



Higher Education Funding Amendment Act (No. 2) 1992

No. 158 of 1992

TABLE OF PROVISIONS

PART 1—PRELIMINARY

Section

1. Short title etc.
2. Commencement

PART 2—AMENDMENTS RELATING TO THE FUNDING OF INSTITUTIONS

3. Definitions
4. Institutions
5. References to payments and Acts
6. Proposed institutions
7. Repeal of section 11
8. Grants for expenditure for operating purposes
9. Grants for expenditure for limited operating purposes
10. Maximum grants
11. Conditions of grants
12. Grants to maintain or enhance the quality of higher education
13. Grants for superannuation expenses
14. Repeal of section 21 and insertion of new sections:
 21. Grants for projects of national priority
 - 21A. Conditions of certain grants for projects of national priority
15. Promotion of equality of opportunity
16. Special research assistance
17. Grants for advanced engineering centres
18. Conditions of grants for advanced engineering centres

TABLE OF PROVISIONS—*continued*

Section

- 19. Grants in respect of teaching hospitals
- 20. Grants in respect of drug and alcohol education in teaching hospitals
- 21. Grants for capital projects
- 22. Conditions attaching to capital grants
- 23. Grants for capital projects
- 24. Grants for renovation projects
- 25. Conditions attaching to capital grants
- 26. Interpretation
- 27. Additional condition
- 28. Benefits of, and opportunities created by, grants to be equally available to female and male students
- 29. Additional conditions
- 30. Amendments affecting entitlements to grants
- 31. Time and manner of payments
- 32. Advances
- 33. Sources of certain payments to institutions
- 34. Authority to borrow
- 35. Application of money borrowed
- 36. Report by Minister
- 37. Consequential amendments of other Acts
- 38. Transitional

PART 3—AMENDMENTS RELATING TO THE HEC SCHEME

- 39. Exempt students
- 40. Requirements before enrolment or undertaking course
- 41. Overpayment of contribution
- 42. Application of Fund
- 43. Power of Secretary to remit semester debt in special circumstance
- 44. Repeal of section 64 and insertion of new sections:
 - 64. Reconsideration of section 63 decision
 - 64A. AAT review of Secretary's decision
- 45. Transitional—HEC Scheme enrolment
- 46. Transitional—AAT review

PART 4—AMENDMENTS RELATING TO CAPITAL AND RECURRENT FUNDING

- 47. Definitions
- 48. Repeal of section 8 and insertion of new sections:
 - 8. Special fund for Table A institutions
 - 8A. Special fund for Table B institutions
- 49. Amendment of Part heading
- 50. Repeal of Part 2.3
- 51. Insertion of new sections:
 - 26. Guidelines for non-building capital projects
 - 27. Guidelines for special capital projects
 - 27A. Grants for special capital projects
 - 27B. Minister may give directions in relation to special capital projects
 - 27C. Conditions attaching to special capital grants
- 52. Repeal of Chapter 3
- 53. Disallowable instruments
- 54. Sources of certain payments to institutions
- 55. Authority to borrow
- 56. Application of money borrowed
- 57. Reimbursement of Consolidated Revenue from Loan Fund
- 58. Report by Minister
- 59. Transitional arrangement for guidelines

TABLE OF PROVISIONS—*continued*

Section

PART 5—MISCELLANEOUS

- 60. Title
- 61. Insertion of new section:
 - 2A. Objects of Act
- 62. Definitions
- 63. Provision for superannuation, long service leave or workers' compensation
- 64. Repeal and substitution of section 13:
 - 13. Post-graduate fees
- 65. Insertion of new section:
 - 22A. Grants to open learning organisations
- 66. Insertion of new section:
 - 25A. Grants to support student organisations in certain circumstances
- 67. Repeal of Chapter 5
- 68. Disallowable instruments
- 69. Repeal of Chapter 7
- 70. Report by Minister

SCHEDULE

CONSEQUENTIAL AMENDMENTS OF OTHER ACTS

Australian National University Act 1991
Maritime College Act 1978
University of Canberra Act 1989



Higher Education Funding Amendment Act (No. 2) 1992

No. 158 of 1992

**An Act to amend the *Higher Education Funding Act 1988*,
to make consequential amendments of other Acts, and for
related purposes**

[Assented to 11 December 1992]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title etc.

1.(1) This Act may be cited as the *Higher Education Funding
5 Amendment Act (No. 2) 1992*.

(2) In this Act, “Principal Act” means the *Higher Education Funding
Act 1988*¹.

Higher Education Funding Amendment
(No. 2) No. 158, 1992

Commencement

2.(1) Part 1 commences on the day on which it receives the Royal Assent.

(2) Parts 2, 3 and 5 commence, or are taken to have commenced, on 1 January 1993.

(3) Part 4 commences on 1 January 1994.

5

PART 2—AMENDMENTS RELATING TO THE FUNDING OF INSTITUTIONS

Definitions

3. Section 3 of the Principal Act is amended: 10

(a) by inserting in paragraph (d) of the definition of “operating purposes” “for purposes referred to in paragraph (a), (b) or (c)” after “the institution”;

(b) by inserting in paragraph (e) of that definition “for purposes referred to in paragraph (a), (b) or (c)” after “the institution”; 15

(c) by omitting from paragraph (g) of the definition of “fees” “State Higher Education Minister” and substituting “institution”;

(d) by omitting from paragraph (b) of the definition of “year to which this Chapter applies” “or the year 1994” and substituting “, the year 1994 or the year 1995”; 20

(e) by omitting the definitions of “approved authority”, “prescribed non-government institution” and “State Higher Education Minister”.

Note: section 3 of the Principal Act is also amended by sections 47 and 62 of this Act.

