22 September 2020

Senator the Honourable James McGrath
Chair
Senate Standing Committees on Education and Employment

Dear Senator McGrath

Responses to Committee Questions on Notice

I am writing in response to an email message of 18 September 2020 in which the Committee Secretary, Mr Alan Raine, asked me to respond to questions on notice from Senator Carr.

My answers to each of Senator Carr's questions are provided below. Consistent with the approach in the Submission that was lodged in the name of the Melbourne Centre for the Study of Higher Education, I have drawn on the expertise of colleagues at the Centre to ensure the responses are as comprehensive as possible. In particular, I have consulted Dr Gwilym Croucher, Professor William Locke, Mr Ian Marshman and Mr Mark Warburton.

Nevertheless, this response is a personal one and does not necessarily represent the views of my CSHE Colleagues or those of the University of Melbourne.

I have reproduced each of the questions in italics, followed by my response:

1. *The explanatory memorandum for the Bill says … "measures announced as part of the Package produce a net saving of approximately $125 million over the forward estimates, with this saving to be redirected towards additional places, such as short courses or Commonwealth supported places in 2021-22."*

    a) *What is your assessment of these figures?*

The answer depends on what the additional CSP places will include. The proportion allocated between, on the one hand, full degree programme places and short course certificate enrolments on the other, is crucial to estimating the number of places to be funded and I am not aware of the government having published a decision on this.

To clarify, what would normally be understood as a student place is a full-time equivalent (EFTSL) place that is funded for each year of a course leading to a degree. A short course (as currently defined by the government[1]) is funded at a lower level. delivered online over six months, and leads to a certificate or graduate certificate.

[1] (https://www.dese.gov.au/covid-19/higher-education/higher-education-faq)

Assuming that the $125 million represents the cumulative savings that are able to be redirected over three forward estimate years, this would provide $41.7 million per annum. Assuming that they were all directed towards CGS places, at an average government cost of $10,000 per place, and assuming that the total amount would be used to generate such additional places, this level of expenditure would create 4170 places per year. If pipeline is taken into account, this would generate the following indicative pattern:

- 4170 new places in 2021;
- 3336 continuing students and 834 new places in 2022;
- 2836 students in third year, 770 in second year, and 564 new places in 2023

This means that although 4170 places would be funded in each year, the new places would represent 4170 in 2021, 834 in 2022, and 654 in 2023, so a total in the first three years of 5568. By 2024 the 2836 students in third year would have left, so the number of new places could begin to increase again. The pattern is indicative as it is affected by assumptions concerning student retention.

There is no indication that all the savings would be directed towards the creation of CGS degree places, because some are clearly intended for the discounted short courses, so the above figures should be seen as representing the maximum number of full-time equivalent CGS degree places likely to be created.

b) In your view is there anything that binds the 'savings' be redirected, as the EM says, to short courses and CSPs in 2021-22.

There is no provision in the Bill before the Senate that would give effect to the statement in the Explanatory Memorandum that the savings would be redirected to the creation of places, so there is no legislative guarantee.

2. Have we seen this level of ministerial discretion written into an education bill in the past 30 years?

Legislation has often provided for Ministerial discretion, but it has tended to be accompanied by the conditions in which it would be exercised, and it has been limited. In this case Ministerial discretion will be applied to significant funding allocations as well as introducing an unprecedented involvement by the Minister and the Department in the academic judgements of universities, including serious consequences financially and reputationally if they are found to have erred. University autonomy exists by virtue of government policy, so it could be significantly reduced through the provisions of this Bill which extend even further the already existing legislated powers of the Minister.

For example, the Education Legislation Amendment (Provider Integrity and Other Measures) Bill 2017 amended the Higher Education Support Act 2003 (HESA) to include Section 16-60, giving the Minister the power to impose conditions on higher education providers for a variety of matters, and subsection (4) of the section states that there are no limits on the conditions the Minister may impose on the approval of a higher education provider.

