HE Support Amendment (Job-Ready Graduates and Supporting Regional and Remote Students) Bill 2020

The title of bill the Higher Education Support Amendment (Job-Ready Graduates and Supporting Regional and Remote Students) Bill 2020 highlights the twin rhetorical aims of the Government.

The six schedules cover:
1. the renewal of the funding and charging clusters;
2. the operation of the Commonwealth Grant Scheme to reflect the funding envelope;
3. amendments to the Other Grants and related elements to allow funding for NPILF and IRLSAF;
4. changes to allow funding for wholly work experience units;
5. tightening of quality and accountability measures to inflict on universities a set of detailed requirements designed for non-university providers;
6. the change to the charge to use FEE-HELP for students of non-Table A providers and access to Fares Allowance after three, not six months, on income support.

The bulk of the Job-Ready Graduate changes are in schedules 1 and 2. The approach is minimalist, amending the Act as strictly required.

Areas of concern and questions

1. Conflict between the Bill, schedule 1 item 22 and the FAQs about status of pre-2021 students who change course (other than to an honours course or from an enabling or undergraduate certificate). Would appear to exclude movement from a level 5-6 course to bachelor unless framed as an existing enrolment in the latter.
2. The way in which the MGBA for Higher Education Courses will be established and increased is not defined. The main elements should be listed covering growth allocation and indexation, with detail for Guidelines.
4. The creation of the IRLSAF involves moving the regional and enabling loadings from the Commonwealth Grant Scheme to Other Grants, losing some security of allocation in future years. Especially so with IRLSAF not set to alter arrangements for any potential benefits until 2024 while removal of the loadings takes effect from 2021.
5. Why, after 17 years, break the commitments of the Howard Government to exclude Table A providers from various accountability provisions of the Act such as 19-80?
6. Where Division 19 and other requirements differ in application to sets of providers should be made explicit in HESA. Those that now only apply to non-Table A to C providers should remain so. There is no evidence that the extensive additions since HESA 2003 greatly improve accountability.
Drafting queries

1. Possible drafting errors are:
   - Schedule 2, Item 25 contains ‘regional area’ and ‘remote area’ without an Asterix. Item 27 inserts both terms into the Dictionary;
   - Schedule 6 where copies of Act, hard copy and download, do not have 137-10(2)(b) with a (i) to which to add a (ia) – which should be ii?

Structure and timing

Sections 1 to 3 set up the Bill and commence on royal assent.

- Schedules 1 to 4 and 7 come into effect on 1 January 2021.
- The student accountability changes begin
  - on 1 January 2021 but for
  - the requirements concerning student passing of units which commence 1 January 2022.
1. **Schedule 1 Funding clusters**

This schedule updates the funding and student charges clusters and rates. By separating them from the other changes to the Commonwealth Grant Scheme (Schedule 2), which alter similar parts of the Act, it is easier to follow the logic of the changes.

This schedule is named the funding reform Schedule throughout the Bill. The sections of relevance are Items 22 and 23, the grandfathering provisions, since these do not as such enter the main Act, HESA, but remain legislated through this Bill.

**Part 1**

Part one sets up the long-term system, with reference to Part 2 for the transition arrangements.

**Schedule 1, Items 1-2 and items 6-7 application of guidelines**

The remit of the Commonwealth Grant Scheme guidelines is tidied up in several places.

**Item 3, 30-15 The Funding Clusters**

The terms to describe the suite of discipline areas are updated and regrouped to reflect JRG.

  - Adjustment for social work degree units and for psychology should affect this.
- Environmental science is explicitly separated from agriculture (and funded less).
- English emerges as a distinct discipline.
  - Hardcoding of a split that may not last long, given the case to separate from other society and culture units is weak.

The four clusters work for the funding levels but then require three to be split into two for the student contributions (Item 8 below). It would be more coherent to present the seven distinct revenue clusters in each place.

**Item 4, 33-10 Commonwealth contribution amounts**

Updates the table for the new clusters and rates.

The rates that apply for grandfathered students are covered elsewhere at items 22-23, see below.

**Item 5, 33-35 Allocation of units to a funding cluster**

The Act permits the CGS Guidelines to determine how to allocate units to a cluster or define which cluster they belong to. The Bill amends this to allow the Guidelines to do so for both the Act and funding reform Schedule. Hence Guidelines can cover allocation of units both to existing clusters and to proposed clusters. It introduces concept of a part cluster.

The allocation has rarely been a matter of concern.