Institutions

4. Section 4 of the Principal Act is amended: 25

(a) by omitting subsection (1) and substituting the following subsection:

“(1) Subject to this section, in this Act, unless the contrary intention appears, ‘**institution**’ means any of the institutions of higher education specified in the following Tables: 30

*Higher Education Funding Amendment
(No. 2) No. 158, 1992*

TABLE A

Australian Catholic University
Charles Sturt University
The Macquarie University
The University of New England
The University of New South Wales
The University of Newcastle
University of Sydney
University of Technology, Sydney
University of Western Sydney
The University of Wollongong
Ballarat University College
Deakin University
La Trobe University
Monash University
Royal Melbourne Institute of Technology Ltd
Swinburne University of Technology
University of Melbourne
Victoria University of Technology
Griffith University
James Cook University of North Queensland
Queensland University of Technology
University of Central Queensland
University of Queensland
University of Southern Queensland
Curtin University of Technology
Edith Cowan University
Murdoch University
The University of Western Australia
The Flinders University of South Australia
The University of Adelaide
University of South Australia
University of Tasmania
Northern Territory University
Australian National University
University of Canberra

*Higher Education Funding Amendment
(No. 2) No. 158, 1992*

TABLE B
Avondale College Marcus Oldham College of Farm Management Australian Maritime College Batchelor College

.”;

- (b) by omitting from subsection (2) “the Table” and substituting “a Table”;
- (c) by omitting from subsection (3) “the Table” and substituting “a Table”.

References to payments and Acts

5

5. Section 5 of the Principal Act is amended by omitting paragraph (a) and substituting the following paragraph:

- “(a) the Minister is to be taken to have paid money to an institution that is not a body corporate if he or she has paid money to the body administering the institution; and”.

10

Proposed institutions

6. Section 6 of the Principal Act is amended by omitting from paragraph (e) “the State shall be taken to have paid money to the institution if it” and substituting “the Minister is taken to have paid money to the institution if he or she”.

15

Repeal of section 11

7. Section 11 of the Principal Act is repealed.

Grants for expenditure for operating purposes

8. Section 15 of the Principal Act is amended:

- (a) by omitting “a State in which an institution to which this section applies is situated” and substituting “an institution to which this section applies specified in Table A in subsection 4(1)”;
- (b) by adding at the end “having regard to the educational profile of the institution”.

20

25

Grants for expenditure for limited operating purposes

9. Section 16 of the Principal Act is amended:

- (a) by omitting “a State in which an institution to which this section applies is situated” and substituting “an institution to which this section applies specified in Table B in subsection 4(1)”;

30

*Higher Education Funding Amendment
(No. 2) No. 158, 1992*

- (b) by adding at the end “having regard to the educational profile (if any) of the institution”.

Maximum grants

5 **10.** Section 17 of the Principal Act is amended by omitting paragraphs (d), (e) and (f) and substituting the following paragraphs:

- “(d) in the case of the year 1992—\$2,733,557,000; and
(e) in the case of the year 1993—\$2,889,851,000; and
(f) in the case of the year 1994—\$3,202,329,000; and
(g) in the case of the year 1995—\$3,275,568,000.”.

10 Conditions of grants

11. Section 18 of the Principal Act is amended:

- (a) by omitting from subsection (1) “a State under section 15 or 16 in relation to an institution” and substituting “an institution under section 15 or 16”;
- 15 (b) by omitting paragraph (1)(a);
- (c) by omitting from paragraph (1)(b) “the State will ensure that an amount so paid to the institution is spent” and substituting “the institution will spend each amount of financial assistance received by it”;
- 20 (d) by omitting from paragraph (1)(c) “the State will ensure that”;
- (e) by omitting from paragraph (1)(d) “the State will ensure that each institution situated in the State” and substituting “the institution”;
- (f) by omitting from paragraph (1)(e) “the State will ensure that,”;
- 25 (g) by omitting from paragraph (1)(f) “not later than 30 September next following that year, a statement by a qualified auditor, in the approved form” and substituting “not later than 30 June next following that year, a statement by a qualified auditor, in an approved form”;
- 30 (h) by omitting from paragraphs (1)(f) and (g) “the State will ensure that” (wherever occurring).

Grants to maintain or enhance the quality of higher education

12. Section 18A of the Principal Act is amended:

- 35 (a) by omitting from subsection (1) “approve” and substituting “determine”;
- (b) by omitting from subsection (2) “give approval” and substituting “make a determination”;
- (c) by omitting from subsection (3) “approves” and substituting “determines”;
- 40 (d) by omitting from subsection (3) “approved financial assistance” and substituting “determination”;

Higher Education Funding Amendment
(No. 2) No. 158, 1992

- (e) by omitting subsection (4) and substituting the following subsection:

“(4) The total of the amounts determined by the Minister under subsection (1) in respect of a year must not exceed:

- (a) in the case of the year 1994—\$76,071,000; and 5
(b) in the case of the year 1995—\$76,071,000.”.

Grants for superannuation expenses

13. Section 20 of the Principal Act is amended:

- (a) by omitting from subsection (1) “in relation to superannuation” and substituting “in relation to the provision of superannuation benefits for staff of such institutions whose salaries are funded from grants provided under this Act for operating purposes or limited operating purposes”; 10

- (b) by omitting from subsection (2) “payable in relation to” and substituting “payable to”; 15

- (c) by omitting paragraphs (3)(d), (e) or (f) and substituting the following paragraphs:

- “(d) in the case of the year 1992—\$53,191,000; and
(e) in the case of the year 1993—\$53,671,000; and
(f) in the case of the year 1994—\$53,671,000; and 20
(g) in the case of the year 1995—\$53,671,000.”.

Repeal of section 21 and insertion of new sections

14. Section 21 of the Principal Act is repealed and the following sections are inserted:

Grants for projects of national priority 25

“21.(1) The Minister may approve a proposal for expenditure as a proposal deserving financial assistance under this section in respect of a year to which this Chapter applies if:

- (a) the proposal is for expenditure by an institution to which this section applies or by another incorporated body; and 30
(b) the proposal is for expenditure upon a project relating to a matter of national priority in higher education.

“(2) The Minister may give approval under subsection (1), subject to such conditions as he or she determines.

“(3) If the Minister approves a proposal under subsection (1) in respect of a year: 35

- (a) the Minister must determine an amount of approved expenditure in relation to the proposal; and
(b) the amount of approved expenditure must not be greater than

Higher Education Funding Amendment
(No. 2) No. 158, 1992

the amount of estimated expenditure on the proposal for the year.

5 “(4) If the Minister determines an amount in relation to a proposal for expenditure by an institution in respect of a year, the amount specified in a determination under section 15 or 16, as the case requires, in relation to the institution in respect of that year is taken to be increased by the amount of the approved expenditure.

10 “(5) If the Minister determines an amount in relation to a proposal for expenditure by a body other than an institution in respect of a year, there is payable to the body in connection with the proposal in respect of that year an amount equal to the amount determined by the Minister.

