

2004-2005

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**HIGHER EDUCATION LEGISLATION AMENDMENT (2005 MEASURES NO. 1) BILL  
2005**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Education, Science and Training,  
the Honourable Dr Brendan Nelson MP)

# HIGHER EDUCATION LEGISLATION AMENDMENT (2005 MEASURES NO. 1) BILL 2005 OUTLINE

The Bill will amend the *Higher Education Support Act 2003* to:

- Set new maximum aggregate funding levels for the Commonwealth Grant Scheme (s30-5) to reflect :
  - Additional funding for 100 radiation therapy places for the years 2005-08;
  - Additional funding for 40 aged care nursing places for the years 2005-08; and
  - A technical adjustment to transfer funding to Other Grants for infrastructure at the Australian Maritime College for 2005.
- Extend the eligibility for capital development pool funding under Other Grants to Table B providers (s41-10)
- Set new maximum aggregate funding levels for Other Grants (s41-45) to reflect:
  - Additional funding for capital development at Charles Darwin University for the years 2005-07;
  - Additional funding for capital development for James Cook University for the years 2005-06;
  - Additional National Institute funding for the Australian National University to reflect supplementation for the years 2005-07; and
  - A technical adjustment to transfer funding from the Commonwealth Grants Scheme for infrastructure at the Australian Maritime College for 2005.
- Allow exemptions from the tuition assurance requirements (TARs) for Higher Education Providers (HEPs) to be subject to conditions and to apply only for a specified period (ss16-31, 19-40).
- Clarify that re-crediting of Student Learning Entitlement (SLE) and FEE-HELP balance occurs if a HEP who is subject to the TARs ceases to be able to provide a unit of study (ss16-25, 16-30, 16-31, 19-40, 79-1, 79-20, 110-5, 104-25, 140-42).

The Bill will amend the *Higher Education Funding Act 1988* to:

- Clarify that no refunds of voluntary HECS repayments will be made from 1 January 2005 (s61).
- Make a technical correction to the definition of HECS debt to make it consistent with the *Higher Education Support Act 2003* (s106Y).

The Bill will also amend the *Maritime College Act 1978*, to ensure that the Australian Maritime College complies with the National Governance Protocols (ss15, 17, 26, 27).

## **FINANCIAL IMPACT**

In relation to the *Higher Education Support Act 2003*, the Bill:

- increases the overall appropriation by \$48.726 million for the period 1 January 2005 to 31 December 2008.

# HIGHER EDUCATION LEGISLATION AMENDMENT (2005 MEASURES NO. 1) BILL 2005

## NOTES ON CLAUSES

### Clause 1 - Short title

Provides for the Act to be cited as the *Higher Education Legislation Amendment (2005 Measures No. 1) Act 2005*.

### Clause 2 - Commencement

Subclause 2(1) inserts a three column table setting out commencement information for various provisions in the Act. Each provision of the Act specified in column 1 of the table commences (or is taken to have commenced) in accordance with column 2 of the table and any other statement in column 2 has effect according to its terms.

The table provides for sections 1-3 of the Act and for Schedule 1, items 1 and 3-17 of Schedule 2, and Schedules 3 and 4 to the Act to commence on the day on which it receives the Royal Assent and for other provisions to commence on the days set out in column 2 of the table.

Subclause 2(2) provides that column 3 of the table is for additional information which may be added to or edited in any published version of the Act but that information in this column is not part of the Act.

### Clause 3 - Schedule(s)

Provides that each Act that is specified in a Schedule is amended or repealed as set out in the applicable items in the Schedule and that any other item in a Schedule has effect according to its terms.

## **Schedule 1 – Amendments relating to grants for higher education assistance**

### ***Higher Education Support Act 2003***

#### **Item 1 Paragraphs 30-5(1)(a) to (d)**

Amends paragraphs 30-5(1)(a), (b), (c) and (d) to vary the level of maximum grants under the Commonwealth Grant Scheme (Part 2-2) for the years 2005-2008 to reflect additional funding for 100 new places for radiation therapy, a further 40 aged care nursing places, additional medical places for James Cook University and the transfer of funding from the Commonwealth Grants Scheme to Other Grants (National Institute Funds) (section 41-45 refers) to allow the Australian Maritime College to utilise funds for infrastructure development at Point Nepean that had previously been intended for new places in 2005.

