

Appendix 3

Correspondence



Australian Government
Australian Public Service Commission

Australian Public Service Commissioner

Mr Ian Goodenough MP
Chair
Parliamentary Joint Committee on Human Rights
S1.111
Parliament House
CANBERRA ACT 2600

Dear Mr Goodenough

I refer to your letter of 10 November 2016 seeking my advice on the compatibility of the Australian Public Service Commissioner's Directions 2016 (the Directions) with the right to privacy.

In my response of 22 November 2016 I undertook to review the necessity of publishing in the Public Service *Gazette* terminations of employment for breaching the Australian Public Service (APS) Code of Conduct, and notify you of my findings in June 2017.

After consultation with APS agencies, I have concluded that the current arrangements should not continue. I intend to establish a new, secure database of employment terminations for breaches of the Code of Conduct that will not be accessible to the general public. This approach would respect the privacy of affected employees. Agencies would be able to access the database and thereby maintain the integrity of their workforces.

Once the record is established, I will make appropriate amendments to the Directions.

Yours sincerely

John Lloyd PSM
June 2017



Senator the Hon Simon Birmingham

Minister for Education and Training
Senator for South Australia

Our Ref MC17-003631

Mr Ian Goodenough MP
Chair
Parliamentary Joint Committee on Human Rights
S1.111
Parliament House
CANBERRA ACT 2600

05 JUL 2017

Dear Mr Goodenough *Ian,*

Thank you for the opportunity to respond to the Committee's Human Rights Scrutiny Report 5 of 2017 concerning the Higher Education Support Legislation Amendment (A More Sustainable, Responsive and Transparent Higher Education System) Bill 2017 (the HESLA Bill).

I note the Committee's concerns about four measures: the increased student share of higher education funding and efficiency dividend; changed arrangements for enabling courses; replacing subsidies with loans for most Australian permanent residents and New Zealand citizens; and the new schedule of repayment arrangements and indexation for Higher Education Loan Program thresholds. The additional information requested by the Committee is attached.

In summary, the Australian Government does not consider that these measures will limit the right to education or the right to equality and non-discrimination. Funding support for Commonwealth supported students has risen rapidly in recent years. The HESLA Bill will increase student choice and greatly expand opportunity for many thousands of Australians and students will still, on average, pay only 46 per cent of the costs of higher education, with taxpayers continuing to provide the rest.

Access to, and affordability of, higher education will continue to be protected by the HESLA Bill which will allow students – including Australian permanent residents and all New Zealand citizens – to borrow the costs of their study thereby, removing upfront fees as a barrier to participation. The proposed new minimum repayment threshold of \$42,000 commences at a very low, one per cent rate of repayment.

I thank the Committee for its consideration of the HESLA Bill.

Yours sincerely

Simon Birmingham

Encl. Response to the Parliamentary Joint Committee on Human Rights

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HIGHER EDUCATION SUPPORT LEGISLATION AMENDMENT (A MORE SUSTAINABLE, RESPONSIVE AND TRANSPARENT HIGHER EDUCATION SYSTEM) BILL 2017

Detailed response to the Joint Parliamentary Committee on Human Rights

The Parliamentary Joint Committee on Human Rights requested further information in relation to four measures in the Higher Education Support Legislation Amendment (A More Sustainable, Responsive and Transparent Higher Education System) Bill 2017 (the Bill).

The information requested by the Committee is provided below. The Minister believes that any limitations on human rights contained in these measures are reasonable, necessary, and proportionate to the broader policy objectives of ensuring financial sustainability for higher education and budget repair.

Increased student share of higher education funding and efficiency dividend

Schedule 1 of the Bill outlines a rebalancing of the student and Commonwealth contributions for Commonwealth supported places (CSPs). The increase in student contribution amounts of 1.8 per cent per year for four years will be phased in from 2018 to 2021, for a cumulative increase of 7.5 per cent by 2021.

An efficiency dividend of 2.5 per cent in both 2018 and 2019 will be applied to amounts under the Commonwealth Grant Scheme (CGS).

Right to education

This measure engages with Article 13(2)(c) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) which states that “higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education”.

