

1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

HIGHER EDUCATION FUNDING AMENDMENT BILL 1993

EXPLANATORY MEMORANDUM

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



Higher Education Funding Amendment Bill 1993

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 Bill provides funding in 1996 for an additional 1500 undergraduate student places. Additional funding is provided to assist higher education institutions with a teacher education renewal strategy by undertaking to support the offer of redundancy payments to excess staff.

The Bill provides additional funding for higher education superannuation expenses to assist institutions to meet costs arising from institutions' implementation of the Superannuation Guarantee Levy.

The Bill provides for funding adjustments for the Open Learning Initiative (OLI) between the years 1993, 1994 and 1995, while maintaining the previous total amount provided for the three years.

The Bill provides changes to improve the administration of Tax File Numbers under the Higher Education Contribution Scheme and the Open Learning Deferred Payment Scheme.

FINANCIAL IMPACT

The Bill provides increases of \$46.045m in 1994, \$29.929m in 1995 and \$36.069m in 1996 to the current legislated amounts. The maximum level of legislated amounts in 1993 is reduced by \$15.849m. The reduction is for grants to open learning organisations and the amount has been redistributed over the 1994 and 1995 grant years.

NOTES ON CLAUSES TO THE BILL

Clause 1 - Short title

Clause 2 - Commencement

1. This clause provides that the Act shall come into operation on the day it receives the Royal Assent.

Clause 3 - Application

2. This clause provides for all amendments applying to Tax File Numbers to operate from the next semester commencing on or after 1 July 1994.

Clause 4 - Definitions

3. The definition of "fees" under section 3 of the Principal Act is expanded to include fees paid by certain students who are entitled to New Zealand citizenship under section 29 of the *Citizenship Act 1977* of New Zealand.

Clause 5 - Making and variation of determinations etc.

4. The purpose of this clause is to amend section 9 of the Principal Act to allow guidelines made under the Act to be notified in the *Gazette* instead of being published. The notification will include information on how to obtain copies of the guidelines.

Clause 6 - Maximum grants

5. This clause increases the amounts of maximum grants available for operating and limited operating purposes. The variations to existing legislated amounts are set out below:

	1994	1995	1996
	\$m	\$m	\$m
Increase in level due to removal of 1.5xHECS	13.188	13.292	12.474
Funding for additional student places			13.094
Deduction for additional places (spare capacity)		-2.509	-5.017
TOTAL	13.188	10.783	20.551

Clause 7 - Grants for superannuation expenses

6. This clause increases the maximum amounts available in 1994 by \$23.276m, in 1995 by \$12.931m and in 1996 by \$15.518m. The additional funding is provided to allow institutions to meet costs under the Superannuation Guarantee (Administration) Act 1992.

Clause 8 - Insertion of new section

7. This clause inserts section 20A into the Principal Act to empower the Minister to determine amounts payable in 1994 and 1995 to assist institutions to make redundancy payments to excess staff. The amounts to be provided in each of those years are to be made available from the maximum amounts available under section 17 of the Principal Act, for 1995 and 1996 respectively. The maximum amounts available under section 17 for each of those years is reduced by the amount of assistance provided from each of those years, respectively.

Clause 9 - Grants to open learning organisations

8. This clause amends section 22A of the Principal Act to vary the maximum amounts provided in 1993, 1994 and 1995 to reflect adjusted cash flow estimates. The total of the revised maximum amounts is the same as the total of the previous maximum amounts provided under section 22A.

Clause 10 - Exempt students

9. This clause amends section 35 of the Principal Act by deleting all references to "year" and substituting "semester". The change is made to ensure consistency between all elements of HECS administration. The purpose of the proposed subsection (7) is to correct an anomaly in administering section 35 of the Principal Act by expanding the list of exempt students to include certain New Zealand citizens who are being sponsored or funded through an AIDAB program and are studying in a course for which fees are charged. Currently certain students from the Cook Islands, Niue and Tokelau are deemed to be New Zealand citizens under section 29 of the Citizenship Act 1977 of New Zealand and are therefore subject to HECS. These students are in receipt of Australian International Development Assistance Bureau sponsorship or funding and, except for the operations of section 29 of the Citizenship Act 1977 of New Zealand, would be considered to be overseas students and under section 35 of the Principal Act would not be required to make a contribution under the HECS.

Clause 11 - Repeal of section 36 and substitution of new section

New section 36 - Student load not to include work experience in industry.

