

The Senate

Standing Committee on
Employment, Workplace Relations
and Education

Higher Education Legislation Amendment
(2007 Measures No. 1) Bill 2007
[Provisions]

May 2007

Membership of the Committee

Members

Senator Judith Troeth	LP, Victoria	Chair
Senator Gavin Marshall	ALP, Victoria	Deputy Chair
Senator Guy Barnett	LP, Tasmania	
Senator George Campbell	ALP, New South Wales	
Senator Mitch Fifield	LP, Victoria	
Senator Ross Lightfoot	LP, Western Australia	
Senator Anne McEwen	ALP, South Australia	
Senator Natasha Stott Despoja	AD, South Australia	

Participating Senators

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Committee Report

1.1 The Senate referred the provisions of the Higher Education Legislation Amendment (2007 Measures No. 1) Bill 2007 (the bill) to this committee on 21 March 2007 for inquiry and report by 1 May 2007. The bill will primarily amend the *Higher Education Support Act 2003* (HESA), although amendments will also be made to the *Higher Education Funding Act 1988* (HEFA) and the *Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003* (TCA). The committee called for submissions and received seven.

National Protocols

1.2 The main provisions of the bill give effect to changes to the *National Protocols for Higher Education Approval Processes* (the national protocols) agreed by the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA) at its July 2006 meeting. The key changes aim to increase the number of universities and university colleges engaged in teaching and research, to allow authorised institutions other than universities to accredit their own courses, and to apply the national protocols to all higher education institutions. These changes will take effect from 31 December 2007 and are also to be incorporated into state and territory legislation.

1.3 Legislative implementation of the revised national protocols implements the Commonwealth's policy to encourage a more diverse higher education sector. The revised national protocols allow for the emergence of specialist universities which concentrate teaching and research efforts in one or two broad fields of study, and for provisional 'university colleges' to develop into new universities under the sponsorship of established universities. These new institutions will serve new and varying community requirements. The government's intention is for more diverse and quality higher education to respond to international markets and to promote choice for students, and encourage competition.

1.4 Submissions to the committee unanimously supported the objectives of the national protocols but expressed some reservations regarding various provisions of the bill. These concerns essentially revolved around maintaining and protecting the quality and standards of higher education.

Assurance

1.5 The Group of Eight (Go8) applauded diversity in the higher education sector and stated that the revised national protocols will be beneficial 'so long as the

government remains vigilant about ensuring that the quality assurance mechanisms contained in HESA are rigorously enforced'.¹

1.6 The National Tertiary Education Industry Union (NTEU), while generally agreeing with the Go8, was more critical and identified particular provisions of the bill as posing a significant risk to the higher education industry and consequently requiring further consideration and monitoring.

1.7 One such provision was the expanded definition of the term 'university' to include 'specialist universities' and 'university colleges'. A specialist university will offer higher education awards (such as research masters and PhDs) in only one or two broad fields of study and a university college may offer the same awards in only one field of study for the first five years after establishment.²

1.8 The NTEU submitted that the modified term could produce a reduction in discipline breadth and depth if higher education providers were to compete on a range of 'profitable' courses. Market driven rivalry could undermine the revenue basis of established universities and lead to the break-up of some current universities as profitable disciplines or faculties split away to set up their own operations. The reduction in discipline breadth could also constrain the development of high quality curricula and innovation, narrow research capacity across the higher education sector, and undermine research quality by diminishing the capacity for inter-disciplinary collaboration.

Discipline breadth enables universities to provide a range of inter-disciplinary links that create the necessary synergies between research, teaching and learning that is required in the production and advancement of knowledge. It is this characteristic that distinguishes universities from other higher education providers.

The introduction of different types of universities, including overseas universities and their awards, accredited in their country of origin but being offered within Australia, risks confusing students about exactly what type of education they are enrolling in and the nature and quality of our system.³

1.9 The NTEU believed that the ultimate effect of this amendment might be a diminution of the national and international reputation of Australia's universities and the quality of higher education they deliver.

1.10 The Federation of Australian Scientific and Technological Societies (FASTS) strongly supported the objectives of the national protocols though it queried whether the current model provides for sufficient diversity in a dynamic higher education system. In an argument similar to the NTEU, FAST was concerned that

1 Group of Eight, *Submission 3*, p. 1.

2 National Tertiary Education Industry Union, *Submission 5*, p. 1. See also Federation of Australian Scientific and Technological Societies, *Submission 7*, p. 2.

