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9 November 2018

Senator Slade Brockman
Chair
Senate Standing Committee on Education and Employment
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Senator Brockman

The Group of Eight (Go8) represents Australia's leading research-intensive universities. Go8 members deliver Australia 100,000 quality graduates each year. As Go8 Chief Executive I am writing to provide a brief submission following the referral of the Higher Education Support Amendment (Cost Recovery) Bill 2018 and the Higher Education Support (Charges) Bill 2018 (the Bills) to the Committee.

In the 2018 Budget, the Government announced it would recover the cost of administering the Higher Education Loans Program (HELP), with those arrangements to commence on 1 January 2019. Since that announcement, the higher education sector has been promised consultation re this unacceptable cost recovery model.

Consultation has not occurred — even as required by the Australian Government Cost Recovery Guidelines. This is untenable given 1 January is less than two months' away.

In total this is a demonstrably pernicious policy; it is a tax on public institutions dressed up as recouping administrative costs. The Go8 therefore registers its strong objections to the Government's unacceptable policy proposal:

- There is no clear rationale for the tax.
- The Bill taxes universities for a service provided by Government to students.
- Minister Tehan has suggested universities will raise revenue from students to meet the cost recovery charges. Universities do not have the power to charge students to pay for an additional Government tax; and the Go8 institutions would not.
- As drafted, the Government will, through the Charges Bill, levy a **tax on universities in respect of activities the Department does not undertake, and from which universities are exempt.**
- The Government is seeking to **charge for activities that are unrelated to the administration of the HECS-HELP and FEE-HELP schemes.**
- There is no indication in any explanatory material that the Department will be seeking to deliver its own internal efficiencies in respect of any of the activities covered by the Charge.

In the absence of any consultation and engagement from Government the Go8 recommends these Bills be rejected by the Senate.



Discussion

This is a blatant tax on universities

The Explanatory Memorandum to the Charges Bill is clear: “the Bill provides for an annual charge to be imposed on higher education providers (as defined in HESA), as a tax. “

It is the equivalent of introducing a new tax on doctors, one levied for each patient they see, to assist Government pay for the administrative costs of Medicare.

In an environment that has been characterised by inadequate and incoherent funding arrangements for universities, introducing a tax on learning and teaching funding, one that unashamedly targets student participation, is a backward step. The Go8 acknowledges that there are costs associated with administering HELP loans however these costs are a public investment in our university system – and investment that is more than outweighed by the returns to the economy and the community as clearly demonstrated in the recent impact analysis undertaken for the Go8 by London Economics.

This analysis showed that our universities contribute some \$66.4 billion to the national economy each year - impact derived from research and our students.

The Charges Bill will impose a tax on universities for providing each student who receives a HELP loan, with a study position at their institution. The HELP loan payments benefit students. These HELP loan payments are then provided to the universities to undertake teaching and learning activities in respect of student degree programs.

Therefore, it is very clear that using the student loans program as an excuse, these Bills impose taxes on the teaching and learning activities of universities.

With the tax design only revealed by Government at the very last minute and the sector still waiting on any meaningful consultation, passage of these Bills would provide Government the power to levy the tax with Regulations to be made by the Governor-General under the Charges Bill that establishes the details of how the tax is applied each year.

Consultation

The Charges Bill provides that Regulations will be made that specify the amount of the Annual Charge payable by a higher education provider in a year. The Explanatory Memorandum to the Charges Bill indicates *‘it is anticipated’* that the Charge specified in these Regulations will differ according to provider size. This raises a significant issue; with less than two months before the charging framework is planned to come into force, the Government is yet to engage in any meaningful way with stakeholders on how *‘it anticipates’* these apparent costs will be recovered.

*It was only late on 31 October 2018, two days before submissions to this Inquiry closed, that the Department released a Cost Recovery Implementation Statement (CRIS) to inform consultations.



