

Overview and Analysis: Higher Education and Research Reform Amendment Bill 2014

The Commencement dates reflect the 1 January 2016 start date for the main changes, with differences for:

- change of title for University of Ballarat and increases to ARC funding, immediate on assent of the Bill;
- the NZ inclusions and the abolition of the HECS-HELP benefit from 1 January 2015; and
- the new lower first repayment threshold for HELP debts from 1 July 2016, to apply to 2016-17 income tax year.

Schedule 1: Deregulation, expansion of demand driven system and other measures

Part one, Main amendments

The Objects of the Act (Division 2) are not changed.

International providers:

- The current inclusion of some international providers in Table C is removed from the Act. In its place international providers are defined as those not established in Australia nor based in Australia. They need appropriate TEQSA approval as do all other providers.
- The key change is capacity for access to funding which can include CGS plus HECS-HELP for their students, Other Grants and Commonwealth Scholarships (eg APAs) subject to the requirements of the Act, and their students' access to HELP. Access to the last two is subject to Guidelines, which are yet to be released for comment.
- The transition provisions of the Bill (186 and 187) prevent International Providers accessing Other Grants or Scholarships until the Minister makes Guidelines that give them such access. The official position is that there is no policy change intended.
- An amendment to ESOS (under Part Three Consequential Amendments) includes 'international providers' under ESOS, so capturing any international student enrolling in an international provider's Australian operations.

Higher Education Providers

- A provider is defined as one registered by TEQSA and approved by the Minister under HESA. This gives a clearer link between TEQSA approval and access to funding and HELP. The link had been inserted previously but less clearly (the, to be deleted, 16-27).
- The HESA approval requires a provider to apply after the TEQSA approval but there is little additional scrutiny involved – which makes sense. Hence all providers can be eligible for support but some may choose not to ask.
- The Table A and B lists are retained but with very few explicit uses to remain. The lists could be removed but they serve to highlight the importance of the providers so listed.
- Throughout the Act there are proposed new sections to allow the Minister to take account of relevant TEQSA advice. This should reduce duplication of advice. Other sections, which duplicate considerations or actions which the TEQSA Act covers, are removed.

Quality and Accountability requirements

- Financial viability: 19-12 amended to allow that the Minister ‘may’ rather than ‘must’ have regard to financial statements from the provider. This allows the Minister to rely solely on TEQSA advice if s/he so wishes. It is doubtful that TEQSA advice on financial viability is of value but while it remains in the standards the provision makes sense to avoid a separate analysis of the same data.
- The quality and fairness provisions remain essentially as it with amendments that tidy up language (eg removal of FEE-HELP references).
 - Fairness of treatment in selection, services and **presumably fees** remains a general test. This might be an issue from time to time with some non-university providers.
 - The requirements not to force membership of student bodies and the rules around charging and use of student services and amenities fees remain in place. These are a question of ‘fairness’.
- Tuition fee requirements
 - The Bill deletes much that was previously in place about how to determine student contributions and formally tuition fees, including the requirement for a schedule by unit of the fee to be charged.
 - New requirements are that fees be charged by unit of study but this does not prevent universities setting the charge by the qualification or other basis. In effect whatever the planned fee is it must be capable of being presented in terms of each unit and included in an invoice making it clear. This provides the legal basis for any HELP debt and dispute about what was borrowed.
 - The struggle is the conflict between notionally deregulating fees and wanting some constraint on what is eligible for HELP. This exists now for FEE-HELP but becomes mainstream with all CGS places included.
 - So the Bill continues the existing arrangement whereby students cannot be charged fees for the course of study greater than the sum of the tuition fees per unit taken
 - Tuition fees must be “directly in respect of the provision of the unit”
 - ‘fee’ for a course of study however does not include things such as amenities and services fees, for accommodation, or otherwise incidental (as defined in Guidelines).

To extent that universities are considering the bundling of various potential services they would still need to distinguish the ‘tuition’ element, HELP eligible, from other, non-HELPable services. The Department indicates that it will police major cases of other services bundled into the HELP element.

This does not seem to prevent use of the tuition funds to generate surpluses which are then used for other purposes such as research (or does it?). Part of the problem is that the input focus emphasises ultimately the cost of providing a good or service rather than the price for gaining a degree.

Student services and amenities charge remains distinct and permitted, presumably to avoid the political heat of touching an item totemic to both sides of parliament. The reality is that if a university did not charge it but allocated funds to support such services and amenities (from its general revenue, including tuition fee surplus) it could do so.

- The compact requirements are to be removed.

- The requirement for upholding free intellectual inquiry, 19-115 - remains in place for Table A and B providers only. The current provider standards require all providers to have “a commitment to and support for free intellectual inquiry”. It may be a case that no Government wishes to be seen to remove such a requirement even if superfluous.