The breadth of charges opens up conflicting pressures on where a unit is located. Extracting Social Work units, especially if they have broader use than in a Social Work degree, could be a risk point as would other units with potential to sit in two or more clusters.
Item 8, 93-10 Maximum student contributions

Replaces the table with the new clusters. As argued at Item 3 above it would be clearer to present the seven sets of disciplines rather than try to fit them to the Government’s four contribution levels.

The previous subsection (2) on how to determine unit to cluster is deleted. I assume on basis that it repeats the earlier provision which is referenced in Note 1.

Items 9-18

Consequential flow through of changes:

- to application of Commonwealth Grant Scheme Guidelines;
- inclusion of funding reform Schedule.

Item 19 nursing and education students, pre 2009

Repeals provisions of the 2009 Amendment Act that preserved nursing and education students of the time at the National Priorities rate – that is the pre 2005 band 1 rates, as indexed. Hard to imagine there are many such students left. This seems to help simplify systems for universities and the Department by removing one complicating provision and makes clear that they would be charged the proposed lowest student contribution.

A reminder that an end point for preservation arrangements is useful, but set to ten years not four.

Part 2 Application and transition

Items 20-21 definitions and application

Makes clear the units to be grandfathered are those in the law, business, society and culture cluster plus visual and performing arts. These are the areas where the proposed student contribution is higher than currently charged. All other areas have a lower student contribution and hence the new rates can apply immediately.

The amended Act applies immediately to all units of study from 1 January 2021 that are not grandfathered.

Items 22-23 the grandfathering provisions

22(1) defines the continuing student to cover:

- finishing the course already enrolled in;
- moving to honours;
- moving from enabling to another HE course and from Undergraduate Certificate to bachelor degree.

The FAQs allowed for a person to change course and providers and retain pre-2021 status. That is not supported by the Bill.

22(2) and (3) set out the Government and student contributions for the current system indexed to 2021 values where needed to cover grandfathered disciplines.

Item 23 makes clear that the amounts specified in the Bill are those to apply in 2021 without further indexation.
2. **Schedule 2 Commonwealth Grant Scheme**

**Items 1 to 9 Section 30 on allocation of places and maximum base grant amounts**

The language for places is updated and a revised approach to the maximum base grant amounts created.

1. The standard generic term is ‘HE course(s)’ replacing ‘course(s) of study’. This is the broad set of courses across all levels that makes up the funding envelope.

2. ‘designated HE courses’ remain but apply only to medicine plus any others specified by the Minister. So far none indicated. This removes PG coursework from the designated set and includes in HE Course.

3. ‘demand driven HE courses’ is used for the Indigenous students from relevant regions initiative.

There can be a maximum base grant amount for all three of the above.

There remains no requirement for any MBGAs – it is a policy requirement of the current Government. In short, a future Minister could choose not to set them in which case all places would be funded.

The MGBA provision for 2. and 3. remains as now - that it can be no lower than the previous year’s funding or MGBA.

The arrangements to set and increase the Higher Education Courses MGBA need some framing consistent with Government intent to include a growth allocation each year and indexation of the whole.

**Items 10-22 Section 33 Basic grant amounts**

The current calculation for non-designated and designated are reworked to apply to the three different sets of courses, in a more logical order than currently. The current approach of funding the lesser of the enrolled load or the MBGA remains.

- new 33-5 (2A and 2B) for the general HE Courses
- existing 33-5 (3 and 4) continues for the designated places (that is, medicine on current settings)
- existing 33-5 (5 and 6) was for non-designated is adapted to the demand driven HE courses.

The table at 33-30 that sets the calculation to determine how many places are delivered in a cluster is updated to the three groups.

**Items 23-27 dictionary**

Renews the dictionary for the three new terms and removal of dated terms.

The important additions concern the places for Indigenous students. This works through linked definitions.

1. “demand driven higher education course means a *course of study that:

   (a) is undertaken by an *eligible Indigenous person for the course of study with a *Table A provider; and

   (b) is leading to a *higher education award that is a bachelor degree or bachelor honours degree; and
(c) is not a *course of study in medicine."

2. eligible Indigenous person means
   “an Indigenous person is an **eligible Indigenous person** for a *course of study with a *Table A provider if, at the time the person first enrolled in a course of study with that provider, the person’s permanent residential address is in a regional area or a remote area”.

3. Indigenous person
   Indigenous person has the same meaning as in the Indigenous Education (Targeted Assistance) Act 2000. That Act defines:
   
   Indigenous person means:
   
   (a) a member of the Aboriginal race of Australia; or
   
   (b) a descendant of the Indigenous inhabitants of the Torres Strait Islands.

4. definitions of regional and remote linked to the ABS Remoteness Structure.

