

The Senate

Education and Employment
Legislation Committee

Higher Education Support (Charges) Bill
2018 [provisions]

Higher Education Support Amendment
(Cost Recovery) Bill 2018 [provisions]

November 2018

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Mr Matthew Hughes, Research Officer

Ms Jade Monaghan, Administrative Officer

Committee web page:

www.aph.gov.au/senate_eec

PO Box 6100

E-mail: eec.sen@aph.gov.au

Parliament House

Ph: 02 6277 3521

Canberra ACT 2600

Fax: 02 6277 5706

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Chapter 1

Introduction

Reference

- 1.1 On 18 October 2018 the Senate referred the provisions of the Higher Education Support (Charges) Bill 2018 (the Charges Bill) and the Higher Education Support Amendment (Cost Recovery) Bill 2018 (the Cost Recovery Bill) to the Education and Employment Legislation Committee for inquiry and report by 23 November 2018.¹

Conduct of the inquiry

- 1.2 Details of the inquiry were made available on the committee's website. The committee also contacted a number of organisations inviting submissions to the inquiry. Eighteen submissions were received, as detailed in Appendix 1. The committee decided to conduct the inquiry on the papers.

Structure of the report

- 1.3 This chapter describes the administrative arrangements for the inquiry and provides an overview of the bills.
- 1.4 Chapter 2 provides background information and sets out the details of the key provisions of the bills.
- 1.5 Chapter 3 sets out the government's rationale for the proposed changes, and looks at several issues raised in submissions.

Overview of the bills

- 1.6 The Charges Bill would introduce an annual charge on all higher education providers whose students are entitled to HECS-HELP assistance or FEE-HELP assistance under the *Higher Education Support Act 2003* (HESA or the Act).²
- 1.7 According to the Explanatory Memorandum the annual charge would be imposed as a tax. The Charges Bill does not set the amount of the annual charge, which would be prescribed by the regulations or worked out in accordance with the manner prescribed in the regulations.³
- 1.8 The Cost Recovery Bill would amend HESA to implement an application fee for higher education providers seeking approval as a higher education

¹ *Journals of the Senate*, No. 125, 18 October 2018, p. 3994.

² *Explanatory Memorandum*, Higher Education Support (Charges) Bill 2018, p. 2.

³ *Explanatory Memorandum*, Higher Education Support (Charges) Bill 2018, p. 2.

provider under the Act to offer FEE-HELP. The amount of the application fee would be set in the *Higher Education Provider Guidelines 2012*.⁴

- 1.9 The Cost Recovery Bill would also provide for the administration of the proposed annual charge.⁵

Compatibility with human rights

- 1.10 The bills' Explanatory Memoranda state that the bills are compatible with human rights because they do not raise any human rights issues.⁶
- 1.11 The Parliamentary Joint Committee on Human Rights considered the bills in its Scrutiny Report 11 of 2018. No concerns were identified.⁷

Financial impact statement

- 1.12 The 2018-19 Budget reported that the government expected to raise \$30.7 million over the forward estimates from the annual charge and the application fee.⁸ The government has since revised this figure. The Explanatory Memorandum for the Charges Bill states that the annual charge is expected to deliver a saving of \$13.8 million over the forward estimates (2019-20 to 2021-22).⁹ The application fee is expected to deliver a saving of \$0.3 million over the forward estimates. Together, these measures would provide an estimated saving of \$14.1 million over the forward estimates.¹⁰
- 1.13 Since the introduction of the bills, the total figure has been further refined in the Department of Education and Training's draft Cost Recovery Implementation Statement to \$11.3 million over the forward estimates.¹¹

Scrutiny of Bills Committee

- 1.14 The Senate Standing Committee for the Scrutiny of Bills (Scrutiny of Bills Committee) considered the bills in its Scrutiny Digest 12 of 2018. The Scrutiny of Bills Committee considered that some guidance on 'the method of calculation of a maximum charge should be provided on the face of the

⁴ *Explanatory Memorandum, Higher Education Support Amendment (Cost Recovery) Bill 2018*, p. 2.

⁵ *Explanatory Memorandum, Higher Education Support Amendment (Cost Recovery) Bill 2018*, p. 2.

⁶ *Explanatory Memorandum, Higher Education Support (Charges) Bill 2018*, pp. 3–4; and *Explanatory Memorandum, Higher Education Support Amendment (Cost Recovery) Bill 2018*, p. 5.

⁷ Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report*, Report 11 of 2018, 16 October 2018, p. 72.

⁸ Commonwealth of Australia, *Budget Measures: Budget Paper No. 2 2018-19*, p. 10. Note: the measure applies to the last three years of the forward estimates.

⁹ *Explanatory Memorandum, Higher Education Support (Charges) Bill 2018*, p. 2.