While many provisions of that Bill did not apply to universities, Section 16-60 did. Consideration of the full implications of this change at the time was overwhelmed by the widespread concern about the behaviour of various private providers, primarily in the VET sector. These changes expanded the scope of regulation, introduced civil penalties for breaches of conditions of approval and conditions of grant, and have restricted the availability of student loans.

However, changes that were intended to manage a situation in which fraudulent behaviour needed to be controlled captured universities as well as non-university providers, leading to a changed relationship between the government and universities that could potentially reduce the traditional autonomy of universities.

The Bill currently being considered by the Parliament suggests that the inclusion of universities in the 2017 legislation was deliberate and continues the trend of increasing Federal Government power (exercised either by the Minister or the Secretary of the Education Department) to regulate the affairs of universities, including new provisions that would allow government to intervene in their academic domain.

a) *In your view could the Minister for Education intervene on the remuneration arrangements of individual Vice Chancellors and university expenditure decisions?*

The appointment conditions of Vice-Chancellors and university staff generally are matters for Councils which are established under Acts of Parliament, so other than the Minister tying funding, especially discretionary funding, to the size of the salary of the VC and senior staff, it would be difficult.

Nevertheless, Section 16-60 could be used to apply a condition dealing with a Vice-Chancellor's remuneration or other expenditure of a university. Subclause (1) provides that:

> The Minister may impose conditions on a body corporate's approval as a higher education provider. Such conditions need not be imposed at the time notice of approval is given to the provider.

While the legislation states that specific matters may be included in such conditions, subclause (4) makes it clear that the power is not limited to those conditions. It therefore appears that it could be used to deal with a broad range of matters, including those about which you have asked.

In addition, Section 36-70 would appear to enable the Minister to intervene in such matters. This form of intervention would tend to be used by a minister who wished to impose conditions on all higher education providers or a class of higher education provider. The clause reads as follows:

> **36-70 Providers to comply with the Commonwealth Grant Scheme Guidelines**
>
> (1) The Commonwealth Grant Scheme Guidelines may specify conditions that higher education providers must comply with for the purposes of this Division.
>
> (2) A higher education provider must comply with all such conditions in respect of any year for which the provider receives a grant under this Part.
>
> (3) However, the provider need not comply with such a condition during a particular year if the condition comes into force on or after the day on which the provider entered into a funding agreement under section 30-25 in respect of a period that includes that year.

It is important to note that the Commonwealth Grant Scheme (CGS) Guidelines are subject to disallowance by the Parliament. The provision gives very broad scope for the Minister to specify conditions with which universities and other higher education providers must comply. I am not aware of anything that would prevent the CGS Guidelines from dealing with Vice-Chancellor remuneration or university expenditure.

The provisions of the CGS Guidelines contrast with the Minister's power to enter into a CGS funding agreement with a university. While the Minister has a broad power to impose conditions in CGS funding agreements, Section 30-25(2B) precludes the Minister including conditions relating to industrial relations matters. Depending on the interpretation of 'industrial relations matters', this would appear to prevent a funding agreement dealing with the Vice-Chancellor's remuneration, but not with university expenditure. A CGS funding agreement could be used to apply a condition relating to a university's expenditure on a particular university.

3. *Could these changes – coinciding with the current COVID-19 pandemic – put any universities at risk of failure?*

University funding will be affected both by the fall in international student income and a reduction in total funding resulting from the Job-ready Graduates package. The overall annual reduction in government funding is some 15.5%. As can be seen in the Table below, the combined government and student income will reduce by 16.4% in science and engineering and by 17% in mathematics; it increases by 2.4% in IT. There will also be reductions in the total income for other priority areas, with Allied Health at 8.8%, nursing at 7.9%, and languages 0.7%.

