



Dr Jane Thomson
Committee Secretary
Senate Education and Employment Committees
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Dear Dr Thomson

Education Legislation Amendment (Tuition Protection and Other Measures) Bill 2019; Higher Education Support (HELP Tuition Protection Levy) Bill 2019; and Vet Student Loans (VSL Tuition Protection Levy) Bill 2019

Executive Summary

Independent Higher Education Australia proposes that the draft legislation be amended to:

1. **Expand the Australian Government's Tuition Protection Service (TPS) to give Australian students the same protections as international students**
2. **Extend TPS coverage to all Australian independent tertiary sector students ensuring that students who pay their tuition fees upfront receive the same protections as students who access a FEE-HELP or VSL Loan.**
3. **Implement universal TPS coverage for all independent sector Higher Education students from 1 January 2020 through:**
 - **expansion of the proposed 'FEE-HELP TPS' to cover Upfront-Fee-paying students, and**
 - **accessibility for Non-FEE-HELP approved Higher Education Providers to the expanded TPS**

IHEA Recommendation – Universal Student Protections in Higher Education

Tuition Protection	International Students (Full-Fee Paying)	Australian Domestic Student with a Commonwealth Loan	Australian Domestic Student Upfront-Fee-Paying
Current	Yes – Current TPS	Yes- through exemption from HESA tuition protections	No Exemption protections
Draft Legislation	Yes – Current TPS	Yes – Proposed FEE-HELP TPS	No TPS protections
IHEA Proposal	Yes – Current TPS	Yes – Proposed FEE-HELP TPS	Yes – Expanded Proposed FEE-HELP TPS

Universal student protections in the independent higher education sector:

- Provides **equity** to all students through **universal benefits**
- Ensures **all students are protected** in the unlikely event of student displacement arising from course discontinuance or provider closure
- **Removes a systemic incentive** created by the draft legislation for students to access a government loan in order to guarantee protections
- **Eliminates a looming compliance crisis** and high-risk environment for students in the increasing likelihood of there being no accessible insurance (ASTAS) scheme to protect upfront-fee-paying students
- **Reduces red-tape** on independent sector providers by reducing the number of reporting student cohorts and implementing single agency compliance
- Gives **certainty and security to Australian students** who pursue their educational goals and career progression through courses offered by an independent provider
- **Restores community confidence** in the independent higher education sector experiencing collateral reputational damage following past exploitation of the HELP scheme by a small number of VET providers
- Builds holistic **recognition and respect for Australian higher education** through transparent government commitment to tuition protections
- Enhances the policy settings to **manage higher education sector growth pressures** in the national interest

IHEA strongly advocates universal student protections through TPS coverage across the tertiary sector. We recognise however the necessity to implement the expanded TPS from 1 January 2020, and the likely burden of assessing the large number of independent VET providers required to achieve universal coverage.

Comparatively, the Independent Higher Education sector is relatively small with 131 providers. Of these only 16 are not currently FEE-HELP approved or CRICOS registered. Implementation of universal TPS protections for independent higher education sector students would be relatively simple to implement, low risk and sector funded.

Key Definition: Upfront-Fee-Paying Student

For the purposes of clarity, this submission uses the term '**upfront-fee-paying**' to describe independent sector students who pay for their studies without accessing a student loan or subsidy. This term is consistent with Department of Education HEIMS reporting.

'Full-fee-paying' is a commonly used term to describe a non-HELP or non-subsidised student. This term is however misleading. All Australian higher education students not in receipt of a Commonwealth Supported Place (CSP) incur the full liability for their tuition fees, including Australian students who access a FEE-HELP loan, self-funding students and international students.

The term is further complicated by Australian students who fund their tuition through FEE-HELP and pay 125% of their tuition costs as a result of the FEE-HELP 25% loan tax which is applied to FEE-HELP financing for most courses offered by independent providers. These students incur FEE-HELP liabilities which are 25% in excess of the full fee paid to their provider of choice, and are effectively 'greater-than-full-fee-paying students'

2. Implementing IHEA's Proposal for Universal Protections

Expansion of the domestic TPS to Australian Upfront-Fee-Paying higher education students would not create significant increased burden for the Commonwealth. The TPS is funded by the sector and expanded coverage attracts increased revenue.