¹⁰ *Explanatory Memorandum, Higher Education Support Amendment (Cost Recovery) Bill 2018*, p. 2.

¹¹ Department of Education and Training, *Cost Recovery Implementation Statement, Cost recovery activities for HECS-HELP and Fee-HELP programs*, Financial Year 2018-19, 31 October 2018, p. 17.

primary legislation'.¹² The Scrutiny of Bills Committee also considered that 'significant matters, such as the amount of a penalty or the review of decisions relating to the collection and recovery of the higher education provider charge, should be included in primary legislation unless a sound justification for the use of delegated legislation is provided'.¹³

1.15 The Scrutiny of Bills Committee sought the minister's advice on the following matters:

- 'why there are no limits on the charge specified in primary legislation and whether guidance in relation to the method of calculation of a maximum charge can be specifically included in the bill';¹⁴
- 'why it is considered necessary and appropriate to provide that the rate of a penalty for late payment and the right of review of decisions made in relation to the collection or recovery of higher education provider charges may be set out in delegated legislation';¹⁵
- 'why, if it is considered appropriate to leave such matters to delegated legislation, the bill does not require that the Guidelines make review rights available'.¹⁶

1.16 At the time of writing, the Scrutiny of Bills Committee is yet to publish a response from the minister.

Acknowledgement

1.17 The committee thanks the various stakeholders who contributed to the inquiry by preparing written submissions.

¹² Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 12 of 2018*, 17 October 2018, p. 7.

¹³ Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 12 of 2018*, 17 October 2018, pp. 8–9.

¹⁴ Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 12 of 2018*, 17 October 2018, p. 7.

¹⁵ Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 12 of 2018*, 17 October 2018, p. 9.

¹⁶ Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 12 of 2018*, 17 October 2018, p. 9.

Chapter 2

Background and key provisions

- 2.1 This chapter sets out the purpose of, and measures proposed by the Higher Education Support (Charges) Bill 2018 (the Charges Bill) and the Higher Education Support Amendment (Cost Recovery) Bill 2018 (the Cost Recovery Bill).

Purpose of the bills

- 2.2 The purpose of the bills is to implement cost recovery for the administration of the HECS-HELP and FEE-HELP programs. In introducing the bills to the House of Representatives on 19 September 2018, the Minister for Education, the Hon. Dan Tehan MP (the minister), stated that the Higher Education Loan Program (HELP) cost recovery measures 'will ensure consistency and fairness across the whole of the tertiary education sector, as similar charging measures already exist in the vocational education and training sector'.¹
- 2.3 The Charges Bill seeks to introduce an annual charge on all higher education providers whose students are entitled to HECS-HELP assistance or FEE-HELP assistance. In introducing the Charges Bill, the minister explained the purpose of the annual charge:
- The annual charge will partially recover the costs incurred by the Commonwealth each year in administering the HECS-HELP and FEE-HELP programs from higher education providers.²
- 2.4 The annual charge is also intended to partially recoup the costs incurred by the Commonwealth in relation to data collection and analysis as well as compliance activities.³
- 2.5 The Cost Recovery Bill would implement an application fee for registered higher education providers that apply for approval as a higher education provider to offer FEE-HELP.⁴ The fee would fully recover the costs of administration and assessment of applications from prospective FEE-HELP providers.⁵ Further information on the purpose and details of the application fee is set out towards the end of this chapter.

¹ The Hon. Dan Tehan MP, Minister for Education, *House of Representatives Hansard*, 19 September 2018, p. 9466.

² The Hon. Dan Tehan MP, Minister for Education, *House of Representatives Hansard*, 19 September 2018, p. 9467.

³ *Explanatory Memorandum*, Higher Education Support (Charges) Bill 2018, p. 3.

⁴ *Explanatory Memorandum*, Higher Education Support Amendment (Cost Recovery) Bill 2018, p. 2.

⁵ *Explanatory Memorandum*, Higher Education Support Amendment (Cost Recovery) Bill 2018, p. 2.

Background

- 2.6 On 8 May 2018, the government announced two HELP charging measures as part of the 2018-19 Federal Budget. These measures would require higher education providers, who utilize Commonwealth funding, to contribute to the maintenance and operation of HELP arrangements. The proposed charging measures would involve:
- an annual charge on all higher education providers whose students are entitled to HECS-HELP and/or FEE-HELP assistance, to partially recover the costs incurred by the Commonwealth in administering the HECS-HELP and FEE-HELP programs; and
 - an application fee for registered higher education providers seeking approval as a higher education provider under the *Higher Education Support Act 2003* (HESA or the Act) to offer FEE-HELP, in order to recover the Commonwealth's full costs of administering and assessing applications.⁶
- 2.7 The bills seek to implement the government's commitment to introduce partial HELP cost recovery measures in the higher education sector. Higher education providers would be required to meet the cost for the regulatory arrangements from revenues they raise. The minister has noted that proposed cost recovery measures are consistent with the Australian Government Charging Framework (the Charging Framework).⁷