The short time allowed for submissions to the CRIS process – coincidentally the same date as the reporting date for this Committee – suggests **the Government is not open to genuine feedback on the CRIS proposals.**

The Australian Government Cost Recovery Guidelines (the Guidelines) require a CRIS to be developed, and for Governments to consult on that CRIS, before finalisation of any charging mechanism.

This presents universities with a ridiculous situation: the apparent cost of administering the HECS-HELP and FEE-HELP elements of the Loan Program must have been identified and closely costed through the process for the 2018 Budget. Yet despite that, some five months later, the sector is only now presented with a framework on how these apparent costs will be recovered one month before legislation is to be passed.

While the Government demands substantial amounts of data from across very complex organisations, in very short timeframes, the Government is unable to consult those same organisations on data and issues that have been readily at its disposal for some months.

The *Australian Government Cost Recovery Guidelines* state:

“Entities are also expected to consult on draft legislation. Where possible, consultation on the draft cost recovery model and draft legislation should be streamlined, while giving stakeholders adequate opportunity to provide feedback.”¹

The Guidelines also state that ‘stakeholder feedback should inform the final design of the cost recovery model and be documented in the CRIS.’²

There was no consultation on draft legislation. Instead this was introduced without warning. Such lack of consultation on draft legislation prior to introduction can lead to the potential for damaging unintended consequences and the need to revise legislative frameworks. This in turn diminishes trust in the regulatory and quality assurance partnership with Government.

Currently, it is difficult then to see how the views of the Go8 and others in the sector will inform a final CRIS in any meaningful way, given the charging framework is scheduled to commence in less than two months’ time.

Double-dipping

It is not clear how the design of the cost recovery model facilitated by the Charges Bill will avoid double-dipping for the work undertaken by the Tertiary Education and Quality Standards Agency (TEQSA) in respect of the *Higher Education Support Act 2003* (HESA).

For example, the CRIS states that the “department regulates higher education providers who can offer courses under HECS-HELP and FEE-HELP, to ensure that providers are financially viable, making available required

¹ *Australian Government Cost Recovery Guidelines*, July 2014, p44

² *Ibid*, p43



information to current and new students and complying with reporting obligations and legislative requirements.”³

This presents some confusion. In Senate Estimates hearings on 25 October 2018, the Department gave evidence that financial viability requirements are assessed by ‘external experts’ and the financial viability requirement is *only applied to non-university providers*.

On that basis, the Go8 would anticipate that design of the Charge would ensure universities are specifically exempted from any elements of the Charge that seeks to recover for these types of activity.

Similarly, the CRIS states the Department undertakes reviews of provider policies and procedures in a number of areas including, but not limited to, fair treatment and equal opportunity procedures, student grievance procedures, student refund and review processes, and personal information procedures.⁴ These are all areas under the regulatory and quality assurance domain of TEQSA and functions for which TEQSA already levies cost recovery charges from providers.

Indeed, TEQSA will be increasing these charges as it moves to a full cost recovery model.⁵ If the Department were to seek to recover the cost of undertaking activities from the same entities as TEQSA when the Department has simultaneously provided evidence that it relies on the regulatory work of TEQSA in this area, it would have serious ramifications for the efficacy of Australia’s higher education regulatory framework.

- Issues of role confusion in the regulatory architecture were a culprit in the inadequate implementation and monitoring VET-FEE HELP. These were identified in the design of the scheme, but ultimately not acted upon, resulting in the scheme’s cost increasing more than 820 per cent in three years to over \$3 billion.

Seeking to recover the cost of administering the HELP scheme alongside other activities when some of those other activities appear to be undertaken by TEQSA, which is simultaneously moving to full cost recovery following Government decisions also announced in the 2018 Budget, indicates the Government would be ‘double-dipping’ in its cost recovery. The Government will be taxing higher education providers twice for the same thing.

That might be analogous to the Commonwealth *and* States both levying income tax then spending the revenue on the same services for taxpayers.

