



Australian Government
**Department of Industry
Innovation, Science, Research
and Tertiary Education**

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Mr Glenn Worthington
Committee Secretary
House of Representatives Standing Committee on Education and Employment
PO Box 6021
Parliament House
CANBERRA ACT 2600

Dear Mr Worthington

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

Thank you for your letter to Dr Don Russell, dated 14 September 2012, inviting the Department of Innovation, Industry, Science, Research and Tertiary Education to provide a submission to the inquiry into the Higher Education Support Amendment (Maximum Payment Amounts and Other Measures) Bill 2012.

I am pleased to provide the attached submission to assist with the Inquiry. Also attached is a response from the Tertiary Education Quality and Standards Agency (TEQSA).

The amendments to the *Higher Education Support Act 2003* are in three Schedules.

Schedule 1 of the Bill (Grants) amends the maximum payment amounts for Other Grants and Commonwealth Scholarships, to account for changes in indexation and to add the next funding year.

Schedule 2 of the Bill (Research Funding) amends the Australian Research Council Act 2001 to update appropriation amounts to apply indexation and to insert a new funding cap for the last year of the forward estimates.

Schedule 3 of the Bill (Use and Disclosure of Information) allows the disclosure of information (including personal information) obtained or created for the purposes of the Act to:

- a) TEQSA, for the purposes of the *TEQSA Act*;
- b) The Australian Skills Quality Authority (ASQA) for the purposes of the *National Vocational Education and Training Regulator Act*;

- c) 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
- d) Facilitate the centralised administration of Australian Government endorsed surveys of staff, students and former students.

It is the Department's understanding that the Inquiry is concerned solely with Schedule 3 of the Bill, hence the submission only relates to this Schedule.

The Department has consulted widely on the Bill, including with the Office of the Australian Information Commissioner and the Attorney-General's Department, ensuring that the amendments protect the privacy of staff and students and minimise the reporting burden on providers, while at the same time meeting the legitimate needs of higher education and vocational education and training data users to access personal information. The Department consulted with TEQSA, ASQA and Universities Australia in the preparation of this submission.

Yours sincerely

Robert Griew
Associate Secretary
Tertiary, Skills and International

18 September 2012

**Department of Innovation, Industry, Science and Tertiary Education
Submission to the Inquiry into the
Higher Education Support Amendment (Maximum Payments Amount and Other
Measures) Bill 2012**

1. Background

The *Higher Education Support Act 2003* (the Act) authorises, in certain circumstances, the use and disclosure of personal information collected under the Act.

The Higher Education Support Amendment (Maximum Payment Amounts and Other Measures) Bill 2012 (the Bill) seeks to amend the Act to authorise wider disclosure of information (including personal information) to a limited number of bodies for a limited set of purposes.

The only bodies to receive access to personal information are the Tertiary Education Quality and Standards Agency (TEQSA), the Australian Skills Quality Authority (ASQA) (the National Vocational Education and Training (VET) Regulator), State and Territory agencies, higher education providers, VET providers and bodies or associations determined by the Minister by legislative instrument. This is to assess, among other things, the impact of the Government's higher education and VET reforms. A third party that may be contracted by the government to conduct surveys of staff, students and former students would also be provided access. A third party contracted by the government to conduct surveys is considered a Commonwealth Officer under the Act and would be subject to the provisions in the Act that regulate the activities of Commonwealth Officers including the offence provisions.

Wider disclosure to those bodies will be for permitted purposes: improving the quality of higher education or vocational education and training; and for research relating to the provision of higher education or vocational education and training, including research relating to quality assurance or planning the provision of higher education or vocational education and training.

2. Summary of the amendments

The Higher Education Support Amendment (Maximum Payment Amounts and Other Measures) Bill 2012 would amend the *Higher Education Support Act 2003* to:

- Provide a definition of **Higher Education Support Act information** (HESA information), including personal information and VET personal information, for the purposes of authorising wider disclosure of such information;
- Authorise disclosure of HESA information to **prescribed bodies**;
- Describe the **purposes** for which HESA information can be disclosed;
- Require the **consent of providers** when the HESA information they provided to the Department is being disclosed to prescribed bodies; and
- Except with regards to certain information, include an **offence provision** where:
 - (a) the use of personal information or VET personal information is not for a permitted purpose; or
 - (b) the disclosure of personal information or VET personal information is not for a permitted purpose or was disclosed to a person who is not a member of staff within the same body.

