



Member Driven Advocacy  
Independent Tertiary Education Council Australia

ITECA Submission

## Higher Education Support Amendment (Response to the Australian Universities Accord Interim Report) Bill 2023

Putting students at the heart of tertiary education.

August 2023

## Executive Summary

### Tertiary Education that Delivers For Australia's Future

The Independent Tertiary Education Council Australia (ITECA) is the peak body representing independent providers in the skills training, higher education and international education sectors. ITECA writes as the Committee considers the Higher Education Support Amendment (Response to the Australian Universities Accord Interim Report) Bill 2023 and key matters relevant to the Bill.

Australia can be proud of our tertiary education system as a whole and its components: skills training, higher education, and international education. Across these, there is a network of public and independent providers that have a collective commitment to excellence and quality. The latter operate within robust regulatory frameworks that are overseen by both the Australian Government as well as State and Territory governments.

Australia's 144 independent higher education providers support around 162,000 students from advanced diploma to doctoral degree level and across a wide range of discipline areas. Independent higher education providers focus on their students; they embody excellence, delivering specialised degree programs and personalised experiences for diverse student cohorts, while delivering sector-leading student experience outcomes. Yet students accessing higher education degree programs with independent providers is not treated equitably by governments when compared with their colleagues at public institutions. ITECA seeks to ensure that these discriminatory arrangements cease.

#### Overarching Priority — A Positive and Effective Approach to Reform

One of the most critical elements to the successful reform of any sector is for governments to ensure they work toward securing the support and engagement of the sector participants. Imposing change on a regulated community without consulting them, in a manner and timeframe that has not been the subject of any engagement is not a way to engender support for future reform direction.

This approach has no place in modern Australia.

While independent providers do not represent the largest or most vocal cohort of providers in the sector, independent providers fulfil a critical role, responding to and supporting student and employer demand. A role that is often left vacated by large public institutions.

The independent skills training sector supports more than 4 million students in training to attain their goals. At the same time, the independent sector delivers the highest satisfaction rates for students and employers across the country.

Troy Williams  
ITECA Chief Executive  
Canberra, August 2023

Felix Pirie  
ITECA Deputy Chief Executive – Policy & Research

*“Independent higher education providers focus on their students; they embody excellence, delivering specialised degree programs and personalised experiences for diverse student cohorts, while delivering sector-leading student experience outcomes.”*

[ITECA Reference: N4.11.7]

## Key Recommendations

### Consultation that Delivers Clarity on Reform

Independent providers support more than 89% of the more than 4 million students in engaged in skills training across Australia and around 10% of the 1.6 million students in a higher education awards program. That's a total of more than 4.2 million students who are supported by approximately 3,900 independent business organisations delivering tertiary education to students across Australia.

The possibility of profound effects arising for the independent higher education sector from the passage and implementation of the Higher Education Support Amendment (Response to the Australian Universities Accord Interim Report) Bill 2023 (the HESA Bill) is very real. While ITECA Higher Education supports aspects of the HESA Bill, notably removal of the "50% pass rule", remaining features cause significant concern.

Although the overarching and broad concepts of the HESA Bill have been raised with the sector through the prism of the Universities Accord process, the absence of any real consultation by the Australian Government on the HESA Bill and its provisions is a significant challenge to the sector being able to engage behind this reform project.

ITECA Higher Education has consistently advocated for both greater equity of access to all of tertiary education, as well as the removal of discriminatory aspects in the policy design of the existing frameworks across the sector. It is not clear that the HESA Bill as framed achieves either of these aims and that is both frustrating and unfortunate.

#### Recommendation – An Improved Consultative Mechanism

That the HESA Bill be more fully considered in the context of possible detrimental effects on institutions that deliver support services to students, particularly through the need to fully engage and consult with the sector on the detail of proposed provisions and how they are expected to be implemented.

That the expertise of the independent higher education sector be included in the legislative drafting process as a way of ensuring the experiences of institutions that deliver student support firsthand and on a daily basis are incorporated.

#### Recommendation – Clarity on Regulatory Requirements

That the Australian Government's engage with the sector on the detailed proposals in the HESA Bill and discuss with the sector the consequences these requirements may have for institutions and students.

#### Recommendation – A Reasonable Timeframe for Implementation

That the Australian Government work with the sector on an agreed and reasonable timeframe for implementation of the proposed requirements in the HESA Bill.

