

The University of Sydney response to the 'Support for Students Policy' – Guidelines consultation paper', September 2023

Executive summary

Support for the policy intent

The University of Sydney, in its [25 August submission to the Senate Education and Employment Committee's](#) inquiry into the Higher Education Support Amendment (Response to the Australian Universities Accord Interim Report) Bill 2023, welcomed and offered its full support for the policy intent behind the Bill and the proposed supporting Guidelines that are the subject of these consultations. This followed the University's strong opposition to the inclusion of the '50 per cent Pass Rate Rule' (50% PRR), when it was added to the Job-ready Graduates Package in 2020 without consultation with the sector. We have been consistent in our advocacy for the Rule's abolition on student equity and mental health grounds, raising concerns publicly, in our compact meetings with the Department, and in submissions to the Australian Universities Accord.

We are committed to continuing to strengthen the academic, pastoral, and other non-academic support measures available to our students, as part of our focus on improving the overall quality of the learning experience we provide. We recognise that our performance in the QILT student experience surveys falls well short of where we want it to be. We are investing significant resources in this area as a key limb of our [2032 Strategy](#). We are keen to work with the Department as it considers the best way forward for ensuring that domestic and international students enrolled with Australian higher education providers are appropriately supported to succeed in their studies.

Key issues of concern

1. Lack of consultation, risk of unintended consequences, student privacy, proportionate regulation

Our main concern with the Government's proposed alternative to the 50% PRR is that by rushing a Bill into Parliament without consultation with the sector, there is once again a significant risk of outcomes at odds with the worthy policy goals. These include a range of privacy concerns relating to student data and a high likelihood of institutions and the Department wasting scarce available resources. Insufficient targeting and the imposition of onerous record-keeping requirements for all students risks diverting resources away from students who are genuinely struggling with their studies. Notwithstanding the statements in the consultation paper that the Department does not expect to apply a one-size-fits-all approach to compliance, we are concerned that this is exactly what will occur unless the Act or Guidelines explicitly adopt regulatory principles like those that underpin TEQSA's approach: necessity, reflective of risk and proportionality.

2. Respect for university autonomy, duplication and inconsistency with Australia's higher education quality assurance framework

We are also concerned about the implications for the principle of Australia's public universities as independent and autonomous entities that many of the Department's proposed mandatory and highly prescriptive policy requirements will have. Respect for the principle of university autonomy is enshrined in the *Objects* clause of the *Higher Education Support Act 2003*. The same principle also underpins the design and stable operation of the Australian higher education sector's quality assurance framework, with the *TEQSA Act* clearly defining the distinct powers and roles of the Minister for Education, the Higher Education Standards Panel and TEQSA as the system regulator. If the Government is concerned that the Framework is falling short of delivering its expectations for the provision of student support measures, the appropriate course of action is for the Minister for Education to - as he has done in parallel to these proposed legislative changes - direct the Higher Education Standards Panel to review the relevant threshold standards and provide advice on any changes that are required. The *TEQSA Act* also gives the Minister powers to direct TEQSA to take certain actions, while TEQSA has extensive powers of investigation and review.

3. Unrealistic timelines for compliance, especially if adoption of a stand-alone ‘Support for Students Policy’ is to be mandated for universities

We are concerned that the Government’s implementation timeline for all institutions to have a stand-alone ‘Support for Students Policy’ in place is practically unrealistic for many providers. In our case, officers proposing a new policy must adhere to the requirements of the [University of Sydney \(Policies Development and Review\) Rule 2011](#). We cannot commence the formal requirements of our Rule until the full details of the amended *HESA* and supporting Guidelines are known.

Importantly, it is unclear what purpose a stand-alone ‘Support for Students Policy’ is intended to serve. Higher education institutions have in place multiple policies that cover specific areas relevant to student support. Our [Coursework Policy 2021](#) for example, contains detailed information regarding progression requirements. Any further detail required by legislative amendment should be captured here rather than in a stand-alone ‘Support for Students Policy’. Removing or copying information risks misalignment and our existing policies need to remain complete and coherent. We also need the work in the student support space to be nimble and agile, and having to replicate this information in a stand-alone Support for ‘Students Policy’ is a potentially inefficient use of resources.