Table: Changes in Total per capita funding

Field	Total 2021	Total New	Per capita increase/decrease	% increase/decrease
IT	$20,713	$21,200	$487	2.4
Mathematics	$20,713	$17,200	($3,513)	-17.0
Health	$20,713	$21,200	$487	2.4
Allied health	$23,245	$21,200	($2,045)	-8.8
Nursing	$21,929	$20,200	($1,729)	-7.9
Engineering	$28,958	$24,200	($4,758)	-16.4
Science	$28,958	$24,200	($4,758)	-16.4
Agriculture	$34,144	$30,700	($3,444)	-10.1
Dental	$35,801	$38,300	$2,499	7.0
Environmental studies	$34,144	$24,200	($9,944)	-29.1
Medical science	$35,801	$24,200	($11,601)	-32.4
Medicine	$35,801	$38,300	$2,499	7.0
Vet science	$35,801	$38,300	$2,499	7.0

Universities may decide to focus on enrolling more Arts, Law and Business students because they will generate the highest margins to counterbalance the losses in the priority areas. However, if all universities are in the same position and adopt the same strategy, the more prestigious and financially secure will likely be preferred by students, leaving the weaker institutions even less secure.

An analysis of the Department's *Finance 2018 – Financial Returns of Higher Education Providers* shows that in 2018, with one minor exception, every University would have reported a net operating deficit if revenue from international students were deducted from their income. The report suggests that several universities would be at risk if they were to lose significant income from international students in addition to the savings measures now being proposed. That a large number of universities have begun to reduce staffing levels and postpone infrastructure spending would suggest that they are at some risk. Whether this leads to failure is another question because some will have significant reserves, but the majority do not. It is important to note in this regard that the substantial proportion of university assets are non-current, with a very large proportion in buildings and infrastructure as well as specific purpose trusts. For a recent analysis of universities' resilience in the face of a collapse in international student income I draw the attention of the Committee to a paper by Mr Ian Marshman and Professor Frank Larkins.[2]

However, the Department has no doubt conducted a risk analysis based on the information it has received from universities, and conducted its own investigations of the severity of any identified risk, so it would be prudent to seek clarification from it.

4. *The Department's submission says that "The Government's assessment of the cost of delivering a course was informed by* ***Deloitte*** *research based on university self-reported data on the cost of delivery of teaching and scholarship."[1] How does that observation fit with Deloittes warnings about use of their data[2]:*

> *"The key limitations of this analysis are set out […] below. These limitations were recognised at the outset of this exercise and are ongoing challenges faced by exercises of this nature. … An ongoing challenge faced by universities is the accurate attribution of costs between teaching and research functions and costs, recognising that these are often interrelated."*

   a) *Have any other reviews justified this package of reform?*

I draw the attention of the Committee to an article that appeared in *Campus Morning Mail* on 15 July 2020 in which I comment on the Deloitte Report[3]. The government itself has stated in its Job-ready Graduates package discussion document that it relied on the Deloitte Access Economics analysis, and I am not aware of any other work having been done. However, I am obviously not privy to what other modelling or analysis might have been commissioned by the Department to support its advice to the Minister.

In my experience there have not been examples of such far-reaching changes to funding arrangements being based on a report that was not commissioned to answer the particular question. The report makes clear that it should be used with care, and that it does not provide a solid basis to support significant funding changes because of the several caveats it identifies. These include that only 32 universities participated; 13 were not able to attribute costs between levels of education and faculty; and data gathering was not uniform across institutions. The report also states that while recognising that CGS funding is intended to cover some level of base research, this was excluded from its definition of teaching and scholarship. It also failed to take account of infrastructure and building and maintenance costs.

Yours sincerely

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[2] Marshman, I. & Larkins, F., "Modelling Individual Australian Universities Resilience in Managing Overseas Student Revenue Losses from the COVID-19 Pandemic (https://melbourne-cshe.unimelb.edu.au/lh-martin-institute/fellow-voices/modelling-individual-australian-universities-resilience-in-managing-overseas-student-revenue-losses-from-the-covid-19-pandemic).

[3] Massaro, V., "Funding model inadequate on teaching quality and standards", *Campus Morning Mail*, 15 July 2020 (https://campusmorningmail.com.au/news/funding-model-inadequate-on-teaching-quality-and-standards/?utm_campaign=website&utm_source=sendgrid.com&utm_medium=email)