be cited as the *Higher Education Funding Amendment Act (No. 1) 1996*.

### **Clause 2 - Commencement**

**Clause 2** provides that the provisions of the Bill, other than those identified in clause 2(2), commence on the day the Bill receives Royal Assent. Items 20 to 26, 29 to 39, 42 to 50 and 52 of Schedule 1 commence on 1 January 1997.

### **Clause 3 - Schedules**

**Clause 3** provides that, subject to section 2, each Act that is specified in the Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned.

## SCHEDULE 1

### AMENDMENTS TO THE HIGHER EDUCATION FUNDING ACT 1988

#### **Item 1 - Section 3 (definition of *qualified accountant*)**

**Item 1** amends paragraph (b) of the section 3 definition by omitting reference to the "Australian Society of Accountants" and substituting, "Australian Society of Certified Practising Accountants". The amendment is necessary following a change in the name of the Society.

#### **Item 2 - Subsection 4(1)**

**Item 2** revises the Tables of Institutions contained in section 4 of the Act. The Tables list the higher education institutions recognised for the purposes of the Act.

The revision was needed to reflect minor changes to the titles of some institutions, such as inserting the term "the" before "University of Sydney". The amendments reflect changes made to the tables by a declaration made by the Minister under subsection 4(2) of the Act on 30 June 1995.

Additionally, following a review of the funding of the Australian Maritime College and Batchelor College, it was decided to fund the institution on a triennial rather than an annual basis. The College therefore needs to be moved from Table B, which lists institutions funded on an annual basis, to Table A, which lists institutions funded on a triennial basis.

#### **Item 3 - Paragraphs 17(h), (i) and (j)**

**Section 17** sets the maximum amount that may be paid for the operating purposes of higher education institutions, paid under **section 15 and 16** of the Act. The amendment sets those limits in respect of the years 1996, 1997 and 1998 to reflect price movements.

#### **Item 4 - Paragraph 18(1)(f)**

Section 18 sets out the conditions in respect of grants awarded to institutions. The amendment clarifies that financial statements are to be submitted by a qualified auditor.

#### **Item 5 - Paragraph 18(2)(a)**

**Paragraph 18(2)(a)** makes reference to the Marcus Oldham College of Farm Management, the amendment removes "of Farm Management" reflecting the change of the institution's name.

#### **Item 6 - Section 19**

**Section 19** provides for grants for Aboriginal participation projects. Funding under section 19 supported the old Aboriginal Participation Initiatives. In 1991 this funding was consolidated with the Aboriginal Strategic Initiatives Program. The consolidated Aboriginal funding was from then on allocated to institutions as one amount within their operating grants, under section 17 of the Act. The section is to be repealed.

### **Item 7- Paragraphs 20(3)(h), (i) and (j)**

**Section 20** allows the Minister to make grants to higher education institutions for superannuation expenses, paid under **section 15 and 16** of the Act. The amendment amends the maximum amount that may be paid for the years 1996, 1997 and 1998 to reflect price movements and the transfer between section 20 for superannuation and section 17 for operating grants.

### **Item 8 - Section 20A**

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

**Item 8** adds a new **section 20A** to the Act to create a facility providing advances for a reasonably wide range of purposes. The advances, adjusted for price changes, are recovered through subsequent reduction in grants of operating grants. The amended **section 20A** allows advances to be paid for the purpose of funding activities that fall within the Act's definition of "operating purposes" or "limited operating purposes" contained in section 3 of the Act. The item also inserts a new **section 20B** which allows the Minister to issue guidelines setting out the criteria for the advance and recovery of amounts under section 20A and limits to the amounts available. The determination to advance an amount of money, and guidelines are subject to Parliamentary scrutiny as disallowable instruments see amendments to paragraph 110(b) and 110(c) of the Act by **items 53 and 54**.

### **Item 9 - Subsection 21 (3)**

**Subsection 21(3)** outlines the process of the Minister determining expenditure of grants for projects of national priority under subsection 21(1). The amendment clarifies that the Minister, rather than the institution, is responsible for making the relevant estimate.

### **Item 10 - Subsection 22A(3)**

**Subsection 22A(3)** outlines the process of the Minister determining expenditure of grants to open learning organisations under subsections 22A(1) and (2). The amendment clarifies that the Minister, rather than the institution, is responsible for making the relevant estimate.

