



Higher Education Funding Amendment Act 2001

No. 86, 2001



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**An Act to amend legislation relating to higher
education, and for related purposes**

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Higher Education Funding Amendment Act 2001

No. 86, 2001

An Act to amend legislation relating to higher education, and for related purposes

[Assented to 18 July 2001]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Higher Education Funding
Amendment Act 2001*.

2 Commencement

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

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- (2) Item 11 of Schedule 1 commences, or is taken to have commenced, immediately after the commencement of the *Innovation and Education Legislation Amendment Act 2001*.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Extra funding for research, higher education and other purposes

Australian Research Council Act 2001

1 Paragraph 48(b)

Omit “2002.”, substitute “2002;”.

2 At the end of section 48

Add:

(c) the year 2003.

3 Paragraph 49(b)

Repeal the paragraph, substitute:

(b) for the year 2002—\$270,376,000; and

(c) for the year 2003—\$339,183,000.

Higher Education Funding Act 1988

4 Paragraphs 17(l), (m) and (n)

Repeal the paragraphs, substitute:

(l) in the case of the year 2000—\$3,425,879,000; and

(m) in the case of the year 2001—\$2,728,871,000; and

(n) in the case of the year 2002—\$2,828,336,000; and

(o) in the case of the year 2003—\$2,814,602,000.

5 Paragraphs 20(3)(m) and (n)

Repeal the paragraphs, substitute:

(m) in the case of the year 2001—\$100,000,000; and

(n) in the case of the year 2002—\$106,472,000; and

(o) in the case of the year 2003—\$97,079,000.

6 Paragraph 22A(5)(j)

Repeal the paragraph, substitute:

(j) for the year 2002—\$235,000; and

(k) for the year 2003—\$235,000.

7 Paragraphs 23C(2)(i) and (j)

Repeal the paragraphs, substitute:

- (i) for the year 2001—\$977,318,000; and
- (j) for the year 2002—\$1,052,494,000; and
- (k) for the year 2003—\$1,081,201,000.

8 Paragraph 24(3)(n)

Repeal the paragraph, substitute:

- (n) in the case of the year 2002—\$5,281,000; and
- (o) in the case of the year 2003—\$5,281,000.

9 Paragraph 27A(6)(i)

Repeal the paragraph, substitute:

- (i) for the year 2002—\$41,156,000; and
- (j) for the year 2003—\$41,156,000.

10 Paragraph 27D(2)(e)

Repeal the paragraph, substitute:

- (e) in the case of the year 2002—\$5,278,000; and
- (f) in the case of the year 2003—\$5,278,000.

Innovation and Education Legislation Amendment Act 2001

11 Schedule 1

Repeal the Schedule.

Schedule 2—Bankruptcy

Bankruptcy Act 1966

1 At the end of subsection 82(1)

Add:

Note: The operation of this section in relation to accumulated HEC debts and semester debts under the *Higher Education Funding Act 1988* is affected by section 106YA of that Act.

2 At the end of subsection 153(1)

Add:

Note: The operation of this section in relation to accumulated HEC debts and semester debts under the *Higher Education Funding Act 1988* is affected by section 106YA of that Act.

Higher Education Funding Act 1988

3 After section 106Y

Insert:

106YA Effect of bankruptcy

- (1) This section applies in relation to a bankruptcy if:
 - (a) before the bankrupt's bankruptcy date, the bankrupt incurred:
 - (i) an accumulated HEC debt; or
 - (ii) a semester debt or semester debts; or
 - (iii) both; and
 - (b) that debt or those debts had not been discharged before the bankruptcy date.

Debts related to pre-bankruptcy period are provable

- (2) Subject to subsection (5), the following are taken to be provable debts for the purposes of the Bankruptcy Act:
 - (a) the pre-bankruptcy part of the bankrupt's accumulated HEC debt;

- (b) the unpaid part of the semester debt, or of each of the semester debts.

Note 1: An accumulated HEC debt and a semester debt can be discharged and replaced by a new accumulated HEC debt through the operation of sections 106N and 106O.