While additional actuarial assessment will be required for 16 providers who are not currently approved for FEE-HELP or CRICOS registered, 115 of the 131 independent sector Higher Education Providers already report to FEE-HELP and/or the international TPS.

Extension of the TPS will require Higher Education Providers to submit details of their enrolments, tuition fees, collection procedures and financial risk profile which includes all fee-paying students. Providers have established practices and procedures to submit detailed reports including audited financial statements, fee revenue, and enrolment data to ASTAS agents, insurers, federal departments, TEQSA, ASQA, and corporate regulators.

Commonwealth data indicates extension of the TPS would provide protections to an additional 15,800¹ currently enrolled students, approximately 25% of total fee-paying student enrolments. Inclusion of these students would in turn increase administrative fees and premium revenue to the benefit of the TPS.

The Australian independent higher education sector is small in size, low risk and recognised for quality. Provider or course closure impacting the higher education sector is rare. Enrolments are static or growing steadily – spikes rarely, if ever, occur. Entrance for new providers is tightly controlled with registered provider numbers relatively static since the inception of TEQSA in 2011.

IHEA contends that the extension of student protections to all higher education students:

- Will not create significant administrative burden to the Commonwealth or providers
- Will significantly increase levy revenue to the TPS
- Is low risk for the Commonwealth

3. Sectoral Impacts of Extending TPS Protections to All Independent Higher Education Students

3.1 Impact on Students

IHEA's proposal to extend the TPS is founded on the benefit to students through universal protections and equity. A commitment to student protections, wellbeing, quality experience and success are core principles of IHEA members.

IHEA supports an Australian independent tertiary sector tuition protection scheme (TPS) administered by the Commonwealth that does not disadvantage any cohort of Australian students on the basis of how they pay for their

¹ Enrolments at Table B, Table C and Non University providers (2018 HEIMS data)

studies. The draft legislation in effect limits the protections of a national consumer protection scheme to students who take out a loan.

Extending the TPS to protect all independent sector higher education students:

- Implements equity in treatment for all students
- Ensures protections from provider failure for all students
- Eliminates systemic incentive for students to take out loans, reducing student debt levels

Protection Status Impacts of the Draft Legislation - Student Protections by Provider Type and Student Cohort

Higher Education Provider			Student Cohort		
Type	Enrols	Might also enrol	International Fee-Paying Students	Australian FEE-HELP Students (Commonwealth Loan)	Australian Upfront-Fee-Paying Students
FEE-HELP Approved	Australian FEE HELP loan students	Australian Upfront-Fee-Paying students International Upfront-Fee-Paying Students (if CRICOS Registered)	Protected by TPS	Protected by TPS	NOT protected by TPS
NOT FEE-HELP Approved	Australian Upfront-Fee-Paying Students	International Upfront-Fee-Paying Students (if CRICOS Registered)	Protected by TPS	N/A	NOT protected by TPS
CRICOS Registered NOT FEE-HELP Approved	International Fee-Paying Students	Australian Upfront-Fee-Paying students	Protected by TPS	N/A	NOT protected by TPS

3.2 IHEA Proposal - Impact on Providers

The impact on providers of implementing universal student protections includes reduced red-tape, transparent levies and costs and confirmed compliance with TEQSA tuition protection requirements.

Red-tape reduction

The draft legislation effectively creates four cohorts of students for the purposes of tuition protection. Each of these cohorts will require separate reporting and levies/costs. Reporting will also be to two different agencies – Department of Education and TEQSA.