### **Item 11 - Paragraph 22A(5)(d)**

**Paragraph 22A(5)(d)** provides for the total amounts of approved expenditure for grants to open learning organisations. The amendment increases the total for 1996, to reflect supplementation for price movements.

#### **Item 12 - Subsection 23(1)**

**Subsection 23(1)** of the Act lists activities for which a higher education institution may receive research funding. However these provisions may not necessarily permit the funding of research infrastructure, as well as projects falling under the special research initiatives program. Instead of continuing the practice of adding paragraphs to this section to fund worthy special research projects that are conducted in different ways, it is desirable to amend 23(1) so proposals that permit the conduct of research programs, permit research training or are themselves research programs that are deserving of financial assistance may be funded. The amendment to subsection 23(1) allows the Minister to approve the conduct of research programs, or a program that supports research training or the conduct of research programs by an institution.

#### **Item 13 - Subsection 23(1A)**

**Item 13** makes a similar amendment as **Item 11** to subsection 23(1A) which funds research undertaken by bodies other than institutions so that research programs or programs that support research training or the conduct of research may be funded.

#### **Item 14 - Subsection 23 (2)**

**Subsection 23(2)** outlines the process of the Minister determining expenditure for special research assistance under subsection 23(1) and (1A). The amendment clarifies that the Minister, rather than the institution, is responsible for making the relevant estimate.

#### **Item 15 - Subsection 23A (4)**

**Subsection 23A(4)** outlines the process of the Minister determining expenditure for grants for advanced engineering centres under subsection 23A(1). The amendment clarifies that the Minister, rather than the institution, is responsible for making the relevant estimate.

#### **Item 16 - Paragraphs 23C(2)(b), (c), (d) and (e)**

**Section 23C** provides for limits on total funds available to certain grants. The amendment supplements the total level of grants payable in respect of the years 1995, 1996, 1997 and 1998 to reflect price movements.

#### **Item 17 - Paragraphs 24(3)(h), (i) and (j)**

**Section 24** provides for grants to teaching hospitals. The amendment supplements the maximum level of grants payable in respect of the years 1996, 1997 and 1998 to reflect price movements.

#### **Item 18 - Paragraphs 27A(6)(c), (d) and (e)**

**Section 27A** provides for grants for special capital projects. The amendment supplements the maximum level of grants payable in respect of the years 1996, 1997 and 1998 to reflect price movements.



### **Item 19 - Paragraph 34(4)(a)**

**Paragraph 34(4)(a)** makes reference to the Marcus Oldham College of Farm Management, the amendment removes “of Farm Management” reflecting the change of the institution’s name.

### **Items 20 to 54 - Amendments to the Open Learning Deferred Payment Scheme (“OLDPS”)**

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

The following amendments are designed to make the OLDPS scheme simpler to administer. The amendments will enhance the Commonwealth’s ability to monitor the scheme’s effectiveness in meeting its objectives and ensuring proper accountability of the Open Learning Agency of Australia (“the Agency”) in adhering to the conditions of its financial grants from the Commonwealth.

#### Removal of the Concept of Semester from the Act

One of the proposed amendments is that the concept of “semester” be removed from the legislation, and substituted with the concept of “study periods”. A “study period” means a period of 13 weeks commencing in March, June, September or December, for the purposes of Open Learning. This concept is already recognised within the Act. These amendments ensure the legislation reflects the time unit by which courses undertaken under the OLDPS are conducted.

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

#### **Item 20 - Subsection 99(1) (definition of *census date*)**

**Item 20** amends the definition by omitting the term “semester” and substituting “study period” in accordance with the changes made in Item 21.

#### **Item 21 - Subsection 99(1) (definition of *OL semester debt*)**

**Item 21** omits the definition of OL semester debt in section 99 and substitutes a definition of *OL study period debt*, “OL study period debt has the meaning given by section 106K”

#### **Item 22 - Subsection 99(1) (definition of *semester*)**

**Item 22** repeals the definition of “semester” from the list of definitions relevant to the Chapter of the Act establishing the OLDPS scheme, and it is now redundant.

#### **Item 23 - Subsection 99(2)**

**Item 23** amends the subsection by omitting “semester”, wherever occurring, and substituting “study period”.

#### **Item 24 - Section 101**

**Item 24** amends section 101 by omitting the first reference to “semester” in the section and substituting “study period”.