Note 2: If an accumulated HEC debt, or a semester debt that the bankrupt incurred before the bankrupt's bankruptcy date, is discharged and replaced in this way:

- (a) it ceases to be a provable debt; and
- (b) subsections (6) and (7) of this section can apply to the new accumulated HEC debt; and
- (c) for that purpose, a pre-bankruptcy part for the bankrupt's new accumulated HEC debt is calculated under subsections (8) and (9).

Debts related to post-bankruptcy period not provable

- (3) To avoid doubt, the following are taken not to be provable debts for the purposes of the Bankruptcy Act:
 - (a) the bankrupt's accumulated HEC debt (apart from the pre-bankruptcy part of that debt);
 - (b) any semester debt incurred by the bankrupt on or after the bankrupt's bankruptcy date.

Dividend taken to be voluntary payment

- (4) A dividend paid under the Bankruptcy Act to the Commonwealth in respect of:
 - (a) the pre-bankruptcy part of the bankrupt's accumulated HEC debt; or
 - (b) a semester debt mentioned in subsection (1);is taken for the purposes of this Part to be money that the bankrupt has directed to be applied in payment of that debt.

No release on discharge from bankruptcy

- (5) Section 153 of the Bankruptcy Act does not operate to release the bankrupt from the following:
 - (a) all or any part of the accumulated HEC debt;
 - (b) a semester debt mentioned in subsection (1).

Replacement of accumulated HEC debt

(6) If:

- (a) subsections (2) to (5) apply to an accumulated HEC debt (the **old HEC debt**) of the bankrupt (including because of a previous application of this subsection or subsection (7)); and
- (b) the old HEC debt is discharged under section 106O because the bankrupt incurred another accumulated HEC debt (the **replacement HEC debt**) under section 106N;

then:

- (c) after the replacement HEC debt is incurred, those subsections apply (subject to any later application of this subsection) to the replacement HEC debt instead of the old HEC debt; and
- (d) for that purpose:
 - (i) a proof of debt under the Bankruptcy Act in relation to the pre-bankruptcy part of the old HEC debt (including because of a previous application of this subsection or subsection (7)) is taken to relate, to the extent of that proof, to the pre-bankruptcy part of the replacement HEC debt; and
 - (ii) if at the time the old HEC debt is discharged under section 106O, a semester debt of the bankrupt is also discharged under that section—a proof of debt under the Bankruptcy Act in relation to the semester debt is taken to relate, to the extent of that proof, to the pre-bankruptcy part of the replacement HEC debt.

Replacement of semester debt only

(7) If:

- (a) immediately before the bankrupt's bankruptcy date, the bankrupt had:
 - (i) one or more undischarged semester debts (an **old semester debt**); and
 - (ii) no undischarged accumulated HEC debt; and
- (b) on or after the bankruptcy date, the unpaid part of an old semester debt is discharged under section 106O because the bankrupt incurred an accumulated HEC debt (the **new HEC debt**) under section 106N;

then:

- (c) after the new HEC debt is incurred, subsections (2) to (5) apply (subject to any later application of subsection (6)) to the new HEC debt instead of the old semester debt; and
 - (d) for that purpose, a proof of debt under the Bankruptcy Act in relation to the old semester debt is taken to relate to the pre-bankruptcy part of the new HEC debt.
- (8) Subject to subsection (9), the *pre-bankruptcy part* of a bankrupt's accumulated HEC debt is the amount that would be the bankrupt's relevant debt calculated in accordance with subsections 106Q(2) and (3), if:
 - (a) that amount was calculated as at the time immediately before the bankrupt's bankruptcy date; and
 - (b) the reference in paragraph 106Q(2)(a) to the person's accumulated HEC debt referred to in paragraph (1)(b) were a reference to the person's accumulated HEC debt on the 1 June immediately preceding the bankruptcy date.
- (9) If:
 - (a) immediately before the bankrupt's bankruptcy date, the bankrupt had one or more undischarged semester debts; and
 - (b) at a time (the *discharge time*) on or after the bankruptcy date, the unpaid part of those debts (the *discharged amount*) was discharged because of the operation of section 106O;then:
 - (c) if the bankrupt did not have an accumulated HEC debt immediately before the discharge time—the *pre-bankruptcy part* of the bankrupt's accumulated HEC debt is equal to the discharged amount; or
 - (d) otherwise—the *pre-bankruptcy part* of the bankrupt's accumulated HEC debt is taken to be increased at the discharge time by an amount equal to the discharged amount.
- (10) In this section:

bankrupt has the same meaning as in the Bankruptcy Act.

bankruptcy has the same meaning as in the Bankruptcy Act.