Higher Education Support Act information

The Bill provides a definition of HESA information for the purpose of authorising wider disclosure of such information. It includes information defined elsewhere in the Act as *personal information* and *VET personal information*, as well as any other information obtained or created by a Commonwealth officer for the purposes of the Act and information obtained or created by a Commonwealth officer as a result of a survey of staff, students or former students.

Provision of data at the unit record level will allow more accurate assessment and monitoring of the Australian Government's higher education demand driven funding reforms for planning and quality assurance purposes, including achievement of Australian Government targets. However, unit record level data is considered to be personal information, because it identifies, or could conceivably be used to identify, individuals. Accordingly, the Act does not currently permit the Department to release data at this level.

Prescribed bodies

The Bill authorises wider disclosure of HESA information to a limited range of bodies that include TEQSA, ASQA, State and Territory agencies, higher education providers, VET providers and bodies or associations determined by the Minister by legislative instrument. The latter is likely to include only include peak bodies and other advocacy groups such as Universities Australia, the Council of Private Higher Education (COPHE), the Australian Council for Private Education and Training (ACPET) and Tertiary Admissions Centres (TACs). These bodies or associations will be determined by legislative instrument in order to avoid unnecessary amendments to the Act in the event, for example, that a body changes its name.

The Bill also amends the Act to clarify that a Commonwealth officer may disclose Higher Education Support Act information to another Commonwealth officer to assist that officer in the other officer's official employment within the meaning of the Act. The effect of this amendment is to allow Commonwealth officers employed in the Higher Education and VET sectors to exchange information that may be relevant to the performance of their official employment. It also ensures Commonwealth officers can use HESA information in the course of their official employment.

Purposes

The Bill provides that HESA information may be disclosed to TEQSA and ASQA for the performance of duties or functions, or the exercise of powers under, or for the purposes of, the *Tertiary Education Quality and Standards Agency Act 2011* (the TEQSA Act), or the *National Vocational Education and Training Regulator Act 2011*, respectively.

The Bill also provides that HESA information will only be disclosed to State and Territory agencies, higher education providers, VET providers and bodies or associations determined by the Minister by legislative instrument for permitted purposes. These permitted purposes will be for improving the provision of higher education or vocational education and training (VET); and for research relating to the provision of higher education or vocational education and training, such as quality assurance or planning.

Wider disclosure of HESA information, including student and staff at the unit record level will allow more accurate assessment and monitoring of the Australian Government's higher education demand driven funding reforms for planning and quality assurance purposes. The amendments also maximise the Commonwealth's ability to ensure that only quality education providers receive Commonwealth funding under the FEE-HELP schemes.

The Bill will also allow Commonwealth officers to use HESA information to conduct surveys of staff, current students and former students of higher education providers or VET education providers for the purposes of improving the provision of higher education or vocational education and training; and for research relating to the provision, including quality assurance and planning, of higher education and training.

As set out earlier, 'Commonwealth officers' is defined to include persons who perform services on behalf of the Commonwealth. Therefore this will also allow the Department to disclose personal information to a contracted administrative body in order to conduct surveys of staff, students or former students. For example, the Department will be authorised to provide student contact details and Commonwealth Higher Education Student Support Numbers (CHESSNs) for the purpose of constructing sample frames and contacting students

to conduct student surveys. This is consistent with the recommendations of the report of Advancing Quality in Higher Education Reference Group that the Australian Government contract an independent and centralised administrative body to co-ordinate a suite of government endorsed performance measurement instruments, including administration of student surveys.

Consent of providers

The Bill requires that if HESA information was provided by a higher education provider or a VET provider then consent of the provider is required to disclose the information to other higher education providers, VET providers, or bodies or associations determined by the Minister by legislative instrument. Obtaining the consent of providers provides additional safeguards to ensure that personal information or VET personal information is not misused and the privacy of staff and students is protected.

Offence provisions

The Bill provides that a person commits an offence if that person uses personal information or VET personal information for a purpose that was not a permitted purpose. Except with regards to certain information, the Bill provides that a person commits an offence if the person discloses personal information or VET personal information and the disclosure was not for a permitted purpose or was to a person who is not a member of staff within the same body. The penalty for committing such an offence is imprisonment for 2 years. The Office of the Australian Information Commissioner recommended the inclusion of strong penalties for the improper use or disclosure of personal information and expressed approval that penalties had been incorporated in the Bill. This provides additional safeguards as it will deter behaviour that could lead to misuse of personal information or VET personal information.