10. This clause repeals section 36 of the Principal Act and inserts a new section to clarify the classification of units incorporating work experience in industry. If work outside the institution is deemed to be work experience in industry, it is not considered to be part of a student's course load and therefore not subject to HECS. Paragraph 36 (1)(c) is added to clarify this issue by stipulating that, where institutions do not provide, or pay for, supervision of a student's work in industry, that work is not counted as part of the student's load. The clause also adds a new subsection which allows the Minister to make guidelines to further assist institutions to classify work experience units.

Clause 12 - Requirements before enrolment or undertaking course

11. Paragraph 41(1)(b) is amended by rewriting subparagraph(i) in plain English and omitting subparagraph (ii).

12. Subparagraph (ii) is omitted because of the changes described in the notes on clause 13 under new section 41B concerning the provision of tax file number information. Subsection 41(2) is also omitted because of these changes.

Clause 13 - Insertion of new sections

New section 41A: Institutions to give students certain information on enrolment.

13. New section 41A will apply where a student has elected under section 41 not to pay 75% of the contribution payable under Part 4.2, Division 2 of the Principal Act to an institution, and instead has provided a document as described in amended subsection 41(1)(b) to the institution (see notes on Clause 12). If the document does not show the tax file number (TFN) of the student (for example, if the student does not have a TFN or the student is unable to recall their TFN), the institution will be required to advise the student of the requirements of new section 41B within a period of 7 days after the date on which the document is provided.

New section 41B: Certain students to give tax file number information by census date.

14. This new section will apply where a student has not provided their TFN to an institution at the time of enrolment (subsection 41B(1)). In such cases the student must provide to the institution, on or before the "census date":

a number which the institution is satisfied is the student's TFN (paragraph 41B(2)(a)); or

a certificate provided by the Commissioner of Taxation stating that the student has applied to the Commissioner for the issue of a TFN (paragraph 41B(2)(b)).

The term "census date" is defined at subsection 34(1).

New section 41C: Student must be excluded from course if tax file number information not provided.

15. This new section provides for the cancellation of a student's enrolment where the student has not provided their TFN, or a certificate from the Commissioner of Taxation as described in paragraph 41B(2)(b), to the institution by the census date. In these circumstances the student will not be permitted to undertake the course of study in that semester.

Clause 14 - Power of Commissioner to inform institution concerning tax file number

16. This clause amends section 42 of the Act. Currently, subsection 42(1) provides that the Commissioner of Taxation may inform an institution of a new TFN issued to a student. The Commissioner may also advise the institution of the existing TFN of a student where the student has not provided it to the institution. The amendment proposed to paragraph 42(1)(a) by subclause 14(a) will limit the notification of TFNs to institutions by the Commissioner to cases in which a new TFN is issued to a student who did not previously have a TFN.

17. Subclause 14(a) also proposes a consequential amendment to subsection 42(1) to reflect the amendments to section 41 proposed by clause 12. A similar technical consequential amendment to subsection 42(2) is proposed by subclause 14(b).

18. Subclause 14(c) proposes new subsection 42(2A). This subsection reflects existing paragraph 42(5)(c) and will apply if, for any reason, the TFN of a student is withdrawn by the Commissioner of Taxation and a new TFN is issued in its place. In such circumstances the Commissioner may inform an institution by written notice of the new TFN of the student.

The new TFN as advised by the Commissioner will be taken to have been the TFN originally notified by the student to the institution pursuant to section 41.

19. Subclause 14(d) proposes a consequential amendment to paragraph 42(3)(a) to reflect the amendments proposed to section 41 (see notes on clause 12).

20. Subclause 14(e) omits subsection 42(5) and proposes a new subsection 42(5) in its place. New subsection 42(5) will differ from the previous subsection by the deletion of former paragraph 42(5)(c). Paragraph 42(5)(c) will be reflected in new subsection 42(2A).

21. New subsection 42(5) will provide that, where the Commissioner of Taxation has refused an application by a student for the issue of a TFN (paragraph 42(5)(a)) or cancels an existing TFN (paragraph 42(5)(b)), the Commissioner may inform the institution in which the student is enrolled by written notice of the refusal or cancellation.

22. Paragraph 42(5)(a) will also apply in circumstances where a student has provided a certificate from the Commissioner of Taxation stating that the student has applied for the issue of a TFN (see notes on Clause 13 above) and no TFN is subsequently issued. This situation may arise if the proof of identity provided by the student in conjunction with their TFN application is accepted at first instance, but on further investigation proves to be inadequate to establish the true identity of the applicant (refer subsection 44(2)).