CGS: eligibility

- The grant remains paid as benefit to students, retaining constitutional cover, where there is a funding agreement in place. The removal of the compact requirement places the focus back on an agreement. Each of the new providers will need an agreement in place for funding from 2016.
- Distinctions between Table A and other providers who can be funded for national priority purposes are removed.
- Designated places remain for those few areas controlled – medicine, postgraduate coursework, with enabling added explicitly. Provision remains for the Minister to designate other courses if so desired.
 - Current instrument is revoked (see Part 5 below). This designates sub bachelor and enabling places so controlling the number to be funded.
- The Funding Agreement provisions remain largely intact, with the addition of two extra possible areas to cover participation in surveys and information to be made public. It updates the provision to specify a maximum basic grant which cannot be less than the grant for the previous year.
- Note that the Agreement still can define a maximum number of undergraduate places should the Minister so wish – this could be relevant to phasing in access by currently non funded providers. These are powers which could be used but generally are not, giving Government some levers should a provider engage in activity undermining the spirit of the Act.

CGS grant amount

- This updates the basis of the calculation to be the same for all providers.
- The distinction in rates between universities and others comes at 33-10. The wording to identify universities refers to a ‘provider category that permits the use of the word ‘universities’. With the current argument that provider categories as such are not needed it would be better to avoid that particular term to use a reference to registration as a provider permitted to use the title ‘university’.

CGS Conditions of grant

- The Bill removes many complicated provisions about whether a student is a commonwealth supported student to focus on the student applying for support (for the Government funding, not for HELP) and all other requirements being in order.
- A student must be primarily based in Australia, consistent with not funding Australians living internationally. There is no intent to change current arrangements for students on exchange.
- A person can continue to notify the provider they are not to be Commonwealth supported. Not immediately clear why someone would but useful to capture idea.
- The new 36-55 allows for Guidelines to define how students who are not Commonwealth supported are charged. This includes the rules for charging international students (who clearly are not Commonwealth supported), which is where the requirement that the international fee must be at least equal to the Commonwealth supported student fee will be articulated.

- That rule will need to apply at the level at which the university defines the fee (eg the whole program) not necessarily at the unit level. An international student from a moderately low cost program could be in a unit alongside a domestic student from a higher cost program through the unit being an option in multiple programs.

Other Grants

- The table of various grant types is updated and the column of eligible entities removed. The list of simplified so that for example there is no ongoing reference to systemic infrastructure since it is covered by the head of power for capital expenditure.
- Eligibility will be defined in the Other Grant Guidelines, with the proviso that no currently ineligible provider can become eligible until and if the Guidelines are made. The question is thus the long term capacity for eligibility to widen as a Government, subject to parliamentary scrutiny, decides.

Commonwealth scholarships

- Covers research student scholarships and others Government directed scholarships of which there are now few, with Start Up and Relocation covered in Social Security legislation.
- Eligibility, as for Other Grants, for the non-research scholarships extends to all providers if Guidelines so determine.
- Research scholarships are open to Table A and any other university – including the international universities if the Guidelines so determine. This hangs on the transition provision 187.

No change to Reduction and Repayment of grants sections.

HECS-HELP loans

- The Bill runs together the HECS-HELP and FEE-HELP provisions, mostly retaining FEE-HELP with update of name to HECS-HELP. FEE-HELP rules about maximum loan amounts and loan fees removed.
- Point 73 of Schedule 1 repeals Divisions 90 to 96 while points 1 and 2 of Schedule 10 (NZ students) amends the, to be repealed, Section 90-5. A question of timing –the NZ amendments apply for 2015 until Schedule 1 kicks in in 2016.
- Arrangements for students to argue for repayment of HECS-HELP in special circumstances. Parallels current arrangements but moved from Chapter 2. Period during which the provider can accept a request is limited to two years after the initial one year period. This is to halt decisions to revisit the HELP charge at periods long after the period of study.

OS-HELP and SA-HELP not changed.

Loan repayments. Amendments revise to accommodate integration of HECS and FEE-HELP into new HECS-HELP.

Administrative requirements

- Largely tidy up amendments.
- Deletion of sections requiring providers to charge either a student contribution or tuition fee reflect that the Bill would not require charging of a fee, merely allow one to be charged.
- No provision for students to be exempt from charges – because no requirement to charge. All is up to the provider to decide (fairly).

Part two, Application, saving and transitional provisions

Preserved funding students to whom the current funding and student contribution arrangements apply through to end of 2020. Designed to cover a wide range of stories – it is inclusive not exclusive:

- student must remain enrolled in a course of study but can move to new courses of study over that time, with no more than a twelve month gap;
- covers those at 14 May 2014 who were
 - enrolled,
 - had a deferred place approved, or
 - had accepted a place but not completed the enrolment process.

Various precise points to cover decisions and actions that work across the transition point from current Act to proposed new Act. These seem to make sense without close reading of each one. Includes the restriction on extending access to Other Grants and Scholarships until Guidelines are made which define the extension.

Part three, Consequential

- Amendments to ANU Act;
- ESOS, to include international providers as to be defined in HESA; and
- to update the Income Tax Assessment Acts of 1936 and 1997. It replaces the restriction on claiming student contributions as an education expense with a restriction on Tuition fees for a Commonwealth Supported Place. That is nothing appears to change.

