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Mr Ben Rimmer  
Deputy Secretary, Higher Education Research and International  
Department of Education  
GPO Box 9880  
CANBERRA ACT 2601

Dear Mr Rimmer

**RE: ITECA Response – Consultation Paper on Support for Students Policy**

The Independent Tertiary Education Council Australia (ITECA) is the peak body representing independent institutions in the higher education, skills training, and international education sectors. It is in response to the Consultation Paper on the proposed “Support for Students Policy” requirements set out in the *Higher Education Support Amendment (Response to the Australian Universities Accord Interim Report) Bill 2023* – the HESA Bill –that ITECA writes.

ITECA Higher Education has recognised the well-intentioned policy objectives underpinning the HESA Bill. In seeking to pursue these objectives and to ensure that reform measures can be effective, however, it is imperative that the perspectives and expertise of those directly affected by it are heard and integrated into the design process. Prior consultation with regulated business sectors is not merely a procedural step; it is a cornerstone of enlightened and responsive legislative governance.

While the Consultation Paper on the “Support for Students Policy” was released nearly two weeks after the HESA Bill was introduced into the Parliament, and engagement on the detail in the Paper itself has been limited at best, it is nonetheless pleasing the Department has canvassed a number of important issues through the Paper.

Among the issues that are central to the “Support for Students Policy”, is the need to engage deeply with the independent sector on the mutual desire to student success in higher education. In pursuing these intentions, it is also imperative to consider potential ramifications of the policy design, including with respect to issues such as academic integrity, potential shifts in institutional behaviour regarding student enrolment, as well as the additional financial, regulatory and reputational implications of the HESA Bill.

While the intent behind the HESA Bill is inarguably noble, it does pose a slew of challenges and ambiguities for institutions. ITECA Higher Education is particularly concerned about the design of the proposed “Support for Students Policy” requirements as well as the manner in which these have communicated to the sector.



## Regulatory Overlap

The majority of ITECA Higher Education members that support students across all levels of higher education attainment and disciplines are dual sector institutions that also support international students. As the Department is keenly aware, in this context these institutions are currently required to maintain policies, programs and processes to support students succeed in the event of difficulty and in their chosen studies. These requirements are in place under three separate legislative mechanisms:

- **Higher Education Standards Framework (Threshold Standards) 2021** made pursuant to the *Tertiary Education Quality and Standards Agency Act 2011*
- **Standards for Registered Training Organisations (RTOs) 2015** made pursuant to the *National Vocational and Training Regulator Act 2011*
- **National Code of Practice for Providers of Education and Training to Overseas Students 2018** made pursuant to the *Education Services for Overseas Students Act 2000*

Every higher education institution is, at the very least, already subject to regulation in this policy area under the Threshold Standards. ITECA Higher Education very much supports initiatives that enhance the safety of students in the study environment, the ability of students to raise concerns about those issues and to see those concerns addressed.

A case has not been put forward by the Australian Government, however, for yet more regulation, that's duplicative in nature, to develop and confirm additional student support mechanisms through additional legislative measures. Further, at no time have alternative proposals been entertained that would enable the sector to deliver these improved support outcomes for students without creating an additional, burdensome, and duplicative red tape burden.

The ITECA Higher Education membership have raised questions relating to coverage of the proposed new requirements. The student support requirements placed on institutions under the Threshold Standards are focussed on quality-related activity of the institution in terms of delivery and the institution broadly.

The parallel requirements under the RTO Standards in the context of a dual-sector institution relate to the relevant skills training aspects of the institution. The respective requirements under Standards 6 of the National Code, however, are able to apply in relation to student visa holders in courses registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) only.

In this context, the ITECA Higher Education membership is of the firm view that the coverage of existing student support requirements is comprehensive.

Noting this, ITECA Higher Education has two core questions regarding coverage that remain unanswered:

- I. Do the support for students policy requirements (and the issues that might be included in the Higher Education Provider Guidelines) apply only in respect of students in receipt of course subsidies under the Commonwealth Grant Scheme and / or the Higher Education Loan Program?

That is, are full-fee paying domestic and international students excluded from coverage under these proposed new requirements as they are not covered by the funding arrangements in the HES Act 2003?

2. Given there are already no fewer than three separate pieces of legislation that stipulate a range of requirements be in place for support for student policies and processes and that there was an absence of engagement with the sector regarding the need for additional measures, what action is being taken to streamline the existing and new requirements at a policy and implementation level?

How is this being managed in a way that engages institutions to reduce the substantial regulatory burden while ensuring students are supported?

In addition to the broad information included, the Consultation Paper includes a degree of detail that offers some assistance with respect to how the “Support for Students Policy” may be framed. Noting this, ITECA Higher Education is pleased to offer feedback on these issues, following consultation with our members.

The Consultation Paper notes that *“the Department proposes that the guidelines will prescribe the following information to be included in the Support for Students policy...”* and at the same time highlights that the list which follows in the Paper is not exhaustive. The list of fifteen requirements in the Consultation Paper includes matters that are either already specified in the Threshold Standards and National Code or which would be reflected through slight amendment to those existing regulatory requirements.

The list also includes obligations relating to workplace health and safety required of businesses in respect of critical incident and response policies. These are matters already specified through robust regulatory obligations through legislative provisions outside the various tertiary education frameworks. It is not apparent that adding to them through another Commonwealth policy is likely to assist in any measurable or evident way.

