

AVCC Higher Education News

LEGISLATION SPECIAL

2003 – 7 December

Higher Education Legislation Support Bill 2003

After a late night session, the *Higher Education Support Bill 2003* was finally passed through the Senate at midnight on 4 December 2003. The amendments to the Bill passed by the Senate were subsequently passed by the lower house on Friday afternoon, 5 December 2003. This is an important outcome for the higher education sector and is testament to the substantial effort involved in developing the amendments that led to the affirmative vote by the Independent Senators.

The final legislation that has been passed retains the major structural reforms proposed in the Government's *Our Universities: Backing Australia's Future* but has been significantly amended to ensure its effective implementation, addressing the major concerns identified by the AVCC in *Excellence and Equity* and taking up most of the particular amendments proposed in *Guarding the Goalposts*.

Continual lobbying by the AVCC, universities and the independent Senators has resulted in legislation that the sector can now move forward with. While the legislation is a compromise, it offers a basis for growth within the sector and provides a point from which we can move forward to the next Federal election. The alternative, of not having the legislation passed, would have had a catastrophic effect on the future of higher education. With 2004 as an election year, the AVCC will continue to negotiate on further refinements to the legislation.

The main changes are:

1. indexation – the legislation now requires the Government to review the indexation arrangements for higher education to take effect from 2007-08. The review will be complete by February 2005, with a Government response due by April 2005 – the review is required by the new Section 198-25 of the *Act*;
2. the AWA requirement has been cut back to a requirement that enterprise agreements include the statement that the university **may** enter into AWAs in accordance with the *Workplace Relations Act*;
3. acceptance of the AVCC and Chancellors amendments to the governance Protocols;
4. doubling of the additional student places from 2007 (see Table one below for potential number of places in 2005 to 2008);
5. the maximum student contribution rates (HECS) will be set at the present rates plus 25% rather than the proposed 30% (see table two below for new maximum contributions).
6. the maximum level of fee paying domestic undergraduates will be set at 35% rather than 50%;
7. the repayment threshold for all HELP debts (whether HECS, FEE or OS) will be \$35,000 in 2004-05 and indexed there on;

8. changes to FEE-HELP and OS-HELP to remove the interest charge such that:
 - undergraduates accessing FEE-HELP and OS-HELP loans would be subject to an administration fee of 20% but no interest. This is the argument made by Bruce Chapman and equals the discount for upfront or early payment available on HECS-HELP. It means that the total debt is known in advance and advantages those who repay the debt more slowly.
 - postgraduate courses would be subject to no interest nor to an administration fee. This essentially rolls over PELS into FEE-HELP but extends the scheme to students of all approved providers;
9. additional equity related funding over 2004 to 2008 of \$8m for students with disabilities, \$8m for students from disadvantaged backgrounds, and \$50m for disadvantaged students undertaking enabling courses (the last to be part of the CGS arrangements);
10. doubling of the accommodation scholarships and exemption of all Government scholarships from income testing arrangements;
11. the learning entitlement will be extended to seven years, effectively capturing all standard course combinations and leaving considerable scope for people who enrol in 3 and 4 year courses to undertake further funded study. Capacity for extra years if necessary is to be retained;
12. Government Scholarships will be exempt from income testing but not others offered by universities;
13. revising the objects of the *Bill* to include explicit reference to the role of universities;
14. substantial withdrawal of unnecessary accountability provisions and refinement of many others; and
15. in 2006 there will be a review of the new arrangements (this is a new Section 238-7 of the *Act*).

Attached is a detailed list of the outcome against the AVCC's proposed amendments.