## Higher Education Support Amendment (Response to the Australian Universities Accord Interim Report) Bill 2023

### An Improved Consultative Mechanism

ITECA Higher Education is of the firm view that to be effective when seeking to regulate business sectors, legislative changes must appreciate the intricacies of the businesses it seeks to regulate and the outcomes they are seeking to deliver.

A foundation of achieving this is ensuring prior consultation with the regulated business sectors before the introduction of the relevant legislative changes. Engaging in prior consultation serves multiple crucial purposes:

**Grounded Understanding:** Businesses possess in-depth, practical knowledge about their operations, challenges, and dynamics. Their insights can prevent the creation of regulations that are either too lax, failing to protect public interests, or too restrictive, inadvertently stifling innovation and economic growth.

**Feasibility and Implementation:** By consulting businesses, legislators can ensure that proposed rules are feasible and do not impose disproportionate burdens. This aids in smoother implementation and compliance.

**Building Trust:** Engaging businesses in the legislative process promotes a sense of partnership. When businesses feel that their perspectives are valued, they are more likely to collaborate and adhere to the spirit, not just the letter, of the law.

**Future-proofing Legislation:** As markets evolve, legislation should not become obsolete or counterproductive. Input from businesses can help craft forward-looking regulations that stand the test of time.

*“Prior consultation with regulated business sectors is not merely a procedural step; it is a cornerstone of enlightened and responsive legislative governance.”*

In sum, for legislation to be both effective and efficient, it is fundamental that the perspectives and expertise of those directly affected by it are heard and integrated into the design process. Prior consultation with regulated business sectors is not merely a procedural step; it is a cornerstone of enlightened and responsive legislative governance.

ITECA Higher Education members are of the firm view that student support arrangements play an indispensable role in ensuring the delivery of top-tier programs. These supports, spanning academic, emotional, and logistical spheres, act as scaffolds that foster an environment conducive to optimal academic, learning and personal growth. As students navigate the rigorous curricula of independent programs, tailored support mechanisms ensure they remain engaged, resilient, and motivated.

Given the diverse student body often found in independent institutions, these supports are vital in addressing varied needs, promoting inclusivity, and reducing levels of attrition. Ultimately, a well-rounded education is not merely about information dissemination; it's about holistic development, problem-solving, and resilience-building. Without robust student support, even the most academically sound programs risk falling short of their potential, underscoring the inextricable link between student support and academic excellence in independent higher education.

ITECA Higher Education is confident that members appreciate these issues and deliver support mechanisms for students consistent with existing obligations including those under the Higher Education Threshold Standards as

well as the National Code of Practice for Providers of Education and Training to Overseas Students 2018 (the National Code).

In the context of the existing obligations and placed on all higher education providers and their demonstrated commitment to meeting them to support students, it is both perplexing and worrisome that the independent higher education sector, which is directly affected by the proposed measures in the HESA Bill, was not consulted during its drafting and prior to its introduction to the Parliament.

This omission prevents the legislation from benefiting from the collective insights and experiences of institutions that deliver student support firsthand and on a daily basis.

#### Recommendation/s

- That the HESA Bill be more fully considered in the context of possible detrimental effects on institutions that deliver support services to students, particularly through the need to fully engage and consult with the sector on the detail of proposed provisions and how they are expected to be implemented.
- That the expertise of the independent higher education sector be included in the legislative drafting process as a way of ensuring the experiences of institutions that deliver student support firsthand and on a daily basis are incorporated.

## Higher Education Support Amendment (Response to the Australian Universities Accord Interim Report) Bill 2023

### Clarity on Regulatory Requirements

The Higher Education Support Amendment (Response to the Australian Universities Accord Interim Report) Bill 2023 (the HESA Bill) currently before the Parliament provides for considerable regulatory impact on independent higher education institutions. The HESA Bill is vague about the specifics of what may be required for incorporation within the "support for students policy."

Such ambiguity may lead to inconsistent and potentially inequitable interpretations across different institutions. This can jeopardise the very objective of the legislation by allowing gaps in the quality and nature of support offered to different students at different institutions. At the same time, however, the HESA Bill stipulates that the detail of the regulatory arrangements that will be set out in Guidelines that are yet to be drafted and the detail of which are a complete mystery to institutions to institutions, at the time the HESA Bill was introduced to Parliament.

To put it another way, at the time the HESA Bill was introduced to Parliament, higher education institutions were being told they would be regulated against a new set of requirements, the detail of which they did not know and were not briefed on. Further, non-compliance with these new mystery requirements would attract significant financial and reputational penalty, and knowledge of the detail of these requirements would be available only sometime after the legislation came into force.

