

Brief for Parliament

31 August 2020

The needless burden of new university accountability measures

IRU Recommendation

Schedule 4 *Higher Education Support Act (Job-Ready Graduates and supporting regional and remote students) Bill 2020* (the Bill) should be stripped back:

1. to give the Department Secretary powers to determine that a student is not genuine, with the Department responsible for proving that case; and
2. to insert clear statements of application for each provision where they do not apply generally to all approved higher education providers.

Schedule 4, the 'student protection' measures

The original *Higher Education Support Act 2003* (HESA) was an example of a Coalition Government's commitment to balance in regulation and red tape. It carefully calibrated the necessary requirements to protect the Commonwealth and students with universities' capacity to undertake education and research to the best outcomes possible.

Division 19, the quality and accountability requirements was 13 pages in 2003. It is now 27 pages long.

In 2011 the Tertiary Education Quality and Standards Agency (TEQSA) was created to enforce a comprehensive suite of higher education standards which cover all the issues the Minister has emphasised.

Schedule 4 of the Bill is not related to the Job-Ready Graduates Package.

It is an extension to universities of micro regulation for private providers which is contrary to the Government's commitment to reduce red tape. It is contrary to the commitments of the Howard Government in 2003 in creating HESA and this Government in 2017 when it added most of the provisions that would now be extended to universities.

Schedule 4 extends to the university sector a large set of detailed requirements designed to prevent negative marketing behaviours in some VET and private higher education providers.

There are several ways to ensure a level playing field across higher education. The best is to ensure that regulations apply only where likely to be needed. The provisions in dispute ought not apply to most higher education providers including the Universities.

The two specific issues which the Minister has highlighted do not require the heavy-handed approach proposed to resolve them.

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Students who enrol in multiple degrees with multiple providers

There are already limits on any person incurring more than the set cap of HELP over their lifetime. Where the Department identifies students enrolling in multiple degrees, it should test their veracity and, where suitable, use the Genuine Student test to block the student from further Commonwealth support.

Universities and other providers cannot identify such students, hence a requirement to not enrol them only puts them at risk of being in breach of the Act for something they cannot determine. All that the extra provision will achieve is for universities to ask yet another question of students and insert additional complication to their student systems.

Students who fail more than 50% of units

Universities have student progress rules targeting the individual needs of students. They are subject to regular publication of performance information that includes the proportion of units that are passed, whether students return in future years and student completion rates.

The proposed provision would insert a hard rule onto the complex set of individual circumstances, rather than let universities and other higher education providers work with their students.

Failing of several units before getting on top of study is uncommon but it is more likely among students less confident of their places in higher education. Hence of the 1-3% of students currently enrolled who fail more than half of their units there is a higher proportion of students from poorer areas and who are Indigenous.

Universities working with their students leads to better based decisions about whether and when to continue study. The proposed rule would create more conflict but only reduce incurring HELP debts for a small number of students.

Clarity in the Act

Where Division 19 and other requirements differ in which sets of higher education providers they apply to, this should be explicit in HESA. The current Bill highlights that the application of many provisions depends on Education Legislation Amendment (Provider Integrity and Other Measures) Act 2017 a thoroughly non-transparent location for such crucial information.

The needless burden on universities: Details of Schedule 4 of the Bill

The Bill would extend the provisions set out in the table to Table A, B, C providers.

Section of HESA	What it covers	Context and position
19-10, 19-12	Long-standing Financial statements requirement, amended to allow Guidelines to define detail.	The requirements in the Guidelines are not relevant to universities which the State and Commonwealth Auditors audit. Not necessary for universities

19-36	Not to indicate that HELP is a not a loan or need not be repaid	No sign universities have ever done this. Not necessary for universities
19-36E	Not complete a request for Commonwealth support	The additional provisions tie this insertion to CSP eligibility. Universities would only assist an applicant to extent necessary to ensure they are able to make the request. 19-36A to E not included – specific marketing rules There is no need for it.
19-42	Assess a student is suitable before enrolling in a unit	Universities adhere to the general requirement to select students who are capable of the course. With TEQSA monitoring the relevant standards. No need to apply to universities
19-45	Adds ‘civil penalty: 60 points’ to existing student grievance procedures if procedures not followed	Not necessary for universities
19-70	Long-standing requirement to provide information. Adds civil penalty	Not necessary for universities
19-71 to 19-73	To cooperate with TEQSA, To keep records as specified To publish information as specified	No need but not objectionable
19-75, 19-77, 19-78, 19-80, 19-82, 19-95	Adds Civil penalties to raft of requirements to notify of events and comply with orders	Not necessary for universities
104-1	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	Tied to student pass rate proposal. Other elements not necessary for universities.
104-43, 104-44	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.	Ties to need for ‘genuine student test’ and 19-36E. The substantive questions are the issue not the recrediting rules.

169-17	Allows Guidelines to limit provider rules on students who withdraw, such as a fee for withdrawal and conditions on re-enrolment	Any evidence of issue with universities, which cannot levy a fee on CSP students? Not necessary for universities
169-25, 174-5	Further civil penalties for <ul style="list-style-type: none"> not setting census dates and EFTSL levels correct use of electronic communications 	No evidence of university problems Not necessary for universities

The Schedule then sets out further substantive additions to requirements of universities:

- Extends the compliance assurance requirement 19-80 to Table A providers so that the Minister can require an audit of a provider against the various quality and accountability provisions of the Act. Reverses original exclusion of Table A providers in 2003 Act (Item 9);
- 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, 26);
- the provider must assess the student as academically suitable (item 13);
- an enrolment cannot lead to being enrolled in the equivalent of more than 2 EFTSL and receive any Commonwealth support for the student (item 14 for CSP and HECS-HELP; Items 27-28 for FEE-HELP);
- the provider is not to have completed any part of the request for Commonwealth assistance (item 15);
- 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 eight or more units for a bachelor degree and four or more of any other (Items 40 to 42).

This is a major extension of regulation over universities, with a limited evidence base for the need.

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