



Queensland University of Technology
submission to the
Senate Education and Employment Legislation Committee
inquiry into the provisions of the
Higher Education Support Amendment (Response to the
Australian Universities Accord Interim Report) Bill 2023

Introduction

QUT thanks the Senate for the opportunity to comment on the provisions of the Bill.

This Bill seeks to amend the *Higher Education Support Act 2003* (HESA) to implement two priority actions recommended by the Australian Universities Accord Panel in its Interim Report and agreed to by Government, namely to:

- ‘Ensure that all First Nations students are eligible for a funded place at university, by extending demand driven funding to metropolitan First Nations students’; and
- ‘Cease the 50% pass rule, given its poor equity impacts, and require increased reporting on student progress.’

We are pleased to tender our advice to the Senate through the Committee regarding the provisions of the Bill.

Schedule 1 – Amendments

Part 1 – Indigenous Students

Extension of demand driven funding

QUT supports this Part in its entirety, to ensure that demand driven funding is available to all Indigenous Australians engaging in non-designated bachelor degree and bachelor honours degree level study, regardless of domicile.

Part 2 – Supporting Students to Succeed

Repeal of 50 per cent pass rule

QUT supports clauses 10 and 12, which repeal the sections of HESA currently giving effect to the ‘50 per cent pass rule’, and the directly consequential clauses 7, 8, 9, 11, 13, 14, 15, 16 and 17, which remove references to the repealed sections.

Support for Students Policy

QUT supports in principle the intent of clause 6, which inserts a new section 19-43 – Support for Students Policy, while harbouring some concerns about the potential scope for unreasonable requirements to be imposed by future governments through the Higher Education Provider Guidelines (pursuant to clauses 19-43(2)(b), 19-43(3) and 19-43(6)).

The Committee will be aware that the Department of Education has issued a [Support for Students Policy Guidelines Consultation Paper](#), in which it consults on measures that might be mandated in the Guidelines. While this is a welcome exercise there is no certainty that the sector will be consulted in future, nor that future regulatory requirements will be consistent with the intent of the present Bill and the Accord Panel's initiating recommendation. For example, by issuing updated Guidelines it would be a simple matter for a future Minister to restore the '50 per cent pass rule' by non-legislative means; or to effectively prohibit universities from enrolling students of certain characteristics if those characteristics are likely to adversely affect the students' likelihood of progression and success.

QUT has concerns about the effect of certain measures the discussion paper proposes to be included in the Guidelines under the authority of clauses 19-43(2)(b), 19-43(3) and 19-43(6). Some of these measures could inadvertently drive institutions to reduce their exposure, with potentially unintended consequences for the underlying policy objective of the Bill and the Australian Universities Accord to increase access. Some measures may entail the obligation to intrude unacceptably on student privacy, such as seeking information in personal, financial and medical matters that could adversely affect successful completion.

QUT recommends that the provisions of the Bill be amended to remove the referral to the Higher Education Provider Guidelines and to instead insert specific measures within section 94-13 of HESA. This will enable the Senate to ensure that requirements imposed under this Bill do not have unintended consequences and that the Bill's intent is observed into the future.

Application of Amendments

QUT strongly recommends the amendment of clause 18, Application of Amendments, to ensure that Section 19-43 of HESA takes effect from the start of the 2024 academic year, rather than upon Assent, since there is no plausible prospect that providers will be able to comply immediately with all of the requirements of the new HESA section 19-43 without a minimum reasonable preparation time.

Our university has policies and procedures that broadly address the concerns of the Bill. We already comply with them, except in respect to any new obligations about their financial wellbeing or health status. We have also begun examining the effect of any prospective changes. For example, immediately upon learning of the Bill and the probable new requirements under HESA, QUT started to examine its suite of policies and identifying the work required to meet these potential new obligations. Notwithstanding this diligent anticipation of regulatory change, QUT will need reasonable time to consolidate, publish and publicise existing policies; augment and clarify them in accordance with the Bill's requirements, including but not only those specified in the forthcoming updates to the Higher Education Provider Guidelines; and enhance procedures to demonstrate and report compliance with the policies. Application upon Assent will not provide providers reasonable time to undertake this essential work.

In its consultation paper the Department of Education advises that 'providers will be expected to meet the requirements of the Guidelines by the start of the 2024 academic year' (p.13), which we are prepared to take on faith – although we note that the Department's consultation period does not close until two days after the Legislation Committee is required to report to the Senate.

However, there are other provisions of the new section 19-43 of HESA, outside those referring specifically to the Higher Education Provider Guidelines (19-43(2)(b), 19-43(3) and 19-43(6)), which are not subject to this assurance. Indeed, as the Department notes, '[u]ntil

the Guidelines are in effect, given existing policies, providers are expected to have a policies [sic] in place that meets the minimum requirements in the Amendment Bill' (p.13).

The amendment of clause 18 to ensure that Section 19-43 applies from the start of the 2024 academic year, relating to both new and continuing students, would bring providers' Support for Students Policy obligations under other parts of section 19-43 into alignment with their obligations under the forthcoming Guidelines.

The Universities Australia (UA) common [calendar](#) is predicated on Monday 26 February being the first day of the 2024 academic year. Some universities commence earlier or later than the indicative UA commencement date. Almost all universities hold summer sessions that extend across the Christmas period; the Department's assurances regarding 'the start of the 2024 academic year' are understood to refer to the commencement of the autumn session following the summer session, however named and of whatever duration. If application of 19-34 'from the start of the 2024 academic year' is too difficult to legislate we would recommend application from a defined suitable date in early 2024.

Explanatory Memorandum

Further, while we recognise that the present inquiry is concerned with the provisions of the Bill itself, QUT signals that we have additional concerns with elements of the accompanying Explanatory Memorandum (EM). We are especially concerned about expectations that potentially entail a broader and deeper scrutiny on the part of providers into the affairs of particular students, and the recording of facts and opinions regarding those students, than is currently customary – potentially including intrusions into student privacy (such as their financial, medical, and cultural contexts) beyond the scope generally deemed appropriate and acceptable.

The scale of the student cohort (about 46,000 domestic students) and the nature of their study patterns – taking classes across different campuses and crossing between study modes (on-campus, online and hybrid) – is vastly more complex than a secondary school environment from which some of the language in the EM seems to be derived.

Given the significance of Explanatory Memoranda to judicial interpretation of legislative intent, providers will be obliged to take account of the EM's considerations of scope in order to satisfy themselves that they are giving effect to their obligations to the extent expected by the Parliament. There may be predictable but unintended consequences of these parts of the EM that could antagonise the specific objective of the Bill and the Government's broader objectives in expanding access, participation, progress and success in higher education to various groups of Australians who are currently under-represented. The EM also fails to acknowledge the additional resource requirements, for both providers and Government, of the considerations it countenances as part of the provision of support for students.