We therefore urge the Government to withdraw its proposed requirement for every provider to have a stand-alone ‘Support for Students Policy’, in recognition that it is entirely possible to achieve the same policy outcomes by allowing providers to have more than one relevant policy in place. If the Government persists in requiring a stand-alone policy and the Bill passes before the end of 2023 with the Guidelines tabled for potential disallowance in Parliament within a similar timeframe, providers will not have sufficient time to prepare a stand-alone policy for immediate commencement. Providers should therefore be given until 1 July 2024 to achieve full compliance.

In the submission that follows we elaborate on these and other issues by answering each of the questions posed in the consultation paper.

National Code for overseas students

1. Are there features of the Code that could also be applied to domestic student support and included in the Guidelines?

The proposed amendments in the Higher Education Support Amendment (Response to the Australian Universities Accord Interim Report) Bill 2023 and new requirements in this consultation paper broadly cover the array of student supports that are applicable to all students.

2. How do we ensure that the Code and the new arrangements work together effectively?

Long-term, we urge the Department to look afresh at the merits of moving to a far simpler, less duplicative, and modern regulatory and reporting framework covering the delivery of education and training by registered tertiary education providers whether in Australia, transnationally, through blended-learning or fully online. As we stressed in our [April 2022 submission to the ESOS Act Review](#), the ESOS Framework was established well before the rise of online education and Australia’s decision, in 2011, to shift to a national risk-based approach to regulating its tertiary education sector through the creation of separate national laws and regulators for vocational and higher education providers. Regulatory modernisation requires a commitment from the Commonwealth to work in partnership with the sector to develop and implement an integrated set of threshold standards and a risk-based approach that covers domestic and international students coherently, taking account of differences in the location and mode of study.

In the short-term, where possible, the Department should seek to align the language in the Bill and Guidelines with that used in Standard 8.8 of the *National Code* to ensure that all students are supported consistently. For example, the requirements in the *National Code* apply to an institution’s ‘policy and process for monitoring and recording course progress for the overseas student’,¹ whereas the proposed *HESA Amendments* require policy only and the identification of student success in *units of study*.² Introducing the same standard for all students rather than requiring international students to be counted and potentially audited twice over (across CRICOS registered courses in the *National Code* and units in the *HESA* and *HEP Guidelines*) would ensure consistency, and reduce duplication and unnecessary compliance costs for providers.

Additionally, it would be helpful for the higher education sector to have one set of requirements, regardless of a student's citizenship or visa status, rather than working to implement disparate instruments under different pieces of legislation. Similarly, consulting with the higher education sector on key draft changes to legislation and associated instruments before they are introduced to Parliament, and with sufficient time to respond appropriately, would reduce the risk of confusion and unintended consequences arising from duplication or contradictions across various instruments.

For instance, due to the proposed requirement under the *HEP Guidelines* for a 'Support for Students Policy' to include 'appropriate crisis and critical harm response arrangements for students', there are now three different legislative instruments (under three distinct acts) requiring providers to have crisis, critical harm, or critical incidents policies and/or procedures (*National Code*, *Higher Education Standards Framework (HESF)*, and proposed for the *HEP Guidelines*). The *National Code* (p.28) includes a specific definition of a 'critical incident': 'A traumatic event, or the threat of such (within or outside Australia), which causes extreme stress, fear or injury', supplemented by Standard 6.8, which states the policy for managing critical incidents includes those 'that could affect the overseas student's ability to undertake or complete a course, such as but not limited to incidents that may cause physical or psychological harm.' It would be ideal if the language around 'crisis and critical harm' in the *HEP Guidelines* were consistent with its use in the *National Code* (though updated to apply to all students). Ensuring the language and meaning used for terms is the same across all three legislative instruments, where possible and appropriate, would enable providers to adopt the same nomenclature and standards in their policies. Similarly, ensuring there is consistency across Commonwealth regulatory obligations would ensure the *National Code* and *HEP Guidelines* (and other instruments) work together effectively.

