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Submission by Mr Michael Gallagher

to the Senate Education and Employment References Committee

re the Higher Education and Research Reform Bill 2014 and related matters

This submission addresses two of the seven matters referred to the Committee: (a) principles; and (b) alternatives to deregulation.

The principles of the higher education reform Bill

It is assumed that this matter relates to the principles underpinning the new 2014 Bill as presented by the Government. The following assessment relates the provisions of the Bill to the Go8 "Guiding principles for higher education" outlined in 2011, which are the most comprehensive contemporary set available. The results are shown in Table 1.

Table 1. An assessment of the 2014 Bill against Go8 principles

Go8 Principles 2011	**Higher Education & Research Reform Bill 2014**
Opportunity: Participation in higher education should be open to all who can benefit and wish to do so. It should not be limited arbitrarily, for instance, by government policy settings and funding constraints that restrict privately funded options.	The Bill provides for the expansion of opportunity. It continues the policy of uncapped undergraduate places introduced by the previous government in 2008. It leaves the determination of ability-to-benefit with the admitting providers. Nobody is excluded from participating on the basis of government-set quotas on the availability of student places. The Bill provides additionally for pathway places at the sub-Bachelor degree level. These places will be of most benefit to those students who have not been well prepared for direct entry into Bachelor level study. The previous government had excised sub-Bachelor programs from the demand-driven system.

	The Bill provides for students to study with non-university providers, public and private, without discrimination as to provider type. It makes available both tuition subsidies and income-contingent loans on the same basis irrespective of provider, except that providers of 'university' status will be paid more per student in consideration of the research roles that universities are expected to perform. Thus the Bill expands access more broadly than under any previous policy regime.
Fairness: Access to higher education should be fairly available, without systemic barriers to participation. Students should neither be deterred by up-front costs nor denied the opportunity to pay what they can afford.	The Bill provides for horizontal equity among students by removing the previous bias in tuition subsidies and HELP loans that favoured students enrolled with public universities over those enrolled with non-university providers, public and private. The Bill improves vertical equity among students by redistributing a proportion of the extra tuition that some students are willing to pay to provide scholarships for less-advantaged students, including stipends to meet living costs while studying, thereby, enabling students to devote more time to learning and thus raise their prospects for successful completion. The Bill also improves the fairness of community contributions to the costs of providing higher education by raising the proportion that graduates as direct beneficiaries pay and thereby lowering the levy on non-graduate taxpayers who generally have lower incomes than graduates. For graduates, the increased contribution represents a fair and reasonable proportion of their annual income, without imposing unrepayble debt at any time. The structure of HELP loans is such that there are no financial barriers to access by students from any socio-economic group.
Choice: Students should be free to select the higher education opportunities that best suit their needs and interests. The growing diversity of learner needs and circumstances requires greater opportunity for students to determine the trade-offs that suit them best in terms of quality, convenience, ways and means of learning, and cost.	The Bill extends student choice by expanding and diversifying the forms of higher education provision. Students will have wider options regarding where, when and how they study and for what price. The Bill provides for the current tuition subsidy and HELP loan arrangements (that favour students at public universities) to be even-handed across all providers, so that student choice is not distorted by biassed policy incentives.

Quality: Higher education should meet acceptable threshold standards of quality. Higher education performance may well vary above the threshold. Quality should be evaluated with reference to the different missions of higher education institutions. Institutions should be publicly accountable for verifying their delivery of higher education of the quality they claim.	The expansion and diversification of higher education supply enabled by the Bill will operate in the context of a focussed national regulator (TESA) charged with ensuring that only bona fide providers can operate and that threshold academic standards are maintained.
Financial sustainability: Higher education of acceptable quality should be affordable for the nation on a long-term basis. The provision of higher education should be financed at levels which at least cover costs.	The more diverse structure of supply enabled by the Bill provides for a more cost-effective system of provision, including providers that do not carry the overhead costs associated with research alongside a comprehensive teaching mission often including expensive disciplines. Thus the unit costs to the Federal Budget per enrolled student will be lower in aggregate in the future compared with the past, thereby enabling affordable participation expansion.
Structural diversity: The structure of the nation's higher education system should cost-effectively accommodate the diversity of student needs and circumstances. While different higher education institutions may play different roles, such as in graduate education and research, there should be paths and bridges between them that enable continuous learning.	The Bill opens up Australia's higher education system – a most narrow and monochrome system compared with other countries – to a much more diversified structure of supply that will be better able to cater for the growing and more diverse future student populations. The Bill also provides for an expansion of pathway programs and will encourage different institutions to focus on their strengths. The Bill removes current incentives that might encourage course level shifting as a device for getting around restrictive undergraduate tuition pricing.
Institutional flexibility: Higher education institutions should have the organisational and operational flexibility they need to respond competitively to change.	The Bill restores university autonomy over course offerings, including the discretion to set tuition prices. Successive governments have been unable to fund higher education enrolments on the basis of full cost recovery across all fields offered, and universities, therefore, have had to cross-subsidise the funding shortfalls from their own-source revenues or enlarge enrolments in lower-cost courses. The central control of tuition pricing for domestic undergraduate students has stifled the capacity of different universities to diversify their incomes and enrolment profiles. The Bill removes central tuition price control and allows all providers the discretion to set their