Recalibration of Commonwealth contribution and student contribution amounts contained Schedule 1 of this Bill will result in decreased Government funding and an increase in student contributions and the introduction of an efficiency dividend will reduce the total resourcing available to universities for Commonwealth supported students. This outcome may be considered a retrogressive measure, as it is counter to the goal of progressive introduction of free education.

This measure is reasonable and proportionate to the policy objective of ensuring long-term financial sustainability of the higher education system. By ensuring that the demand driven funding system can be preserved for bachelor level studies and extended to approved sub-bachelor courses, the rebalancing of student and Commonwealth contribution amounts supports future opportunities for students to access higher education.

Students are well resourced through the CGS, expenditure through which totalled \$7.1 billion in 2016. Average funding per student has increased by around 15 per cent over the five years from 2010 to 2015. In comparison the average cost of delivery per equivalent full time student has only

grown at 9.5 per cent over the same period¹. The effect of an efficiency dividend on the CGS should have minimal effect on the ability of students to access higher education, or on providers to deliver high quality courses.

Even after the efficiency dividend and rebalancing of Commonwealth and student contribution amounts is fully implemented by 2021, the Commonwealth will still fund on average 54 per cent of the cost of courses.

The rebalancing of contributions also sits within the context of Australia's generous and highly regarded student loan scheme that ensures no domestic student need pay upfront fees for access to higher education. That is, despite the modest increase in student contribution amounts, access to higher education will be maintained through the continued availability of Higher Education Loan Program (HELP) loans.

While the progressive introduction of free higher education is one aspect of the right to education outlined in the ICESCR, maintaining equitable access to higher education for future Australians is vital for economic prosperity and social wellbeing. The measure is proportionate to this policy objective, as it creates a more sustainable higher education system and, by doing so, ensures future generations of Australians will remain able to access higher education and the substantial private benefits it confers.

Given the Budget context and the Government's commitment to a return to surplus, there is a need to reduce the overall levels of Government spending. The savings as a result of this measure will also be an important contribution towards budget repair, which is an important objective of this Government.

Changed arrangements for enabling courses

This measure, contained in Schedule 2 of the Bill, introduces a number of changes to enabling places. The enabling loading paid to providers in lieu of charging enabling students a student contribution amount is being removed. To ensure that enabling places continue to be adequately resourced, for the first time providers will be able to charge Commonwealth supported enabling students a capped student contribution amount up to the value of the rate of the enabling loading. In addition, the way Commonwealth supported enabling places are allocated will be overhauled – from 1 January 2019 a fixed number of places will be allocated on a cyclical basis through a competitive three year tender process.

Right to education

The introduction of student contribution amounts for Commonwealth supported enabling students may be considered a retrogressive measure in terms of the right to education, specifically the progressive introduction of free higher education.

However, access to higher education is also an important aspect of this right, and these measures are aimed at improving the system of enabling places to assist underprepared learners to progress to undertaking higher education courses. Enabling courses are recognised as a preparation tool for

¹ *Cost of delivery of higher education* (2016), Deloitte Access Economics

students with social or educational disadvantages², and an important means of access to higher education.

The *Report of the Review of the Demand Driven System* by Dr David Kemp and Andrew Norton found that the overall attrition rates for enabling courses can be as high as 40 or 50 per cent. The Report suggested that a contributory factor is the lack of investment from the student, including in a financial sense³. By ensuring that students are making a modest financial commitment towards their education, the measure aims to improve progression to higher education for students enrolled in enabling places. This expands the right to education by ensuring that there are viable alternative entry pathways available to underprepared learners.

Further, while providers may charge a student contribution amount for an enabling course of study, students will be able to defer these upfront costs via a HELP loan. This ensures that the student contribution amount does not present an upfront financial barrier for students.

Additionally, under the current system of allocation of Commonwealth supported enabling places some providers under-utilise their allocation which is inefficient and effectively diminishes opportunities for individuals who may benefit from participation in an enabling course. The measure ensures that with cyclical competitive tender processes, enabling places will always be allocated to providers who have demonstrated a history of high standards of academic preparation and completion rates, among other criteria currently under consideration. The right to access higher education is being expanded by ensuring the efficiency of allocation of these places to providers who are most likely to fully utilise the places allocated to them, and to deliver high quality outcomes for students.

The measure expands access to higher education by improving the enabling funding mechanism, and incentivising commitment to ensure higher completion rates.

