

SUBMISSION TO THE EDUCATION AND EMPLOYMENT LEGISLATION COMMITTEE

6 November 2018

Universities Australia (UA) welcomes the opportunity to make a submission to the Senate Education and Employment Legislation Committee's enquiry into the *Higher Education Support (Charges) Bill 2018* and *Higher Education Support Amendment (Cost Recovery) Bill 2018*.

HELP is a cornerstone of Australia's higher education system. HELP has enabled millions of Australians to gain access to higher education, and to realise the benefits that higher education brings. By allowing students to defer paying their fees until they are earning a reasonable income, HELP facilitates access to university for students regardless of their financial background.

HELP was designed to make it easier to enrol in university and to reduce the influence of students' financial circumstances in enrolment decisions. UA unreservedly supports the benefits that students, their communities and the broader economy receive as a result of the Australian Government administering HELP and increasing access to university.

The Charges and Cost Recovery Bills introduce:

- a tax on higher education providers to cover ongoing HECS-HELP and FEE-HELP administration costs;
- a fee to cover the application review process to become a FEE-HELP provider.

THE PROPOSAL

The Bills introduced to Parliament in September would empower the Minister to make Guidelines, in which the Minister could set both charges.

As UA members already have access to FEE-HELP, we are less concerned about the application fee. The annual charge on HELP providers is, however, of significant concern to UA.

The Bill includes no detail on how the measure would work. Detailed information only became available on 31 October, when the Department of Education and Training (DET) released a Cost Recovery Implementation Statement (CRIS). The CRIS details the activities that would be subject to partial cost recovery and the charges that would be levied on providers.

According to the CRIS, the proposed annual charge on HELP providers will implement partial cost recovery for 'ongoing compliance and monitoring' activities carried out by DET, namely:

- financial viability checks;
- reviews of provider websites for policy standards and information for students;
- responses to queries and complaints; and
- ongoing provider and student management.

For Table A and B universities, the annual charge will be calculated as follows:

- a flat charge on every university (\$26,207); and

- a charge of \$1.82 for every 'registered student' (for example every student who has taken out a HECS-HELP or FEE-HELP loan; note that this will be calculated on the basis of individual students, not equivalent full-time load).

For non-university providers and Table C universities, charges will be structured differently. There will an additional per student charge of \$13.18 to cover additional 'provider management and compliance' and the institution charge will be much lower (\$544 to \$2,719) but will be scaled on the basis of regulatory risk.

UA'S RESPONSE

UA's has **six main concerns with the proposal**:

- higher education providers should not have to pay the bureaucracy to perform administrative functions that are integral to the HELP scheme and for which DET is already funded;
- insufficient information or protections in the legislation and relegation of key elements of the measure to Guidelines;
- lack of consultation with the sector;
- legislation does not limit the scope of activities to be cost recovered;
- legislation does not set limits on the amount of the charge; and
- documentation is inconsistent about total revenue to be raised by the charge.

THE PRINCIPLE OF COST RECOVERY

UA acknowledges the Australian Government Cost Recovery Guidelines (CRGs), and the principles which underpin them:

- **Efficiency and effectiveness:** making the proper use of available resources and meeting targets at minimum cost.
- **Transparency and accountability:** documenting key information about the activity, such as the policy approval, statutory authority to charge and cost recovery model, in an accessible way for those who pay charges and for other stakeholders. It also involves clear lines of responsibility for key stakeholders, including the responsible Ministers.
- **Stakeholder engagement:** 'entities should engage actively with stakeholders throughout all stages of the cost recovery process, from policy development through to implementation and review'.¹

The proposed measure is a partial cost recovery – as opposed to full cost recovery – exercise. This rightly takes into consideration the significant economic contributions that the university sector and its graduates make to society as a whole.

Nevertheless, it is not clear why universities should have to offset the costs of routine administrative activities that are a core part of programs delivered for the public good by the DET and which are accordingly resourced through DET's budget. The proposed measure would require universities to transfer resources from teaching and supporting students to pay for bureaucrats in Canberra. Universities have no say in how DET organises its administrative work or how much it pays its officers. This makes any cost recovery levy unpredictable and open-ended.

Universities (and other higher education providers) are already subject to a number of imposts related to Government regulatory activity, including TEQSA charges, the Skilling Australians Fund and compulsory contributions to the Tuition Protection Service.

Some of the activities listed in the CRIS – such as reporting of institutional data to DET – already impose significant costs on universities.

¹ Australian Government Cost Recovery Guidelines, July 2014 – Third edition, pg 12,
https://www.finance.gov.au/sites/default/files/australian-government-cost-recovery-guidelines_0.pdf.