15 “(6) The total of the amounts of approved expenditure determined by the Minister under subsection (3) must not exceed:

- (a) for the year 1992—\$32,472,000; and
- (b) for the year 1993—\$33,714,000; and
- (c) for the year 1994—\$39,372,000; and
- (d) for the year 1995—\$39,387,000.

Conditions of certain grants for projects of national priority

20 “21A.(1) A body other than an institution is granted financial assistance under section 21 in relation to an approved proposal of the body in respect of a year on the conditions set out in this section.

25 “(2) The total amount spent by the body in connection with the proposal during the year must not be less than the total amount of the financial assistance paid to the body under section 21 in relation to the proposal.

30 “(3) For the purposes of subsection (2), the total amount spent by the body during the year includes amounts spent by the body after the end of the year in respect of commitments entered into before the end of the year.

“(4) The body must give to the Minister a statement by a qualified auditor of the amount spent by the body as described in subsection (2).

“(5) The statement by the auditor in respect of the year to which the proposal relates must:

35 (a) be in the approved form; and

(b) be given to the Minister not later than 30 June in the year following the end of that year.”.

Higher Education Funding Amendment
(No. 2) No. 158, 1992

Promotion of equality of opportunity

15. Section 22 of the Principal Act is amended by omitting paragraphs (5)(e) and (f) and substituting the following paragraphs:

- “(e) in the case of the year 1993—\$3,985,000; and
- (f) in the case of the year 1994—\$3,985,000; and 5
- (g) in the case of the year 1995—\$3,985,000.”

Special research assistance

16. Section 23 of the Principal Act is amended:

(a) by inserting after subsection (1) the following subsection:

“(1A) The Minister may approve a proposal for expenditure by a body, other than an institution, for purposes that will assist programs of research undertaken by institutions to which this section applies, as a proposal deserving financial assistance under this section in respect of a year to which this Chapter applies subject to such conditions as the Minister determines.”; 10
15

(b) by inserting in subsection (2) “under subsection (1) or (1A)” after “a proposal”;

(c) by omitting from subsection (3) “a State in which an institution to which an approved proposal relates is situated” and substituting “an institution or another body to which an approved proposal relates”; 20

(d) by inserting in subsection (3) “or other body” after “the institution”;

(e) by omitting paragraphs (4)(d), (e) and (f) and substituting the following paragraphs: 25

- “(d) in the case of the year 1992—\$254,903,000; and
- (e) in the case of the year 1993—\$275,391,000; and
- (f) in the case of the year 1994—\$296,964,000; and
- (g) in the case of the year 1995—\$252,837,000.”;

(f) by omitting from subsection (5) “a State under subsection (3) in relation to an approved proposal by an institution” and substituting “an institution or another body under subsection (3) in relation to an approved proposal of the institution or body”; 30

(g) by omitting paragraph (5)(a); 35

(h) by omitting from paragraph (5)(b) “the State will ensure that”;

(i) by inserting in paragraph (5)(b) “or other body” after “the institution”;

(j) by omitting from paragraph (5)(b) “paid to the State” and substituting “paid to the institution or body”; 40

(k) by omitting paragraph (5)(c) and substituting the following paragraph:

*Higher Education Funding Amendment
(No. 2) No. 158, 1992*

“(c) the institution or other body gives to the Minister, not later than 30 June next following that year, a statement by a qualified auditor, in an approved form, as to the amounts spent as described in paragraph (b).”.

5 Grants for advanced engineering centres

17. Section 23A of the Principal Act is amended:

- (a)** by omitting from subsection (5) “a State in which an institution to which an approved proposal relates is situated” and substituting “an institution to which an approved proposal relates”;
- (b)** by omitting from subsection (6) “a State” and substituting “an institution”;
- (c)** by omitting paragraphs (7)(a), (b) and (c) and substituting the following paragraphs:
 - “(a) for the year 1992—\$4,913,000; and
 - (b) for the year 1993—\$3,613,000; and
 - (c) for the year 1994—\$1,512,000; and
 - (d) for the year 1995—\$1,512,000.”.

Conditions of grants for advanced engineering centres

20 18. Section 23B of the Principal Act is amended:

- (a)** by omitting from subsection (1) “A State” and substituting “An institution”;
- (b)** by omitting from subsection (1) “an institution” and substituting “the institution”;
- (c)** by omitting subsection (2);
- (d)** by omitting subsection (3) and substituting the following subsection:
 - “(3) The total amount spent by the institution in connection with the proposal during the year must not be less than the total amount of the financial assistance paid to the institution under section 23A in relation to the proposal.”;
- (e)** by omitting from subsection (5) “The State must ensure that the institution gives” and substituting “The institution must give”;
- (f)** by omitting from subsection (6) “the approved form” and substituting “an approved form”;
- (g)** by omitting from subsection (6) “30 September” and substituting “30 June”.

Grants in respect of teaching hospitals

40 19. Section 24 of the Principal Act is amended:

- (a)** by omitting from subsection (2) “a State in which an institution

Higher Education Funding Amendment
(No. 2) No. 158, 1992

to which this section applies is situated” and substituting “an institution to which this section applies”;

- (b) by omitting paragraphs (3)(d), (e) and (f) and substituting the following paragraphs:
- “(d) in the case of the year 1992—\$4,421,000; and 5
(e) in the case of the year 1993—\$4,461,000; and
(f) in the case of the year 1994—\$4,461,000; and
(g) in the case of the year 1995—\$4,461,000.”;
- (c) by omitting from subsection (4) “a State under subsection (2) in relation to an institution” and substituting “an institution under subsection (2)”;
- (d) by omitting paragraph (4)(a);
- (e) by omitting from paragraph (4)(b) “the State will ensure that”;
- (f) by omitting from paragraph (4)(b) “to the State” and substituting “to the institution”;
- (g) by omitting from paragraph (4)(c) “the State will ensure that”;
- (h) by omitting from paragraph (4)(c) “not later than 30 September next following that year, a statement by a qualified auditor, in the approved form” and substituting “not later than 30 June next following that year, a statement by a qualified auditor, in an approved form”.