ITECA Higher Education has raised a number of issues in the context of the provisions of the HESA Bill that are the cause for some concern across the independent higher education sector. Among these are:

**Detail on application of provisions:** The HESA Bill is not clear on the application of the provisions to students and student cohorts. For example, feedback from members has raised a number of concerns including **whether requirement for a "support for students policy" apply in respect of each student at the institution who may be at risk of not successfully completing a unit of study.** Further, it is not clear **whether the measures in the HESA Bill apply only to students in receipt of a Commonwealth Grant Scheme place and / or funding under the Higher Education Loan Program.**

**Detail on 'At Risk' Students and Units of Study:** The proposal does not adequately define the term 'at risk' when referring to students. Are these students at academic risk, mental health risk, or financial risk? Furthermore, does the measure apply to every single unit of study? Such intricacies can greatly influence the scope and logistics of the support programs. In addition, **the lack of clarity as to how institutions are to identify students at risk of not successfully completing a unit (e.g. through a complaints mechanism) is concerning in light of substantial penalty provisions.**

**Student Complaints:** The current draft does not provide a clear mechanism or procedure for student complaints against institutions in the context of this

*"Is the intent of this policy measure to penalise institutions in every instance where an 'at risk' student does not successfully complete a unit, citing inadequate support?"*

policy. This oversight can lead to unresolved grievances and potential legal complications for institutions.

These are a small number of issues of detail raised by ITECA Higher Education members.

### Penalty provisions

In addition to the issues raised above, the manner in which the alignment of the penalty provisions in the HESA Bill are designed to function is causing significant concern among independent higher education institutions. The provision for penalties is particularly troubling. Is the intent of this policy measure to penalise institutions in every instance where an 'at risk' student does not successfully complete a unit, citing inadequate support?

Such a mechanism could be easily exploited and is likely to place an undue burden on institutions across the sector.

The penalty provisions in the HESA Bill are set at 60 penalty units, which currently amounts to \$18,780 per instance of non-compliance. ITECA Higher Education has significant concerns with the lack of detail and clarity regarding the application of the penalty provisions. Some of these include in circumstances such as the following:

- There is **uncertainty as to whether the penalty provisions apply in each instance** where a student complains they were not adequately supported to successfully complete units of study they were enrolled.
  - That is, **uncertainty as to whether an institution may be liable for a penalty of \$18,780 each time a student complains** they were not adequately supported to pass units.
  - There is similar uncertainty as to what the

The penalty provision also applies to a new requirement to report to the Minister about compliance with the support for students policy. However, there is yet to be any detail offered on what is required in these reports to the Minister and what the cadence of these reports might be.

- An institution that does not comply with the requirement to report to the Minister is liable for a \$18,780 fine.
- There is also uncertainty as to **whether the \$18,780 fine can be applied for both:**
  - Not providing the report to the Minister on time; and
  - Not including the mandated information (currently unknown) in the report.

### Recommendation/s

- That the Australian Government's engage with the sector on the detailed proposals in the HESA Bill and discuss with the sector the consequences these requirements may have for institutions and students.

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### Unintended Consequences

ITECA Higher Education recognises the Government's well-intentioned policy intentions to ensure student success in higher education. In pursuing these intentions, however, it is imperative to consider potential ramifications, particularly concerning academic integrity, potential shifts in provider behaviour with respect student enrolment, as well as the likely additional financial, regulatory and reputational implications of the HESA Bill.

While the intent behind the HESA Bill is inarguably noble, its current form poses a slew of challenges and ambiguities. ITECA Higher Education strongly urges the Government to reconsider the details, engage in active consultation with the higher education sector, and refine the proposal to ensure it is pragmatic and effective.

The policy objective to support 'at risk' students is laudable. However, the potential consequences for academic integrity and the possible changes to student enrolment behaviours of higher education institutions are significant. That is to say nothing of the likely significant financial and regulatory challenges the HESA Bill presents.

Regulations must be designed with careful consideration of these nuanced challenges, ideally in close consultation with higher education stakeholders. A balanced approach that safeguards academic integrity while providing genuine support to students is essential. Such an approach will ensure that our institutions continue to produce graduates of the highest calibre without compromising on inclusivity and diversity.

**Cost Implications:** The implementation of such a broad policy as provided for in the HESA Bill will inevitably impose significant financial, staffing, and regulatory burdens on higher education providers.