The Government has argued that a levy on HELP loans is needed to put the higher education sector on an equal footing with the VET sector, and the arrangements introduced over recent years for VET Student Loans (VSL). This ignores the very different contexts of each sector, and their respective loan schemes.

In looking at the similar charge introduced in 2016 as part of the VSL program, UA notes a strong emphasis was placed on cost recovery for compliance activities. The widespread unethical provider behaviour that resulted in billions of wasted taxpayer dollars under the former VET FEE-HELP (VFH) scheme warrants a strict compliance regime to monitor the VSL program.

Changes to student loans in VET have been brought in progressively to undo the expansion of the VFH loan program and well publicised routing of taxpayer money by unethical providers. Part of the VET loans reforms was a levy on VSL providers to offset costs of administration, in particular of the very significant compliance activity that DET has had to undertake in an area of widespread and serious malfeasance in order to get VET loans back under control.

This situation does not exist in higher education. Especially in the university sector, the level of risk – and therefore the level of monitoring and compliance activity required – is much lower. Indeed, the proposed charging regime outlined in the CRIS recognises this by excluding routine compliance (outside some specific areas) from the list of costs to be recovered.

In the VET sector, levies on VSL providers have been part of a bigger policy response which included a major, radical redesign of the VET loan scheme itself. Again, this is not a situation that obtains in higher education and to ‘align’ universities with the VSL program would be to punish them for the VFH disaster.

LACK OF DETAIL IN THE LEGISLATION

The Bills to enact this measure include no detail on how it would work. As mentioned above, the Bills do little more than empower the Minister to make Guidelines to set charges (a tax). The charges themselves would be set out in Guidelines. Until the CRIS was released by DET on 31 October, there was no indication either of what activities were to be included in the scope of cost recovery or of the process for setting the charges.

UA is concerned this approach is a high-risk exercise that fails to provide clarity about the structure and level of the annual charge over time. There are no parameters set out in the legislation. For example, it would have been desirable for legislation to provide a ‘cap’ or ‘limit’ on the charges, set out the types of activities to be covered and the basis for calculating charges. The CRIS provides relatively clear guidance on the Government’s intention, but this document is at a further remove from legislation.

In particular, it appears to UA that clause 7 of *Higher Education Support (Charges) Bill 2018* is drafted in such a way that it would not prevent a future Minister from expanding the charges levied under it from a partial cost recovery to a full cost recovery basis. Parliament is currently considering the introduction of the tax as a partial-cost recovery measure. UA believes that legislation designed to set up partial cost recovery scheme should do that and no more, and should not leave open the possibility of a further change to full cost recovery without the need for further legislation. As a matter of principle, taxes – such as the charges levied in the Bill – require the explicit approval of Parliament.

UA also notes clause 8 of the *Higher Education Support (Charges) Bill 2018* states the Guidelines will have the power to exempt providers from paying the higher education charge. No guidance is provided in the explanatory memorandum on how it is envisaged this power would be used or in what circumstances.

LACK OF CONSULTATION

UA is disappointed at limited consultation with the sector on the proposal and DET’s failure to engage with the sector in a timely way.

Neither the 2018-19 Budget papers nor the legislation before the Senate includes any detail on how the measure would work. The CRIS, which outlines how the CRGs would be applied to this specific measure, was not released until late on 31 October. The significant delay in releasing the CRIS means that UA has had limited time to consider the details of the proposal and to consult with members at this stage.

UA has been keen to engage with DET on the proposed measure for some time. The CRGs state: *consultation should start when policy objectives and options are being identified. Throughout the consultation process, stakeholders should be given sufficient time to provide considered responses.*²

UA's strong preference would have been to see the CRIS prior to the introduction of these Bills to allow UA and the sector to provide meaningful and informed responses to the Committee.

We welcome the present Senate Committee enquiry into the legislation as an opportunity to discuss questions and concerns about the measure, and to get a better and more detailed picture of the Government's proposals.

UA will make a separate submission to DET in response to the CRIS by the due date of 23 November.

SCOPE OF ACTIVITIES TO BE COST RECOVERED

The CRIS lists a number of Departmental administrative activities, costs of which would be partially recovered through the annual charge on providers. The CRIS does not make a convincing case for the need to recover costs for some of these, either because these activities are unnecessary in themselves, or because they form part of routine Department administration for which cost recovery is not appropriate.

Financial viability checks do not need to be undertaken separately for universities for the purposes of the HELP program. Universities' financial viability can be assessed from universities' statutory financial reports to State and Territory Auditors-General, and from general financial data that universities are obliged to report to DET.

