

SUBMISSION TO CONSULTATION ON THE DRAFT LEGISLATION FOR THE JOB-READY GRADUATES PACKAGE

17 August 2020

Universities Australia (UA) welcomes the opportunity to comment on the [draft Higher Education Support Amendment \(Job-Ready Graduates and Supporting Regional and Remote Students\) Bill 2020](#) (the Bill).

UA is concerned about some aspects of the Bill and is looking forward to working with the Department of Education, Skills and Employment (DESE) to improve the Bill before it is introduced to the Parliament. UA member universities may also make more detailed submissions on aspects of the proposed legislation.

MAXIMUM BASIC GRANT AMOUNT FOR HIGHER EDUCATION COURSES

Schedule 2–Part 1 of the Bill in effect combines ‘designated places’ (with the exception of ‘medicine places’) with non-designated places—i.e. Bachelor places—in a single new category called ‘higher education courses’. The Bill specifies that postgraduate courses of study are no longer designated courses of study. This amendment allows providers to transfer Commonwealth supported places (CSPs) between bachelor and postgraduate courses.

The amendments create new maximum basic grant amounts (MBGAs) for three categories of places: higher education courses; designated higher education courses; and demand driven higher education courses. Designated higher education courses are courses in medicine and any other courses that may be designated by the Minister by legislative instrument; demand driven courses are Bachelor places for Indigenous students from regional or remote areas; and ‘higher education courses’ are all other CSPs.

The amendments provide that MGBA amounts for *designated higher education courses* must not be less than the value of the places (derived by funding formula) for the grant year. MBGAs for *demand driven higher education courses* must not be less than the previous year’s funding (whether set by formula or through an MBGA).

However, UA is concerned that the amendments do not include a floor for the MBGA for the new *higher education courses*. Currently, MBGAs for non-designated places must be at least what was paid in the preceding year (current subsection 30-27(3)(b)). UA understands that these amendments are drafted to provide for a reduction in MBGA due to the new funding clusters and future trading of Commonwealth funding between Table A providers. However, the Bill in its current form does not adequately provide assurance to universities that the Minister would not reduce funding further by specifying a lower MBGA for higher education courses in future funding agreements for Table A providers.

Relevant provisions in the Bill could be redrafted to allow implementation of the Job-ready Graduates package over 2021-24 and to support trading CGS between universities during the implementation period and beyond, while providing firmer assurance that the value of MBGAs would be not be arbitrarily lowered. An alternative option for drafting is suggested below.

UA recommends that the Bill should include provision to ensure that total value of MBGA for higher education courses for Table A providers should not be less than the amount received in the preceding year, excepting the implementation of the new funding clusters changes and cases where universities trade Commonwealth Grant Scheme funding between providers.

UA proposes that the following clauses be inserted after subsection 30-27(1):

Table A providers—maximum basic grant amounts for higher education courses

(1A) The *maximum basic grant amount for a *Table A provider for *higher education courses must not be less than:

- a) if a maximum basic grant amount was specified in the provider’s funding agreement for the preceding year for those courses—the amount that was so specified; or
- b) if a maximum basic grant amount was not specified in the provider’s funding agreement for the preceding year for those courses—the amount worked out under paragraph 33-5(5)(a) for the provider for the preceding year.

(1AB) The *maximum basic grant amount for a *Table A provider for *higher education courses may be other than provided for in section 30-27(1A) if:

- a) the Minister gives the *Table A provider notice in writing of a proposed *maximum basic grant amount other than provided for in section 30-27(1A); and
- b) the *Table A Provider agrees in writing to the proposed *maximum basic grant amount.

In addition, Schedule 2 does not outline the implementation of CPI indexation of MBGAs for ‘higher education courses’ as announced in the JRG package. Nor does it provide for the different geographic growth factors for a university’s funding depending on the locations of the university’s campuses. UA is concerned that the Bill currently does not legislate these two measures into HESA.

UA recommends that indexation of MBGA for higher education courses by CPI and by the geographical growth factor should be legislated in Part 2-2 of HESA, rather than in legislative instruments (CGS Guidelines) made by the Minister.