Grants in respect of drug and alcohol education in teaching hospitals

20. Section 25 of the Principal Act is amended:

- (a) by omitting from subsection (1) “a State in which an institution to which this section applies is situated” and substituting “an institution to which this section applies”;
- (b) by omitting from subsection (3) “a State under subsection (1) in relation to an institution” and substituting “an institution under subsection (1)”;
- (c) by omitting paragraph (3)(a);
- (d) by omitting from paragraph (3)(b) “the State will ensure that”;
- (e) by omitting from paragraph (3)(b) “to the State under subsection (1) in relation to the institution” and substituting “to the institution under subsection (1)”;
- (f) by omitting from paragraph (3)(c) “the State will ensure that”;
- (g) by omitting from paragraph (3)(c) “not later than 30 September next following that year, a statement by a qualified auditor, in the approved form” and substituting “not later than 30 June next following that year, a statement by a qualified auditor, in an approved form”.

*Higher Education Funding Amendment
(No. 2) No. 158, 1992*

Grants for capital projects

21. Section 26 of the Principal Act is amended:

- (a) by omitting from subsection (3) “the State in which the institution is situated” and substituting “the institution”;
- 5 (b) by omitting subsection (4) and substituting the following subsection:

“(4) If an amount has been determined under subsection (2) as the estimated maximum Commonwealth contribution towards a capital project of an institution, the total of:

10 (a) amounts payable to a State in relation to that capital project under this Act as in force before 1 January 1993; and

15 (b) amounts payable to the institution in relation to that capital project under this Act as in force on or after that day;

must not exceed the estimated maximum Commonwealth contribution towards the project as determined, or last determined under subsection (2).”;

20 (c) by omitting paragraphs (5)(e) and (f) and substituting the following paragraph:

“(e) in the case of the year 1993—\$255,041,000.”;

(d) by omitting from subsection (6) “or to the State in which the institution is situated, as the case may be,”.

Note: section 26 of the Principal Act is subsequently repealed by section 50 of this Act.

Conditions attaching to capital grants

25 **22.** Section 27 of the Principal Act is amended:

(a) by omitting “a State under section 26 in relation to a capital project of an institution” and substituting “an institution under section 26 in relation to a capital project of the institution”;

(b) by omitting paragraph (a);

30 (c) by omitting paragraph (b) and substituting the following paragraph:

“(b) the sum of the amounts spent in relation to work carried out before the end of that year in connection with the project will not be less than the sum of:

35 (i) the amounts (if any) paid in relation to the project to the State in which the institution is situated under this Chapter as in force before 1 January 1993; and

40 (ii) amounts paid to the institution in relation to the project under this Act as in force on or after that day.”;

*Higher Education Funding Amendment
(No. 2) No. 158, 1992*

- (d) by omitting from paragraphs (c) and (d) “the State will ensure that”;
- (e) by omitting from paragraph (e) “the State will ensure that,”;
- (f) by omitting paragraph (f) and substituting the following paragraph: 5
 “(f) the institution will give to the Minister, not later than 30 June next following that year, a statement by a qualified auditor, in an approved form, as to the amounts spent in respect of work carried out before the end of that year in connection with the project.”. 10

Note: Section 27 of the Principal Act is subsequently repealed by section 50 of this Act.

Grants for capital projects

- 23. Section 31 of the Principal Act is amended:
 - (a) by omitting from subsection (3) “to the State in which the institution is situated,” and substituting “to the institution”;
 - (b) by omitting subsection (4) and substituting the following subsection: 15
 “(4) If an amount has been determined under paragraph (2)(a) as the estimated maximum Commonwealth contribution towards a capital project, the total of:
 - (a) the amounts payable to a State under subsection (3) as in force before 1 January 1993 in relation to the project; 20
 and
 - (b) the amounts payable to an institution under subsection (3) as in force on or after that day in relation to the project; 25
- must not exceed the amount so determined.”;
- (c) by omitting from subsection (6) “or to the State in which the institution is situated, as the case may be,”.

Note: section 31 of the Principal Act is subsequently repealed by section 52 of this Act.

Grants for renovation projects

- 24. Section 32 of the Principal Act is amended by omitting from subsection (4) “the State in which the institution is situated” and substituting “the institution”. 30

Note: section 32 of the Principal Act is subsequently repealed by section 52 of this Act.

Conditions attaching to capital grants

- 25. Section 33 of the Principal Act is amended:
 - (a) by omitting “to a State under section 31 or 32 in relation to the capital project or a renovation project, as the case may be, of an institution” and substituting “to an institution under 35

Higher Education Funding Amendment
(No. 2) No. 158, 1992

section 31 or 32 in relation to a capital project or renovation project, as the case may be, of the institution”;

(b) by omitting paragraph (a);

5 (c) by omitting paragraph (b) and substituting the following paragraph:

“(b) the sum of the amounts spent in relation to work carried out before the end of that year in connection with the project will be not less than the sum of:

10 (i) the amounts (if any) paid to the State in which the institution is situated in relation to the project under this Chapter as in force before 1 January 1993; and

15 (ii) the amounts paid to the institutions in relation to the project under this Chapter as in force on or after that day.”;

(d) by omitting from paragraphs (c) and (d) “the State” and substituting “the institution”;

(e) by omitting from paragraph (e) “the State will ensure that,”;

20 (f) by omitting paragraph (f) and substituting the following paragraph:

25 “(f) the institution will give to the Minister, not later than 30 June next following that year, a statement by a qualified auditor, in an approved form, as to the amounts spent in respect of work carried out before the end of that year in connection with the project.”.

Note: section 33 of the Principal Act is subsequently repealed by section 52 of this Act.

Interpretation

26. Section 34 of the Principal Act is amended:

(a) by omitting subparagraphs (b)(ii) and (iii) of the definition of “designated course of study” in subsection (1);

30 (b) by omitting paragraphs (c), (d), (e) and (j) from subsection (4).

Additional condition

27. Section 38 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

35 “(1) In addition to the conditions specified in any other provision of this Act, financial assistance is granted to an institution referred to in section 4 on the condition that the institution complies with the requirements of this Chapter.”.

*Higher Education Funding Amendment
(No. 2) No. 158, 1992*

Benefits of, and opportunities created by, grants to be equally available to female and male students

28. Section 107 of the Principal Act is amended by omitting from subsection (1) “to a State for the purpose of financial assistance is granted on the condition that the State” and substituting “to an institution for the purpose of financial assistance is granted on the condition that the institution”. 5

Additional conditions

29. Section 108 of the Principal Act is amended:

- (a) by omitting “to a State” and substituting “to an institution or other body”; 10
- (b) by omitting “the State” (wherever occurring) and substituting “the institution or body”.