	own tuition fees in a competitive environment. Thus the Bill offers all higher education providers, including public universities, the opportunity to balance their revenues and costs. The Bill removes the tight nexus currently between revenue growth and enrolment growth, and will allow those institutions that so wish to reduce student numbers and provide more intensive learning experiences. Thus the Bill increases the operating flexibility for Australia's higher education providers, enabling them to be more globally competitive.

This assessment suggests that the principles underpinning the new 2014 Bill represent the most comprehensively progressive and coherently balanced policy framework in the history of Australian higher education.

Alternatives to deregulation in order to sustain high quality delivery of higher education in Australia's regions

This issue has two dimensions: (i) alternatives to deregulation of higher education tuition fees; and (ii) ways and means of providing higher education services to regions.

Alternatives to deregulation

The alternative to deregulation is reregulation. A government-regulated environment, however, is not the default normal order in any economic sector. Regulation is designed to require that certain things are done that may otherwise not be done or to prevent unwanted things from happening that may otherwise happen to an unreasonable extent. Thus regulation imposes restrictions and costs as well as endeavouring to safeguard valued activities and protecting against harm. In principle, the onus is on those who argue for regulation to justify why it is necessary, to identify what positive and adverse impacts the regulation may have, and to make provision for minimising the risks involved with regulatory application. Where regulation cannot be justified, or where its costs outweigh its benefits, it should not be imposed. Even when a degree of government regulation is shown to be necessary, it should be framed and implemented in ways that reduce the risks of adverse consequences.

Tuition fee deregulation is a means of increasing the finance available to sustain quality in higher education in a mass system of participation where government alone cannot afford to do so. It is also a mechanism for improving fairness and responsiveness.

It is not evident that those opposing deregulation of tuition pricing in Australian undergraduate education understand they have a responsibility to make their case for regulation. The international markets in higher education services at the undergraduate and postgraduate levels function reasonably well. That is, markets do work and are at work in higher education.

Some argue that higher education is not like other markets. But how different is it? There are buyers and sellers of services. There are defined product categories. There is rivalry among different providers. There are channels of information to guide consumer choice. It may well be that the student-consumer cannot appreciate in advance of the experience what is worthwhile to learn. However, customers of restaurants also may not be aware of the value of their eating experience until they have enjoyed it. Is there anything so special about higher education that is behooves regulation?

The case for regulation in the finance sector is predicated on the scale of potential harm that could occur. Market failure in higher education would have adverse consequences for some people and regions but it would not be so widely devastating as in finance where the basis for regulation is firmer.

> "We regulate finance over and above the way we regulate other industries because finance exhibits market failures that can have devastating consequences. When financial markets malfunction seriously, the real economy takes a nosedive." (Warwick University Commission on International Financial Reform, 2011.

Some argue that because higher education confers 'positional goods' it is subject to pressures that go beyond normal drivers of price. But housing, too, offers positional goods, and there is nothing inherent to housing markets that renders competition on price inappropriate.

It is argued that price signals are masked by the availability of income-contingent loans but the domestic postgraduate market has been operating – with some 60% of students taking out HELP loans – and is it clear that there is a wide spread of price points and no consumer complaints about exorbitant prices. Both the domestic undergraduate and postgraduate student cohorts include a majority of adult learners, most working while studying, and segments of the postgraduate market include younger learners progressing directly from undergraduate studies. Thus there are overlaps in the student mix across the undergraduate and postgraduate markets.