TRANSITION FUND

Schedule 3 does not include the Transition Fund to assist universities that are disadvantaged by changes in funding arrangements announced in the package. It appears that the Transition Fund will rely on existing purposes for Other Grants under section 41-10 of HESA—grants to support diversity and structural reform (9A) or structural adjustment (9B). This means that implementation details will be specified in legislative instruments (grants guidelines) made by the Minister.

Moreover, Schedule 3 makes clear that the National Priorities and Industry Linkage Fund (NPILF) and the Indigenous, Regional and Low Socio-Economic Status Attainment Fund (IRLSAF) would operate as other grant programs under Part 2-3 (Other Grants) of HESA.

UA notes that funding proposed to be made available for both the NPILF and IRLSAF is sourced from changes to the Commonwealth contribution amounts in different funding clusters within the Commonwealth Grant Scheme, as outlined in Schedule 1–Part 1 of the Bill, as well as the abolition of regional and enabling loadings. Section 238-12 of HESA provides a standing appropriation for these amounts that are derived through formulae, which provides a degree of certainty for university planning. In contrast, the amendments in the Bill that allow for the Government to establish both the NPILF and IRLSAF and to make payments under Part 2-3 of HESA do not provide legislative assurance that the total amount for these funds will match the policy intent in future years.

UA recommends that the total amount of funding for the NPILF, IRLSAF and Transition Fund should be legislated at the end of Part 2-3 of HESA to ensure the amount of funding available for these measures are available in future years to fully implement the Government’s policy intent.

STUDENT PROTECTION MEASURES

Schedule 5 extends measures in the *Education Legislation Amendment (Provider Integrity and Other Measures) Act 2017* (Provider Integrity Act) to all providers (including Table A, B and C universities) and introduces new student protection measures in HESA.

New subsections 36-12 and 104-1AA will prevent students from taking a study load of more than two EFTSL in a 12-month period, unless providers are satisfied that students are capable of undertaking the additional study load. Universities already monitor their students’ study load to support satisfactory study progression over the course of study. However—using the current Higher Education Information Management System (HEIMS)—universities are not able to detect these concurrent enrolments with other providers.

UA is concerned that the above amendments will create an additional administrative burden to universities—for potentially a small cohort of students—if the monitoring of study load for students that have more than one enrolment concurrently cannot be automatically detected in a timely fashion under the new Transforming Collection of Student Information (TCSI) System operational from 2021.

UA acknowledges the intent of the new subsection 36-13 to extend the 50 per cent pass rate rule in a course of study to Commonwealth-supported students and extension of subsection 104-1A to all students requesting FEE-HELP assistance. Universities already have a range of measures in place to ensure satisfactory academic progress of their students.

UA is concerned about future study prospects for students who fail more than the permitted proportion of units. We seek clarification on the pathways back to study that may be available to these students.

UA recommends that the new subsection 36-13 and extension of 104-1A to all students accessing FEE-HELP assistance should ensure students that have failed more than the permitted amount of units or subjects in a course of study are not permanently excluded from accessing Commonwealth-supported places and/or Commonwealth assistance.

AUDITS OF HIGHER EDUCATION PROVIDERS

Schedule 5 also contains a provision to extend the scope of s.19-80 of HESA to Table A providers. This would empower the Minister to order an audit of a Table A provider's compliance with quality and accountability requirements set out in Division 19 of HESA, namely:

- the financial viability requirements;
- the fairness requirements;
- the compliance requirements; and
- the contribution and fee requirements.

We are unsure whether this amendment will achieve a meaningful improvement in universities' accountability, given the other regulatory arrangements and reporting requirements to which Table A universities are already subject.

UA argues that this new power should be limited to ensure that an audit could only be initiated when necessary, proportionate and risk-based. For example, an amended s.19-80 could set generic conditions for prima facie evidence of non-compliance with the quality and accountability requirements, or risks of non-compliance.

Suggested additional clauses to be added to s.19-80 appear below:

(5) Prior to issuing a determination under subsection (1) in respect of a higher education provider that is a Table A provider, the Minister must have reasonable grounds to suspect that a material breach of the requirements has occurred, or is likely to occur.

(6) Before issuing a determination under subsection (1), the Minister must have regard to the regulatory principles in Part 2 of the Tertiary Education Quality and Standards Agency Act 2011.

UA recommends that additional clauses should be added to s.19-80 of HESA to limit audits of Table A providers to cases where audits are necessary, proportionate and based on risk.