

# BRIEFING NOTE ON NTEU AMENDMENTS TO THE HIGHER EDUCATION SUPPORT BILL 2003

## 1. Overview of the Bill

The Bill as it currently stands simultaneously proposes a deregulated and competitive higher education funding system and a highly prescriptive raft of regulatory requirements that would apply to all high education providers receiving any form of Commonwealth Funding.

The Bill has three key problems:

First, many of the regulatory requirements (e.g. workplace relations, governance, discipline and course mixes, quality assurance) are inappropriate for autonomous, self accrediting universities and are inconsistent with the allied principle of institutional autonomy.

Second, the Bill creates a general regime of purchaser-provider relationships between each higher education institution and the Commonwealth. This type of relationship is inappropriate for universities, and the more general regime is designed to create price competition not only between universities but also between universities and new providers (to be approved by the Minister).

Third, the Bill anticipates higher HECS fees and a major growth in full fee paying students, and requires each university to fix a price for each course. The dynamics of this funding model will create price competition between subsidised and unsubsidised courses with all the attendant equity and planning problems.

Attached is a comprehensive and integrated set of amendments drafted by the NTEU. These would ensure the following changes to the Bill:

- The elimination and/or reduction of the powers of the Minister to direct, control or approve the activities of universities which include governance, workplace relations, admission processes, quality assurance and courses offered.
- The separation of the regulatory treatment of universities and publicly established higher education institutions listed in Table A and B of the Bill from those of other providers. This includes the addition of a statement on the objects and purposes of universities, such as the recognition of the important principles of institutional autonomy and academic freedom. This is designed to take into account the unique character and role of universities in Australia, currently absent from the Bill, and to ensure that these are reflected in all decisions made by the Minister in relation to universities. This is a central amendment and should be inserted to ensure university independence irrespective of the wider outcomes of the debate.
- Universities and like institutions will be listed as either Table A institutions (eligible for the full suite of Commonwealth funding), or Table B institutions (eligible for limited Commonwealth funding).
- Ensuring that conditions for all grants to universities and like institutions are confined to those specified in the Bill. Currently there are no other higher education providers who receive Commonwealth Government funding for university places that are not included in Schedule 2 of the NTEU's amendments to the Bill. The NTEU proposes that the Minister have no power to determine that new providers not currently included in Table A and B can receive Commonwealth funding without legislative amendment. The appropriation that has been made for the Bill was clearly made for those institutions listed on Table A and B. If the

Minister wishes to expand the allocation of places then this would take place outside the funding context of this Bill.

- Funding agreements must be made between the relevant university and the Minister, and should reflect a three-year indicative allocation with an annual review and adjustment procedure.
- A representative and expert advisory body, the Higher Education Funding Council, should be established to provide public advice and recommendations on the level and general distribution of Commonwealth funding to universities and like institutions, and other relevant funding agreement and policy matters.
- Changing the indexation mechanism for university funding to ensure that there is a sustainable public funding stream for the future.
- Amending the CGS to ensure it would deliver an additional \$1 billion in funding to universities to overcome the reductions in real Government expenditure between 1996 - 2002. This would mean that the negative impacts of any funding redistribution would be ameliorated because it would effectively result in the re-distribution of additional funding on a discipline specific basis.
- Improving equity and access by:
  - Capping HECS fees at present levels
  - Applying FEE-HELP only to postgraduate students with no real interest rate
  - Deleting completely the Student Learning Entitlement
  - Raising of the repayment threshold for HECS
- A separate section of the Bill should set down regulatory provisions for other higher education providers.

Further details on key aspects of the legislation are set out below.

## **2. Regulation and approval**

The NTEU's amendments split the Bill's reference to "higher education providers" into two separate parts.

The first is "universities/listed higher education institutions", comprising the institutions currently listed in Table A and B of the Bill. They are subject to a reduced regulatory regime that is set out in Division 15 of the amended Bill.

The second category is all other "higher education providers". These providers are non-Table A and B providers that are not currently specified in the Bill. They are subject to the full range of regulation covering accreditation, approval, accountability and quality, set out in Division 16 of the current Bill.

This broad separation reflects the fact that those bodies on Table A and B are self-accrediting universities and institutions established by a statute of the State, Territory and Commonwealth Parliament. As such they have a different status to other providers, including already fulfilling many of the regulatory mechanisms set out in the Bill. In our version of the Bill, the NTEU proposes to eliminate these powers of the Minister.

Legislation is required to add any university or listed higher education institution to the Act for funding purposes. To approve funding the Minister must amend the Act.

The term “higher education body” is proposed to refer to the full range of higher education institutions.