It is not self-evident that the domestic undergraduate market requires special protection measures or necessitates regulation sine qua non. A number of threshold policy questions arise:

- Why should government, rather than universities, set tuition prices for university courses?
- Are universities in Australia not to be trusted to exercise the operating autonomies available to their counterparts in other countries?
- What makes central government determination of tuition pricing superior to the distributed pricing decisions of universities?
- What is the justification for insisting that all universities must be subject to the same price cap by field of study?
- Are all degrees equivalent in terms of the quality of the inputs they bring, the character of the learning experiences they provide, and the learning outcomes of graduates?

- What is so special about undergraduate education for domestic students that it requires price regulation when postgraduate education for domestic students does not, and price setting for international undergraduate and postgraduate students is totally deregulated?
- On what basis is it assumed that universities will behave so very differently in pricing tuition for undergraduate students than for postgraduate students?
- What is the justification for allowing international students to exercise market choices but disallowing domestic students the same consumer options?
- What do students forfeit when their universities are unable to tailor learning experiences to meet their expectations?

The proponents of reregulation have not answered such questions. They have failed to make the case against deregulation, which is the COAG default position when the case for reregulation has not been made.

The Council of Australian Governments (COAG) in October 2007 issued *Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies.* COAG agreed that all governments will ensure that regulatory processes in their jurisdiction are consistent with the following principles:

1. establishing a case for action before addressing a problem;

2. a range of feasible policy options must be considered, including self-regulatory, co-regulatory and non-regulatory approaches, and their benefits and costs assessed;

3. adopting the option that generates the greatest net benefit for the community;

4. in accordance with the Competition Principles Agreement, legislation should not restrict competition unless it can be demonstrated that:-

a. the benefits of the restrictions to the community as a whole outweigh the costs, and

b. the objectives of the regulation can only be achieved by restricting competition;

5. providing effective guidance to relevant regulators and regulated parties in order to ensure that the policy intent and expected compliance requirements of the regulation are clear;

6. ensuring that regulation remains relevant and effective over time;

7. consulting effectively with affected key stakeholders at all stages of the regulatory cycle; and

8. government action should be effective and proportional to the issue being addressed.

Consistent with these principles, any effort by the Parliament to reregulate higher education would need to (a) make the case for regulation being necessary, and (b) choose an approach to reregulation after consideration and consultation on all the available options, **starting from the presumption against new or increased regulation:**

> "Once the problem has been examined and a case for government intervention has been established, officers should identify the objectives for any intervention and consider all feasible options, of both a regulatory and non-regulatory nature, that

> could wholly or partly achieve these objectives. Working from an initial presumption against new or increased regulation, the overall goal is the effective and efficient achievement of the stated objectives. The 'status quo' and effectiveness of existing regulations should be considered as an option for meeting the objectives."

Rejection of deregulation as proposed in the new 2014 Bill would mean default to the status quo ante of the previous government's legislation, which all informed participants in the higher education industry regard as flawed and unsustainable.

If re-regulation is the bent of the current Senate the main options are:

i. re-capping the supply of government-subsidised student places, whether by
   a. a system-wide quota, or
   b. allocation of a quota of places to particular providers; or
   c. competitive tender; or
   d. rationing individual study vouchers according to ability-to-benefit criteria, including school attainment.
ii. shifting from funding inputs to funding outputs, whether by
   a. promoting student progression by funding study units passed
   b. promoting student graduation by funding completions
iii. designating particular suppliers to offer a set range of services, including student places, whether by
   a. identifying a range of providers for whom government-subsidised places are restricted by level of award (e.g. sub-Bachelor only; Bachelor and Master only; Bachelor to Doctor);
   b. identifying a range of providers for whom government support is available on a performance-related basis to sustain a set range of functions (e.g. for regional community engagement)
iv. limiting the extent to which prices may vary, whether by
   a. setting an upper tuition fee limit, or
   b. setting a maximum HELP loan limit
   c. imposing a tapered levy on price increases above a set amount by reducing the government payment per student
   d. establishing a prices justification tribunal
   e. establishing a prices monitoring body (or using an existing body)
   f. establishing a pricing regulator.