#### **Item 25 - Paragraph 101(a)**

**Item 25** amends section 101 (eligible clients) by omitting paragraph 101(a) which refers to “semesters” and substituting a new paragraph 101(a) which refers to “study periods” and replaces the requirement to undertake at least three units of study in a “semester” and at least two units in the first “study period” of that “semester”, with the requirement to undertake at least two units of study in the “study period” only.

#### **Item 26 - Paragraph 101(1)(b)**

**Item 26** amends the paragraph by omitting the now redundant term “semester” and substituting “study period”.

#### **Item 27 - Subparagraph 101(c)(ii)**

**Item 27** amends one of the criterion for client eligibility by omitting “at the time of enrolment” and substituting “14 days before the census day for the study period. This will ensure that those clients who have enrolled at one point for a number of study periods, and who have less than 50 per cent successful completion rate required during those study periods, would not be eligible for deferred payment for any of those remaining study periods.

#### **Item 28 - Transitional**

**Item 28** inserts a transitional provision that preserves the right of a person enrolled in a study period commencing in January 1997 to continue being an “eligible client” for the purposes of the Open Learning Deferred Payment Scheme, notwithstanding the effect of removing the concept of “semesters”, and replacing them with “study periods”, effected by **items 24, 25, 26 and 27**.

#### **Item 29 - Section 103**

**Item 29** omits section 103 (standard study load) which refers to “semesters” and substitutes a new section 103 which refers to “study periods”. This amendment makes it clear that an OLDPS student may only defer payments of eight units on any calendar year basis. Eight units represents a full time study load for a comparable on-campus course. The proposal will continue to ensure that students studying at a distance do not overburden themselves, while increasing ease of administration.

#### **Item 30 - Subsection 104(3)**

**Item 30** amends section 104 (Basic Charge) by omitting the existing subsection 104(3). This section already recognises the concept of “study periods” but the new subsection 104(3) removes the references to “semesters” and streamlines the Minister’s notification requirements with respect to the basic charge.

### **Item 31 - Subsection 105(2)**

**Item 31** amends the subsection by omitting the now redundant term “semester” and substituting “study period”.

### **Item 32 - Subsection 106(1)**

**Item 32** amends section 106 (eligible client who has joined scheme not to pay basic charges) by omitting subsection 106(1) which refers to “for the semester in which the study period is included” and substituting a new 106(1) which refers to “for the study period”.

### **Item 33 - Subsection 106(2)**

**Item 33** amends the subsection by omitting the now redundant term “semester” and substituting “study period”.

### **Item 34 - Subsection 106AA(1)**

The section currently requires the Agency to notify the Minister when a client of the Agency does not have a tax file number. **Item 34** amends section 106AA(Agency to notify Minister where tax file number not provided) by omitting the requirement in subsection 106AA(1) that the Agency must notify the Minister in writing that the client does not appear to have a tax file number. Instead, the Agency must not permit the client, as a client of OLDPS, to continue or undertake the unit of study the client is enrolled in.

### **Item 35 - Section 106AB**

**Item 35** amends subsection 106AB and has the effect that if a person has not provided the Agency with a tax file number, the person cannot participate in the OLDPS scheme. OLDPS is a loan facility, the Commonwealth pays on behalf of the student the basic charge payable to the Agency for each unit of study taken on behalf of the student, with the student then repaying the money borrowed from the Commonwealth according to income, through the taxation system. It follows that in the absence of a tax file number, it is not possible for a person to participate in the scheme.

The effect of the combination of **Item 34** and **Item 35** is that where a person fails to provide the Agency with a tax file number, the person is ineligible to participate in the OLDPS scheme. It will then be up to the Agency to determine whether it will accept the enrolment of a person. The person may be obliged to pay the basic charge for the unit of study themselves immediately.

### **Item 36 - Subsection 106B(1)**

**Item 36** amends the subsection by omitting the now redundant term “semester” and substituting “study period”.

### **Item 37 - Subsection 106D(1)**

**Item 37** amends section 106D (Commonwealth to discharge clients’ liabilities) by omitting the first occurring reference to “semester” in subsection 106D(1) and substituting “study period”.

