The Senate

Education, Employment and Workplace Relations Legislation Committee

Higher Education Support Amendment (Streamlining and Other Measures) Bill 2012 [Provisions]

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RECOMMENDATIONS

Recommendation 1

2.12 The committee recommends that the Government continue to consult with stakeholders in the formation of the VET Guidelines provided for in the bill.

Recommendation 2

2.25 The committee recommends that the bill be passed.

CHAPTER 1

Introduction

Reference

1.1 On 11 October 2012, the Senate referred the provisions of the Higher Education Support Amendment (Streamlining and Other Measures) Bill 2012 (the bill) to the Senate Education, Employment and Workplace Relations Legislation Committee (the committee) for inquiry and report by 19 November 2012.

1.2 The bill was introduced in the House of Representatives by Senate by the Parliamentary Secretary for Higher Education and Skills, Ms Sharon Bird MP, on 19 September 2012. The bill was read for the first time in the Senate on 11 October 2012.

Conduct of inquiry

1.3 The committee contacted a number of organisations inviting submissions to the inquiry by 26 October 2012. Details of the inquiry were also made available on the committee's website.[1]

1.4 Submissions were received from 7 individuals and organisations, as detailed in Appendix 1.

Purpose of the bill

1.5 The Explanatory Memorandum (EM) states that the bill aims to improve the Higher Education Loan Program (HELP) schemes, particularly VET FEE-HELP through implementation of the recommendations arising from the VET FEE-HELP Post Implementation Review. In particular the bill's intention is to strengthen the integrity and quality framework underpinning the HELP schemes, improve information sharing and transparency with the national education regulators, improve arrangements for the early identification of low quality providers, and facilitate better management of risk to students and public monies.[2]

1.6 The EM states that the bill would achieve these outcomes by:

- implementing a risk managed approach to provider approvals and administrative compliance, including consideration of reports by the national education regulators;
- implementing more effective suspension and revocation actions;
- simplifying the guidelines around VET FEE-HELP;

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1 Committee website

2 Explanatory Memorandum, p. 1.

- improving the flexibility of the census date requirement;
- providing enabling legislation for specified certificate IV level qualifications to be eligible for VET FEE-HELP; and
- improving Ministerial and Secretarial delegation arrangements.

Key provisions of the bill

Schedule 1

1.7 Item 4 would remove the current requirement for a VET FEE-HELP provider to be a body corporate, and provides that the Minister may approve a provider if they are of a kind specified in the VET Guidelines (provided for in Schedule 3). The Schedule would also provide an alternative means for the Minister to approve an applicant as a VET provider when they are a low risk applicant. The additional provision would allow approval without the Minister needing to be satisfied that an applicant (both the body and the key decision makers in it) were fit and proper for the purpose. Various other Items in the Schedule make associated changes.[3] Taken together, the changes are directed at easing the process for Ministerial approval of providers who are deemed to be low risk.

1.8 Item 14 would expand the financial information to which the Minister must have regard in making a decision about an applicant's financial viability to include not only annualised financial information already required under the Act, but also any more recent information that the Minister may require to be produced for the purposes of making a well-informed decision.

1.9 Items 25 to 33 amend the definition of 'VET course of study' to expand the Minister's powers to determine the course qualifications applicable for VET FEE-HELP, through the specification of a course in the VET Guidelines. This is necessary to give effect to the 2012 Council of Australian Governments (COAG) *National Partnership Agreement on Skills Reform* and to allow for a managed trial of certificate IV qualifications under VET FEE-HELP. Item 29 is notable in that it removes a prohibition on the Minister making a determination about a course being eligible for VET FEE-HELP within 6 months of a course starting. The EM claims this is necessary to provide flexibility and responsiveness to student and industry needs.

Schedule 2

1.10 Items 1 to 18 would allow a decision to revoke the approval of a higher education or VET provider to take effect on the day following the last day on which a notice of motion to disallow the instrument can be moved in either House of Parliament. This would provide for more timely and effective revocation to prevent an organisation from continuing to offer FEE-HELP or VET FEE-HELP to students

3 See, for example, Items 23 and 24.

during the period between the Minister's decision to revoke a provider's approval and the time when the notice of revocation of approval takes effect.