Go8 universities **will not** to raise revenue from students

In his second reading speech, Minister Tehan stated that “...higher education providers will be required to meet the cost for the regulatory arrangements from revenues they raise from students.” The Go8 suggests some clarification on this crucial point.

³ COST RECOVERY IMPLEMENTATION STATEMENT: Cost recovery activities for HECS-HELP and FEE-HELP programs; Financial Year 2018-2019; DRAFT FOR Consultation; Department of Education and training, October 2018, p4

⁴ Ibid, p.8

⁵ TEQSA Budget Statements 2018-19



The Minister's statement implies that universities will be required to charge students – directly and proportionally – on the basis of their HELP loan status in order to meet the universities' new taxation (cost recovery) obligation to Government.

Currently, universities do not have authority to charge students and nor will Go8 universities seek to charge our students. It seems clear then, that the Government's intention (while avoiding stating it) is that the costs be absorbed by each university.

The result of this policy would be that universities will be required to pay the tax from funds set aside for teaching and learning activities. This will in effect tax the teaching and learning activities of universities and, consequently, tax the learning of university students.

Exemptions

The Charges Bill establishes that the Regulations may provide for exemptions for higher education providers from the annual charge. The Regulations are yet to be drafted and there is yet to be consultation, aside from the very early stage consultation on the CRIS that will inform the regulations.

The Charges Bill does not appear to enable a provider or critically, a class of providers, to be exempted from an element of the annual Charge. Although the Charge will be calculated based on component parts, there is no capacity for a provider or class of providers to be exempted from inclusion in one of those component parts.

The CRIS sets out that one element of the Charge is annual financial viability checks, and these are levied against all higher education providers, including Table A universities. Under HESA, however, the requirements for compliance with HESA are set out in Subdivision 19-E. Subdivision 19-80 establishes that "[T]he Minister may require a higher education provider (other than a Table A provider) to be audited as to compliance with any one or more of the following requirements:

(a) The financial viability requirements;

....."

This understanding of the HESA exemption was confirmed by evidence from the Department to the recent Senate Estimates hearings on 25 October 2018:

Senator STOKER: "...Let me ask this, then: in relation to the matters set out in division 19, how does the department monitor whether universities are complying with those conditions?"

Mr English: The financial viability requirements are assessed by us using expert advisers, and that financial viability assessment is only applied to non-university providers.

Senator STOKER: To non-university providers?

Mr English: To non-university providers. The quality requirements in 19-C—you'll see that they meet the threshold standards defined within the TEQSA Act, and we rely on TEQSA's assessment of the compliance with the threshold standards."



The Go8 is very keen to ensure the Government is not seeking to recover costs for work that it is not able to undertake in respect of universities. On the understanding that universities are exempted from financial viability checks, as outlined in HESA and as clearly stated in very recent evidence from the Department, the Charge should be completely redesigned and at the very least, universities exempted from this element.

Span of activities

In the context of the design of the Charge, the Go8 is concerned about the scope of activities that appear to be considered for the proposed Charge.

For example, the cost of managing the annual higher education provider workshops (in 2018 these were held at the National Convention Centre in Canberra) are included as a cost recoverable activity. This understanding, from the Budget announcement, in the Minister's speech and the Explanatory Memorandum to the Charges Bill, establishes that the intent is to recover costs associated with administering the HECS-HELP and FEE-HELP schemes as well as data collection and compliance.

It is difficult to see, therefore, how an activity such as the workshops can be included in this span of activities. For example, the agenda for the 2018 workshops included VET Student Loans Ombudsman Best Practice complaint handling, an update on the Australian Qualifications Framework review, a panel discussion on rural and regional education, a VET sector update, a MySkills website version 4.0 (and training.gov.au) update, and sessions on tuition assurance obligations for providers. On the latter, Table A providers are exempted from complying with the tuition assurance obligations established in HESA that these sessions were about.