Commonwealth should make a small saving from those paying fees to non funded providers who in the future will become Commonwealth supported, and thus not able to claim fees as education expenses. This might lead some students to consider the relative benefit of being Commonwealth supported.

Part four, Amendment of CGS Guidelines

Defines the five clusters by detailed discipline sets.

Part five, Repeal

Repeals list of designated courses covering sub-bachelor and enabling places. Enabling added to Act as explicitly designated, hence the number of places is controlled.

Issues to consider

1. Policy issues about the size of the CGS reduction and the equity of treatment in the capacity for non funded providers to enter the CGS with all enrolled places from 2016 (when currently funded providers will have to transition to all students being subject to deregulated fees).
2. Embedding of international providers with access to funding schemes controlled through Guidelines.
3. Definition of tuition fee, controls of which services can be charged against HECS-HELP, and university flexibility to offer bundles of services.
4. Reference to provider categories to define universities (33-10)
5. Precision in the rule linking international and domestic fees to ensure considered on a strictly comparable base of the same course of study.

Schedule 2 Commonwealth Scholarships Scheme

The Scholarships scheme is included as a new requirement for receipt of CGS.

The funds are to be allocated within six months of the year following collection. This gives provides reasonable time to be sure of the precise amount and to have allocated the funds usefully.

The Bill is broad about the uses: targeting access, participation and completion by students from disadvantaged backgrounds. The CGS guidelines can add to this. Hopefully they do not specify very much beyond defining the eligible students.

The calculation of the amount for scholarships reflects the policy.

- The 20% figure can be lower (not higher) by means of the Guidelines (disallowable so it need a good case for Parliament).
- The Guidelines can determine the process for working out eligible revenue, which could be used to avoid being stuck with the complicated mess set out in (8) to determine the 'comparison revenue' once calculated for the first year.

Issues to pursue

6. Consider how a pooling scheme would best be presented.
7. Work with Department to simplify the calculation of eligible revenue in later years of scheme.

Schedule 3 Indexation of HELP debts

Does what is required to replace the CPI with the ten-year bond rate as the basis for indexing outstanding HELP debts.

To allow for CPI when the debtor's income is less than the first threshold and for the bond rate for those with income at or above will require amalgamation of the current sections with the proposed new sections.

Issues to pursue

8. Oppose change of index to ten year bond rate, giving consideration to Chapman-Higgins alternatives.

Schedule 4 Minimum repayment income for HELP debts

Resets the income points for the repayment bands and adds in the new lowest band with a 2% repayment rate.

There are no issues with this.

Schedule 5 Research funding and research students

Part 1 amends the ARC Act to increase the maximum amounts which the ARC may expend and adds in 2017-18. This covers both the extension of the Future Fellowships and the reduction for the efficiency dividend. The new maximum amounts are all higher than those previously defined, however funding is still set to drop, year on year, through to 2016-17, and increase thereafter.

Part 2 creates the proposed arrangements for research students to be charged through the introduction of a new set of Other Grant conditions specific to the research student grants.

- New 41-26 (1) and (2) set out that a research student cannot be charged more than the two arbitrary amounts defined in the policy. A determination under the current act under 169-20(1) holds that students classified as RTS students by their provider are exempt from tuition fees.
- Subsection (3) allows each university to define who is or is not an RTS student. Non-RTS students are currently permitted to be charged a fee, with a few universities doing so.

Part 3 repeals the determination under 169-20(1) exempting RTS students from tuition fees (see above). Division 169-20 itself is repealed under Schedule 1.

Part 4 amends the Other Grant Guidelines (Research) 2012, primarily to define which research training courses are high and which low cost. These are in line with current high cost / low cost split used in the calculation of the RTS grant amount.

Issues to pursue

9. The IRU case against reduction to the RTS and the long term arrangements for how research students are or are not charged.

Schedule 6: VET FEE-HELP loans fees and limits

This brings VET FEE-HELP into line with the new HECS-HELP in not having limits and fees. Detail is not an area that IRU needs to be across.

Schedule 7: HECS-HELP benefit

The HECS-HELP benefit is a payment in the form of reduced HELP repayments or reduced outstanding debt for people working in relevant fields and regions. The Government is removing the benefit. The Schedule hunts out all references to the benefit to remove them from the *Act* and the *Income Tax Assessment Act*.

IRU has not objected to this saving, on grounds that the benefit has little obvious impact beyond reducing the debt of the eligible students, without actively leading more graduates to work in the areas which create entitlement.

Schedule 8 Indexation of amounts

The amendments change the basis for indexation from a mix of CPI and Labour Price Index to solely being CPI. The presentation is revamped but the effect is the same.

- This change has received little discussion. It is presented as a savings measure, which generally it would be. In some years it may not be where CPI exceeds the LPI. There is some humour in the Government removing the CPI as an index in one place to insist in this context that it be the index.

Schedule 9: University name change

Updates name of the University of Ballarat into Federation University.

Schedule 10: New Zealand citizens

The amendments add the definition of eligible New Zealand students (came to Australia as a child and have lived considerable parts of their life here since) to all relevant parts of the Act. The decision is a positive one.

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