The proposed changes to the Higher Education Provider Guidelines

3. What other detail should be included in the Guidelines and why?

The consultation paper acknowledges the diversity of providers across the higher education sector and states that 'it is not expected that there will be a one size fits all response to the minimum requirements' (page 8). To clarify the meaning of this expectation, the *HESA* (if amended) or Guidelines should set out how the Department's approach to compliance will ensure that it does not take a one-size-fits-all approach. In this regard, [TEQSA's regulatory approach is helpful](#), especially its application of the three regulatory principles of *necessity*, *reflective of risk* and *proportionality* (*TEQSA Act*, Part 2, Sections 13-17). Given the consultation paper's recognition of the overlaps that the proposed changes to the *HESA* will create for both the Higher Education Threshold Standards and the ESOS Framework, the Department should, at a minimum, adopt a transparent approach to compliance that is consistent with TEQSA's regulatory principles.

Noting the *HESA's* recognition (Division 2–Objects) of Australia's public universities as autonomous institutions, TEQSA's longstanding application of its regulatory principles, and the Government's recognition of the sector's diversity, we have serious concerns about the Government's proposal to mandate that every higher education provider in receipt of Commonwealth funding support must have and apply a stand-alone 'Support for Students Policy' – ahead of a review of the relevant Threshold Standards by the Higher Education Standards Panel.

The Guidelines should therefore clarify whether a stand-alone 'Support for Students Policy' will be required of all providers. As detailed above, our strong contention is that this should not be required and that the Guidelines should detail the requirements for compliance, if providers determine that the best approach for their particular circumstances and operations requires more than one policy instrument.

4. Are the proposed individual student and institutional level requirements practical, and implementable? If not, how could they be improved?

Some of the proposed additional requirements are practical and implementable. However, some requirements have practical, legal, and budgetary implications for providers that need to be understood, considered, and addressed. For example:

- **'How the higher education provider will assess academic and non-academic suitability for continuing study, especially for students who have already triggered alerts'**

This requirement has potential issues relating to practical implementation and reporting, particularly regarding the 'non-academic suitability' aspect. It is unclear what the Commonwealth is referring to regarding 'non-academic suitability', but if this relates to 'fitness to study', this is not a requirement that

should be mandated. For example, students who experience mental health issues often take time to identify what is troubling them, to develop trust and seek treatment, and to realise the effect of treatment. If students disclosing mental health problems results in universities having to make decisions about their continued study, that would erode trust in coming forward about issues and potentially breach anti-discrimination legislation. Mandating an assessment of such 'non-academic' issues, particularly where identification may have implications for whether a student continues their studies, is a significant change that should be thoroughly considered against broader national and state legislative requirements (including privacy and anti-discrimination laws).

- ***'A list of circumstances resulting in proactive offers of 'special consideration' and academic adjustment arrangements for students who have experienced or been affected by a significant life event'***

Similarly, the requirement for the policy to have 'a list of circumstances resulting in proactive offers of 'special consideration' and academic adjustment arrangements for students who have experienced or been affected by a significant life event' may create privacy issues. While higher education providers allow for a range of circumstances to be appraised for special consideration or arrangements, it is appropriate that students themselves decide if they would like to request such consideration or arrangement. More proactive action by providers, as implied by 'where a provider is aware of a significant life event of a student', would likely necessitate the sharing of health and other personal information derived from student disclosures. Privacy legislation requires universities to protect personal information, including health information. This may inhibit the sharing of information that might be used in targeted support and providing 'pro-active' special consideration arrangements for students who have been affected by significant life events. If the amended *HEP Guidelines* were to require universities to list circumstances resulting in 'special consideration' and academic adjustment arrangements, this should not be accompanied by a requirement for providers to proactively offer such arrangements.

