

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

- 1.1 On 13 September 2012, the House of Representatives Selection Committee referred the Higher Education Support Amendment (Maximum Payment Amounts and Other Measures) Bill 2012 for inquiry and report.
- 1.2 The Bill was introduced to the House of Representatives on 12 September 2012.
- 1.3 The inquiry was announced by media release on 14 September 2012 and received six submissions. A list of submissions is at Appendix A.

The Bill

- 1.4 The Bill consists of three schedules. Schedules 1 and 2 adjust funding for Other Grants and Commonwealth scholarships respectively. Schedule 3 proposes amendments to the *Higher Education Support Act 2003* (HESA) relating to the use and disclosure of information collected under the Act.
- 1.5 In referring the Bill, the Selection Committee provided the principal issue for consideration as the:
 - substantial... expansion of the scope of the information sharing that the department is allowed to engage in [and possible] implications on both the privacy and the red tape reduction...
- 1.6 Thus, the principal issue for referral of the Bill cited by the Selection Committee refers exclusively to Schedule 3.

1.7 Schedule 3 of the Bill proposes to amend HESA to allow the disclosure of information (including personal information) collected for the purposes of the Act to:

- Tertiary Education Quality and Standards Agency (TEQSA), for the purposes of the *TEQSA Act*;
- Australian Skills Quality Authority for the purposes of the *National Vocational Education and Training Regulator Act*;
- higher education and vocational education and training providers, peak bodies,
- Tertiary Admissions Centres and state and territory governments, for use in research relating to the provision of higher education and vocational education and training, including quality assurance and planning; and
- conduct Australian Government funded surveys of staff, students and former students.¹

1.8 The bill facilitates wider disclosure of HESA information while requiring the disclosure be:

- to designated organisations for permitted purposes;² and
- with the consent of the provider.³

1.9 The Department of Industry, Innovation, Science, Research and Tertiary Education (DIISRTE) stated:

The need to amend the Act has arisen because the Department has received a high volume of requests from State and Territory governments and other higher education stakeholders for student and staff data at the unit record level ...

TEQSA also requires unit record level data to fulfil its functions under the TEQSA Act, or else it will need to establish a separate data collection, placing additional burden on providers

...

1 *Explanatory Memorandum*, p. 1.

2 Department of Industry, Innovation, Science, Research and Tertiary Education (DIISRTE), *Submission 1*, p. 5.

3 DIISRTE, *Submission 1*, p. 6.

The amendments address higher education providers' concerns regarding the burden associated with data provision and quality assurance...⁴

Stakeholders response

- 1.10 Of the four submissions received from industry stakeholders, three supported the proposed measures in Schedule 3 and one expressed reservations at these measures.
- 1.11 The National Tertiary Education Union (NTEU) acknowledged the 'usefulness of accurate and targeted data in the context of quality assurance and policy planning...'⁵ However, it expressed concern that:
- the objectives under this proposal for the disclosure of personal information of staff and students are very broadly defined, and may be accessed by a range of organisations for almost any purpose relating to "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... (Bill's Explanatory Memorandum, p. 5.)⁶
- 1.12 DIISRTE referred to requirements that ensure the confidentiality and appropriate use of personal data in the:
- Higher Education Data Protocols [that] govern the security and storage of personal information which is disclosed under the Act. The relevant provision of the Protocols provides that:
- 2.3.2 ... approved users of Higher Education data
- comply at all times with any security requirements notified by DIISRTE relating to Higher Education data;
 - store the Higher Education data securely and protect the data from loss and unauthorised access;
 - ensure that only those people with a genuine need to view the data will have access to the data;

4 DIISRTE, *Submission 1*, pp. 6-8.

5 National Tertiary Education Union (NTEU), *Submission 4*, p. 1.

6 NTEU, *Submission 4*, p. 1.

- only retain the data while there is a genuine need to keep it, and then destroy the data;
- not engage in any data-matching activities involving the data without the prior written consent of DIISRTE;
- not attempt to re-identify the data if it is provided in a de-identified or aggregated form;
- not provide the data to any third parties without the prior written consent of DIISRTE; and
- not publish the data (in any medium) without the prior written consent of DIISRTE

...

the Office of the Australian Information Commissioner [OAIC] and Attorney-General's Department were satisfied with the Bill, based on the inclusion of these significant safeguards surrounding privacy.⁷

1.13 The Privacy Commissioner confirmed that:

At various stages in the development process, the OAIC advised the Department to give further consideration to issues surrounding the use, disclosure and security of the personal information that is to be handled under the proposed changes. The final draft of the Bill seems to reflect the OAIC's comments, and we have no cause to comment further on these proposed amendments.⁸

1.14 The NTEU also raised concern at:

the stated intention to use personal information to "...to construct accurate and robust survey sample frames to assess the quality of teaching and learning." (Bill's Explanatory Memorandum, p. 5.). When viewed in the context of a number of other proposals from DIISR[TE] and the regulatory bodies, NTEU is concerned that privacy overrides proposed by this Bill will be used to drill down to individual levels and include details of staff teaching qualifications as a proxy for quality assessment.⁹

7 DIISRTE, *Submission 1*, p. 10.

8 Office of the Australian Information Commissioner, *Submission 6*, p. 1.

9 NTEU, *Submission 4*, p. 2.

1.15 DIISRTE outlined its response to stakeholder concerns relating to privacy (specifically raised by the National Union of Students) during consultation on the Bill, which:

amended the relevant sections of the Protocols to read:

- 2.3.3 Individuals or groups wishing to register a complaint regarding the use of Higher Education data should in the first instance lodge that complaint with the data user concerned.
- 2.3.4 Users of Higher Education data agree to address in an adequate and timely manner any complaints received in accordance with section 2.3.3 above.
- 2.3.5 If individuals or groups are unsatisfied with the outcome of a complaint lodged with a user of Higher Education data as per section 2.3.3 above, they may raise the issue with DIISRTE.
- 2.3.6 Users of Higher Education data agree to co-operate with DIISRTE to address complaints received in accordance with section 2.3.5 above.

Under the Privacy Act, individuals who believe their personal information has been mishandled also have the right to lodge a complaint with the Office of the Australian Information Commissioner (OAIC).¹⁰

1.16 The National Union of Students had 'no concerns or feedback to provide on the matter.'¹¹

1.17 Universities Australia, the Australian Technology Network of Universities and Innovation Research Universities all supported the proposed measure and expressed their satisfaction that the regime of safeguards would ensure the appropriate use of data.¹²

1.18 Universities Australia added:

Making the HEIMS [Higher Education Information Management System] data available to the sector through a centralised collection process will ensure that regulatory functions operate within known parameters and that the reporting burden on universities, particularly the duplication of effort, is kept to a minimum. Furthermore, data will be able to

¹⁰ DIISRTE, *Submission 1*, p. 11.

¹¹ Ms Donherra Walmsley, President, National Union of Students, Correspondence, 26 September 2012.

¹² Australian Technology Network of Universities, *Submission 2*, p. 1 and Innovation Research Universities, *Submission 3*, p. 1.

be utilised in more proactive ways not currently possible, and at more appropriate levels of granularity, leading to better public policy outcomes through better provision and access to information.¹³

Committee comment and recommendation

- 1.19 The Committee supports the proposed improvement and facilitation of efficient sharing of HESA data and is satisfied with the proposed measures to ensure appropriate use of this data.

Recommendation 1

The Committee recommends that the House of Representatives pass the Higher Education Support Amendment (Maximum Payment Amounts and Other Measures) Bill 2012.

Amanda Rishworth MP

Chair

4 October 2012

13 Universities Australia, *Submission 5*, p. 2.