#### **Item 2 Subsection 41-10(1) (cell at table item 5, column headed “Who is eligible”)**

Has the effect of extending the eligibility for grants to support the capital development of projects of higher education providers, to Table B providers.

#### **Item 3 Subsection 41-45(1) (table)**

Amends the table in subsection 41-5(1) to vary the maximum payments for Other Grants under Part 2-3 for the years 2005-2008 to reflect the transfer of funding from the Commonwealth Grants Scheme to Other Grants (National Institute Funds) for 2005 for the purposes described for item 1; infrastructure funding for Charles Darwin University and James Cook University through the Capital Development Pool; and National Institute funding for the Australian National University.

## **Schedule 2 – Amendments relating to assistance to students**

### **Part 1—Amendments**

#### ***Higher Education Support Act 2003***

##### **Item 1 and 2 Paragraph 16-25(1)(c) and Subsection 16-30(1)**

Amend paragraph 16-25(1)(c) and subsection 16-30(1) as a consequence of the repeal of subsection 16-30(2) by item 5.

##### **Item 3 Subsection 16-30(1)**

Removes the limitation on the definition of the *tuition assurance requirements* that they apply “on the date of an application under section 16-40” to make it clear that they are an ongoing requirement.

##### **Item 4 Paragraph 16-30(1)(a)**

Amends paragraph 16-30(1)(a) to reflect the amendment made by item 3.

##### **Item 5 Subsection 16-30(2)**

Repeals subsection 16-30(2) (dealing with exempting a body corporate from the tuition assurance requirements) to reflect the insertion by item 6 of new section 16-31 dealing with such exemptions.

##### **Item 6 After section 16-30**

Inserts a proposed new section 16-31 dealing with exemptions from the tuition assurance requirements.

Proposed subsection 16-31(1) provides that the Minister may (in writing) exempt a body corporate from the tuition assurance requirements for the purposes of approving the body under section 16-25.

Proposed subsection 16-31(2) provides that an exemption is subject to the conditions specified in the exemption. A body will not be exempt if a condition of the exemption is not complied with.

Proposed subsection 16-31(3) provides that an exemption given under section 16-31 is not a legislative instrument.

### **Item 7 At the end of section 19-40**

Section 19-40 deals with ongoing compliance with the tuition assurance requirements after a body has been approved as a higher education provider. Item 7 inserts new subsections 19-40(3) and (4) which modify the existing exemption provisions.

Proposed subsection 19-40(3) provides that an exemption is subject to such conditions and may be imposed for such a period as is specified in the exemption. A body will not be exempt if a condition of the exemption is not complied with.

Proposed subsection 19-40(4) provides that an exemption given under section 19-40 is not a legislative instrument.

### **Item 8 Before section 79-1**

Creates a new Subdivision 79-A dealing with the main case of re-crediting a person's Student Learning Entitlement (SLE) from existing sections 79-1, 79-5, 79-10 and 79-15. Item 8 also inserts a new section 79-1A explaining that, if Subdivision 79-B (dealing with the re-crediting of a person's SLE if a provider is unable to provide a unit of study and inserted by item 9) applies to re-credit a person's SLE with an amount equal to the EFTSL (equivalent full time student load for a year) value of a unit of study, then Subdivision 79-A does not apply in relation to that unit. As a consequence of these amendments the heading to section 79-1 is replaced by the heading "Main case of re-crediting a person's SLE".

### **Item 9 At the end of Division 79**

Inserts a new Subdivision 79-B dealing with the re-crediting of a person's SLE if a provider is unable to provide the unit and a new section 79-20.