Provider Reporting and Cost Model – Draft Legislation Impacts

Student Cohort	Covered By	Costs	Reporting to
Australian FEE-HELP loan students	FEE-HELP TPS	TPS Levies	Department / TPS Director
International Students	International TPS	TPS Levies	Department / TPS Director
Australian VSL Loan students	VSL TPS	TPS Levies	Department / TPS Director
Unprotected Students	Private market / Institution arrangements	Insurance premiums / Financial services costs etc TEQSA Cost Recovery levies	TEQSA

Independent Higher Education Providers (HEPs) are already straining under a weight of regulation, red-tape and rising costs. TEQSA accreditation and registration, risk assessments and annual reporting requirements are extensive and costly to administer. In addition, recent government policy decisions impose levies to meet the costs of the HELP scheme, and full cost recovery for TEQSA and ASQA. Six reviews of system architecture or high-level policy settings are currently underway, resulting in a sector environment of constant change, consultation demands and uncertainty.

Within this there is regularly changing advice on tuition protection requirements. Universal TPS coverage will provide certainty to students, providers and regulators.

IHEA's proposal for universal student protections will reduce red tape through:

- streamlining protection reporting
- ensuring one agency manages all protection requirements
- implementing certainty, transparency and legislative frameworks to the design and costs of tuition protections

Transparent Levies and Costs

Costs of providing tuition protections for independent sector students have massively increased in recent years.

Prior to tuition protection exemptions for FEE-HELP recipient students (issued in 2018 and current), providers were required to insure 100% of their students. With a few exceptions where providers established financial capability and placement capacity to the satisfaction of TEQSA, the vast majority of providers insured through a peak body endorsed Australian Student Tuition Assurance Scheme (ASTAS).

Since 2018, there has been one available TEQSA approved ASTAS scheme, provided by ACPET (now ITECA). Despite the FEE-HELP student exemption reducing the number of students requiring private insurance (ASTAS) coverage, premiums have risen considerably. IHEA members report massive increases in premiums in the last two years.

For example, the College of Law reports rising their insurance costs under ASTAS arrangements:

Year	% of Students Covered	Insurance [ASTAS] Cost (approx)
2017 ²	100 ³	\$40,000
2018 ⁴	40 ⁵	\$101,000
2019	40	\$147,000

Pressures on premiums include reluctance by insurers to cover Australian education institutions following insurance payouts to cover VET FEE-HELP losses. Despite not being involved in the exploitation of VET FEE-HELP, Australia's independent higher education providers experience collateral reputational damage.

Independent providers, most of whom do not have large operational budgets, have limited capacity to absorb cost increases without these flowing on to tuition fees. Whilst IHEAs modelling indicates that universal student protections will reduce costs and subsequently relieve pressure on student fees, this may not be the case for all providers. Application of the maximum allowable levy components of the administrative fee which is then combined with high level determinations of the risk rated premium components, may result in some smaller providers paying higher costs through the levies.

Further, some providers may be able to establish they have sufficient resources and continuity arrangements to ensure tuition protections for all students independent of the TPS.

IHEA welcomes and supports the capacity for the TPS Director and Minister to exempt classes of providers or individual institutions respectively. IHEA trusts that exemptions are issued on the basis of determination that the provider meets all requirements of tuition protection.

IHEA's proposal for universal student protections:

- whilst expected to reduce tuition protection costs, may not reduce costs for all providers
- implements certainty, transparency and a legislative framework to tuition protection costs
- retains the capacity for providers to be exempted through TPS Director or Ministerial decision

Confirmed Regulatory Compliance – Looming ASTAS Availability crisis

There is significant threat that private market tuition insurance through an approved ASTAS will not be available in 2020. ITECA have advised that they are considering discontinuing their ASTAS scheme due to the rising costs of maintaining a viable scheme. IHEA has consulted in the insurance market and has similarly confirmed the difficulty in obtaining coverage. TAFE Directors Australia (TDA) discontinued their ASTAS scheme in 2017.

² In 2017 there were two available insurance (ASTAS) schemes available

³ Prior to the 2018 HESA protections exemption being applied the College was required to cover all students

⁴ In 2018, following withdrawal of approval for peak bodies to provide insurance (ASTAS) to FEE-HELP students, there has been only one available scheme for providers

⁵ The 2018 exemption resulted in providers only having to directly insure full-fee-paying students

A potential compliance crisis looms for the independent sector and non-FEE-HELP recipient students. It is very likely that there will not be an accessible scheme available to protect students who are not covered under the TPS proposed in the draft legislation.