Bankruptcy Act means the *Bankruptcy Act 1966*.

bankruptcy date, in relation to a bankrupt, means the date of the bankruptcy of the bankrupt (within the meaning of the Bankruptcy Act).

dividend has the same meaning as in the Bankruptcy Act.

pre-bankruptcy part, in relation to a bankrupt's accumulated HEC debt, has the meaning given by subsections (8) and (9).

provable debt has the same meaning as in the Bankruptcy Act.

4 Application

- (1) Subject to subitem (2), the amendments made by this Schedule apply to bankruptcies for which the date of the bankruptcy is after the introduction day.
- (2) The amendments made by this Schedule do not apply to a bankruptcy if:
 - (a) a declaration was presented by the debtor under section 54A of the *Bankruptcy Act 1966* on or before the introduction day; and
 - (b) the declaration was accepted under section 54C of that Act on or before that day; and
 - (c) the date of the bankruptcy is after the introduction day, but within the period of 6 days after the day on which the declaration was accepted.
- (3) To avoid doubt, the amendments made by this Schedule do not affect the interpretation of the *Bankruptcy Act 1966* or the *Higher Education Funding Act 1988* in relation to bankruptcies to which those amendments do not apply.
- (4) In this item:

introduction day means the day on which the Bill that became the *Higher Education Funding Amendment Act 2001* was introduced into the House of Representatives.

the date of the bankruptcy has the same meaning as in the *Bankruptcy Act 1966*.

Schedule 3—ANU governance arrangements

Australian National University Act 1991

1 Section 3

Insert:

Chair of the Education Committee means the person mentioned in paragraph 10(1)(d).

2 Section 3

Insert:

Chair of the Research Committee means the person mentioned in paragraph 10(1)(e).

3 Section 3 (paragraphs (d) and (e) of the definition of *ex officio member*)

Repeal the paragraphs, substitute:

- (d) the Chair of the Education Committee; or
- (e) the Chair of the Research Committee; or

4 Paragraphs 10(1)(d) and (e)

Repeal the paragraphs, substitute:

- (d) if a Statute creates an Academic Board, a subcommittee of which is known as the Education Committee—the Chair of the Education Committee;
- (e) if a Statute creates an Academic Board, a subcommittee of which is known as the Research Committee—the Chair of the Research Committee;

5 Paragraphs 15(2)(d) and (e)

Repeal the paragraphs, substitute:

- (d) the Chair of the Education Committee; or
- (e) the Chair of the Research Committee; or

6 Subsection 20(2)

Repeal the subsection, substitute:

- (2) The Board may advise the Council on any matter relating to education, learning or research or the academic work of the University.

7 Subsection 25(2)

Repeal the subsection, substitute:

- (2) The Board may advise the Council on any matter relating to education, learning or research or the academic work of the University.

Schedule 4—Miscellaneous

Higher Education Funding Act 1988

1 Paragraph 18(1)(e)

Repeal the paragraph.

2 Subsection 34(1) (definition of *overseas student charge*)

Repeal the definition.

3 Subsection 36(3)

Repeal the subsection, substitute:

- (3) The Minister may issue guidelines setting out criteria that the institution must apply in deciding whether the requirements in paragraphs (1)(a), (b), (c) and (d) are satisfied.

4 After paragraph 61(1)(b)

Insert:

- (ba) for amounts mentioned in paragraph (b) that are less than \$50—the crediting of such amounts against primary tax debts (within the meaning of Part IIB of the *Taxation Administration Act 1953*); and

[*Minister's second reading speech made in—
House of Representatives on 7 June 2001
Senate on 21 June 2001*]

(105/01)