TABLE One: Target places 2004-2008 and potential over enrolment (EFTSL)

	2004	2005	2006	2007	2008
existing target	396,555	397,570	397,570	397,570	397,570
New fully-supported places	0	9,100	15,925	21,044	24,883
Additional nursing places	210	368	486	574	574
Additional medical places	234	468	702	936	1,170
Additional places for sector growth				2,800	4,900
<i>Total extra</i>	<i>444</i>	<i>9,936</i>	<i>17,113</i>	<i>25,354</i>	<i>31,527</i>
Total	396,999	407,506	414,683	422,924	429,097
5% of target places		20,375	20,734	21,146	21,455
Marginal places still in the system		7,358	4,168	1,786	0
Total allowed places		435,239	439,585	445,856	450,552

Marginal places being phased out could vary - calculation will be based on actual 2003 data

Notes:

Marginal places still in the system' calculation has been made using the following assumptions -

Based on 2002 sector over enrolment of nearly 32,800 EFTSU

Based on individual institutional over enrolment in 2002

No places phased out for institutions that are over enrolled by under 5%

For institutions that are over enrolled by over 5% only the places above 5% have been phased out

Phased out using reverse pipeline

CSU over enrolment adjusted to take into account the police studies enrolments

Table Two: maximum student contribution rates

The rates below are the new maximum student contribution rates following the amendment to limit the maximum to the existing rates plus 25% other than for teaching and nursing

Education and nursing	\$3,768
Band 1	\$4,710
Band 2	\$6,709
Band 3	\$7,854

Outcome of AVCC's proposed amendments to the *Higher Education Support Bill 2003*

1. *Amendments addressed, following the legislation reaching the Senate, through negotiations initially with the AVCC and finally with the independent Senators, supported by the AVCC.*

Amendments to implement policy issues identified in *Excellence and Equity*

33-15(1)	<p>Tying of additional core funding to governance and workplace relations requirements</p> <p>The tie remains but the conditions have been modified:</p> <ul style="list-style-type: none"> • the Government has accepted the majority of the AVCC and Chancellors' proposed amendments to the Governance Protocols; and • the workplace relations requirements have been cut back to a requirement that enterprise agreements include the statement that the university may enter into AWAs in accordance with the <i>Workplace Relations Act</i>. <p>The other HEWRR provisions are likely to be used as the requirements for access to the Workplace Productivity Programme.</p>
Section 41-45	<p>Equity loading. \$50m in 2004, rising to \$150m from 2007</p> <p>Additional \$8m for students with disabilities, \$8m for students from disadvantaged backgrounds, and \$50m for disadvantaged students undertaking enabling courses (over 2004 to 2008). Amount of enabling funding by institution will be set out in funding agreements as part of the CGS.</p>
Section 46-40	<p>Scholarships</p> <p>Doubling of accommodation scholarships and exemption of all Government scholarships from income testing.</p>
Para 143-1(3)(b), Sub-para 143-10(1)(b)(ii)	<p>Interest on FEE-HELP and OS-HELP</p> <p>Undergraduate debts subject to an administration charge of 20% to replace interest. Postgraduate debts subject to no interest charge.</p>
Sections 154-10 and 20	<p>Repayment threshold</p> <p>Raised to \$35,000 in 2004-05.</p>

Other amendment (remaining intrusion, autonomy and issues from the Bill)

Division 2	<p>Objects</p> <p>The objects were revised to include explicit reference to the role of universities.</p>
Sub-sections 19-35(2)(3)	<p>Selection procedures should be open, fair and transparent but not based on merit</p> <p>To be "open, fair and transparent procedures that, in the provider's view, are based on merit".</p>
Section 19-60	<p>Application of the information privacy principles</p> <p>AVCC did not pursue its opposition to the application of the IPPs.</p>