Queries:

- lack of * in front of regional area and remote area in the Indigenous person definition.

**Item 28 Application**

The changes in the Schedule apply to funding agreements and Grants for 2021 and later years.
3. **Schedule 3 – Other Grants**

The two new funds will operate through the Other Grants sections of the Act.

**Items 1-2 Compacts**

The requirements for a mission based compact in 19-110 are extended to include statements with strategies on:

- engaging with industry;
- equality of opportunity.

This applies to compacts from 2021, although the amendment takes effect on 1 January 2021. I think the intent is to make the requirement live for universities agreeing to a 2021 compact in late 2020.

**Item 3 Objects**

The objects of the Act would now include among the ‘distinctive purposes of universities’ after education, creation of knowledge and application of knowledge

“engagement with industry and the local community to enable graduates to thrive in the workforce”.

**Items 4-5 Commonwealth Grant Scheme**

These remove the Regional loading and the Enabling loading from the Commonwealth Grant Scheme – so they will become Other Grants through IRLSAF.

- Loadings must be paid while the provisions exist. Other Grants can be paid up to an amount. It is harder for the Government to alter the schemes under the Commonwealth Grant Scheme than under Other Grants.
- IRU has long argued for HEPPP to be added as a loading. It would secure the funds from the annual savings raid that happens most years. JRG is the same in taking HEPPP growth funds to support the Napthine response.
- The Bill goes the other way to move the two existing loadings from CGS to Other Grant payments. The risk is that with a less regionally oriented Minister the drive to use the funds better (or just use them) may be lost to other priorities.
- This change applies from 2021 not 2024 when IRLSAF changes are meant to begin.

**Items 6-7 List of Other Grant types**

This provides that IRLSAF related grants under the guide of promoting equality can be paid both to Table A and specified bodies corporate, not just to Table A institutions. This could be useful but clarity about which bodies are thought likely is needed.

The option for industry grants is added – for Table A providers. This will cover NPILF.
4. **Schedule 4 Work experience in industry**

All items work to change the capacity to fund work experience in industry. It amends 33-30(1) that now excludes a unit of study that is ‘wholly WEI’ so that, form 2021, units are eligible other than those defined as ineligible.

Ineligible units are those that are wholly WEI and either the student has no student contribution to pay or the unit fails to meet requirements in the Administration Guidelines.

Worked through it means that the Guidelines will set up the kind of wholly WEI unit the Minister approves of, which will then be funded, assuming the student is also subject to paying a student contribution.

In sum, the potential for funded work experience units increases compared to the current blanket ban.
5. **Schedule 5 – Student protection**

**Part 1 – changes that apply from 1 January 2021**

**Item 1 time frame for application of 2017 Amendment bill provisions**

This sets out that the provisions previously included for non-listed institutions (the other HE providers) will extend to all providers approved under the Act from 1 January 2021. This is a major extension of regulation over universities, with limited evidence base for the need.

Division 19 is now twice its original size from 2003.

The sections extended to Table A, B, C providers from the 2017 Act.