1.11 Items 19 to 25 provide that the Minister may seek information from the Tertiary Education Quality and Standards Agency (TEQSA) or a relevant VET regulator in taking a decision to approve, revoke or suspend a higher education or VET provider's eligibility for the purposes of VET FEE-HELP and FEE-HELP. Before they can be approved, providers are required to comply with any requirements set out in the Guidelines. Items 26 to 29 provide that these information-seeking powers would apply to applications for approval made before, on or after the commencement of the powers.

Schedule 3

1.12 The Schedule would allow for the consolidation of four existing sets of guidelines (the VET Provider Guidelines, VET FEE-HELP Guidelines, VET Tuition Fee Guidelines, and VET Administration Guidelines) into one set of VET Guidelines.

Schedule 4

1.13 Items 1 and 4 would remove the current requirement that the number of enrolments in a course should be determined on a date (the census date) at least 20 per cent of the way through a course. The amendment would see the date set through the Administration Guidelines (for FEE-HELP) or the VET Guidelines (for VET FEE-HELP).

1.14 Items 2, 3 and 5 would provide for the Minister and Departmental Secretary to make delegations to persons who are not Australian Public Service employees. The EM provides that the amendments do not:

> …in any way alter existing arrangements in relation to Ministerial and Secretarial delegations, but provides that, during unforeseen situations like machinery of government changes and changes to Administrative Arrangement Orders, the business of all departments that administer funding or programs under the Act can continue. The existing arrangements in relation to the level of delegation will remain at high level managerial staff of the APS.[4]

4 Explanatory Memorandum, p. 48.

CHAPTER 2

Issues

2.1 Submissions to the inquiry were generally favourable to the bill. On the whole, submitters considered bill would improve access to education and reduce administrative burden.[1]

2.2 The sentiments expressed by the Tasmania Department of Education were typical of those received in support of the bill:

> …[W]e would support measures that would enable legislation to allow specified Certificate IV level qualifications to be eligible under VET FEE-HELP. Benefits of introducing VET FEE-HELP in Tasmania for Diploma, Advanced Diploma and specified Certificate IV level qualifications will include allowing us to prioritise government subsidies to the areas of greatest needs such as foundation skills and pathway qualifications in Tasmania's priority industries and occupations.[2]

2.3 The National Tertiary Education Union (NTEU) was a notable exception to the widespread support received, arguing that the expansion of VET FEE-HELP to a broader range of courses and providers had the potential to adversely reflect on VET quality and access, and declined to support the bill on that basis.[3] Nonetheless, even this submitter conceded the attempt in the bill to strengthen quality assurance and streamline administration through risk-based applications.

2.4 A number of other submitters raised specific concerns with various aspects of the bill. These are addressed in turn.

Lack of detail

2.5 A number of submitters, while supportive of the bill's objectives, noted that much of the practical detail would come into effect through the VET Guidelines, and that without being able to examine those, a fully informed assessment was not possible. RMIT University was typical of many submitters in calling for further consultation with the sector 'to enable the objectives of the bill to be realised as there is a risk that the changes could create further complexities and add to the implementation cost'.[4]

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1 See, for example, Navitas Limited, *submission 1*, p. 1; RMIT University, *submission 4*, p. 1; TAFE Directors Australia, *submission 6*, p. 1.

2 Tasmania Department of Education, *submission 2*, p. 2.

3 NTEU, *submission 3*, pp 2–4.

4 RMIT University, *submission 4*, p. 1.

2.6 RMIT pointed to the bill's shifting of census date requirements from the Act to the VET Guidelines as a case in point, submitting that it supported the move:

> …provided that, as set out in the Explanatory Memorandum to the Bill, institutions will be able to choose their preferred method of calculating census dates. This will then enable universities to best tailor the delivery and timings of their course offerings according to their strategies and the needs of the market. RMIT understands that the Bill is being amended to create greater flexibility. However, if these Guidelines did not follow this model or were changed in the future, RMIT notes that these changes would cause large providers to incur substantial costs to change their systems. Changes to census dates could obviously also have implications for RMIT students, particularly where they have dual enrolments in both higher education and VET with varying census dates.[5]

2.7 RMIT also made the point that consultation, and prior warning of substantive changes, was critical for reasons of practicality:

> It is vital that consultation is undertaken during this process to ensure the objectives of the program can be met. Providers require sufficient lead time (at least 6 months) to prepare and implement administrative systems changes in response to legislative amendments. Similarly, lead-time is particularly critical for students as they make their study decisions in advance, and the accessibility of finance is a key factor in decision-making.[6]