Section 19-70 and 169-30	<p>Provision of statistical and other information (19-70) and use of student identifier in transferring data (169-30)</p> <p>Amendment to prevent requiring information under 19-70 that is already provided under 19-95.</p>
Section 19-80	<p>Access for Departmental officers</p> <p>Deleted.</p>
Section 19-90	<p>Only one contribution and fee level per unit</p> <p>AVCC proposed that Section 19-90 be amended to allow:</p> <ul style="list-style-type: none"> • universities to set and hold contribution and fee levels for particular intakes of students while setting different levels for subsequent intakes; and • universities to set lower contribution and fee levels for designated groups of students. <p>Minister has agreed to amend to achieve first point in Autumn 2004 sittings (drafting the change is complex and would have held up potential passage). Second change was considered and rejected by Dr Nelson.</p>
Division 22	<p>Revocation of approval as higher education providers</p> <p>Government amended division to ensure that any revocation would take place only after disallowance period was passed.</p>
Sections 30-25	<p>The funding agreement</p> <p>Amended so that:</p> <ul style="list-style-type: none"> • Minister enters the agreement not the Secretary; • funding agreements will be tabled in Parliament; • Minister will have regard for matters that the provider would like to have specified in their funding agreements; <p>Agreement cannot specify that particular courses cannot be used to provide Commonwealth supported places – but Minister can still so determine (under 36-15) subject to Parliamentary disallowance. See note on use of this power.</p>
Sub-sections 33-25	<p>Include 101% funding provision in the <i>Bill</i></p> <p>Included but payment subject to Minister's approval.</p>
Para 36-55(1)(b)	<p>Capacity to set higher minimum domestic fee level than equivalent HECS level</p> <p>No change.</p>
Sub-section 36-55(3)	<p>Minimum fee levels for students in non-award courses</p> <p>No change.</p>
Section 41-45	<p>The appropriation for the 11 Other Grant groups should be separately declared in a disallowable instrument</p> <p>Amended.</p>
Section 104-10	<p>Capacity to exclude some courses from FEE-HELP</p> <p>Power is now subject to Parliamentary disallowance.</p>
Section 174-20	<p>Need for student agreement for electronic communications</p> <p>No change.</p>
Division 174	<p>Administrative guidelines</p> <p>No change.</p>

2. Amendments agreed by the Government in advance of Senate negotiations in response to AVCC proposals

Sections 3-1, 8-1, 13-1	The distinction between universities and other self accrediting institutions in Tables A and B from other providers approved by the Minister will be included in these explanatory sections.
Section 16-25	The decision by the Minister to approve additional higher education providers will be disallowable.
Section 19-5	The general financial viability requirement is linked to the subsequent provisions in Section 19-10 to make clear that financial viability will be assessed against existing reporting requirements.
Paragraph 19-10(2)(c)	Universities will have 6 months to provide their audited statements.
Sections 19-15 to 19-25	Table A providers subject to distinct quality audit arrangements under new 19-17 that allows each institution to agree the process with the Minister.
Section 19-45	Table A providers are required through university statutes to have grievance and related processes and are subject to Ombudsmen. Guidelines no longer will detail arrangements.
Section 19-75	Amended to make clear that notification is only required of events that could have a significant impact on the university.
Sub-section 19-105(3)	Fee guidelines for international students now subject to disallowance.
Section 30-10	The Minister will have regard to a university's proposed distribution of places across the funding clusters.
Sub-section 33-25(1)	The CGS will be reduced by the average HECS for the university for any enrolment beyond 105% of the allocation (or other higher percentage agreed).
Sub-sections 33-25(3)-(5)	No reduction in the CGS for achievement of 99%-100% of the agreed grant amount.
Section 36-35	The 50% rule only applies to domestic students.
Para 46-20(2)(d)	Deleted.
Division 51	The Minister not Secretary will formally make decisions for the reduction and repayment of grants.
Section 73-20	The Act provides for learning entitlement to re-accrue through 'life long' entitlement.
Sub-para 93-10(a)(ii)	Maximum HECS levels cannot be changed (other than for indexation) without amendment to the Act.
Section 107-15	No restrictions on how much FEE-HELP a student of a particular provider may receive.
Para 118-10(b)	OS-HELP: no requirement that there be an arrangement with the overseas provider although it may well occur.
Sub-section 118-15(2) and Division 121	Deletions to reduce scope for OS-HELP Guidelines.

**AVCC Higher Education News -National is produced by the AVCC Secretariat.
All responsibility for the content is taken by Chief Executive Officer, John Mullarvey.
This publication is copyright free provided attribution of authorship is made to the AVCC.**