The absence of an accessible ASTAS will result in many low-risk providers being unable to comply with TEQSA requirements, resulting in greater risk for students.

Similarly, the absence of an accessible ASTAS will result in divided cohorts of FEE-HELP (government protected) and Upfront-Fee-Paying (unprotected) students. HEIMS data indicates that one quarter of fee paying domestic students are upfront-fee-paying students – approximately 15,800⁶ students. It is foreseeable that this may stimulate students to choose a HELP loan rather than upfront payment in order to access guaranteed TPS protections.

IHEA's proposal for universal student protections:

- Ensures providers can comply with TEQSA tuition protection requirements
- Mitigates risks to students associated with their provider being unable to access approved ASTAS protection requirements
- Removes the classification of student enrolments into government-protected and non-government-protected cohorts and a potential incentive for students to take out a HELP loan

3.3 Impact on Commonwealth

IHEA's proposal for universal student protections is not expected to add burden to the Commonwealth and will contribute to an increased pool of levy revenue contributed by low risk providers.

HEIMS data indicates that approximately 30% of fee-paying enrolments are Upfront-Fee-paying students (i.e. no FEE-HELP recipients). Excluding these students from TPS protections denies the TPS levy revenue and a greater insurance pool.

Universal student protections will expand the eligibility across the TPS landscape for an additional 16 providers who are not CRICOS or FEE-HELP approved. 14 of these providers are not-for-profit institutions that provide vocational or professional based higher education programs.

Non-FEE-HELP Approved AND Non-CRICOS Registered HEP's

TEQSA Provider Name	Provider Type	Educating :
Australian Chiropractic College Limited	Professional	Chiropractors
Centre for Pavement Engineering Education Incorporated	Professional	Engineers
Chartered Accountants Australia and New Zealand	Professional	Accountants
Commissioner of the Australian Federal Police	Professional	Police
Eastern Health	Professional	Health Clinicians
Governance Institute of Australia Ltd (formerly Chartered Secretaries Australia Ltd)	Professional	Governance Professionals
Kollel Academy of Advanced Jewish Education Limited	Professional	Jewish Education - * No fees charged
Mayfield Education Inc.	Professional	Health practitioners inc nurses and aged care
Montessori World Educational Institute (Australia) Inc	Professional	Early childhood educators
The Australasian College of Dermatologists	Professional	Dermatologists
The Australian Council for Educational Research Limited	Professional	Researchers / Education professionals
The Institute of Internal Auditors-Australia	Professional	Auditors
The Tax Institute	Professional	Tax Agents
Institute for Emotionally Focused Therapy Pty Ltd	Private	Psychologists
Performing Arts Education Pty Ltd	Private	Actors / Screen artists (new provider / small enrolment)
EQUALS International	Private	New HE provider, No HE enrolments in 2019

⁶ Enrolments at Table B, Table C and Non University providers (2018 HEIMS data)

Professional Associations/Institutes/Colleges – NFP

These organisations who are registered HEPs are not-for-profit organisations, at low risk of closure and characterised in the main by the provision of post graduate qualifications to professionals. Whilst course placement options may seem difficult in the event of provider closure, closure is unlikely given the role of these institutions in providing professional qualifications and career advancement.

A pre-envisaged difficulty in placing professional students in the event of provider closure is not sufficient reason for exclusion from TPS coverage. Eligible institutions under the draft legislation includes providers with niche offerings and the TPS provisions provide for the placement of students to the extent that a suitable course is available.

Profession based providers have built business models that do not rely on FEE-HELP or International student revenue. All students are upfront-fee-paying Australian students. Many have operated for a long time and have a mission built on advancement of their professions and the quality/recognition of qualifications rather than generation of revenue from education operations.

Universal access to the TPS enables profession based providers not approved for FEE-HELP to:

- Access to an expanded TPS giving certainty of protections to students, accreditation agencies, employers and industry
- Have certainty of compliance with TEQSA tuition protection requirements
- Reduce compliance costs and red tape through participation in a scheme based on certainty, transparency and a legislative framework

New / Recently Registered Providers

Current arrangements for provider FEE-HELP approval includes a track record of delivery. Whilst ministerial powers enable approval on registration, providers are usually required to have been operating for a minimum of two years before being approved for FEE-HELP.