3. Rationale

Requests for personal information, including student and staff data at the unit record level

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. For example, the Minister received a request in November 2011 from Professor Fred Hilmer, Convenor, New South Wales Vice-Chancellor's Committee, for the disclosure of higher education student unit record data to the New South Wales Department of Education and Communities to support the achievement of NSW State Government targets for higher education attainment. Professor Hilmer stated:

Access to [unit record data] will be critical to our work to better understand the effort that is required across NSW universities and their partners in schools, TAFE Institutes and other providers to meet targets.

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. On 27 April 2012 TEQSA wrote to the Secretary of the Department to explain its need for the data, stating:

TEQSA is dependent on access to high quality, timely information to undertake its regulatory functions...There is a significant overlap in the data needed by TEQSA and that already collected by your Department...

TEQSA's most preferred option is to be given "Access to unit record extracts from HEIMS [the Department's Higher Education Information Management System] for student and staff data." In response, the Department advised it was exploring amendments to HESA which would allow disclosure of personal information to TEQSA. This is further explained in TEQSA's response to the inquiry (see Attachment 2).

Reduction of regulatory burden on higher education providers and VET providers

Consultation with higher education and VET providers and their peak bodies has consistently indicated the need to reduce the burden on the tertiary sector associated with the provision of data for regulatory and quality assurance purposes.

For example, Universities Australia's Submission to the Coalition Deregulation Taskforce, dated 2 May 2012 states that:

The collection and dissemination of data could be streamlined in order to reduce duplication and better focusing of the usage requirements as to increase efficiency and effectiveness. Information repositories such as the Higher Education Information Management System could be freed from the overregulation imposed by legislation and privacy concerns so that they can be used to assist with sampling procedures and pre-filling of demographic and other data pertaining to respondents. With appropriate systematic design and collection we could avoid situations where multiple survey instruments collect essentially the same information, such as with the First Year Student Experience Questionnaire, Course Experience Questionnaire, University Experience Survey and Australasian Survey of Student Engagement.

The Summary Report of the Consultation Process on TEQSA's 2012 Provider Information Request, issued in August 2012, noted that:

There was considerable support for a consolidated, coordinated and integrated approach to higher education data/information collections. Respondents cited a number of reasons for their support, including to:

- prevent multiple requests/duplication in different formats at different times;
- assist with the volume of data reporting and compliance requirements;
- ensure standardised reporting periods and a standardised set of data as well as consistency in data definitions;
- reduce administrative burden;
- enable benchmarking; and

- enable appropriate quality controls.

Respondents supported the idea of TEQSA working with DIISRTE and other departments and agencies, providers and peak bodies towards the development of a single data/information collection.

The Review of Reporting Requirements for Universities currently being undertaken by PhillipsKPA published a Background and Issues paper on 12 September 2012. In discussing opportunities for reductions and improvements in DIISRTE reporting requirements it stated:

Ultimately it may be conceivable that a core national higher education information system could be established to act as a single interface with universities for all or most of the major national higher education data collections and to serve the needs of multiple users, including the universities themselves. The capability established in HEIMS may provide a potential basis for such a development.

The Bill's wider disclosure of personal information derived through HEIMS would facilitate development of a 'core national higher education information system' that provides such a single interface for universities.

Through the Advancing Quality in Higher Education (AQHE) Reference Group, the Department has consulted extensively with the sector on how a proposed suite of Government endorsed student surveys might best be administered. These surveys relate to measures of student satisfaction with higher education learning and teaching. There was widespread agreement in the sector that centralised administration of these surveys would be desirable to reduce the cost born by universities as well as reducing the survey response burden placed on students. Centralised administration would reduce the overall financial cost of conducting the surveys and would ensure that only the minimum number of responses needed to produce accurate results are collected.

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

1. Departmental provision of data to TEQSA, ASQA, and state and territory governments

Many of the data items that the Department collects for the purpose of administering HESA are also required by TEQSA, ASQA, and state and territory governments to perform their regulatory, quality assurance and planning functions. The amendments will allow the Department to provide unit record level data to these bodies. This will enhance the Department's ability to act as a central depository for higher education data and statistics, preventing the duplication of reporting burden for providers.

2. Centralised administration of student surveys

In order for student satisfaction surveys to be centrally administered, a single sample frame based on student contact details collected needs to be compiled, with records linked to a unique student identifier, the Commonwealth Higher Education Student Support Number (CHESSN). However, HESA does not currently allow students' personal information to be used for the purpose of conducting surveys. The amendments allow the Department to compile these student contact details for the purpose of conducting Australian Government funded surveys while removing the administrative burden for individual universities.