3 National Tertiary Education Industry Union, *Submission 5*, p. 2.

implementation of the revised national protocols might result in private providers 'cherry picking' lucrative areas, and that it might result in stratification of higher education institutions characterised by a large rump of low quality bulk provision of mediocre education and training.⁴

1.11 FASTS recommended that the operation of the revised national protocols be reviewed in five years time to gauge the effects on the higher education sector and to assess how rigorously quality assurance and evaluation mechanisms have been applied.⁵

1.12 Amongst submitters only the NTEU even partially considered the position of foreign universities in terms of the bill. The NTEU submitted that overseas higher education providers, accredited through their country of origin and seeking to operate in Australia, should be subject to more rigorous scrutiny, including public consultation. Not only was this required for transparency, accountability and confidence, but also equality as Australian applicants seeking to operate as universities will be subject to such processes.

Implementation

1.13 The second major argument presented in relation to the revised national protocols was that of consultation and implementation.

1.14 The Australian Vice-Chancellors' Committee (AVCC) expressed concern with how existing higher education providers will demonstrate compliance under the proposed Protocol Guidelines (the guidelines). The AVCC noted that the available draft guidelines lack considerable detail, yet are expected to be implemented in 2008. The amount of lead time will be extremely short and the AVCC questioned whether higher education providers will be able to properly and fully implement the guidelines by the beginning of 2008.⁶

1.15 The AVCC also submitted that unless stakeholders are able to assess and contribute to the (complete) guidelines, the Higher Education Approvals Processes might contain unintentional flaws or consequences. These could lead to 'sub-optimal' outcomes for the higher education sector, the need for further legislative amendment, and unnecessary burdens for universities.⁷

4 Federation of Australian Scientific and Technological Societies, *Submission 7*, p. 1.

5 Federation of Australian Scientific and Technological Societies, *Submission 7*, p. 2.

6 Australian Vic-Chancellors' Committee, *Submission 2*, p. 1.

7 Australian Vice-Chancellors' Committee, *Submission 2*, pp 1-2. See also Federation of Australian Scientific and Technological Societies, *Submission 7*, p. 2.

1.16 The NTEU went one step further in recommending that the bill be held over till the guidelines are complete, noting that the bill should not undermine one of the very purposes that it is designed to fulfil.⁸

Administration of funding

1.17 The bill also contains a number of measures to improve the administration of the Higher Education Loan Program (HELP) and arrangements for Commonwealth supported students. These amendments are directed toward clarifying the requirements for assistance and support, and allowing providers to advise students of Commonwealth support for cross-institutional study where one or both of the higher education providers are not Table A providers. The former measures primarily enable students to apply for OS-HELP assistance if they are already overseas, and require Commonwealth supported students to reside in Australia while undertaking their studies, unless part of their course of study requires overseas residency. Permanent residents will not be entitled to Commonwealth support or HECS-HELP or FEE-HELP assistance if they undertake their entire course of study overseas. The latter measure provides more flexibility for providers and extends the range of study options available to Commonwealth supported students.

1.18 Most submissions described the administrative provisions of the bill as 'minor' and 'technical', however, at least one submission was wholly concerned with the issue of student debt and fees.

1.19 The Students' Representative Council (SRC) specifically supported two of the amendments but was critical of the bill for failing to address the issue of fees remission or refund where a student has through special circumstances been forced to discontinue study. The problem described was twofold. First, as the application process is currently linked to the re-crediting of the Student Learning Entitlement, the process applies only to subjects undertaken subsequent to 1 January 2005. Second, under the act, a university can elect to extend the application process beyond 12 months, otherwise that strict time limit applies. The SRC pointed out that special circumstances, primarily medical circumstances, can sometimes take considerable time to be known. Consequently, the SRC argued that special circumstance students should be allowed to apply for remission or refund in respect of subjects undertaken prior to 1 January 2005 and irrespective of the time limit.⁹ It appeared that the SRC was suggesting that the bill be used to remedy a perceived fault within the act.

Establishing entitlement to support

1.20 HESA, HEFA and TFA will be amended to limit the time for students to claim an entitlement to Commonwealth support: HESA and TFA will allow students six weeks from the census date to correct information to establish the entitlement, and

8 National Tertiary Education Industry Union, *Submission 5*, pp 1-3.

9 Students' Representative Council, *Submission 6*, pp 2-3.

HEFA will clarify that students can no longer establish the entitlement under that act. The amendments will be effective from 1 January 2008 to allow sufficient lead time to inform students and higher education providers of these new time limits.

1.21 While a few submissions briefly noted these provisions of the bill, none were critical of the amendments. This was in contrast to views on the provisions regarding the Research Quality Framework (RQF).

Appropriation for the Research Quality Framework

1.22 This is partly an appropriations bill, which provides an additional \$40.8 million (in current year prices) for the period 1 July 2007 to 31 December 2010 to support the implementation of the RQF. In particular, the funding will support the activities and systems required for participating institutions to engage effectively and efficiently with the RQF, including the Australian Scheme for Higher Education Repositories (ASHER) program (\$24.9 million) and the Implementation Assistance Programme (IAP) (\$15.9 million).