Amendments affecting entitlements to grants

30. Section 109 of the Principal Act is amended: 15

- (a) by omitting paragraph (a) and substituting the following paragraph:

“(a) that would reduce an amount payable to an institution under a previous determination made by the Minister unless the Minister has consulted the institution in relation to the proposed reduction; or”; 20

- (b) by omitting from paragraph (b) “a State” and substituting “an institution”.

Time and manner of payments

31. Section 111 of the Principal Act is amended by omitting “a State” and substituting “an institution or other body”. 25

Advances

32. Section 113 of the Principal Act is amended:

- (a) by omitting “to a State” and substituting “to an institution or other body”; 30
- (b) by omitting “the State” (wherever occurring) and substituting “the institution or other body”.

Sources of certain payments to institutions

33. Section 114 of the Principal Act is amended:

- (a) by omitting “a State” and substituting “an institution or other body”; 35
- (b) by omitting from paragraph 114(b) “and Chapter 5”.

Note: section 114 of the Principal Act is also amended by section 54 of this Act.

Higher Education Funding Amendment
(No. 2) No. 158, 1992

Authority to borrow

34. Section 115 of the Principal Act is amended by omitting “the States” and substituting “institutions”.

Note: section 115 of the Principal Act is also amended by section 55 of this Act.

Application of money borrowed

5 35. Section 116 of the Principal Act is amended by omitting “the States” and substituting “institutions”.

Note: section 116 of the Principal Act is also amended by section 56 of this Act.

Report by Minister

36. Section 119 of the Principal Act is amended:

- 10 (a) by inserting “, 18A” after “16”;
(b) by inserting “, 23A” after “23”.

Note: section 119 of the Principal Act is also amended by sections 58 and 70 of this Act.

Consequential amendments of other Acts

37. The Acts set out in the Schedule are amended as set out in the Schedule.

Transitional

15 38.(1) The amendments of the Principal Act made by this Part do not affect a determination made by the Minister under section 15, 16, 19, 20, 21, 22, 23, 23A, 24, 25, 26, 29, 30, 31, 32, 100, 101 or 104 of that Act before the commencement day.

20 (2) All rights, liabilities and obligations arising out of a determination made by the Minister under section 15, 16, 19, 20, 21, 22, 23, 23A, 24, 25, 26, 29, 30, 31, 32, 100, 101 or 104 of the Principal Act before the commencement day continue despite the amendments of the Principal Act made by this Part.

25 (3) The Minister may, if this Act receives the Royal Assent before 1 January 1993, make an advance to an institution, on or after the day on which it receives the Royal Assent and before 1 January 1993, in respect of financial assistance that is expected to become payable to the institution under a provision of the *Higher Education Funding Act 1988* in respect of the year 1993 and the conditions that would be applicable to a payment of an amount under that provision are applicable to such an advance.

30 (4) In this section, “commencement day” means the day on which this Part commences.

Higher Education Funding Amendment
(No. 2) No. 158, 1992

PART 3—AMENDMENTS RELATING TO THE HEC SCHEME

Exempt students

39. Section 35 of the Principal Act is amended by adding after subsection (4) the following subsections:

“(5) A student is an exempt student in relation to a course of study in respect of a semester if: 5

- (a) all of the places in that course of study in respect of that semester are fully funded by an employer within the meaning of subsection (6); and
- (b) at least some of the places so funded are funded to assist the institution providing the course to meet the needs of the employer; and 10
- (c) the student will occupy one of those fully funded places whether or not the student is an employee of the employer.

“(6) In subsection (5), ‘**employer**’ means a person who pays, or is liable to pay, salary or wages and includes: 15

- (a) the Commonwealth, a State or a Territory; or
- (b) any instrumentality of the Commonwealth, a State or a Territory.”.

Requirements before enrolment or undertaking course 20

40. Section 41 of the Principal Act is amended:

- (a) by omitting from paragraph (1)(a) “85%” (wherever occurring) and substituting “75%”;
- (b) by omitting from paragraph (1)(b) the words before subparagraph (i) and substituting “if the student is not an excepted student in relation to that course in respect of that semester, the student:”; 25
- (c) by omitting from paragraph (1)(b) “85%” and substituting “75%”;
- (d) by adding at the end the following subsections: 30

“(3) In subsection (1), ‘**excepted student**’, in relation to a designated course of study in respect of a semester, means:

- (a) a student who:
 - (i) at the completion of enrolment for the course in respect of that semester, is a New Zealand citizen; and 35
 - (ii) is enrolled as an external student resident outside Australia or has, at enrolment, been resident in Australia for a continuous period of less than 2 years; and 40
 - (iii) at enrolment is not also an Australian citizen; or

*Higher Education Funding Amendment
(No. 2) No. 158, 1992*

(b) a student who:

- (i) at the completion of enrolment for the course in respect of that semester is entitled to stay in Australia, or to enter and stay in Australia, without any limitation as to time; and
- (ii) will be resident outside Australia for the duration of the course in that semester for a reason other than a requirement of the course.

“(4) In determining, for the purpose of paragraph (3)(a)(ii), the length of a person’s continuous residence in Australia, a period of residence outside Australia that cannot reasonably be regarded as indicating an intention to cease to reside in Australia must be disregarded.

“(5) In determining, for the purpose of subparagraph (3)(b)(ii), whether a person will be resident outside Australia for the duration of the designated course in a semester, any period of residence in Australia that cannot reasonably be regarded as indicating an intention to reside in Australia for the duration of the course in that semester must be disregarded.”.

20 Overpayment of contribution

41. Section 56 of the Principal Act is amended by omitting “85%” and substituting “75%”.

Application of Fund

42. Section 61 of the Principal Act is amended by adding at the end the following subsection:

“(2) If the students occupying all of the places in a course of study in respect of a semester are exempt students in respect of the course and that semester under subsection 35(5), that course of study is not to be treated during that semester as a course of study funded by the State for the purposes of paragraph (1)(c).”.

