

## **Submission to consultation on the Higher Education Support Amendment (Job-Ready Graduates and Supporting Regional and Remote Students) Bill 2020**

The Melbourne Centre for the Study of Higher Education (Melbourne CSHE) welcomes the opportunity of providing comments on the exposure draft of the Higher Education Support Amendment (Job-Ready Graduates and Supporting Regional and Remote Students) Bill 2020. The Melbourne CSHE is a research centre in the Melbourne Graduate School of Education, University of Melbourne.

These comments are those of the authors and do not represent those of the University of Melbourne. The authors are (in alphabetical order): Gwilym Croucher, Frank Larkins, William Locke, Ian Marshman, Vin Massaro, James Waghorne and Mark Warburton.

In brief, the Melbourne CSHE suggests consideration needs to be given to the following areas of the Bill:

- Schedule 1, in which there appear several anomalies in the proposed grandfathering arrangements contradicting the stated intention of the policy measures and that may have the unintended consequence of reducing funding to support education below the level intended.
- Schedule 2, which, by introducing the new ‘funding envelope’, may create unintended consequences for university operations and planning, in particular by removing in practice the current operation of the ‘floor’ in the Maximum Basic Grant Amount (MGBA).
- Schedule 3, in establishing the new Indigenous, Rural and Low SES Attainment Fund (IRLSAF) it appears that the proposed future funding total will rest on a Ministerial determination and that the creation of the IRLSAF will come through an amendment of the ‘other Grants Guidelines’, creating uncertainty about whether these arrangements will be implemented.
- Schedule 5 includes a proposed extension of a range of additional protections for higher education students which risks potentially adverse and unintended consequences for the operation of universities. Requiring universities to assess a student as academically suited to undertake a unit of study before enrolling could generate significant issues in implementation and operation. The proposed extension of Ministerial powers implies constraints on university autonomy that may have unintended consequences. This schedule in effect proposes to establish a parallel system of oversight to that of some TEQSA functions, which risks inconsistency and inconsonance.

Subjecting universities to a wider range of civil penalties could lead to the fundamental relationship between universities and government being altered. This would be an outcome that has not been extensively articulated in the explanatory material accompanying the exposure draft.

### **Schedule 1**

There appear to be several anomalies in the proposed grandfathering arrangements that seem to contradict the stated intention of the policy measures.<sup>1</sup> They do not seem to apply to students who, having commenced an undergraduate certificate in 2020, subsequently decide to undertake a diploma, advanced diploma or associate degree. This gap in which students are grandfathered appears to risk universities receiving less funding for these students than would be expected had they not undertaken a diploma, advanced diploma or associate degree.

Additionally, the grandfathering arrangements appear to have omitted students studying Pathology, despite the announced policy being that grandfathering will apply to all students whose contribution is to increase. The phasing out of grandfathered students in the MGBA after 3 years appears to risk that a

---

<sup>1</sup> s30-15

university utilising its full MBGA may be underfunded for the difference between the grandfathered Commonwealth Grant Scheme (CGS) rate and the new CGS rate.<sup>2</sup>

## **Schedule 2**

The proposed changes to the definitions that introduce the new ‘funding envelope’ may potentially create unintended consequences for university operations and planning.<sup>3</sup> In effect, the Bill removes the current operation of the ‘floor’ in the MBGA. At present the MBGA cannot be set below the lesser of either (a) the previous year’s amount, if one was specified in the higher education provider’s funding agreement, or (b) the amount of CGS payable for the student load for the previous year. The draft Bill changes definitions relevant to the MGBA by removing this floor in practice.<sup>4</sup>

The Minister will have discretion over the amount of CGS funding payable to any higher education provider, with no legislative guarantee that the amount will at a minimum be indexed or not reduced. Removing this legislative funding ‘floor’ risks outcomes that appear to contravene the objects of the Act, ‘to support students undertaking higher education and certain vocational education and training’.<sup>5</sup> In an extreme example, a future Minister could hypothetically reduce a university’s MBGA to only \$1.00, while that university would still be required to advise its students that they were Commonwealth supported students. In effect the university would be obliged by the legislation to provide education in the absence of the CGS funding reflecting the designated cluster rates.<sup>6</sup>

