THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

HIGHER EDUCATION SUPPORT AMENDMENT (REMOVAL OF HIGHER EDUCATION WORKPLACE RELATIONS REQUIREMENTS AND NATIONAL GOVERNANCE PROTOCOLS REQUIREMENTS AND OTHER MATTERS) BILL 2008

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Education, Employment and Workplace Relations the Honourable Julia Gillard MP)
OUTLINE

The Bill will amend the Higher Education Support Act 2003 (HESA) by repealing section 33-17.

Section 33-17 enables imposition on higher education providers (providers) of the Higher Education Workplace Relations Requirements (HEWRRs) and the National Governance Protocols (NGPs) as a condition of funding under the Commonwealth Grant Scheme (CGS). The HEWRRs and NGPs are detailed in the CGS Guidelines made under HESA.

Section 33-17 provides for a reduction in a provider’s CGS grant if the provider is found not to have met the HEWRRs and the NGPs at the compliance date specified in the CGS Guidelines.

Repealing section 33-17 will remove these conditions on CGS funding. The amount of funding will not be affected.

The Bill also makes a range of minor technical amendments which will improve the operation of the HESA. It will:

- amend sections 19-25 and 19-27 so that the Higher Education Provider Guidelines may list a body to perform quality auditing for certain classes of higher education provider and set the requirements that the body must meet in conducting its audits. It will also provide a new definition for a quality auditing body in Clause 1 of Schedule 1;

- amend section 22-10 so that an approved provider that no longer meets certain approval criteria may be revoked by the Minister; and

- amend section 41-10 (1), Item 9A, “Who is eligible”, by replacing the content with:

  “*Table A providers, *Table B providers that are universities, and bodies corporate that are specified in the Other Grants Guidelines for the purposes of this item.”

This amendment has been made so that existing funding commitments, made to organisations that are not Table A or Table B providers, under the Collaboration and Structural Reform Fund (CASR) can be honoured now that the CASR funds
have been transferred to the Diversity and Structural Adjustment Fund as at 31 December 2007.

FINANCIAL IMPACT

Nil.
HIGHER EDUCATION SUPPORT AMENDMENT (REMOVAL OF THE HIGHER EDUCATION WORKPLACE RELATIONS REQUIREMENTS AND NATIONAL GOVERNANCE PROTOCOLS REQUIREMENTS AND OTHER MATTERS) BILL 2008

NOTES ON CLAUSES

Clause 1 - Short title

Provides for the Act to be cited as the Higher Education Support Amendment (Removal of the Higher Education Workplace Relations Requirements and National Governance Protocols Requirements and other matters) Bill 2008.

Clause 2 - Commencement

Provides for the Act to commence on the day on which it receives the Royal Assent.

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

Higher Education Support Act 2003

Items 1, 2 and 3 - Paragraphs 19-25(1)(a), 19-25(2)(a) and 19-27(1)

Subdivision 19-C sets out the quality requirements that higher education providers must comply with. Sections 19-25 and 19-27 relate to quality assurance of higher education providers. Items 1, 2 and 3 make technical amendments to paragraphs 19-25(1)(a), 19-25(2)(a) and 19-27(1) to reflect the changes to the definition of “quality auditing body” made by item 9, and the amendment to the scope of the kinds of quality auditing bodies which may be listed under the Higher Education Provider Guidelines made by item 4. The amendments indicate that a particular quality auditing body may be specified in the Guidelines as being an auditing body for that provider or the kind of provider to which it belongs.

Item 4 – At the end of Subdivision 19-C

Item 4 inserts proposed new section 19-29 after section 19-27. Proposed new section 19-29 provides that the Higher Education Provider Guidelines may:

- list a body as a quality auditing body for one or more kinds of higher education provider; and
- set out the requirements that must be met by quality auditing bodies in conducting audits of higher education providers.

Currently the Australian Universities Quality Agency is the only auditing body listed in the Higher Education Provider guidelines, and it is able to audit all approved higher education providers. This amendment has the effect of enabling the Minister to list additional auditing bodies in the Higher Education Provider Guidelines in the future, and to specify the scope of those new bodies’ auditing activity.

Item 5 – At the end of section 22-10

Section 22-10 deals with the revocation of approval as a higher education provider if a body ceases to be a university or other accredited provider. Item 5 inserts proposed new subsection 22-10(5) which provides that the Minister may revoke a body’s approval as a higher education provider if it:

- is no longer established under the law of the Commonwealth, a State or a Territory; or
- no longer carries on business in Australia; or
- no longer has its central management and control in Australia; or
- no longer offers at least one course of study that leads to a higher education award.

This amendment provides additional causes for revocation where the body which applied for approval as a higher education provider no longer complies with the criteria for approval set out at subsections 16-25(a) or 16-25(da).
Item 6 – Section 33-17

Section 33-17 relates to reductions in assistance for higher education providers failing to meet certain requirements. Item 6 repeals section 33-17 in its entirety, which has the effect that:

- a higher education provider is no longer required to satisfy the Minister that it has met the Higher Education Workplace Relations Requirements and the National Governance Protocols as set out in the Commonwealth Grant Scheme Guidelines; and
- a higher education provider’s basic grant amount will not be reduced for failure to satisfy the Minister that it has met both these requirements.

Item 7 is an application provision which clarifies that the repeal of section 33-17 does not affect a higher education provider’s basic grant amount for the 2008 grant year.

Item 8 – Subsection 41-10(1) (cell at table item 9A, column headed “Who is eligible”)

The table in 41-10(1) sets out which higher education providers are eligible for certain grants payable under the programs specified in the Other Grants Guidelines. The cell at item 9A of the table indicates which higher education providers are eligible to receive grants to support diversity and structural reform. Item 8 repeals the cell and substitutes a cell which provides that these grants are available not only to Table A providers and Table B providers that are universities, but also to bodies corporate that are specified in the Other Grants Guidelines for the purposes of item 9A. This amendment will enable those bodies that were previously entitled to grants under the former Collaboration and Structural Reform Fund to receive funds already committed under existing funding agreements. This is a transitional mechanism omitted from the previous amendments to 41-10 made by the Higher Education Legislation Amendment (2007 Budget Measures) Act 2007 to transfer unspent funds from the Collaboration and Structural Reform fund to the new Diversity Fund.

Item 9 – Clause 1 of Schedule 1 (definition of quality auditing body)

Item 9 repeals the definition of quality auditing body and inserts a new definition which reflects the amendment to the kinds of quality auditing bodies which may be listed under the Higher Education Provider Guidelines and the scope of their auditing activities, made by item 4.