Replacing subsidies with loans for most permanent residents and New Zealand citizens

This reform addresses the situation that forces permanent residents and most New Zealand citizens to pay upfront fees for higher education – a significant barrier to access for many students. This measure, contained in Schedule 3 of the Bill, extends HELP loans to permanent residents and New Zealand citizens. In order to ensure the affordability of this measure, access to CSPs was removed, effectively treating permanent residents and New Zealand citizens the same as domestic full fee-paying students.

Right to education

While this measure removes the Commonwealth subsidy that these groups currently receive, the measure expands access to tertiary education for New Zealand citizens and permanent residents of Australia by providing access to HELP loans.

Currently, these students must pay for their education upfront, which may be a significant limitation on their capacity to access higher education. Under current arrangements, most Australian

² The Hon Dr Jane Lomax-Smith, Professor Louise Watson, Professor Beth Webster, *The Higher Education Base Funding Review* (2011)

³ The Hon Dr David Kemp and Andrew Norton, *Report of the Review of the Demand Driven System* (2014)

permanent residents and most New Zealand citizens have faced inequalities in access to higher education. They have had to pay upfront fees for tuition that their Australian peers have been able to defer to a HELP loan.

While the Committee has specifically requested advice on the removal of the CSP for permanent residents and New Zealand citizens, it cannot be considered without noting that this measure also expands access to HELP loans.

While it is not yet known how universities will respond in terms of tuition fees, access to a HELP loan is likely to be the most important factor for those New Zealand citizens and permanent residents who are unable to afford upfront payment to undertake tertiary education. There is evidence that tuition fees, when coupled with access to income contingent loans, do not act as a disincentive to study⁴. In this way, the overall measure expands the right to access higher education.

In formulating this measure, the Government considered policy alternatives. Replacing subsidies with loans emerged as the best way to support Australian permanent residents and New Zealand citizens to access higher education while making a contribution to budget repair and the overall policy objective of ensuring the sustainability of higher education funding.

This measure is reasonable and proportionate to both the policy objectives of expanding access for permanent residents and New Zealand citizens, and of creating a financially sustainable higher education system.

Right to non-discrimination

This measure engages with Article 26 of the *International Covenant on Civil and Political Rights* (ICCPR) which states that “the law shall prohibit any discrimination and guarantee to all persons equal protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

Under the current arrangements permanent residents and New Zealand citizens have different entitlements to citizens of Australia. Replacing subsidies with loans for most Australian permanent residents and New Zealand citizens, as proposed by this Bill, alters existing arrangements in order to expand access to higher education for these groups by removing financial barriers. Despite the loss of subsidised tuition fees, access to higher education for most Australian permanent residents and most New Zealand citizens will be improved through the availability of HELP loans.

Furthermore, loan repayment arrangements do not discriminate between Australian citizens, New Zealand citizens and Australian permanent residents; they are identical.

It is also important to note that a special cohort of New Zealand citizens (who arrived here as children and have been long term residents of Australia) will remain eligible for both Commonwealth subsidies and all HELP schemes (including VET Student Loans). This Government introduced this arrangement in 2016 and this measure preserves access for this cohort.

Any savings as a result of this measure are required in order to ensure the long-term sustainability of Australia’s higher education system, and the policy objective of ensuring that most permanent

⁴ Bruce Chapman, *Income Contingent Loans for Higher Education: International Reform* (2005), the Australian National University Centre for Economic Policy Research

residents and most New Zealand citizens are able to access higher education without the barrier of upfront fees.

Any perceived limitation on the right to non-discrimination is reasonable, and proportionate to the policy objectives.

New schedule of repayment thresholds and indexation arrangements for HELP

Schedule 3 of the Bill creates new repayment thresholds and repayment rates for HELP loans. The Bill introduces a new, lower repayment threshold of \$42,000 with a repayment rate of one per cent, and a new upper repayment threshold of \$119,882 with a repayment rate of 10 per cent.

This Schedule also amends the *Higher Education Support Act 2003* so that from 1 July 2019 the HELP repayment thresholds will be indexed using the Consumer Price Index (CPI) rather than Average Weekly Earnings (AWE).