This results in newly registered providers seeking CRICOS registration to enrol international students in order to establish a record of operation essential to provider FEE-HELP approval. The domestic Upfront-Fee-Paying market is relatively small and understandably concentrated in established providers and courses.

The draft legislation will continue to drive new entrants to Australian independent higher education toward international rather than domestic student markets.

If Australia is to develop a dynamically evolving higher education sector that harnesses innovation and modern entrepreneurship to train Australia's future workforce it is in the national interest for student protections to be guaranteed from the point of new provider registration. A sector funded TPS with universal protections delivers this.

IHEA's proposal for universal student protections:

- Enables TPS protections for Australian students to apply to new providers. This will give confidence and security to students and their families when enrolling with a newly registered provider offering innovative course programs not otherwise available to Australian students.

3.4 Impacts on the Higher Education Sector

Universal student protections will benefit the whole higher education sector through providing stability and certainty to underpin demand management and contribute to recognition of Australia's world-class higher education system as committed to student protections.

Growth

Minister Tehan's speech to the AFR Higher Education Summit in August 2019 identified significant demand pressures for Australian higher education. In particular, the Minister identified that more than 50% of jobs created in the 5 years to 2023 will require a bachelor of higher qualification. In addition, the population numbers of 18-year old's is set to peak in 2024. This follows the cessation of the demand driven system in the public university sector in 2018 and a faster enrolment growth rate in the independent sector.

Effective management of this growth pressure will require policy settings that enable the independent sector to expand to meet student demand, employer requirements and the national interest.

IHEA's proposal for universal student protections:

- Provides certainty to all components of the Australian community that growth demands are managed whilst providing essential protections to Australian students investing in their own education

Sector Reputation and Recognition

Australia's reputation for a world class education system is not built on public universities alone. Independent sector providers enrol a significant component of Australia's critical international education market and 180,000 domestic fee-paying students. In the domestic environment independent providers dominate the highest rankings for quality as determined by students in the Quality Indicators for Learning and Teaching (QILT) surveys.

Unfortunately, however, the reputational damage of VET FEE-HELP exploitation has not been limited to the small number of private VET providers involved and has contributed to general concerns about the protection of students across the tertiary sector – public and independent.

IHEA's proposal for universal student protections:

- Clearly identifies that enrolment with any registered Australian higher education provider is secure and supported by government tuition protections
- Assures the Australian community that all students are protected in the pursuit of the educational aspirations with the provider of their choice
- Demonstrates the Australian government's commitment to a high quality independent higher education sector

4. Independent Higher Education Australia

IHEA represents the majority of Australia's registered and accredited independent higher education providers (including independent universities) with campuses across Australia. IHEA members educate students in a range of disciplines including Law, Engineering, Agricultural Science, Architecture, Business, Accounting, Tourism and Hospitality, Education, Health Sciences, Theology, Creative Arts, Information Technology and Social Sciences. IHEA members are higher education institutions with both for-profit and not-for-profit business models and educate domestic and international students in undergraduate and postgraduate programs.

The Australian independent higher education sector currently enrolls more than 150,000 students in 131 institutions, with independent providers variously accredited to offer courses across the full AQF range (diplomas up to doctorates).

IHEA holds a unique position within the higher education sector as a representative peak body of higher education providers only. Whilst some members are dual sector, only the registered higher education entity affiliates through IHEA membership.

Membership of IHEA is only open to providers that are registered with the Australian regulator – Tertiary Education Quality Standards Authority (TEQSA). Membership is also conditional on agreed continued compliance with IHEA's Code of Good Practice.

IHEA's Code of Good Practice includes a commitment to quality, compliance and ongoing review. The Code requires a commitment to tuition assurance and support in the event of student displacement.