The Government has announced the expansion of the successful Tuition Protection Service (exclusive to overseas students) into non-university higher education providers offering FEE-HELP programs and that non-exempt providers will pay a levy based on size and risk. This reflects the funding arrangements for the TPS where all Table A universities are exempted from a risk-rated premium, reflecting their very low risk to the TPS.

In the context of the current charging framework and Charges Bill in particular, however, the Government proposes to levy a tax on universities in respect of information sessions for a scheme that universities are exempt from.

Again, this suggests that either the Charges Bill requires amendment to ensure universities are exempted from elements of the proposed Charge, or that proposed cost recovery arrangement is abandoned on the basis of it being a bad policy poorly executed.



Efficient cost and Budget projections

The 2018 Budget papers shows the forecast revenue for this measure as follows:

Higher Education Loan Program - partial cost recovery	2019-20 \$ 000	2020-21 \$ 000	2021-2022 \$ 000	Total \$ 000
Administered revenue	\$ 9,806	\$ 10,230	\$ 10,665	\$ 30,701

Source: Department of Education and Training Budget Statements 2018-2019, p16

Despite this, the CRIS circulated by the Department shows the combined revenue that will be raised by the combined Charge and Fee (for initial registration as a FEE-HELP provider) will be:

Higher Education Loan Program - partial cost recovery	2019-20 \$ 000	2020-21 \$ 000	2021-2022 \$ 000	Total \$ 000
Administered revenue	\$ 3,620	\$ 3,740	\$ 3,850	\$ 11,210

Source: Department of Education and Training Draft Cost Recovery Implementation Statement, 31 October 2018

- The total from the CRIS does not include \$500,000 expected to be raised through the registration fee in 2019 from providers seeking to offer FEE-HELP.

The significant discrepancy between these figures (the CRIS revenue is more than 63 per cent less than the Budgeted figures) has not been explained.

For a sector weary from successive cuts and unwelcome surprises, an explanation for such a serious difference between the Budgeted revenue and the numbers put forward consistent in this Bill is essential to allay – well based – concerns that additional cuts or taxes might be on the horizon.

In giving authority to the cost recovery mechanism through the Charges Bill, the Government has not simultaneously identified any efficiencies the Department will introduce to streamline the management of the HELP Scheme to ensure the ongoing efficient cost of the scheme.

Inefficient program management can arise from poor procurement practices, poor staff and financial management and other factors that lead to inefficient costs which are often highlighted in the public-sector context.

It would be unfortunate if lack of efficiency in the broader management of the functions over which the proposed cost recovery mechanism has coverage, is identified in the Portfolio Charging Review. In that case, there are two likely scenarios:

- A rebasing and increase of the Charge and Fee; or
- A reduction in service provision (for example through data collection and analysis) to reduce the cost base.

Neither of these are acceptable to the Go8.



The issue of data collection and analysis is noted in the Explanatory Memorandum as being an area of activity under the cost recovery banner. The Go8 is concerned this highlights a broader policy inconsistency. The data collection and analysis used through the Higher Education Data Collection is fundamental to a range of policies and programs managed by universities and the Government. This includes the work the Department is currently undertaking in respect of the Government's policy to implement performance contingent funding for universities.

Through this measure, the Government is now seeking to require universities to pay for Government to collect and analyse university data where there may well be zero benefits to universities, and where there is a 'benefit' the maximum it can be, will be less than inflation-based costs.

If there is an effort to glean yet more administrative efficiencies from universities through the operation of the HELP scheme, it is amazing that there are no efficiencies identified for the scheme and related programs. Instead, these Bills appear to facilitate a blatant case of cost-shifting from Government to universities.

The Go8 does not support these Bills.

Cost recovery should not be used as a Government euphemism for new taxation.

The Go8 recommends the Committee reject these Bills.

I look forward to the opportunity to discuss this submission with you.

Yours sincerely

VICKI THOMSON
CHIEF EXECUTIVE