Other activities listed in the CRIS are somewhat vague, as regards both the activity itself and its costs. While some specific activities (for example, HELP provider workshops) are included in the CRIS – and listed in tables specifying costs and revenue – it is not clear that generic activities such as 'ongoing provider and student management' can be discretely identified, let alone accurately costed.

Some activities are directly driven by Government actions over which the sector has little control. Examples could include:

- changes to policy settings or legislation that result in additional obligations for universities to submit information; and
- a spike in the number of student enquiries to the Department, resulting from actual – or merely proposed – policy changes.

The sector will have no control over the quality of service or efficiency of performance from DET.

As mentioned above, the Bills do not provide sufficient guidance as to what activities could or should reasonably be cost recovered. UA is concerned the Bills enable the relevant Minister to cost recover activities that are pointless or unreasonable in the management of the HECS-HELP and FEE-HELP programs.

² Ibid, pg 13.

BASIS FOR CHARGES

The collection of charges without regulatory oversight runs the risk that the charges may be arbitrary. Related to the points made above, it is not clear from the CRIS how several of the activities in scope have been costed. Neither is it clear how the CRIS has calculated either total revenue to be raised, or levies on institutions.

Table 2 'Process and costs per regulatory activity – 2019' lists administrative activities whose costs are to be partially recovered by the annual charge. Some of these are split between (Table A and B) universities, on the one hand, and NUHEPs and Table Cs on the other, but some are not.

Calculation of aggregate 'direct costs' is not entirely transparent. While the CRIS gives some examples of workings for specific costs, no examples are provided for specific costs related to Table A and B universities. Workings in the examples are largely based on staffing costs at DET. These activities are not separate to the Department's core administrative work.

Table 3 'University and NUHEP and Table C provider regulatory activity costs' gives a useful overall picture of the proposed approach. Costs of two activities (enquiries and stakeholder engagement) are apportioned across providers in line with student numbers.

It is not entirely clear that volume of enquiries is correlated with total student numbers. Uniform treatment of the two categories of provider makes a further assumption of an even spread of enquiries which may not be supported by the evidence.

It is not clear why 'stakeholder engagement' should be related to student numbers. Table 2 lists two specific activities under 'stakeholder engagement', namely 'published materials' and 'HELP provider workshops'. These may not be related to student numbers.

'Provider management and compliance' of (Table A and B) universities is estimated to cost just over \$800,000 per year. This is a broad and generic heading. From material in the CRIS, it appears that for universities this activity includes routine Departmental administration (and only a limited amount of that). Explicit exclusion from cost recovery (on p.9 of the CRIS) of 'the costs of administering payments, general administration and compliance' makes it harder to understand what this category is intended to cover.

Financial viability checks (which, as argued above, add nothing to information available to DET about universities' financial viability) cost nearly \$300,000.

It appears that the sum of these two amounts (about \$1.1 million) are divided by the number of Table A and B universities to give the base per institution charge (\$26,207).

In addition to the institutional flat fee, universities – in common with all other providers – would have to pay a per student charge of \$1.82 for every student who has taken out a HELP loan. It is not clear how this charge is derived. At Australia's largest universities, this would amount to more than \$50,000 per year.

It is not immediately clear why institution-level charges for NUHEPs and Table Cs – even those in the high-risk category – are so much lower (\$522 to \$2,719). For these providers, the CRIS estimates the total cost of compliance and financial viability checks at around \$800,000. Even allowing for the much greater number of providers involved, institution-level charges for all three risk categories look very low. NUHEPs would have to pay an additional charge per student (\$13.18), to which Table A and B universities would not be liable, but this extra charge is explicitly designed to cover additional 'provider management and compliance' activities that are not relevant to Table A and B universities.

CONFUSION ABOUT TOTAL REVENUE TO BE RAISED

The Financial Impact Statements contained in the Bills indicate the measures contained in them are expected to deliver a saving to Government of \$14.1 million over the period 2018–19 to 2021–22.

This figure is reasonably consistent with the figures in the CRIS (\$11 million over the last three years of forward estimates).

However, the 2018–19 Budget Paper No.2 suggests the annual cost to the higher education sector is likely to be around \$10 million from the revenue raised through the charges.

Greater clarity over the projected or intended costs to the sector would ensure that Parliament is able to make informed decisions about the financial implications of the Bills and therefore whether the level of Ministerial discretion contained in them is appropriate.

Recommendations

UA recommends that the Senate reject the Bills.