### **3. Funding**

The NTEU has amended the Commonwealth Grant Scheme (CGS) funding (Part 2-2) and Other Grants (part 2-3 and set out in Section 41-10).

The NTEU’s amendments would ensure that CGS funding would only be to the universities and listed higher education institutions set out on Table A of the Bill, with Table B institutions restricted to National Priority Places.

In addition to Table A and B institutions, organisations listed in Schedule 2 are eligible to apply for item 11 on the table in Section 40 – 10. These are Grants for activities that assure and enhance the quality of Australia’s higher education sector, foster an understanding of the importance of research and scholarship, and support open access to higher education across Australia.

Other higher education providers are not eligible for any funding currently appropriated by the Bill. The Minister is required to make additional appropriations if new providers are added.

Under the NTEU’s amendments, Funding Agreements (as set out in Section 30C) would relate to CGS only and a number of amendments have been set out to reduce Ministerial discretion in relation to funding decisions.

As a general principle, Section 2-5 establishes that any exercising of power by the Minister under the Act must be done in a way that promotes the objects of the Act, including having regard for institutional autonomy and academic freedom.

The amendments also establish a Higher Education Funding Council to act as an advisory body between the Minister and universities on a range of matters, including Funding agreements. If this proves unacceptable to the Senate, then the conditions in Subdivision 30-AC, Y1 (ii) onwards would apply.

The NTEU would stress that it seeks to amend Section 33-15 to remove the need to adopt for universities to adopt the workplace relations requirements and the National Governance Protocols as a condition for CGS loadings in 2005, 2006 and 2007.

### **4. Other policy issues**

The NTEU is keen to amend other aspects of the Bill along the following lines:

- Section 198-10, the indexation mechanism for university funding. This amendment would replace the current indexation mechanism with Average Weekly Earnings Australia . This would make the indexation of university funding consistent with the indexation that applies to the repayment of student debt.
- Deleting in total Part 3-1, covering the Student Learning Entitlement.
- Section 3-2, covering HECS-HELP would be changed to specify that it is only available to ‘university/listed higher education institutions’ and to discount the maximum student contributions by 30%.
- Part 3-3, FEE-HELP would be amended so that it is only available to postgraduate students and to remove the real interest rate of 3.5%.

- Part 4-2, covering HECS repayment thresholds is amended to raise the minimum repayment threshold from \$30,000 to \$35,000.

<b>Effect of NTEU Amendments to regulations and Funding Agreements under the Higher Education Support Bill 2003</b>		
<b>Type of Higher Education Body</b>		
	<b>Universities/listed institutions</b> Covers institutions currently listed in Tables A and B of the Bill	<b>Other HE providers</b> All other providers
<b>Regulation / Approval</b>	<p>Objects have been strengthened to reflect the nature of universities including the importance of academic freedom and institutional autonomy.</p> <p>Removed approvals requirements because they are unnecessary given they are covered by own Statutes.</p> <p>Made other requirements a condition of receiving Grants</p>	<p>For other providers to receive Government funding the Minister would need to amend the Act.</p>
<b>Funding</b>	<p>Commonwealth Grants Scheme (CGS)</p> <ul style="list-style-type: none"> <li>remove Workplace Relations and Governance conditions on loadings</li> <li>reduce student contributions to HECS equivalent (remove 30% increase)</li> <li>increase Commonwealth Contributions by 33% to increase total funding by \$1b per annum</li> <li>Table B restricted to National Priority funding as per existing Bill</li> <li>all Grants to be indexed annually using Average Weekly Earnings (AWE)</li> <li>establish Transitional Fund (as per BAF) to ensure no existing institutions would be worse off under CGS compared to Block Operating Grants</li> </ul> <p>Other Grants</p> <ul style="list-style-type: none"> <li>in addition to Table A and B institutions and organisations listed in Schedule 2 are eligible to apply for Item 11 Grants</li> </ul>	<p>Nor eligible to any of the funding appropriated by Bill.</p> <p>Minister required to make additional appropriations</p>
<b>Funding Agreements</b>	<p>Minister (not Secretary) to make Funding Agreements with individual institutions.</p> <p>Higher Education Funding Council (HEFC)</p> <ul style="list-style-type: none"> <li>establish HEFC to make recommendations to Minister on total level of funding and funding allocations to individual institutions.</li> </ul> <p>Regardless of whether the HEFC is established Funding Agreements must be:</p> <ul style="list-style-type: none"> <li>when making agreements the Minister must do so with regard to: <ul style="list-style-type: none"> <li>the Objects of Bill</li> <li>criteria set out in the Bill.</li> </ul> </li> </ul>	<p>If additional funds are appropriated they would be covered by same provisions</p>