The proposed requirements for the “Support for Students Policy” obligations appear to reflect a desire to have additional in-house regulatory tools as opposed to ensuring the best supports are in place to ensure students are safe and in the best position to successfully complete their studies. These proposed additional requirements create additional red tape and are unlikely to deliver any benefit to students or institutions in this regard.

### **Reporting Obligations**

The HESA Bill mandates reporting obligations on institutions with respect to the “Support for Students Policy”. As ITECA Higher Education members have advised, all institutions provide reports in their existing obligations outlined above.

In the context that the Consultation Paper is the first avenue for discussion on what the actual reporting requirements with respect to timeframe and content of these reports the Minister might be, engagement with independent institutions on these issues has been highly deficient.

The HESA Bill places obligations on institutions in relation to the reporting of compliance with respect to the “Support for Students Policy”. Crucially, the HESA Bill states the report by institutions must:

1. be provided to the Minister within an undefined period (or at intervals) specified in the Higher Education Provider Guidelines; and
2. include information specified in those Guidelines.

The language of the Consultation Paper is concerning in this regard insofar as there are “...*specific reporting requirements that will be in the Guidelines and include but not limited to...*” This demonstrates the concern that this is not a consultation exercise as much as it is an exercise in telling the sector what will be imposed upon them. For example, among the matters that are to be in the reports from institutions are numbers of students identified as requiring support, disaggregated by faculty and the support provided for those identified students as well as the academic progression and outcomes of identified students. Requirements of this nature that have been developed without any discussion or actual consultation are concerning as they do not appreciate the diversity of the sector.

While there may be some institutions with a substantial number of students in a given faculty requiring support, other institutions may have fewer than one hundred students in total and half that number in one faculty. These mandatory reporting requirements ensure it is likely that individuals will be identifiable and therefore likely also that their privacy may be infringed.

These issues highlight the importance of genuine consultation being undertaken prior to introduction of legislation, rather than a process such as this being managed at a time substantially after introduction of the legislative amendments.

A further issue of concern relates to the timeframe given for reporting. While the HESA Bill does not offer any surety with respect to reporting timeframes, it was anticipated timeframes would be set down in the Guidelines. Rather, the Consultation Paper highlights that reporting “...*could be expected to be periodically, after each census date, twice yearly, annually or at other determined intervals.*” In the context of the Government seeking to mandate considerable additional obligations on higher education institutions and requiring those institutions to report in their compliance with those obligations, the Government offers nothing tangible with respect to when or how institutions will be required to report.

ITECA Higher Education is firmly of the view that this is simply not good enough and highlights again a failure of consultation process. A process whereby timeframes and processes were aligned with existing reporting obligations as outlined above would assist in achieving a degree of regulatory convergence for ITECA Higher Education continues to advocate.

### **Penalty Provisions**

ITECA High Education has previously raised concerns regarding the proposed civil penalty provision in the HESA Bill. Against the background of these concerns, the detail provided in the Consultation Paper with respect to how the Government proposes to manage compliance with the “Support for Students Policy” requirements is welcome.

Of particular interest, it is noted that the Department proposes to establish both the capacity to undertake desktop audits of all higher education institutions, as well as a mechanism or office for complaints to be received from “students and others”.

Although it is not dealt with in either the HESA Bill or the Consultation Paper and has not been canvassed with stakeholders from the independent sector, presumably this complaints handling facility will also be given the authority and capacity to deal with all complaints received in a fully appropriate and confidential. While the requirements of the HESA Bill (and therefore the Consultation Paper) relate only to students of higher education institution approved under the HES Act, Consultation Paper indicates this complaints mechanism will also receive complaints from “others”.

ITECA Higher Education, with the firm backing of members, very strongly reiterates concerns already raised above that the lack of consultation and engagement prior to the introduction of the HESA Bill has resulted in what appears to be a policy design that poorly framed and designed in a way that is replete with unintended consequences.

The Consultation Paper highlights a range of compliance tools that the Department may use in an effort to either seek and change the behaviour of an institution or to sanction an institution in the case of poor behaviour.

ITECA Higher Education notes that in comparison to the other regulatory tools available to the Department, reliance on and the use of a civil penalty in the amount provided for under the HESA Bill is unlikely to drive a desired behavioural change at the institutional level across the sector. ITECA Higher Education would strongly encourage the Department to work closely with other regulators that have demonstrated success in driving behavioural change in a tertiary education setting. ITECA, through our work with the skills training and international sectors, has a particular expertise in working with regulators across Australia in this area and would be pleased to assist the Department in this regard.

A strong sanction relating to suspension or revocation of approval as foreshadowed is one that should only be used where there is evidence of repeated and / or egregious non-compliance.

In all cases, the Department must take close account of the regulatory mechanisms and effecting institutions under other legislative frameworks when considering any compliance or enforcement action.

ITECA Higher Education takes this opportunity to reiterate the desire of all independent higher education institutions to support students to succeed and meet their study goals. While the ITECA Higher Education membership supports the intent of the HESA Bill in this context, it is not however, possible to support the detail in the Consultation Paper regarding the “Support for Students Policy” given the absence of prior engagement with the sector on the need for or design of that policy. ITECA Higher Education seeks to develop a cohesive tertiary education system and looks forward to working with you to achieve that.

We look forward to further engagement with you on this legislation.

Yours faithfully



Felix Pirie  
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