2.8 ACPET expressed similar concerns, submitting that:

> While ACPET strongly supports measures to reward high quality providers with a reduced burden we are concerned that at this juncture there is a distinct lack of detail around how risk will be determined and applied and how this will in turn influence the Minister's approval and reporting requirements.[7]

2.9 In its submission, the Department of Industry Innovation Science Research and Tertiary Education (DIISRTE) set out in some detail the consultation undertaken in the course of the Post-Implementation Review (PIR) of VET FEE-HELP, which included online surveys, face to face interviews with Registered Training Organisations (RTOs), focus groups and questionnaires. The discussion paper which followed was made available online and comments invited. Further consultation forums were subsequently held.[8]

2.10 The committee was impressed by the level and quality of consultation undertaken to date, and the committee considers that submitters have every reason to

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5 RMIT University, *submission 4*, p. 2.

6 RMIT University, *submission 4*, p. 1.

7 ACPET, *submission 5*, p. 2.

8 DIISRTE, *submission 7*, pp 2–5.

be optimistic about the level and quality of engagement in the forthcoming Guidelines process.

2.11 Nonetheless, the committee understands the concerns expressed by these submitters, and encourages the Government to continue to consult stakeholders in generating the new Guidelines.

Recommendation 1

2.12 The committee recommends that the Government continue to consult with stakeholders in the formation of the VET Guidelines provided for in the bill.

Increased access for under-represented groups

2.13 The National Tertiary Education Union (NTEU) took issue with the assertion in the Explanatory Memorandum (EM) that increased take-up of VET FEE-HELP by Indigenous Australians, students with disabilities and those living in remote and regional Australia was key to lifting VET participation among those groups. The NTEU argued that:

> The reasons for low participation amongst specific demographic groups are far more complex than an inability of individuals to pay up-front fees. The NTEU considers it an abrogation of the Government's responsibilities to rely on the provision of [income-contingent loans] as the primary policy instrument for improving educational participation amongst underrepresented groups of Australians. One only needs to examine the evidence from the higher education sector and see that after more than two decades of HECS, students from the specified demographic groups remain underrepresented in our universities.[9]

2.14 The committee notes the NTEU's concerns in this regard, and some of the underlying reasons why some in the community are under-represented in the higher education and VET space. However, the committee considers that the bill would provide a net improvement in access to training, regardless of the demographic background of the potential student.

Risk based approach

2.15 Submitters generally viewed the introduction of risk-based assessment of education providers as a positive move that would aid efficient administration while also safeguarding students. Navitas submitted that it was:

> …supportive of any moves to reduce regulatory burden and supports the Business Council of Australia's proposition that adopting a risk-based approach to regulatory design, implementation and review is critical to

9 NTEU, *submission 3*, p. 2.

> lifting regulatory performance and to realising and sustaining the benefits of current and future competition and regulatory reforms.[10]

2.16 Similarly, RMIT University submitted that it:

> …supports the introduction of a risk based approach to the process of approving providers to offer VET FEE-HELP. A differentiated approach allows for greater efficiency and effectiveness of processes, by not burdening low risk institutions such as RMIT with the same processes that may be required for higher risk providers. This approach would materially reduce application times.[11]

2.17 However, the Australian Council for Private Education and Training (ACPET) expressed concern that the approach outlined in the EM would 'automatically deem public providers to be low risk and private providers to be high risk', noting that this is currently the case in relation to the Commonwealth's Tuition Protection Scheme (TPS).[12] ACPET expanded on its case this way:

> ACPET is of the firm view that the VET sector has a sophistication and complexity beyond a simple dichotomy of the public/private divide and therefore this dichotomy should not play a significant part of the risk assessment process. ACPET has not had the opportunity to review and consider the risk rating framework prior to the introduction of the Bill, and in fact we are not aware if the framework has been developed. The Explanatory Memorandum supporting the Bill should explicitly recognise that any provider with a recognised track record of quality may be considered to be low-risk irrespective of ownership.[13]

2.18 However, the committee notes that one of the objectives of the bill is to enable a broader set of information to be assessed as part of the approval process. This is likely to result in a more informed decision, based on a broader set of criteria than a provider's public or private status. The DIISRTE submission states that:

> The Government’s ability to consider information from the national and non-referring jurisdiction education regulators is limited. Similarly, for RTOs offering both higher education and VET courses, information on their conduct across the HELP schemes cannot be exchanged for the purposes of approval, suspension or revocation. These amendments allow the Minister to seek information from the Tertiary Education Quality and Standards Agency (TEQSA) or the National Vocational Education and Training Regulator or the relevant regulators from non-referring jurisdictions to improve decision making for application, administrative compliance, suspension and revocation purposes for FEE-HELP or VET FEE-HELP. These amendments will improve information sharing and

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10 Navitas, *submission 1*, p. 1.