1.23 Support through the ASHER programme will enable higher education providers to place their research outputs (such as journal articles, digitised artworks, x-ray crystallography images, et cetera) in an accessible digital store. This digital store will first be made available to assessment panels for the determination of the distribution of research funds. There are two key assessment criteria, namely, that the research must be of the 'highest quality and highest impact'.¹⁰

1.24 The RQF is intended to ensure that taxpayers' money is invested in high quality research, which delivers benefits to the universities and the community, and demonstrates the government's commitment to achieving excellence in research. The major criticisms of the RQF were present in a number of submissions which generally argued that the RQF is flawed in terms of achieving its objectives, is poorly funded and not yet ready for implementation.

Resource allocation

1.25 The NTEU noted that to date there is no detail as to exactly how the quality and impact assessment results will translate into funding outcomes. The paucity of detail, it was argued, is critical as the details have the potential to effect a considerable redistribution of the public research funds allocated across the higher education sector. In the absence of information, universities will not know whether it is in their best interests (in terms of their funding) to be highly selective in the choice of which research groups and staff to include in evidence portfolios or whether they should maximise the number of research groups and staff included. There is also an issue as to whether the various expert assessment panels will have sufficient time to conduct a genuine peer review of submitted materials. This could 'force' the panels to rely

10 Department of Education, Science and Training, *Submission 4*, p.3.

heavily on problematical research metrics (such as in the arts and humanities). In view of these concerns, the NTEU recommended that the bill not effect the RQF provisions until funding and assessment process details have been finalised and agreed to by the higher education sector.¹¹

1.26 FASTS expressed similar concerns detailing a number of issues which will have major impacts on internal distribution and the profiles of institutions:

It is not possible to make any real assessment of the impact of the RQF in terms of driving behaviours, including mobility or concentration of resources at institutional or research group level until a preferred resource allocation model is available.¹²

Research benefit

1.27 Several submissions adopted a different approach, instead questioning the criterion of 'highest impact'.

1.28 The Students' Representative Council (SRC) had reservations about the increased funding on the basis of questionable benefit and cited the experience of the UK and New Zealand suggesting that any benefit would have to be substantial to offset significant administrative costs. The SRC was especially concerned that the RQF will do little to support and stimulate humanities research and suggested further consideration should be given to evaluating the quality and value of research. It is possible that these concerns would be addressed by the implementation of the Australian Technology Network of Universities (ATN) suggestion.¹³

1.29 The ATN submission described its recent study, conducted in conjunction with Murdoch University, which concluded that research value can be credibly defined, validated and assessed across many research fields. Accordingly, the ATN advocated the inclusion of its processes for evaluating impact as an integral part of the RQF, or any alternative national research assessment framework which will consider publicly-funded research.¹⁴

1.30 While the SRC and ATN were concerned with research value, the Go8 continued to question the RQF model and its implementation. The Go8 does not believe that the stated policy outcomes will be achieved and instead advocated a preference for a validated metrics-based approach to the quality and impact assessment. The committee could not say with certainty whether this type of assessment was that proposed by the ATN. The committee noted that FASTS

11 National Tertiary Education Industry Union, *Submission 5*, p. 4.

12 Federation of Australian Scientific and Technological Societies, *Submission 7*, p. 2.

13 Students' Representative Council, *Submission 6*, p. 2. See also National Tertiary Education Industry Union, *Submission 5*, pp 4-5 and Productivity Commission Research Report, *Public Support for Science and Innovation*, 9 March 2007, p. 501.

14 Australian Technology Network of Universities, *Submission 1*, p. 2.

endorsed giving higher priority to the contextual validation of research metrics due to the relative absence of internationally recognised end-user measures for evaluating higher education research, and the lag-time in end-user impact.¹⁵

1.31 Despite the Go8's reservation, with the endorsed RQF model proceeding from mid 2008, the Go8 welcomed the additional funding provided in the bill to help offset the significant costs of the program.¹⁶

Compliance costs

1.32 The Go8 was the first submitter to comment on the costs of the RQF. The Go8 advised that university block grants are under considerable pressure with Go8 institutions shouldering most of the \$500 million cost supplementation burden due to their relative success under competitive schemes. The Go8 suggested that 'institutions are far more likely to accept the administrative burden the RQF will place on them, if they know that there are likely to be rewards for strong performance'. The Go8 therefore indicated that an increase in the overall block grant envelope be further considered as a means of rewarding high quality and high value research.¹⁷

1.33 These sentiments were echoed in the submission from the NTEU which was generally supportive of the RQF objectives but thought that the government's announced \$87.3 million in funding over the three year period 2007 – 2009 would be wholly inadequate to compensate universities for the real costs of RQF compliance. It noted that only 16.4 per cent of the allocated funds (through the IAP) will be available to universities to offset compliance costs. The NTEU was concerned that universities will need to divert resources away from their core activities of teaching, research and community service to effect RQF compliance.