Power of Secretary to remit semester debt in special circumstance

43. Section 63 of the Principal Act is amended by inserting after subsection (2) the following subsections:

“(2A) A notification under subsection 63(2) must include:

- (a) a statement of the reasons for the decision; and
- (b) notice to the effect that:
 - (i) if the student is dissatisfied with the decision of the Secretary on the application, the student may apply, within 28 days of receiving the notification, under section 64 for reconsideration of the decision; and
 - (ii) if the student is dissatisfied with the decision on the

Higher Education Funding Amendment
(No. 2) No. 158, 1992

reconsideration, the student may, subject to the *Administrative Appeals Tribunal Act 1975*, make application to the Tribunal for a review of the decision on the reconsideration.

“(2B) A failure to comply with subsection (2A) in relation to a notification does not affect the validity of the notification or of the decision to which the notification relates.” 5

Repeal of section 64 and insertion of new sections

44. Section 64 of the Principal Act is repealed and the following sections are inserted: 10

Reconsideration of section 63 decision

“64.(1) If:

- (a) a student applies under section 63 for remission of the whole or a part of an HEC semester debt; and
- (b) the Secretary notifies the student that he or she has decided not to remit the debt or not to remit as much of the debt as the student sought to have remitted; 15

the student may apply to the Secretary for a reconsideration of that decision.

“(2) An application under subsection (1) must be made in writing and must be given or sent to the Secretary within 28 days of the student receiving notification of the decision under section 63. 20

“(3) If an application is made under this section, the Secretary must, as soon as practicable;

- (a) consider the application and: 25
 - (i) confirm the original decision; or
 - (ii) vary the original decision; or
 - (iii) revoke the original decision and substitute another decision; and
- (b) notify the student of the decision on the reconsideration. 30

“(4) A notification under subsection (3) must include:

- (a) a statement of the reasons for the decision on the reconsideration; and
- (b) notice to the effect that, if the student is dissatisfied with the decision on the reconsideration, the student may, within 28 days of receiving the notification, and subject to the *Administrative Appeals Tribunal Act 1975*, apply to the Tribunal for review of the decision on the reconsideration. 35

“(5) A failure to comply with subsection (4) in relation to a notification does not affect the validity of the notification or of the decision to which the notification relates. 40

Higher Education Funding Amendment
(No. 2) No. 158, 1992

AAT review of Secretary's decision

“64A. Application may be made to the Administrative Appeals Tribunal for a review of a decision of the Secretary under section 64.”.

Transitional—HEC Scheme enrolment

- 5 **45.** The amendments of the Principal Act made by sections 39 and 40 of this Act do not affect the respective operation of sections 41 and 56 of the Principal Act in relation to the enrolment of a student in a course of study in respect of a semester ending before 1 January 1993.

Transitional—AAT review

- 10 **46.** The amendments of the Principal Act made by sections 42 and 43 of this Act do not affect any application made, or any entitlement to apply, to the Administrative Appeals Tribunal under section 63 of the Principal Act for review of a decision to remit the whole or a part
15 of an HEC semester debt in relation to a course of study in respect of a semester ending before 1 January 1993.

**PART 4—AMENDMENTS RELATING TO CAPITAL AND
RECURRENT FUNDING**

Definitions

47. Section 3 of the Principal Act is amended:

- 20 **(a)** by omitting “26A” from the definition of “non-building capital project” and substituting “26”;
- (b)** by inserting after paragraph (c) of the definition of “operating purposes” the following paragraph:
- 25 “(ca) capital project of the institution for purposes referred to in paragraph (a), (b) or (c);”;
- (c)** by omitting the definition of “recurrent expenditure”.

Repeal of section 8 and insertion of new sections

48. Section 8 of the Principal Act is repealed and the following sections are inserted:

30 Special fund for Table A institutions

“8. If:

- (a)** an institution specified in Table A in subsection 4(1) transfers an amount of money into a special fund in the institution's accounts; and
- 35 **(b)** the money in the fund is to be used only for future expenditure on the following items:
- (i)** capital projects of the institution;
- (ii)** equipment of the institution;

Higher Education Funding Amendment
(No. 2) No. 158, 1992

(iii) minor building projects of the institution;
the institution is to be taken, for the purposes of this Act, to have spent the amount for operating purposes in respect of the year in which the amount was transferred.

Special fund for Table B institutions 5

“8A. If:

(a) an institution specified in Table B in subsection 4(1) transfers an amount of money into a special fund in the institution’s accounts; and

(b) the money in the fund is to be used only for future expenditure on the following items: 10

(i) equipment of the institution;

(ii) minor building projects of the institution;

the institution is to be taken, for the purposes of this Act, to have spent the amount for limited operating purposes in respect of the year in which the amount was transferred.”. 15

Amendment of Part heading

49. The heading to Part 2.2 of the Principal Act is omitted and the following heading is substituted:

“OPERATING AND OTHER GRANTS”. 20

Repeal of Part 2.3

50. Part 2.3 of the Principal Act is repealed.

Insertion of new sections

51. After section 25 of the Principal Act the following sections are inserted: 25

Guidelines for non-building capital projects

“26. The Minister may issue guidelines setting out criteria that are to be applied in deciding whether a proposal is a proposal for a non-building capital project.

Guidelines for special capital projects 30

“27. The Minister may issue guidelines setting out criteria that are to be applied in deciding whether a proposal for expenditure is a proposal for expenditure on a special capital project.

Grants for special capital projects

“27A.(1) The Minister may approve a proposal for expenditure as a proposal deserving financial assistance under this section in respect of a year to which this Chapter applies if: 35

Higher Education Funding Amendment
(No. 2) No. 158, 1992

- (a) the proposal is for expenditure by an institution to which this section applies; and
- (b) the proposal is for expenditure upon a capital project which, in the opinion of the Minister, is a special capital project within the meaning of guidelines issued under section 27.

5 “(2) The Minister may give approval under subsection (1) subject to conditions.

“(3) If the Minister approves a proposal in respect of a year:

- (a) the Minister must determine an amount as the estimated maximum Commonwealth contribution towards the project; and
- (b) the Minister must determine an amount of approved expenditure on the project in respect of that year; and
- (c) the amount of approved expenditure determined under paragraph (b) must not be greater than the amount determined as the estimated maximum Commonwealth contribution towards the project.

10 “(4) Subject to subsections (5) and (6), there is payable to an institution to which an approved proposal relates an amount equal to the amount of approved expenditure determined by the Minister for that year in relation to the proposal.