- ***'Processes to ensure that students are connected to support, and that non-engagement with support triggers escalations before the census date wherever possible'***

Census is typically the fourth week of a regular semester. In most instances, identification, contact, and escalation due to non-engagement before a census date would not be possible if the identification of academic issues occurs within that same semester. As such, sufficient scope for providers to meet this requirement should be embedded in the procedures, as in most instances, they would only be able to ensure there is support prior to a census in the following semester, that is after a student has been identified as needing support through their performance in assessments related to the previous semester/s. This requirement would also be extremely difficult to implement for students enrolled in intensive sessions held during December, January, February or July, which run for six weeks or less. A directive for pre-census intervention, especially in the first semester of study, may also promote unreasonable discrimination on the basis of factors outside students' control, such as background and socio-economic status, in the absence of robust data on their academic achievement and participation.

- ***'Targeted in-course support from academic staff such as check-ins, and flexibility on assessment arrangements'***

It is unclear what academic staff 'check-ins' with students would involve, who is responsible for 'targeting' or identifying students requiring a 'check in', whether academic staff are best placed to be proactively offering 'check ins', how this would be prescribed via an institutional-level policy, or how this relates to reporting requirements.

- ***'Appropriate crisis and critical harm response arrangements for students'***

As noted above, there are already several requirements for providers to have policies covering crisis and critical harm response arrangements for students. Having such policies is crucial however, consistent with our earlier contention, it is unclear why such arrangements need to be included in a stand-alone 'Support for Students Policy' that is focused on students successfully completing their units of study. Given the separate requirements in the *HESF* and the *National Code*, the *HEP Guidelines* could iterate the obligation for providers to have such policies, but not mandate that their provisions be included in a new 'Support for Students Policy'.

- **‘Support for Students Policy must be updated on an annual basis’**

Should the Government persist with requiring a stand-alone ‘Support for Students Policy’ it is unclear why a requirement for annual updating would be needed. While the information to be included in any such policy may be established at the national level, policies are localised documents that should be subject to each provider’s internal processes for periodic review and quality assurance, and as a result, be updated as necessary. It is feasible that a ‘Support for Students Policy’ could be working effectively in a given year without needing to be updated. It is therefore unclear why a provider should potentially be in breach of the *HEP Guidelines* for failing to update such a policy on an annual basis in such a circumstance.

- 5. Are there examples of best practice, reports and reviews that focus on supporting students to complete their studies, that could be drawn on for the Guidelines?**

As conveyed above and in our [25 August submission to the Senate Committee inquiry into the Bill](#), we are disappointed and surprised that the Government has introduced legislation to give effect to its proposed alternative to the 50% PRR without any meaningful consultation occurring with the sector, including to identify examples of leading and effective practices and existing reporting requirements.

Improving the overall quality of the student experience is a strategic priority for the University and our student support measures are a key component of this. We currently report on progress in this area in the University’s [annual reports](#), to TEQSA, to the Department in context of various policies and programs (e.g. mission-based compacts, performance-based funding, the Indigenous Student Success Program and Disability Support Program) as well as in detail internally and in some cases publicly as required by the University’s governance, quality and performance management framework. For example, see here for our public reporting regarding implementation of our [Disability Inclusion and Action Plan](#).

We would always welcome the opportunity to brief the Department on our efforts to improve the overall quality of the learning experience and outcomes of our students, including academic, pastoral and other non-academic support measures.