## **Schedule 3**

In establishing the new Indigenous, Rural and Low SES Attainment Fund (IRLSAF) it appears that the proposed future funding total will rest on a Ministerial determination and that the creation of the IRLSAF will come through an amendment of the ‘other Grants Guidelines’. If the CGS regional and enabling course loadings are to continue in 2021 as indicated by the current Minister, there is an implied need to duplicate the arrangements for these loadings currently in the CGS Guidelines. To implement the IRLSAF, associated funding will be transferred by increasing the amount specified in the relevant Ministerial determination, introducing uncertainty that the determinations will be made as expected and, if this was the case, it may disadvantage students and create challenges for university planning.

## **Schedule 5**

The proposed extension of a range of additional protections for higher education students risk some potentially adverse and unintended consequences for the operation of universities. We note that most of the proposed protections were developed and applied to non-university providers, following the problems that were experienced with the abuse of VET FEE-HELP and recognition that additional safeguards were required to prevent similar problems occurring with HELP for higher education courses.

The proposed provisions will require universities to assess a student as ‘academically suited to undertake the unit’ of study before that student is enrolled, which determination may under some circumstances preclude the university from enrolling that student as a Commonwealth supported student.<sup>7</sup> This has the potential to create significant issues for implementation and operation. For

---

<sup>2</sup> For example, the current proposed changes imply that in the case of Communication & Media Arts, the shortfall would be \$12,447 per student place. In the case of History, Archaeology, Indigenous Studies, Justice, Law Enforcement, Philosophy & Religious Studies, the shortfall would be \$5,126 per student places.

<sup>3</sup> s30-27, s33-5.

<sup>4</sup> s30-10.

<sup>5</sup> s2-1.

<sup>6</sup> S36-5.

<sup>7</sup> The circumstances are that for a bachelor degree or higher qualification, the student has undertaken eight or more units and not successfully completed at least 50 per cent of them or in any other case, the student has undertaken four or more units and not successfully completed at least 50 per cent of them. s19-42, s36-10.

example, this could be interpreted as requiring universities to assess every student for every unit of study for each year of their degree. The meaning of ‘academically suited’ is ambiguous. Meeting this requirement could impose additional burdens upon universities and raises questions about how a university could demonstrate that requirements had been met in an administratively feasible manner.

Universities will no longer be permitted to complete any part of a request for Commonwealth assistance on behalf of a student. This provides welcome protection against fraud, but it has implications for how universities can support students to enrol. It has the potential to introduce additional barriers to entry for students unable to complete the form without assistance. It also has the potential to introduce additional administrative costs.

The proposed amendments imply the Secretary of the Commonwealth Education Department could determine that a student is not ‘genuine having regards to matters in the Higher Education Provider Guidelines’. If this occurs, the student would become ineligible for Commonwealth support and could not receive a student loan. Without indication of how the Secretary would know when to intervene, it risks creating uncertainty for students and universities.<sup>8</sup>

The Ministerial powers proposed through Schedule 5 imply constraints on university autonomy that may have unintended consequences.<sup>9</sup> For example, where the Minister requires a university to be audited in respect of its compliance with specified requirements there may be a significant cost that universities must cover. This could introduce significant costs at both the institutional and departmental (AOU) level, as well as increased government administration because it suggests that increased reporting will be required for departmental judgments to be made. In addition, this schedule would seem to establish new forms of oversight that duplicate TEQSA functions. This introduces the possibility of inconsistency and inconsonance.

The draft bill makes universities liable for a wide range of civil penalties, which alters the relationship between universities and government. This fundamental change has not been extensively articulated in the informational material accompanying the exposure draft.

**Authors, in alphabetical order: Gwilym Croucher, Frank Larkins, William Locke, Ian Marshman, Vin Massaro, James Waghorne and Mark Warburton.**

---

<sup>8</sup> s36-5.

<sup>9</sup> s19-80, s19-71 to s19-73