This is particularly concerning given that independent higher education institutions were not afforded the opportunity to provide feedback or assess the feasibility of such provisions prior to their introduction to the Parliament.

**Academic Integrity in Higher Education:** The cornerstone of higher education is its commitment to academic rigor and integrity. The proposed intervention could inadvertently pressure institutions to lower their academic standards to ensure that 'at risk' students pass, thereby jeopardising the essence of academic excellence.

An intervention, if not carefully calibrated, might manifest in the form of added pressure on academic faculty to pass students or adjust grading scales. This can lead to a culture where the value of a degree is diluted, and the rigorous academic standards that our higher education system is renowned for are compromised. Furthermore, it may disadvantage those students who genuinely meet the required standards, as their hard work and achievements could be viewed with scepticism in light of diluted standards.

**Effects on Student Enrolment Behaviour:** When legislation makes it mandatory for institutions to intervene with 'at risk' students at a preventative stage in the

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manner the HESA Bill does, those institutions may inadvertently become risk-averse in their enrolment strategies. That is, the legislative requirements may create an environment that incentivises discrimination against students from academically disadvantaged backgrounds.

Institutions, to avoid the repercussions of having 'at risk' students not successfully completing units, might become more selective, potentially sidelining students from disadvantaged backgrounds or those who don't fit the traditional mould of an 'ideal' student. This could reinforce existing social disparities, as these students often require more support to bridge educational gaps that have been evident well before entry to tertiary education.

Moreover, providers might lean towards enrolling students who exhibit clear signs of academic excellence, neglecting the broader holistic attributes that many institutions value, such as leadership, community involvement, or resilience. Such a shift could transform the diverse and vibrant student community that our institutions currently celebrate.

ITECA Higher Education views potential outcomes such as these as highly detrimental to Australia's tertiary education framework, as well as to the broader social, economic and broader national policy goals of the nation.

The Government has been outspoken and very clear that it seeks to expand access to higher education for students from disadvantaged and under-represented backgrounds. A policy measure such as that provided for in the HESA Bill is likely to have the opposite effect and actually restrict access to higher education for those same students.



## Higher Education Support Amendment (Response to the Australian Universities Accord Interim Report) Bill 2023

### A Reasonable Timeframe for Implementation

ITECA Higher Education seeks a timeframe for implementation of legislative change that enables appropriate and reasonable transition for independent higher education providers delivering high quality degree programs and who are eager to continue supporting students reach their life and career goals.

Legislation can often be a catalyst for growth, innovation, and societal progress. However, the manner in which legislative changes are implemented can significantly influence their ultimate impact on businesses. A reasonable timeframe for transitioning to new regulations is crucial.

The Higher Education Support Amendment (Response to the Australian Universities Accord Interim Report) Bill 2023 (the HESA Bill) includes changes to the overall regulatory framework that will likely have a substantial effect on the operating environment of independent higher education institutions. These legislative changes have been introduced into the Parliament without consultation and without engagement on the detail they will contain. Rather, the changes comprise broad requirements, penalty provisions and unintended consequences.

Moreover, the HESA Bill stipulates that these legislative requirements commence from the date of Royal Assent. That is, the requirements could likely come into force in time for the end of the 2023 academic year.

Abrupt legislative change without consultation catches business unprepared, placing undue strain on resources, including time, finances, and personnel. A sudden and significant shift can cause businesses, especially small and medium-sized enterprises, to scramble, potentially leading to unintended oversights, and non-compliance. This can not only jeopardise the viability of the business but can also compromise the intended positive effects of the legislation.

A realistic transition timeframe allows business to understand, plan for, and assimilate the changes effectively. Properly integrated changes are likely to yield more sustainable and meaningful benefits, aligning with the legislation's intent. Providing an adequate period for implementation fosters collaboration and engagement between regulators and business, which can often result in smoother implementation, thus improving regulatory efficiency.

#### Recommendation/s

- That the Australian Government work with the sector on an agreed and reasonable timeframe for implementation of the proposed requirements in the HESA Bill.

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The Independent Tertiary Education Council Australia (ITECA) is the peak body representing independent providers in the skills training, higher education, and vocational training sectors.

ITECA members are united, informed and influential.

Members come together, through ITECA, to create an environment in which providers can offer students and their employers the quality outcomes they are looking for.

If you're interested in working with others that share your commitment to quality in order to improve the reputation of the independent tertiary education sector, get involved in ITECA today.

[www.iteca.edu.au](http://www.iteca.edu.au)



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