

Higher Education Support Amendment (Maximum Payment Amounts and Other Measures) Bill 2012

Introduced into the House of Representatives on 12 September 2012

Portfolio: Innovation, Industry, Science, Research and Tertiary Education

Purpose of the bill

1.2 This bill:

- amends the *Higher Education Support Act 2003* (HESA) to update the maximum payment amounts for Other Grants and Commonwealth Scholarships, to account for changes in indexation and to add the next funding year (Schedule 1);
- amends the *Australian Research Council Act 2001* to update appropriation amounts to apply indexation and to insert a new funding cap for the last year of the forward estimates (Schedule 2);
- amends the HESA to permit a wider disclosure of information (including personal information) obtained or created for the purposes of the HESA, to a range of entities, for the purposes of assessing, amongst other things, the impact of the Government's higher education and VET reforms and to conduct surveys of staff, student and former student. (Schedule 3).

1.3 The statement of compatibility notes that the updates to the Other Grants and Commonwealth Scholarships in schedule 1 of the bill advances the right to education in article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

1.4 The statement also identifies that the measures relating to the use and disclosure of information contained in schedule 3 of the bill engages the right to privacy in article 17 of the International Covenant on Civil and Political Rights (ICCPR).

1.5 Article 17 of the ICCPR provides that no one shall be subjected to arbitrary or unlawful interference with their privacy. Collecting, using, storing, disclosing or publishing personal information amounts to an interference with privacy. In order for the interference not to be 'arbitrary', the interference must be for a legitimate objective and be reasonable, necessary and proportionate to that objective.

1.6 The statement states that the information-sharing measures in the bill are aimed at the legitimate objective of improving the provision of higher education or vocational education and training and for research relating to the provision of higher education and training, including research relating to quality assurance or planning the provision of higher education or vocational education and training. According to

Any Member or Senator who wishes to draw matters to the attention of the committee under the *Human Rights (Parliamentary Scrutiny) Act 2011* is invited to do so.

the statement, personal information, including use of the Commonwealth Higher Education Student Support Number, is also required to construct accurate and robust survey sample frames to assess the quality of teaching and learning.

1.7 The statement provides the following reasons for concluding that any interference with the right to privacy is reasonable, necessary and proportionate to those objectives:

- Disclosure is limited to a defined set of entities and information may only be disclosed for the permitted purposes prescribed in the bill;
- All higher education and vocational education and training providers must ensure that their privacy agreements are up to date and meet legislative requirements and that privacy notices provided to students meet the requirements of the *Privacy Act 1988*;
- The Secretary of the Department may only disclose information provided by a higher education or a VET provider to the staff of the other providers or other bodies or associations determined by the Minister if the provider consents to that disclosure;
- The measures contain provisions whereby it is an offence for the people to whom HESA information is disclosed to use HESA information for a purpose that is not a permitted purpose or to disclose HESA information to external bodies where it is personal information or VET personal information;
- Groups to whom personal information is disclosed will be required to comply with confidentiality and information-handling requirements specified in the Higher Education Data Protocols.
- Where personal information is disclosed to a third party engaged by the Department to conduct surveys of staff, students or former students, this will be under a contract of services that requires the third party act to act as though it were an agency bound by the Privacy Act.

1.8 The committee considers that these provisions are unlikely to raise issues of incompatibility with the right to privacy given that any interference with the right to privacy would appear to be necessary to achieve the stated objectives of improving the provision of higher education or vocational education and training, which can be considered to be legitimate objectives. Further, the provisions appear to be drafted with sufficient precision and contain appropriate safeguards to ensure that the degree of interference is proportionate to those objectives.