15 “(5) If an amount has been determined under paragraph (3)(a) as the estimated maximum Commonwealth contribution towards a special capital project of an institution, the total of the amounts payable to the institution in relation to that capital project under this Act must not exceed the estimated maximum Commonwealth contribution towards the project as determined, or last determined, under paragraph (3)(a).

20 “(6) The total of the amounts of approved expenditure approved by the Minister under subsection (3) must not exceed:

- (a) for the year 1994—\$35,000,000; and
- (b) for the year 1995—\$35,000,000.

25 “(7) If the Minister approves a proposal for expenditure on a special capital project under subsection (3), the Minister may direct that specified information be given to the Minister in respect of the project at such time and in such manner as is specified in the direction.

30 “(8) In this section:

35 **‘maximum Commonwealth contribution’**, in relation to a special capital project, means the proportion of the amount estimated by the Minister to be the total cost of the project that the Minister considers to be the appropriate Commonwealth contribution under this section towards the project.

*Higher Education Funding Amendment
(No. 2) No. 158, 1992*

Minister may give directions in relation to special capital projects

“27B. If:

- (a) information relating to a special capital project of an institution is given to the Minister in accordance with a direction under subsection 27A(7); and
- (b) the Minister has considered the information;

5

the Minister may, for the purposes of this Chapter, give directions to the institution with respect to the manner in which the project is carried out.

Conditions attaching to special capital grants

10

“27C. Financial assistance is granted to an institution under section 27A in relation to a special capital project of an institution in respect of a year on the conditions that:

- (a) the sum of the amounts spent by the institution in relation to work carried out before the end of that year in connection with the project will be not less than the sum of the amounts paid to the institution in relation to the project under this Chapter; and
- (b) the institution will provide information relating to the project to the Minister in accordance with any relevant direction under subsection 27A(7); and
- (c) the project will be carried out in accordance with any relevant direction under section 27B; and
- (d) if the Minister so requests, the institution will give to the Minister, by such date as the Minister specifies, such particulars as are specified by the Minister concerning the progress or expected progress of the work or matter constituting the project; and
- (e) the institution will give to the Minister, not later than 30 June next following that year, a statement by a qualified auditor, in the approved form, as to the amounts spent in respect of work carried out before the end of that year in connection with the project.”.

15

20

25

30

Repeal of Chapter 3

52. Chapter 3 of the Principal Act is repealed.

35

Disallowable instruments

53. Section 110 of the Principal Act is amended:

- (a) by omitting “26, 31, 32” from paragraph (b) and substituting “27A”;
- (b) by omitting “26A” from paragraph (c) and substituting “26 or 27”.

40

Higher Education Funding Amendment
(No. 2) No. 158, 1992

Sources of certain payments to institutions

54. Section 114 of the Principal Act is amended:

- (a) by omitting “Parts 2.3 and 3.2” from paragraph (a) and substituting “section 27A”;
- 5 (b) by omitting “Parts 2.2, 2.4 and 3.1” from paragraph (b) and substituting “Part 2.2 (other than section 27A) and Part 2.4”.

Authority to borrow

55. Section 115 of the Principal Act is amended by omitting “Parts 2.3 and 3.2” and substituting “section 27A”.

10 **Application of money borrowed**

56. Section 116 of the Principal Act is amended by omitting “Parts 2.3 and 3.2” and substituting “section 27A”.

Reimbursement of Consolidated Revenue from Loan Fund

15 57. Section 117 of the Principal Act is amended by omitting “Parts 2.3 and 3.2” and substituting “section 27A”.

Report by Minister

58. Section 119 of the Principal Act is amended by omitting “26, 29, 30, 31, 32” and substituting “27A”.

Transitional arrangement for guidelines

20 59.(1) Any guidelines issued before the commencement day by the Minister under section 26A of the Principal Act that are in force immediately before the commencement day continue in force on and after that day as if they were guidelines issued under section 26 of the Principal Act as amended by this Act.

25 (2) In this section:

“commencement day” means the day on which this Part commences.

PART 5—MISCELLANEOUS

Title

30 60. The title of the Principal Act is amended by omitting “, and for matters connected therewith” and substituting “and associated bodies, and for related purposes”.

Insertion of new section

61. After section 2 of the Principal Act, the following section is inserted:

Higher Education Funding Amendment
(No. 2) No. 158, 1992

Objects of Act

“2A. The objects of this Act are:

- (a) to support a higher education system that:
 - (i) is characterised by quality, diversity and equity of access; and
 - (ii) contributes to the development of cultural and intellectual life in Australia; and
 - (iii) is appropriate to meet Australia’s social and economic needs for a more highly educated and skilled population; and
- (b) to strengthen Australia’s knowledge base and enhance the contribution of Australia’s research capabilities to national economic development and international competitiveness and the attainment of social goals.”.

5

10

Definitions

15

62. Section 3 of the Principal Act is amended:

- (a) by omitting the definition of “overseas student” in subsection (1) and substituting the following definition:

“‘overseas student’ means a person who:

- (a) is not an Australian citizen; and
- (b) is enrolled, or proposes to become enrolled, in a course of study of an institution;

20

but does not include:

- (c) a person entitled to stay in Australia, or to enter and stay in Australia, without any limitation as to time; or
- (d) a New Zealand citizen; or
- (e) a diplomatic or consular representative of New Zealand, a member of the staff of such a representative or the spouse or dependent relative of such a representative; or
- (f) a member of the armed forces of the Crown who has entered Australia in the course of his or her duties;”;

25

30

- (b) by inserting the following definition:

“‘open learning organisation’ means a body corporate established by one or more institutions for the purposes of providing access, by clients of the organisation to tertiary education courses, or units of study, for which particular institutions or other tertiary education providers undertake to grant credit towards accredited tertiary awards;”.

35

Provision for superannuation, long service leave or workers’ compensation

40

63. Section 7 of the Principal Act is amended:

- (a) by inserting “which has yet to adopt full accrual accounting principles” after “an institution”;

Higher Education Funding Amendment
(No. 2) No. 158, 1992

(b) by omitting “or long service” and substituting “, long service leave or workers’ compensation”.

Repeal and substitution of section 13

5 **64.** Section 13 of the Principal Act is repealed and the following section is substituted:

Post-graduate fees

“13.(1) The Minister may issue guidelines in relation to the provision by institutions of post-graduate courses for which fees may be charged.