1.34 The NTEU specifically recommended that the funding made available to universities through the IAP be increased to a minimum of \$40 million which has been estimated by the AVCC as universities' realistic compliance costs. This recommendation was strongly supported by FASTS as a means of enhancing universities' capacity to set research missions and to 'ensure a robust and credible RQF could become an effective instrument in terms of driving a more strategic management of Australian research'.¹⁸

1.35 FASTS also addressed an issue created by the 2001 changes to resource allocation. These changes introduced capping measures and compensation for regional

15 Federation of Australian Scientific and Technological Societies, *Submission 7*, pp 2-3.

16 Group of Eight, *Submission 3*, pp 2-3.

17 Group of Eight, *Submission 3*, p. 3. See also Federation of Australian Scientific and Technological Societies, *Submission 7*, p. 3 which submitted that the matching fund requirement is likely to be in excess of \$500 million.

18 National Tertiary Education Industry Union, *Submission 5*, pp 4-5 and Federation of Australian Scientific and Technological Societies, *Submission 7*, p. 3.

institutions with the intention of reducing significant increases and losses to institutions. FASTS believes that limiting funding increases is an inefficiency of the RQF model and counterproductive as it might discourage full engagement with the process if the potential rewards are so constrained.¹⁹

1.36 The NTEU also took the opportunity in its submission to raise certain issues beyond the scope of the inquiry but considered by the NTEU to significantly and adversely affect the international reputation of Australian universities and the professional and industrial rights of staff employed within the sector. The committee has noted these comments in relation to higher education research and will seek further information from the NTEU at an appropriate time.²⁰

Policy summary

1.37 The committee notes the criticisms made by higher education stakeholders of the provisions of the bill. In the experience of the committee over the past ten years, changes to the regulation of universities have involved a great many iterations and considerable refinement of legislative provisions to achieve desired outcomes. It is highly likely that criticisms made of the legislation – bearing mostly on detail – will be addressed as implementation proceeds at least to the extent that the current concerns of stakeholders require alteration.

1.38 The committee believes that this bill demonstrates the government's strong commitment to higher education and will enhance the quality and diversity of Australia's higher education system, and the choices available to students. It reflects the government's commitment to ensuring that the research and higher education sectors continue to play a vital role in Australia's economic, cultural and social development.

Recommendation

The committee majority commends this bill to the Senate and urges its passage without amendment.

Senator Judith Troeth
Chairman

19 Federation of Australian Scientific and Technological Societies, *Submission 7*, p. 2.

20 National Tertiary Education Industry Union, *Submission 5*, p. 6.

ADDITIONAL COMMENTS BY THE AUSTRALIAN DEMOCRATS

1.1 The Australian Democrats consider a strong higher education sector to be critical to Australia's ability to respond to the social, economic and environmental challenges facing this country.

1.2 The *Higher Education Legislation Amendment (2007 Measures No. 1) Bill 2007* is intended to amend the *Higher Education Support Act 2003* and other legislation to alter the National Protocols for Higher Education Approval Processes and secure funding for the implementation of the Research Quality Framework (RQF).

1.3 While the Democrats have no in-principle objections to the proposed amendments in this Bill, we do support the concerns raised by the National Tertiary Education Union (NTEU) that many of these provisions appear premature when key policy decisions concerning the National Guidelines and the Research Quality Framework (RQF) have not yet been finalised.

1.4 The Australian Democrats echo the NTEU's call for additional funding for universities to help them implement the RQF. The current figure of \$16.4 million allocated to the Implementation Assistance Programme is likely to be totally inadequate as a means of helping the tertiary education sector to adapt to the significant administrative burden that the RQF may generate.

1.5 The Democrats continue to have strong concerns about the directions in which Howard Government policy is forcing the higher education sector, particularly with regard to radical and questionable reforms like the RQF. As such, we reserve the right to move amendments to this legislation when it is brought before the Senate.

Senator Natasha Stott Despoja

Appendix 1

Submissions received

Sub No	Submitter
1	Australian Technology Network Group of Universities
2	Australian Vice-Chancellors' Committee, ACT
3	The Group of Eight Ltd, ACT
4	The Department of Education, Science and Training, ACT
5	National Tertiary Education Industry Union, VIC
6	Federation of Australian Scientific and Technological Societies, ACT
7	Students' Representative Council University of Sydney, NSW