Proposed section 79-20 provides that a higher education provider must (on the Secretary's behalf) re-credit a person's SLE with an amount equal to the EFTSL value of a unit of study if:

- the person has been enrolled in the unit as part of a course of study with the provider; and
- the person has not completed the requirements for the unit during the period during which the person undertook (or was to undertake) the unit because the provider ceased to be able to provide the unit; and
- the tuition assurance requirements applied to the provider at the time the provider ceased to be able to provide the unit.

A HECS-HELP debt relating to a unit of study will be remitted if the SLE in relation to the unit is re-credited (see subsection 137-5(4)). In addition, it is a condition of the higher education provider's funding under Part 2-2 that payments for the unit must be repaid (see section 36-20).

**Item 10 Before subsection 104-25(1)**

Inserts a new subsection 104-25(1A) which provides that, if section 104-42 (dealing with re-crediting a person's FEE-HELP balance if a provider is unable to provide a unit and inserted by item 11) applies to re-credit a person's FEE-HELP balance with an amount equal to the amounts of FEE-HELP assistance that the person has received for a unit of study, then section 104-25 does not apply in relation to that unit. The heading to section 104-25 is replaced by the heading "Main case of re crediting a person's FEE HELP balance" to reflect these changes.

**Item 11 At the end of Subdivision 104-B**

Inserts a new section 104-42 dealing with the re-crediting of a person's FEE-HELP balance if a provider is unable to provide a unit of study. Proposed section 104-42 specifically provides that a higher education provider must (on the Secretary's behalf) re-credit a person's FEE-HELP balance with an amount equal to the amounts of FEE-HELP assistance that the person received for a unit of study if:

- the person has been enrolled in the unit with the provider; and
- the person has not completed the requirements for the unit during the period during which the person undertook (or was to undertake) the unit because the provider ceased to be able to provide the unit; and
- the tuition assurance requirements applied to the provider at the time the provider ceased to be able to provide the unit.

A FEE-HELP debt relating to a unit of study will be remitted if the FEE-HELP balance in relation to the unit is re-credited (see subsection 137-10(4)).

**Items 12 and 13 Subsections 110-5(1) and 137-10(4)**

Amend subsections 110-5(1) and 137-10(4) to reflect the amendments made by items 10 and 11.

**Item 14 Clause 1 of Schedule 1 (definition of tuition assurance requirements)**

Amends the definition of *tuition assurance requirements* in the Dictionary at clause 1 of Schedule 1 to reflect the amendments made by items 5 and 6.



## **Part 2—Application of amendments**

### **Item 15 Application of items 3 and 4**

Provides that the amendments made by items 3 and 4 of Schedule 2 apply in relation to bodies corporate that became higher education providers before or after the commencement of this item.

### **Item 16 Application of item 5**

Provides that, despite the repeal of subsection 16-30(2) by item 5 of Schedule 2, subsection 16-30(2) continues to apply in relation to exemptions that are in force immediately before the repeal, as if the repeal had not happened.

### **Item 17 Application of items 6 and 7**

Provides that the amendments made by items 6 and 7 of Schedule 2 apply in relation to exemptions given after the commencement of this item.

## **Schedule 3—Amendments relating to voluntary repayment of debts**

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

#### **Item 1 Paragraph 61(1)(b)**

Amends paragraph 61(1)(b) (dealing with the application of the Higher Education (HECS) Reserve) to clarify that no refunds of voluntary HECS repayments will be made from 1 January 2005 by limiting refunds to amounts paid under sections 106P and 106PC or those referred to in subsection 106YA(4).

#### **Item 2 Application**

Provides that the amendment made by item 1 applies to all amounts paid under section 106P or 106PC or referred to in subsection 106YA(4), whether the amounts were paid before or after the commencement of this item.

## **Schedule 4—Amendment of the *Maritime College Act 1978***

### ***Maritime College Act 1978***

#### **Item 1 Paragraph 15(4)(b)**

Amends paragraph 15(4)(b) to have the effect of providing that a member appointed as Chairperson or Deputy Chairperson may resign his/her office as Chairperson or Deputy Chairperson by writing signed by him/her and delivered to the Council. Currently the resignation must be delivered to the Minister.

