

Higher Education Support Amendment (Savings and Other Measures) Bill 2013

Portfolio: Education

Introduced: House of Representatives, 21 November 2013

Summary of committee concerns

1.124 The committee seeks further information about the impact of the proposed changes on the right to education and, to the extent that they may involve limitations of that right or are retrogressive measures, a clear statement of justification for the measures.

Overview

1.125 This bill seeks to amend the *Higher Education Support Act 2003*, which provides for funding of education providers and the basis of the government's income contingent loan programs, to make savings in higher education expenditure.

1.126 The bill proposes to:

- remove the existing HECS-HELP up-front payment discount. Currently, a 10 per cent discount is applied to up-front student contribution payments of \$500 or more;
- remove the HELP voluntary repayment bonus, which currently reduces a person's HELP debt by an additional 5 per cent of the payment amount for voluntary repayments of \$500 or more; and
- apply an efficiency dividend of 2 per cent in 2014 and 1.25 per cent in 2015 to Commonwealth contribution amounts under the Commonwealth Grant Scheme.

Compatibility with human rights

Statement of compatibility

1.127 The bill is accompanied by a statement of compatibility that states that it engages the right to education. The statement of compatibility notes that article 13(2)(c) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides that higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.

1.128 It also states that '[t]he purpose of schedules 1 to 3 is to amend the *Higher Education Support Act 2003* (HESA) to make savings in higher education expenditure.'

Committee view on compatibility

Removal of HECS-HELP up-front payment discount and HELP voluntary repayment bonus

1.129 The measures set out in Schedules 1 and 2 will, it is estimated, save the government the sum of \$276.7 million over four years (2013–14 to 2016–17). The result of these measures would appear to be that for some students – those who wish to pay upfront -- the amount of the fees payable will increase. The committee is not clear as to what the likely impact of these two measures on students will be. In particular, the committee is not clear as to the likely impact of the measures on the accessibility of higher education. The committee notes that students do have the option of deferring payment.

Efficiency dividend

1.130 The measures in Schedule 3 (the ‘efficiency dividend’) will result in cuts of \$902.7 million over four years (2013–14 to 2016–17) to the sums provided to universities through subsidies for Commonwealth supported students. Given that there is no suggestion that there will be a reduction in student numbers, this would appear to constitute a substantial cut to the funds provided to universities and may have an adverse impact on the ability of universities to realise fully the right to education of students. As such, the measure would appear to be either a limitation on the enjoyment of the right to education or a retrogressive measure.

1.131 To the extent that these changes involve a limitation on the enjoyment of the right to education, they must be justified. Article 4 of the ICESCR provides that the enjoyment of the rights guaranteed by that Covenant may be restricted but only by

such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

1.132 Insofar as the changes can be characterised as retrogressive measure, this committee’s predecessor (the former committee) noted that retrogressive measures affecting the enjoyment of economic, social or cultural rights have to be clearly justified:

A deliberate retrogressive measure has been described to mean any measure which implies a backwards step in the level of protection of ICESCR rights as a consequence of an intentional decision by the state and includes any unjustified reduction in public expenditure in the absence of adequate compensatory measures aimed to protect the affected individuals. Deliberate retrogressive measures are not prohibited per se under international human rights law but will require close justification,

even during times of severe resource constraints, whether caused by a process of adjustment, economic recession, or by other factors.⁶⁵

1.133 The statement of compatibility does not address these matters. The committee expects that where funding cuts of this sort are made that the statement of compatibility should provide some assessment of the practical impact on the enjoyment of the rights affected and, if the enjoyment of those rights is to be affected, then a justification should be provided.

1.134 The committee intends to write to the Minister for Education to seek further information about:

- (a) the likely impact of the removal of the up-front payment discount and voluntary repayment bonus on university students; and**
- (b) the impact of the proposed changes on the enjoyment of the right to education and, to the extent that they involve limitations of that right or are retrogressive measures, to request a clear statement of justification for the measures.**

65 Parliamentary Joint Committee on Human Rights, *Social Security Legislation Amendment (Fair Incentives to Work) Act 2012, Final Report, Fifth Report of 2013*, pp 16-17.