23. Where a TFN application has been refused, the Commissioner must also provide written notice of the refusal to the applicant (subsection 44(4) of the Principal Act).

24. Paragraph 42(5)(b) only applies where a TFN is cancelled and no new TFN is issued; where the Commissioner issues a new TFN in place of a cancelled TFN, new subsection 42(2A) will apply.

25. In circumstances where the Commissioner cancels the existing TFN of a student, the Commissioner must inform the student in writing of the cancellation and also give reasons for the cancellation (section 47 of the Principal Act).

Clause 15 - Insertion of new section - Institution to cancel enrolment of student without tax file number

26. New section 42A will deal with the consequences that follow from a written notification by the Commissioner to an institution under either new subsection 42(3) or new subsection 42(5) to the effect that a student does not have a TFN. The student may lack a TFN in a number of circumstances:

the TFN of the student may have been cancelled or withdrawn and no new TFN issued (subparagraph 42(3)(a)(i) of the Principal Act; new paragraph 42(5)(b));

the student may have applied for a TFN but not been issued with one (this situation may arise where a student has previously provided a certificate from the Commissioner of Taxation prior to census date stating that the student has applied for a TFN) (new paragraph 42(5)(a));

the Commissioner may not be satisfied that the student has a TFN (where an incorrect TFN is provided) (subparagraph 42(3)(a)(ii) of the Principal Act).

27. If an institution receives a notice issued by the Commissioner of Taxation under new section 42A, paragraph 42A(2)(b) provides the student with the opportunity to quote to the institution a number that the institution is satisfied, in accordance with guidelines issued by the Commissioner, is the TFN of the student. This number must be provided by the student to the institution within a period of 28 days after the date that the institution receives the notice.

28. If no TFN is provided by the student within this 28 day period, the institution must cancel the enrolment of the student and not permit the student to undertake the course in the semester concerned (new subparagraph 42A(1)(b)).

29. If a notice issued by the Commissioner pursuant to section 42 is received by an institution prior to census date, the student concerned may also provide a certificate from the Commissioner of Taxation, of the kind described in new section 41B above, to the institution prior to the census date. The usual procedures for the notification of the new TFN of the student by the Commissioner to the institution as described in new subsection 42(1) above will then apply. However, if a notice under new section 42 is issued after census date there is no provision allowing the student to produce a certificate from the Commissioner in lieu of a TFN.

Clause 16 - Commonwealth to discharge students' liability

30. This amendment is a consequence of changes made to section 41(1)(b) of the Principal Act. These changes are explained in the notes on clause 12.

Clause 17 - Eligible client may join deferred payment scheme

31. Paragraph 105(2)(b) of the Principal Act is amended to ensure that provisions for repayment of debts applying to HECS

students are consistent with those applying to open learning clients. (see notes on clause 12).

32. Paragraph 105(3) (b) of the Principal Act is amended to provide new arrangements for the provision of tax file number information by students who wish to participate in the Open Learning Deferred Payment Scheme. These arrangements are similar to the changed arrangements included under the new section 41B(2) for HECS liable students - (see notes provided on clause 13).

33. Subsection 105(4) is redundant because of the amendment to paragraph 105(3) (b) above and is omitted.

Clause 18 - Tax file number of eligible client

34. Subsections 106A(a) and (b) are amended as a consequence of the amendments to sections 41 and 42 as outlined in clauses 12 and 14 respectively.

Clause 19 - Insertion of new section - Agency to notify Minister where tax file number not provided

New section 106AA - Agency to notify Minister where tax file number not provided

35. The clause provides that where the Agency is advised by the Commissioner that a client who has applied for a loan under the deferred payment scheme does not have a tax file number the Minister is to be advised by the Agency to that effect.

New section 106AB - Commonwealth not liable where client does not have a tax file number

36. Where the Minister has received advice under the new section 106AA that a client does not appear to have a tax file number the Commonwealth's obligation to lend to the client or to pay any moneys to the Agency on behalf of the client is extinguished.

Clause 20 - Agency etc to provide information to Commissioner

37. Section 106R is amended as a consequence of the omission of subsections 41(2) and 105(4) as outlined in the notes on clauses 12 and 17 respectively.

Clause 21: Disallowable instruments

38. This clause provides for any guidelines made under new subsection 36(3) to be treated as disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*. Any guidelines made under section 36(3) will therefore be required to be gazetted and tabled in both Houses of the Parliament.