Reporting

- 6. What other reporting requirements need to be included to demonstrate compliance with the Support for Students Policy requirements? and**
- 7. Is there other information that should be reported, or that could be re-purposed, that would demonstrate compliance, and assist in monitoring and evaluating the outcomes of these Guidelines?**

As noted above, the University of Sydney already has extensive internal and external reporting obligations in relation to its delivery of student support measures and outcomes. These reporting obligations would be the same or similar for Table A public universities and other higher education providers eligible to enrol students with Commonwealth funding support. We therefore urge the Department to consult with the sector to gain an understanding of all relevant existing reporting, prior to imposing new mandatory requirements that can only add complexity and duplication, unless existing reporting burdens are rationalised.

Any new reporting demands that may be introduced should allow sufficient flexibility for providers to identify how they support students, rather than prescribing narrow or overly specified requirements. Student support is an ongoing process and providers should have the scope to continually update and improve identification and support measures without being tied to prescriptive reporting requirements.

For Table A universities, we encourage the Department to consider any new reporting to occur no more than annually through the mission-based compacts/funding agreement process and publicly as part of their existing annual reports. In terms of minimum content and achieving consistency in reporting between different provider categories under a model that is not-one-size-fits all and provides flexibility, the approach the Department took when implementing provider reporting on voluntary adoption of the [Model Code for the Protection of Freedom of Speech and Academic Freedom in Australian Higher Education Providers](#) may provide a useful model. There, the Department took advice from a working group of University Chancellors to agree a template for the content of ‘[Freedom of Speech and Academic Freedom Attestation Statements](#)’, a version of which the University of Sydney has included in its Annual Report since 2020.

Non-compliance

8. What needs to be taken into account in the Department's approach to non-compliance?

Recognising that connecting students to support is a mutual responsibility, providers can identify students at risk of not progressing in their course based on academic assessment outcomes, but students should have a responsibility to engage with, or reach out for, assistance. Also, as noted above, providers have obligations to protect the personal information of students, which may limit the information that can be disclosed to the Department as part of a provider's potential compliance reporting.

There is a need to ensure transparency and consistency in the Department's approach to compliance monitoring and enforcement. The consultation paper does not include any information about providers' rights of appeal following compliance decisions by the Department regarding the proposed 'Support for Students Policy' amendments. Additionally, as described above, there are clear overlaps with existing compliance reporting and reporting more generally. It is unclear why the Department now seeks to be involved in monitoring the delivery of regulatory requirements in this area and whether the resourcing implications of potential duplicated reporting to the Department and to TEQSA (for both providers and affected agencies) have been adequately considered.

Implementation

9. What practical considerations need to be taken into account in implementing the Guidelines?

We are concerned that the consultation paper's advice about implementation requirements on pages 12-13, particularly regarding the timeframes proposed for achieving compliance being 'the start of the 2024 academic year', is unreasonable and unrealistic given providers' established legal and policy requirements for the introduction of new policies.

At the University of Sydney, policy development, review and renewal must occur in accordance with the [University of Sydney \(Policies Development and Review\) Rule 2011](#). This Rule, which is made by the Senate under a By-law of the *University of Sydney Act 1989*, sets out the steps that must be taken by officers of the University proposing new policies, or major changes to existing instruments. Consistent application of the Rule ensures that all University policies are properly prepared and informed by appropriate consultation with staff, students, and relevant University bodies including the Academic Board for all policies relevant to academic matters. With the Government's Bill still before Parliament and the changes to the Guidelines unlikely to be confirmed by Parliament for weeks if not months, we could commence preparatory work but could not commence the formal requirements of our Rule until the full details of the amended *HESA* and supporting Guidelines are known. With the end of the 2023 Academic Year fast approaching, we consider it likely to be practically impossible for the University to have a stand-alone 'Support for Students Policy' in place before the start of our next Academic Year (19 February 2024). Should the Government persist in requiring a stand-alone 'Support for Students Policy', providers should be given until 1 July 2024 to achieve full compliance.

¹ *National Code of Practice for Providers of Education and Training to Overseas Students 2018*, Standard 8.8 [emphasis added].

² *Higher Education Support Amendment (Response to the Australian Universities Accord Interim Report) Bill 2023*, No. 47, 2023, 19-43(2).