Right to education

The measures in Schedule 3 do not limit the right to education, including ensuring access to higher education and through the progressive introduction of free higher education in Article 13 of the ICESCR.

In terms of access to education, there should be no effect on access based on the new repayment threshold. Eligible students will remain able to defer their student contribution amounts or tuition fees via a HELP loan. This includes individuals who earn more than the minimum repayment threshold.

Further, the new repayment threshold introduced by this Bill remains above the national minimum wage (\$35,000 for full-time workers), and the lower repayment rate ensures that any impact is minimal.

Changes to the indexation of the repayment thresholds similarly do not limit the right to access higher education and are not retrogressive in terms of the introduction of free education. According to the Grattan Institute, the AWE figure is distorted by several factors including increasingly larger incomes due to a rise in professional occupations over low-skilled occupations, and an ageing population staying longer in the workforce with high salaries. As growth in CPI is slower than growth in AWE, this results in people commencing repayments towards their HELP debt sooner. This does not equate to people paying more for their education. As individuals may begin repaying their debts more quickly, it may reduce the amount they repay over the life of their HELP debt, as faster repayments means that there is less debt to index each year.

Further, it should be noted that the growth in HELP repayments has not kept pace with the growth in HELP lending. The rate of spending on the HELP scheme is unsustainable and needs to be addressed. The amount of HECS-HELP loans accessed has increased by around 75 per cent from over \$2.1 billion in 2008 to over \$3.6 billion in 2013⁵. Additionally, the expansion of HELP to the vocational education and training sector has led to VET FEE-HELP loans increasing from \$0.03 billion

⁵ 2011-2013 Higher Education Report

on 2009 to over \$1.7 billion in 2014⁶. From 2008-09 to 2012-13 HELP repayments have only increased by 35 per cent (noting the inherent time lag between incurring the loan and commencing repayments)⁷.

The savings arising from this measure will help reduce the unsustainable growth in the HELP scheme, and ensure that it remains available for future generations of students.

Any perceived limitation on the right to education, including the progressive introduction of free higher education, is reasonable, necessary and proportionate to the objective of ensuring that the higher education loan scheme remains sustainable.

Right to non-discrimination

As acknowledged in the original statement of compatibility with human rights in the Explanatory Memorandum, there may be a disproportionate effect on women as a result of the measures contained in this Schedule. Women, and other low-earning demographic groups, may represent a disproportionately large number of those required to make HELP repayments for the first time as a result of the introduction of the new, lower threshold. This may present an indirect limitation on the right to non-discrimination.

Due to the income-contingent nature of the HELP scheme, those who earned less than the minimum repayment threshold have not previously been required to make repayment obligations. Any disproportionate impact on women as a result of this measure is the result of broader and complex social and economic factors that it is not within the scope of a student loan scheme to address or mitigate.

It should be noted however, that women make up the majority of higher education students, graduates and HELP debtors. Women made up 58 per cent of domestic students in 2015⁸, and between 2006 and 2014 had a completion rate of 75 per cent, compared with 70 per cent for men over the same period for bachelor level study at public universities⁹. These figures are not reflective of a recent trend only; women have historically achieved higher rates of enrolment and completion than men. Given that women make up a larger proportion of HELP debtors due to their proportionally greater enrolments, any measure that affected repayment would therefore disproportionately affect women.

As outlined above, this measure directly contributes to improving the sustainability of HELP and ensuring it remains a viable option for students in the future. HELP expenses, which consist mainly of debt not expected to be repaid and the deferral subsidy from the concessional interest applied to HELP loans, are estimated to be \$2.2 billion in 2017-18¹⁰.

This measure is expected to bring approximately 183,000 new individuals into the repayment stream, and is expected to increase HELP repayments and reduce the amount of outstanding debt not expected to be repaid.

⁶ 2015 VET FEE-HELP Statistical Report

⁷ 2011-2013 Higher Education Report

⁸ Department of Education and Training data

⁹ Completion Rates of Higher Education Students – Cohort Analysis, 2005-2014

¹⁰ 2017-18 Education Portfolio Budget Statement

Any limitation on the right to non-discrimination as a result of the measures contained in Schedule 3 is reasonable, and proportionate to the policy objective of creating a sustainable higher education system, and to ensure that higher education remains accessible.