#### **Item 2 After subsection 15(4)**

Inserts a new section 15(4A) which provides that, if a member appointed as Chairperson or Deputy Chairperson resigns his/her office as Chairperson or Deputy Chairperson under paragraph 15(4)(b), the Council must notify the Minister in writing of the resignation as soon as practicable after receiving it.

#### **Item 3 Paragraph 17(2)(b)**

Repeals paragraph 17(2)(b) which provided that the Minister must remove a member from the Council if the member has (in the Council's opinion) breached his/her duties under sections 22A, 22B, 22C, 22D, 22E or 22F as a member.

#### **Item 4 At the end of section 17**

Inserts new subsections 17(4), (5) and (6). Section 17 deals with the removal of a person from the Council.

Proposed new subsection 17(4) provides that the Council must remove a member from the Council if the member has (in the Council's opinion formed by resolution as mentioned in subsection 17(5)) breached his/her duties under sections 22A, 22B, 22C, 22D, 22E or 22F as a member of the Council.

Proposed new subsection 17(5) provides that, for the purposes of subsection 17(4), the Council forms its opinion by resolution if the resolution is passed at a meeting of the Council by at least a two thirds majority of the members of the Council.

Proposed new subsection 17(6) provides that, if a member is removed from the Council under subsection 17(4), the Council must notify the Minister in writing of the removal as soon as practicable after the member has been removed.

#### **Item 5 Subsections 26(2) and (2A)**

Repeals subsections 26(2) and (2A) (which provided for the Minister to appoint the Principal having regard to the advice of the Council) and substitutes new subsections 26(2) and (2A).

Proposed new subsection 26(2) provides that the Council must appoint the Principal while proposed new subsection 26(2A) provides that the Council must not appoint the Principal under subsection 26(2) without the Minister's agreement.

#### **Item 6 Subsection 26(4)**

Amends subsection 26(4) so that it has the effect of providing that the Principal shall hold office, unless he or she resigns from office under subsection 26(5) (inserted by item 7) or is removed from the Council under section 17, for such period as is specified in his or her instrument of appointment, being a period that does not exceed:

(a) in the case of the first Principal—5 years; or

(b) in any other case—7 years;

but is eligible for re-appointment.

#### **Item 7 After subsection 26(4)**

Inserts new subsection 26(5) and (5A).

Proposed new subsection 26(5) provides that the Principal may resign his/her office as Principal by writing signed by him/her and delivered to the Council while proposed new subsection 26(5A) provides that, if the Principal resigns under subsection 26(5), the Council must notify the Minister in writing of the resignation as soon as practicable after receiving it.

#### **Item 8 Subsection 27(4)**

Amends subsection 27(4) so that it has the effect of providing that the appointment of an acting Principal ceases to have effect if he or she resigns the appointment by writing signed by him or her and delivered to the Council. Currently the resignation must be delivered to the Minister.

#### **Item 9 After subsection 27(4)**

Inserts a new subsection 27(4A) which provides that if an acting Principal resigns under subsection 27(4), the Council must notify the Minister in writing of the resignation as soon as practicable after receiving it.

## **Item 10 Application and savings**

Sub item 10(1) provides that a person who, immediately before the commencement of this item, had been appointed under section 26 as Principal continues to hold office as Principal on and after the commencement of this item for the balance of the term of his/her appointment, as if the person had been appointed under that section (as amended by this Act).

Sub item 10(2) provides that the amendment made by item 4 of Schedule 4 applies to each person holding office as a member of the Council on or after the commencement of that item, whether that person was appointed to that office before or after that commencement.

## **Schedule 5—Technical correction**

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

#### **Item 1 Subsection 106Y(3)**

Repeals subsection 106Y(3) and substitutes a new subsection which provides that, in section 106Y (dealing with the application of payments), HELP debt has the same meaning as in the *Higher Education Support Act 2003*. This is a technical correction to make the definition of HELP debt consistent with the definition in the *Higher Education Support Act 2003*.