#### **Item 38 - Subsection 106D(1)**

**Item 38** amends section 106D (Commonwealth to discharge clients' liabilities) by omitting the reference in 106D(1) to "a study period included in the semester" and substituting "the study period"

#### **Item 39 - Section 106E**

**Item 39** amends section 106E. The provision currently sets out the information the Agency must provide the Minister. The item inserts a requirement that the Agency provide to the Minister statistical and other information relating to clients undertaking units of study in a study period. This broadens the current obligation on the Agency, requiring it to gather and provide statistical and other information the amendment will strengthen the conditions of funding to the Agency and will align it with accountability provisions under section 18 of the Act

#### **Item 40 - At the end of Part 5.3**

**Item 40** is a section (**Section 106FA**) to be inserted that provides for the Chief Executive Officer of the Agency to forward an Annual Statement to the Minister before the end of each year. The Statement will include details of whether or not the Agency has complied with requirements under Chapter 5 of the Act.

#### **Item 41 - Part 5.4**

**Item 41** repeals Part 5.4 of the Act (These provisions applied to certain clients of the Agency seeking enrolment in March 1994). This provision is now spent, and is therefore removed from the Act.

#### **Item 42 - Subsection 106H(1) (definition of "OL semester debt")**

**Item 42** omits the definition of OL semester debt in subsection 106H(1) and substitutes a definition of *OL study period debt*, "OL study period debt has the meaning given by section 106K".

#### **Item 43 - Subsection 106H(1) (paragraph (b) of the definition of "semester debt")**

**Item 43** amends subsection 106H(1) by omitting the definition in paragraph 106H(1)(b) of "semester debt" and substituting a new paragraph 106H(1)(b) "an OL study period debt".

#### **Item 44 - Section 106K**

**Item 44** amends the Section 106K (OL semester debt) by omitting the now redundant term "semester", including the reference in the title, and substituting "study period".

#### **Item 45 - Subsection 106L(2)**

**Item 45** amends the subsection by omitting the term "semester", including the reference in the title of **Section 106L**, and substituting "study period".

**Item 46 - Paragraph 106M(1)(a)**

**Item 46** amends paragraph 106M(1)(a) by omitting the reference to “semester debt” and substituting “HEC semester debt or OL study period debt”.

**Item 47 - Subsection 106N(1)**

**Item 47** amends section 106N (Calculation of accumulated HEC debt) by omitting subsection 106N(1) which refers to “semester debt” and “the total of those semester debts” and substituting a new subsection 106N(1) which instead refers to “HEC semester debt or OL study period debts” and “the total of those debts”. The amendment removes the concept of semester debt from the subsection and substitutes HEC semester debt or OL study period debts.

**Item 48 - Paragraphs 106N(2)(a) and (b)**

**Item 48** amends section 106N (Calculation of accumulated HEC debt) by omitting paragraphs 106N(2)(a) and (b) and substituting new paragraphs 106N(2)(a) and (b). The amendment removes the concept of semester debt from the paragraphs and substitutes HEC semester debts or OL study period debts.

**Item 49 - Paragraph 106N(2)(d)**

**Item 49** amends section 106N (Calculation of accumulated HEC debt) by omitting the term “semester”.

**Item 50 - Paragraph 106O(1)(b)**

**Item 50** amends section 106O (Accumulated HEC debt discharges earlier debts) by omitting “semester debt” and substituting “HEC semester debt or OL study period debt”.

**Item 51 - Section 106S**

**Item 51** omits section 106S (Annual Returns) from the Act. It is no longer necessary for taxpayers to provide the amount of their outstanding HECS debt on their Income Tax return. This disclosure is not required as universities provide this information to the Commissioner of Taxation by 31 May each year.

**Item 52- Subparagraph 106Y(2)(e)(i)**

**Item 52** amends section 106Y (Application of Payments) by omitting the reference in subparagraph 106Y(2)(e)(i) to semester debt and substituting “HEC semester debt or OL study period debt”. The amendment removes the concept of semester debts from the subparagraph and substitutes HEC semester debts or OL study period debts.

**Item 53 - Paragraph 110(b)**

**Item 53** amends section 110(b) by inserting a reference to “20A” after “16”. **Item 8** introduced a new section 20A which allowed the Minister to make a determination in relation to advances to higher educational institutions for operating purposes. The amendment made by this item recognises that such a determination by the Minister is a disallowable instrument and must be tabled in Parliament.

**Item 54 - Paragraph 110(c)**

**Item 54** amends section 110(c) by inserting a reference to “20B” after “section”. **Item 8** introduced a new section 20B which allowed the Minister to issue guidelines setting out the criteria for the advance and recovery of amounts under section 20A. The amendment made by this item recognises that such a determination by the Minister is a disallowable instrument and must be tabled in Parliament.





9 780644 436991