Some argue for combinations of various elements. For instance, some suggest re-introducing entry bars to Bachelor degrees and confining the provision of sub-degree programs to a limited range of providers. Others propose imposing fee and loan limits, and others suggest taxing price hiking. Some call for re-capping enrolment volume and maintaining price caps, effectively regressing to the pre-2008 policy position. The means by which these options could be implemented are typically not elaborated.

One proposed means is that of ***mission-based funding compacts*** between the government and individual higher education institutions. These were initiated in respect of public universities in 2009. The notion of mission-based funding compacts was outlined originally in the 2006 ALP white paper.[1] One of the purposes of compacts as envisaged in that paper was to promote mission differentiation among universities. However, Labor in government did not provide funding for the four components designed to that end. A process of 'compact' discussions was conducted by the then two departments responsible for higher education and research funding respectively. The exercise degenerated into a superficial, albeit burdensome, compliance reporting regimen tied to performance-based funding.

The actual implementation of compacts, as distinct from their in-principle intent, reflected the real nature of the 'principal-agent' relationship between the government and universities whereby the government was purchasing services in proxy for students. The idea of compacts had been derived from (a) US experience where tuition fees are not centrally regulated, and (b) the community services sector where entities can function independently and where 'trust-based' rather than 'principal-agent' relationships exist. In the price-controlled Australian environment with a principal-agent relationship at the core, compacts were ineffectual but dangerous.

The risk with compacts concerned the opaque nature of negotiation and the potentially arbitrary nature of subsequent ministerial decision making. Compacts have the potential to authorise external intrusion into the substantive and operational autonomies of universities, such as in mission determination, course approval, student mix, and research orientation. Such intrusion would be a step backwards in relations with government and inimical to re-building trust. Compacts also had the potential to lock-in prescribed activities and ways of operating. Whilst compacts may be conceived and promoted as means of increasing university operational flexibility, they could actually stifle responsiveness to changing circumstances. Compacts actually represent a poor public policy choice for a dynamic, multi-faceted set of institutions operating in an unpredictable environment.

> "The assumption underlying the idea of compacts is that government experts have the foresight, creativity, and expertise to design better universities than those that evolve from the normal interplay of supply and demand. Compacts are a form of central planning. They set out to engineer a university system by freezing the current arrangements in place while leaving room for politicians to interfere where they wish."[2]

Ironically, a form of 'compacts' could function in a deregulated environment. A fundamental role for compacts in a more deregulated, student-demand-driven system is one of mitigating the adverse consequences of competition. Such adverse impacts may include: field-specific loss of course offerings in educational fields of low student demand; region-specific loss of sustainable capacity for scholarship in areas of regional importance; and institution-specific vulnerability to loss of income to sustain campus viability. Compacts as mitigating strategies might provide: a base provision to 'at risk' institutions to support socially valued university functions that may otherwise cease in a more competitive environment and/or a 'community service obligation' or 'provider of last resort' retainer to sustain scholarship which would otherwise be lost through want of student demand. However, the new 2014 Bill provides for regional assistance in other, more direct and transparent, and less risky, forms.

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[1] Macklin, J. (2006), 2. Australia's Universities: Building our Future in the World—a White Paper on Higher Education, Research and Innovation, Australian Labor Party, Canberra

[2] Steven Schwartz (2008). The Trouble with University Compacts, *Policy*, Winter, The Centre for Independent Studies.

None of these various re-regulation proposals has been subject to the kind of cost-benefit analysis and risk assessment that COAG envisages. Importantly, many of these suggestions appear to be someone's preferred solution looking for a problem. The basic assumed problem is that the undergraduate market will perform very differently from the postgraduate market, leading to excessive price hikes and adverse equity impacts for students and graduates, but there is simply no evidence available to demonstrate whether and how that might be so.

It is not necessary to canvass the implications of all the particular options as it is clear that any of them would involve the re-insertion of a strong government role in steering or driving the nation's higher education system and a reversal of the tendency of increasing individual and institutional autonomy. Such a move would not represent some kind of 'transition mechanism', 'staging point', 'middle ground' or 'third way'. To the contrary, it would signal a turnaround against the progressive course of higher education policy in Australia over the last 30 years.