11 RMIT University, *submission 4*, p. 2.

12 ACPET, *submission 5*, p. 2.

13 ACPET, *submission 5*, p. 2.

> transparency with the regulators and will enhance arrangements to identify low quality providers.[14]

Opportunities for further refinement

2.19 RMIT University considered that the administrative and reporting efficiencies proposed in the bill might not go far enough, and that there may be further opportunity for improvement.

> RMIT welcomes the amendments to allow greater information sharing between Government agencies as long as this includes provisions to share information across both State and Commonwealth agencies to minimise duplication, and protects sensitive and commercial-in confidence information. RMIT notes that opportunities to share information go beyond the approval and revocations of approval, and include opportunities to streamline VET reporting across jurisdictions. This would significantly reduce compliance costs and increase efficiencies for providers and government agencies. However, it is not yet clear how the Bill or any proposed future action will fully address this opportunity.[15]

2.20 The committee encourages DIISRTE to examine any potential for further efficiency gains in the administration of VET, in line with RMIT's suggestion.

2.21 TAFE Directors Australia also took the opportunity to point out what it saw as:

> …a fundamental inequity in the current FEE HELP arrangements whereby, with two exceptions, students undertaking higher education qualifications in TAFE institutes do not have the same entitlement to income-contingent loans as students studying in universities.[16]

2.22 RMIT University made a similar point:

> In a demand driven VET environment in Victoria, there have been substantial increases in student fees as a result of policy and funding decisions by government. This means that fees at all certificate levels may be increasing and could constitute barriers to entry. It is critical that all tertiary students have access to an income contingent loan to ensure equity of access, reduce barriers to entry and increase uptake.[17]

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14 DIISRTE, *submission 7*, p. 5.

15 RMIT University, *submission 4*, p. 2.

16 TAFE Directors Australia, *submission 6*, p. 1.

17 RMIT University, *submission 4*, p. 2.

Conclusion

2.23 The committee has considered all the submissions before it, and noted the generally positive reception of the bill. It is clear that, as a general rule, submitters can see significant merit in the objectives the bill seeks to further.

2.24 It has also considered a number of issues raised by submitters as being potentially problematic, but does not consider that any justify the bill's amendment or rejection.

Recommendation 2

2.25 The committee recommends that the bill be passed.

Senator Gavin Marshall

Chair

AUSTRALIAN GREENS
ADDITIONAL COMMENTS

The Australian Greens:

- Note the concerns raised by a number of submitters that much of the detail will be effected through the VET Guidelines and is therefore not available for examination or assessment; and supports the Committee's recommendation that the Government continues to consult with stakeholders in formulating the VET Guidelines provided for in the bill.
- Note the concerns raised by TAFE Directors Australia and RMIT University that VET students currently do not have equitable access to FEE HELP loans.
- Agree with the NTEU's submission that 'it is an abrogation of the Government's responsibilities to rely on the provision of [income-contingent loans] as the primary policy instrument for improving education participation amongst underrepresented groups of Australians'.
- Support the goal of a fee and charges free TAFE system, where income contingent loans are unnecessary and the Commonwealth government increases its contribution to the costs of a high quality accessible system.
- Do not support the shifting of costs for vocational education and training on to the student via TAFE student fees, which in turn necessitate students raising debts to participate in VET through the VET-FEE HELP system. For this reason any extension of the VET-FEE HELP scheme is noted with concern as pre-empting higher student fees.
- Call on the Government to prioritise and increase its VET funding to the TAFE system to ensure a high quality, accessible and viable public VET system.

Senator Lee Rhiannon
Greens Senator for NSW

APPENDIX 1

Submissions received by the Committee

Submission Number	Submitter
1	Navitas Limited
2	Tasmanian Department of Education
3	National Tertiary Education Union (NTEU)
4	RMIT University
5	Australian Council for Private Education and Training (ACPET)
6	TAFE Directors Australia
7	Department of Industry Innovation Science Research and Tertiary Education