4. Related initiatives

Higher Education Support Amendment (Demand Driven Funding System and Other Measures) Bill 2011

On 14 September 2011, the Higher Education Support Amendment (Demand Driven Funding System and Other Measures) Bill 2011 passed the Australian Parliament. The Bill provides for the implementation of a demand driven funding system for Australian public universities.

From 2012, the Government has agreed to fund Commonwealth supported places for all undergraduate domestic students accepted into eligible higher education courses at public universities, excluding medicine which will remain capped.

The demand driven funding system will increase higher education attainment and supports the Government's national attainment target that by 2025, 40 per cent of all persons aged 25 to 34 will hold a qualification at bachelor's degree level or above.

5. Consultation

The amendments have been designed to ensure the privacy of staff and students is protected and to minimise the reporting burden on providers, while at the same time meeting the legitimate needs of higher education data users to access personal information. The Department has been guided in drafting the amendments by consultation with a wide range of stakeholders through various forums.

Office of the Australian Information Commissioner and Attorney-General's Department

The Bill has been developed and settled in consultation with the Office of the Australian Information Commissioner, and both the Office of International Law and the Information Law and Policy Branch at the Attorney-General's Department. As a result of recommendations from these offices, the following changes to the amendments were made:

- Clarification of the types of information governed by the amendments;

- Clarification of the uses and purposes for which personal information may be disclosed, and ensuring that all disclosure and use of personal information must be linked to an appropriate purpose;
- The inclusion of offence provisions for breaches of the Act's privacy provisions; and
- Ensuring that Commonwealth Officers have authority to both use and disclose personal information.

To address the Office of the Australian Information Commissioner's remaining concerns on data security and storage the Department noted that provisions of the *Higher Education Data Protocols* govern the security and storage of personal information which is disclosed under the Act. The relevant provision of the Protocols provide:

- 2.3.2 To protect the security and confidentiality of Higher Education data, approved users of Higher Education data must:
- 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 use and access;
 - ensure that only those people with a genuine need to view the data will have access to the data;
 - 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 and Attorney-General's Department were satisfied with the Bill, based on the inclusion of these significant safeguards surrounding privacy.

Higher education students

The Department has discussed concerns around privacy and the security of students' personal information with representatives of the National Union of Students (NUS). Specifically, the NUS asked that the dispute resolution mechanisms contained in the Department's *Higher Education Data Protocols* (the Protocols), which govern the release and use of data collected for the purposes of HESA, be strengthened. In response, the Department has 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.
- 2.3.7 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).

Through participation in the AQHE Reference Group, the NUS has also endorsed the proposal to centrally administer student surveys in order to reduce the survey burden on students.

Higher education providers

As noted above, consultation with higher education providers and their peak bodies in a number of forums has highlighted their concern with the burden imposed by Government requirements for data associated with the provision for regulatory and quality assurance purposes.

The Department has also noted that higher education providers have expressed concern around the safeguarding of personal data provided to Commonwealth agencies. To quote once again the Summary Report of the Consultation Process on TEQSA's 2012 Provider Information Request:

Support for the request of data at unit record level was considerable. Respondents endorsed unit record extracts, as appropriate, because they:

- enabled standardisation of reporting;
- reduced administrative burden and workload in developing aggregated data sets;
- provided flexibility in analysis;
- reduced the need for follow-up requests from TEQSA; and
- enabled global comparisons.

Respondents were, however, concerned about the handling of such data. In particular, they expressed concerns about the proposal to develop and maintain a separate identifier and the handling of the privacy and confidentiality of student and staff information.

The Department's response to concerns around privacy is detailed in the section on consultation with the Office of the Australian Information Commissioner and the Attorney-General's Department above.

6. Implementation

The amendments to the Act authorising wider disclosure of personal information will commence on Royal Assent.

The Department will revise its *Higher Education Data Protocols* and *VET FEE-HELP Data Collection Data Protocols* to reflect amendments to the Act and ensure these are consistent with the *Privacy Act 1988*. Authorised bodies receiving personal information must comply with the *those protocols*.