10 “(2) A person undertaking a post-graduate course provided in accordance with guidelines issued under subsection (1) may be charged fees in respect of the undertaking of that course.”.

Insertion of new section

65. After section 22 of the Principal Act the following section is inserted:

15 **Grants to open learning organisations**

“22A.(1) The Minister may approve a proposal for expenditure by an open learning organisation for purposes connected with the provision of tertiary courses and units of study.

20 “(2) If the Minister has approved a proposal for expenditure under subsection (1) in relation to an open learning organisation, the Minister may approve a proposal for expenditure by all or any of the following:

- (a) the organisation;
- (b) an institution;
- (c) another incorporated body;

25 for the purpose of providing teaching and learning assistance to clients of the organisation in undertaking their courses or units of study.

30 “(3) If the Minister approves a proposal under subsection (1) or (2), the Minister must determine an amount of approved expenditure in respect of the proposal in respect of each of the years 1993, 1994 and 1995.

35 “(4) There is payable to an open learning organisation under subsection (1) or to an open learning organisation, institution or other body under subsection (2) an amount equal to the approved expenditure determined by the Minister under subsection (3) in respect of that agency or that organisation, institution or other body, as the case requires.

“ (5) The total of the amounts of approved expenditure determined by the Minister under subsection (3) in respect of proposals approved under subsections (1) and (2) must not exceed:

Higher Education Funding Amendment
(No. 2) No. 158, 1992

- (a) for the year 1993—\$26,458,000; and
- (b) for the year 1994—\$16,879,000; and
- (c) for the year 1995—\$2,942,000.

“(6) Financial assistance is granted to an open learning organisation in respect of a proposal approved under subsection (1) on condition that the organisation enter into an agreement with the Commonwealth that sets out the terms on which money is provided by the Commonwealth and accepted by the organisation. 5

“(7) Financial assistance is granted to an open learning organisation, institution or other body in respect of a proposal approved under subsection (2) on condition that the organisation, institution or other body enter into an agreement with the Commonwealth setting out the terms on which money is provided by the Commonwealth and accepted by the organisation, institution or other body.”. 10

Insertion of new section 15

66. After section 25 of the Principal Act the following section is inserted in Part 2.2:

Grants to support student organisations in certain circumstances

“25A.(1) If, in respect of a year, the Minister is satisfied that a State has taken, or refused or failed to reverse, action having the effect, directly or indirectly, of preventing or hindering: 20

- (a) the imposition, by the governing body of an institution, of fees for an organisation that represents the interests generally of students at the institution; or

- (b) the collection of fees so imposed; 25

there is payable to that institution in respect of that year for that organisation such an amount by way of financial assistance as the Minister determines to be appropriate.

“(2) The total of the amounts determined by the Minister in subsection (1) for payment to an institution for an organisation in respect of a year must not exceed an amount that the Minister has determined would have been imposed, or imposed and collected, by that institution for that organisation in respect of that year were it not for that action of the State, or that refusal or failure by the State to reverse action already taken. 30 35

“(3) Financial assistance is granted to an institution for an organisation under subsection (1) in respect of a year on the conditions that:

- (a) the institution will pay each amount of that financial assistance received by it to the student organisation concerned without undue delay; and 40

Higher Education Funding Amendment
(No. 2) No. 158, 1992

(b) the institution will give to the Minister, not later than 30 June next following that year, a statement by a qualified auditor, in an appropriate form, as to the amounts so paid to the organisation.”.

5 Repeal of Chapter 5

67. Chapter 5 of the Principal Act is repealed.

Disallowable instruments

68. Section 110 of the Principal Act is amended by omitting from paragraph (b) “, 32, 100 or 101” and substituting “and 32”.

10 Repeal of Chapter 7

69. Chapter 7 of the Principal Act is repealed.

Report by Minister

70. Section 119 of the Principal Act is amended by omitting “23, 24, 25, 27A, 100, 101 and 104” and substituting “22A, 23, 24, 25 and 25A”.

*Higher Education Funding Amendment
(No. 2) No. 158, 1992*

SCHEDULE

Section 37

CONSEQUENTIAL AMENDMENTS OF OTHER ACTS

Australian National University Act 1991

Section 41:

Repeal the section, substitute the following:

Fees

“41.(1) Fees, other than fees referred to in section 13 of the *Higher Education Funding Act 1988* or fees excluded from the definition of fees in section 3 of that Act, are not payable to the University.

“(2) Fees that are payable to the University are payable in accordance with the Statutes.”.

Section 42:

Repeal the section.

Section 43:

Omit “All fees”, substitute “All financial assistance paid to the University under the *Higher Education Funding Act 1988* and all fees”.

Section 50:

Omit paragraph 50(2)(u), substitute the following:

“(u) the payment to the University of:

- (i) fees referred to in section 13 of the *Higher Education Funding Act 1988*; or
- (ii) fees excluded from the definition of ‘fees’ in section 3 of that Act;”.

Maritime College Act 1978

Subsection 32(6):

Omit “who possesses educational qualifications and has earned a living at any time, in respect of the undertaking, for the purpose of acquiring further qualifications,”, substitute “undertaking”.

Section 33:

Repeal the section.

University of Canberra Act 1989

Section 30:

Repeal the section, substitute the following:

Higher Education Funding Amendment
(No. 2) No. 158, 1992

SCHEDULE—continued

Fees

“30.(1) Fees, other than fees referred to in section 13 of the *Higher Education Funding Act 1988* or fees excluded from the definition of fees in section 3 of that Act, are not payable to the University.

“(2) Fees that are payable to the University are payable in accordance with the Statutes.”.

Sections 31 and 32:

Repeal the sections.

Section 33:

Omit “All fees”, substitute “All financial assistance paid to the University under the *Higher Education Funding Act 1988* and all fees”.

Section 40:

Omit paragraph 40(2)(t), substitute the following:

“(t) the payment to the University of:

- (i) fees referred to in section 13 of the *Higher Education Funding Act 1988*; or
- (ii) fees excluded from the definition of ‘fees’ in section 3 of that Act;”.

NOTE

1. No. 2, 1989, as amended. For previous amendments, see No. 138, 1988; Nos. 80, 168 and 179, 1989; No. 122, 1990; Nos. 53, 177 and 216, 1991; and No. 74, 1992.

[*Minister's second reading speech made in—*
House of Representatives on 4 November 1992
Senate on 11 November 1992]