<table>
<thead>
<tr>
<th>Section of HESA</th>
<th>What is covers</th>
<th>Context and position</th>
</tr>
</thead>
<tbody>
<tr>
<td>19-10, 19-12</td>
<td>Long standing Financial statements requirement, amended to allow Guidelines to define detail.</td>
<td>Not likely an issue.</td>
</tr>
<tr>
<td>19-36</td>
<td>Not to indicate that HELP is a not a loan or need not be repaid</td>
<td>No sign universities have ever done this. Not necessary for universities</td>
</tr>
<tr>
<td>19-36E</td>
<td>Not complete a request for Commonwealth support</td>
<td>The additional provisions tie this insertion to CSP eligibility. 19-36A to E not included – specific marketing rules There is no need for it.</td>
</tr>
<tr>
<td>19-42</td>
<td>Assess a student is suitable before enrolling in a unit</td>
<td>Norton suggests could mean unit by unit decisions – the Act works on units hence the wording. A generic assessment per course should be sufficient. No need to apply to universities</td>
</tr>
<tr>
<td>19-45</td>
<td>adds ‘civic penalty: 60 points’ to existing student grievance procedures if procedures not followed</td>
<td>Not necessary for universities</td>
</tr>
<tr>
<td>19-70</td>
<td>Long standing requirement to provide information. Adds penalty</td>
<td>Not necessary for universities</td>
</tr>
<tr>
<td>19-71 to 19-73</td>
<td>To cooperate with TEQSA, To keep records as specified To publish information as specified</td>
<td>No need but not objectionable</td>
</tr>
<tr>
<td>Item Range</td>
<td>Description</td>
<td>Comment</td>
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<tr>
<td>19-75, 19-77, 19-78, 19-80, 19-82, 19-95</td>
<td>Adds Civic penalties to raft of requirements to notify of events and comply with orders</td>
<td>Not necessary for universities</td>
</tr>
<tr>
<td>104-1</td>
<td>Links the general FEE-HELP requirements to the new 104-1A that introduced the 50% pass test for access to FEE-HELP. Adds other requirements in the weeds of provider misbehaviour</td>
<td>Tied to student pass rate outcome. Other elements not necessary for universities.</td>
</tr>
<tr>
<td>104-43, 104-44</td>
<td>Requirements to recredit a student’s FEE-HELP balance where the student has used FEE-HELP but is not genuine or the provider helped with the application for support.</td>
<td>Ties to need for ‘genuine student test’ and 19-36E. <strong>The substantive questions are the issue not the recreditting rules.</strong></td>
</tr>
<tr>
<td>169-17</td>
<td>Allows Guidelines to limit provider rules on students who withdraw, such as a fee for withdrawal and conditions on re enrolment</td>
<td>Any evidence of issue with universities, which cannot levy a fee on CSP students? Not necessary for universities</td>
</tr>
<tr>
<td>169-25, 174-5</td>
<td>Further civic penalties for • not setting census dates and EFTSL levels • correct use of electronic communications</td>
<td>No evidence of university problems Not necessary for universities</td>
</tr>
</tbody>
</table>

**Items 2 to 7**

Tidy up changes to link to the new proposed 36-12(3).

**Items 8-9 Application of the compliance assurance requirement 19-80**

This section was one of many original provisions of HESA that did not apply to Table A providers. This now removes the exemption.

19-80 permits the Minister to require an audit of a provider against the various quality and accountability provisions of the Act.

**Items 10-19 Being a Commonwealth supported student**

Adds to the extensive set of requirements for where a provider must not advise a person that they are a Commonwealth supported student. The new requirements are:

- definition of CSP includes that the Secretary can determine that a student is not a genuine student. The decision to be taken with regard to the Provider Guidelines, no further elucidation (item 11);
- the provider assess the student as academically suitable (item 13);
- not lead to being enrolled in the equivalent of more than 2 EFTSL (item 14);
• the provider is not to have completed any part of the request for Commonwealth assistance (item 15).

**Items 20-21 Access to HECS-HELP for student at an overseas campus**

This permits students to use HECS-HELP for study at an overseas campus by removing the current bar (section 90-10).

**Items 22, 23, 30, 31 Recrediting HELP balances**

Sections 96 and 97 are amended to carry through any decision that a student should not be a Commonwealth supported student after the point by which they had received HECS-HELP. The result is that the student carries no HELP debt due to that and that the provider repays any funds it received.

Item 30 does the same for recrediting of FEE-HELP.

**Items 24-26, 29 Genuine student for FEE-HELP purposes**

Relocates the requirement in s104-1 to be a genuine student and introduces the role of the Secretary to determine that a student is not genuine.

**Items 27-28 Unreasonable study load**

Inserts new 104-1AA to repeats the requirement not to be enrolled in more than 2.0 EFTSL of load this time to receive FEE-HELP (previous was for CSP and HECS-HELP). In both cases the test of 2 EFTSL involves any load that involves receipt of Commonwealth assistance.

**Items 32 to 38**

Updating ss206, 209, 238 for lists of reviewable decisions, related timelines, and provisions for guidelines consistent with earlier substantive changes.

**Item 39 Application is from 1 January 2021**

Makes clear that the changes related to enrolments from 1 January 2021.

**Part 2 – changes that apply from 1 January 2022**

**Items 40 to 42, failure to complete previous units**

These set out that a student cannot be a Commonwealth supported student or access FEE-HELP if the student has not passed at least 50% of units in the course – of 8 or more for a bachelor degree and 4 or more of any other.

The FEE-HELP provision, s104-1A is already in the Act, but applies only to the other HE providers approved under s16-25.
6. Schedule 6 Other amendments

Item 1 FEE-HELP fee
Alters the FEE-HELP loan fee for undergraduate courses not at a Table B provider from 25% to 20%.

My copy of Act, hard copy and download, do not have 137-10(2)(b) with a (i) to which to add a (ia) – which should be ii?

Item 2, student financial assistance for travel
Amendment to the Social Security Act 1991 to allow a student to access the Fares Allowance after 3 months of receipt of income support rather than six months.