Universities Australia, ACPET, COPHE, Tertiary Admissions Centres, TAFE Directors Australia (TDA), and higher education and VET providers will be advised of amendments to the Act once the legislation has passed Parliament. The Australian Government will consult States and Territories about amendments to the Act and related revisions to the *Higher Education Data Protocols* under the auspices of the Data and Performance Measurement Principal Committee.

Higher education providers and VET providers will be advised that their current policies and administrative procedures in relation to the provision of personal information by students and staff, for example student enrolment processes, may need to be revised to reflect amendments to the Act. Staff and students will need to be informed that their personal information may be disclosed to authorised bodies and the permitted purposes for which their personal information may be used, as authorised by the Act. This is consistent with *Information Privacy Principle Number 2, Solicitation of personal information from individual concerned under the Privacy Act 1988*. The Department is seeking the cooperation of higher education and VET providers to implement required revisions to current policies and administrative procedures in preparation for the 2013 academic year

Attachment 2

TEQSA INPUT KEY POINTS REGARDING HESA AMENDMENT

TEQSA makes the following key points in relation to the DIISRTE submission to House of Representatives Standing Committee on Social Policy and Legal Affairs, considering HESA amendment to HEIMS data disclosure powers in the Further 2012 Budget and Other Measures Bill 2012.

- TEQSA is a new national agency that requires relevant data to carry out its regulatory functions under the TEQSA Act 2011.
- TEQSA is an FMA agency subject to full accountability and compliance requirements of the Commonwealth, including the Information Privacy Principles in the *Privacy Act 1988*.
- TEQSA has a range of powers, including powers permitting it to collect information directly from all regulated providers, including universities.
- The data TEQSA requires is required in order to inform TEQSA risk assessments of providers and make nuanced decisions appropriate to the Threshold Standards against which it regulates all providers. Access to structured, regular and nationally comparable data allows TEQSA to develop efficient regulatory processes that are overall more efficient for providers across the regulatory cycle, and overall more efficient (and less costly) for TEQSA to administer.
- In May this year TEQSA consulted the sector, including all providers, student and staff organisations, about its data collection requirements. It asked the question about whether providers would prefer to report data directly to TEQSA or instead would prefer TEQSA to 'exempt' providers to the extent that TEQSA could fully access HEIMS data. There was very strong support expressed by the sector for TEQSA to have access to unit record data from HEIMS in order to support its work, and to avoid the prospect of duplicative and burdensome reporting to TEQSA. Given much of the data TEQSA requires was already being collected by DIISRTE, the sector expressed very clearly the view that the most appropriate solution for TEQSA was to be permitted access to HEIMS data rather than re-collection of same or similar data from providers. TEQSA has published a

summary report of this sector consultation – at

[http://www.teqsa.gov.au/sites/default/files/PIR Summary Report of the Consultation Process 31082012.pdf](http://www.teqsa.gov.au/sites/default/files/PIR_Summary_Report_of_the_Consultation_Process_31082012.pdf)

- In recognition of the potential privacy issues with access to data at unit record level, TEQSA carried out a Privacy Impact Assessment and submitted that document to the Australian Privacy Commissioner. That document, while not a direct assessment of HEIMS-related issues, assessed very similar issues in respect of data where it is to be collected by TEQSA directly from providers not covered currently by the HEIMS reporting scope. That assessment concluded that the identified privacy issues could be appropriately managed, and detailed a number of measures that the agency will implement to achieve this. A copy of TEQSA's Privacy Impact Assessment can be provided to the Committee upon request.
- On 31 August this year, on the basis of sector consultation and TEQSA's Privacy Impact Assessment, TEQSA wrote to all registered higher education providers to require information be provided to it by 30 November 2012. TEQSA's request was made under the powers of its Act. TEQSA granted an exemption to providers to the extent of their existing reporting into HEIMS. While TEQSA currently has access to high level aggregated information from HEIMS (via DIISRTE), it hopes to be able to access unit record data from HEIMS if this amendment is passed. Such an amendment would avoid the possibility of TEQSA requiring direct reporting from providers of data already submitted by them to HEIMS.
- TEQSA believes that the proposed amendments regarding disclosure of data under HESA to TEQSA are reasonable and appropriate in order to support its regulatory functions, and to do so by utilising the base of significant reporting already occurring within the sector rather than increasing the reporting burden through duplicative reporting requirements. TEQSA has carefully considered the privacy issues involved here and is confident that it can and will take all necessary steps to ensure compliance with its privacy obligations. TEQSA believes that its sector consultation in May this year provides a clear indication of sector support for this proposal in so far as it relates to TEQSA.