- 4. IHEA members are committed to tuition assurance.** (Extract from IHEA Members Code of Good Practice, 2019)
- 4.1. *Where a course of study is to be discontinued for any reason, IHEA members will either enable students to complete their enrolled course, offer enrolment in a similar course leading to a similar award, or assist transfer to another higher education provider offering a similar course. If such arrangements are not possible, the IHEA member will repay all tuition fees and student contributions for uncompleted units of study as required by legislation.*
 - 4.2. *In the event of a member failure, with or without activation of a Tuition Assurance Scheme (TAS), Tuition Protection Service (TPS) or similar process, IHEA members will take all available actions necessary to minimising disruption to affected students.*
 - 4.3. *Members will use best endeavours to accept any displaced students from other Members, in accordance with admission requirements and their capacity to provide a similar course of study.*
 - 4.4. *Members who are members of an IHEA or its associated TAS must comply with the requirements of the relevant TAS.*
 - 4.5. *Members will maintain student records necessary to meet and maintain the requirements of any TAS or TPS that the member institution contracts*

Further Information

IHEA thanks the Senate Education and Employment Legislation Committee for the opportunity to provide evidence to the inquiry into the Tuition Protection Bills.

We would welcome the opportunity to provide any further information that may assist the Committee and to appear before the Committee to speak to this paper if requested.

Sincerely

Simon Finn
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Contacts

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Appendices

Legislative Framework of Tuition Protections

- The HES Act (HESA) requires higher education providers to comply with tuition assurance requirements. (Ref: 16-30 & 19-40)
- Tuition Assurance requirements are contained in the *Higher Education Provider Guidelines* (the Guidelines) (Ch 2.)
- The TEQSA Act requires providers to ensure all students are adequately protected. (HESF 6.2.1i)
- The ESOS Act provides tuition protections to all international students through the international TPS

Background: Tuition Protection Schemes for Independent Sector Students

- Prior to 2018 two peak bodies - TAFE Directors Australia (TDA) and ACPET (now ITECA) - were approved to provide tuition assurance schemes for Higher Education and VET providers. These schemes enabled access to insurance coverage for tuition fees and course assurance for all students of independent providers. This ensured providers could comply with legislative and regulatory requirements
- In 2017, following the exploitation of VET FEE-HELP by a small number of VET sector providers and failures of underwriters to provide adequate coverage of the losses, approval for the peak bodies to offer protection schemes for VET FEE-HELP (now VSL) and FEE-HELP recipient students was withdrawn.
- Withdrawal of approval for TDA and ACPET to run tuition protection schemes resulted in there being no approved scheme available to independent providers to provide tuition protections to their students.
- In January 2018, the Department issued an exemption from the HESA legislated tuition protection requirements to enable provider compliance whilst they developed alternative protection arrangements. It was intended for alternative arrangements to be in place by 1 January 2019.
- Higher Education Providers approved for FEE-HELP have been exempted from tuition assurance requirements in 2018 and 2019.
- The Exemption however does not provide universal student protections. It only applies to protections for HELP recipient students (i.e. those with a loan under HESA).
- In effect the Department interpreted the definition of 'student' under the HESA Act as a 'HELP recipient student' (i.e. a student with a Commonwealth loan)
- The Higher Education Standards Framework (HESF) within the TEQSA Act require Higher Education Providers to have adequate protections for all students.
- The Department subsequently advised peak bodies that were able to offer tuition protection schemes to providers who enrolled students that do not take out a HELP loan. ACPET implemented an ASTAS scheme that was approved by TEQSA as providing adequate protections.
- In August 2018 Minister Andrews announced that legislation to expand the international TPS to cover domestic VSL and FEE-HELP students would be developed.

IHEA Recommendation – Universal Student Protections in Higher Education

Tuition Protection Status – Independent Higher Education Student Cohorts

Tuition Protection	International Students (Full-Fee Paying)	Australian Domestic Student with a Commonwealth Loan	Australian Domestic Student Upfront-Fee-Paying
Current	Yes – Current TPS	Yes- through exemption from HESA tuition protections	No Exemption protections
Draft Legislation	Yes – Current TPS	Yes – Proposed FEE-HELP TPS	No TPS protections
IHEA Proposal	Yes – Current TPS	Yes – Proposed FEE-HELP TPS	Yes – Expanded Proposed FEE-HELP TPS