Australian Government Charging Framework

- 2.8 Cost recovery involves government entities charging individuals or non-government organisations some or all of the efficient costs⁸ of a regulatory activity. The Charging Framework, which incorporates the Cost Recovery Guidelines, encourages a common approach to planning, implementing and reviewing government charging.⁹
- 2.9 In accordance with the Charging Framework, the Department of Education and Training (the department) released a draft Cost Recovery Implementation

⁶ Department of Education and Training, *Higher Education Loan Program (HELP) Charging Measures 2018*, www.education.gov.au/higher-education-loan-program-help-charging-measures-2018 (accessed 15 November 2018).

⁷ The Hon. Dan Tehan MP, Minister for Education, *House of Representatives Hansard*, 19 September 2018, p. 9466.

⁸ 'Efficient costs' are defined as 'the minimum costs necessary to provide the activity while achieving the policy objectives and legislative functions of the Australian Government'. Department of Finance, *Australian Government Charging Framework: Resource Management Guide No. 302*, July 2015, p. 20.

⁹ Department of Finance, *Australian Government Charging Framework: Resource Management Guide No. 302*, July 2015, p. 4.

Statement (Implementation Statement) for consultation on 31 October 2018.¹⁰ The Implementation Statement provides information to higher education stakeholders about how the department plans to implement the measures. The proposed fee structure set out in the Implementation Statement is discussed in Chapter 3.

Commonwealth higher education funding

- 2.10 HESA provides the framework for Commonwealth funding for higher education institutions. The Act covers major higher education funding programs, including HELP loans to students, the Commonwealth Grant Scheme (which subsidises tuition costs for Commonwealth supported places), research grants, and other grants such as funding for equity programs.
- 2.11 Providers must meet quality and accountability requirements, including in relation to financial viability, to maintain their status as an approved higher education provider under HESA.¹¹
- 2.12 Access to Commonwealth funding is restricted according to provider classification arrangements established under HESA. The Act sets out three categories of providers based on tables contained in the Act, with the major of Australian higher education providers being 'Table A providers':
- Australian public universities (Table A providers) have access to all government grants under the Act, and their eligible students can access all HELP loans.
 - Universities listed in Table B can access some government grants, and their eligible students can access FEE-HELP, and in some cases HECS-HELP.
 - Universities listed in Table C and other approved non-university higher education providers are not eligible for government grants under the Act, but their students can access FEE-HELP.¹²

The Higher Education Loan Program

- 2.13 HELP comprises five student loan schemes which allow eligible students to defer the cost of approved tertiary education courses at approved providers. When a student accesses HELP, the government pays the student's contribution amount of their tuition fees directly to the provider.¹³ HELP loans are repaid through the Australian Taxation Office when the debtor's income exceeds the minimum repayment threshold. The schemes are:

¹⁰ Department of Education and Training, *Cost Recovery Implementation Statement, Cost recovery activities for HECS-HELP and Fee-HELP programs, Financial Year 2018-19*, 31 October 2018.

¹¹ *Higher Education Support Act 2003*, ss. 19-1, 22-15, 36-60.

¹² Department of Education and Training, 'Determine your provider type', <https://heimshelp.education.gov.au/resources/provider-type> (accessed 15 November 2018). See also *Higher Education Support Act 2003*, subdiv. 16-B.

¹³ Department of Education and Training, *Submission 18*, p. 1.

- **HECS-HELP**—available for Commonwealth supported higher education students (typically domestic undergraduate students studying at Australian public universities) to pay their student contribution amounts;
- **FEE-HELP**—available for domestic full-fee-paying higher education students to pay course fees up to a lifetime borrowing limit;
- **VET Student Loans**—replaced VET FEE-HELP and is available to Vocational Education and Training (VET) students studying an approved course at an approved training provider, to pay their course costs;¹⁴
- **OS-HELP**—available for eligible Commonwealth-supported higher education students undertaking part of their course overseas; and
- **SA-HELP**—available to students wishing to defer payment of the student services and amenities fee, which providers charge for non-academic student services and amenities.¹⁵

2.14 The department noted that it 'regulates higher education providers that can offer courses under HECS-HELP and FEE-HELP, to ensure that providers are financially viable, making available required information to current and prospective students and complying with reporting obligations and legislative requirements'.¹⁶ The department further explained that the administration of HELP comprises two regulatory activities:

- Applications from registered higher education providers (as defined by the *Tertiary Education Quality and Standards Agency Act 2011*) to be approved under HESA to offer FEE-HELP assistance to eligible students; and
- Ongoing regulatory activities such as compliance and auditing costs, payments and estimates, processing and actioning complaints, and provider and student management. These activities ensure that approved higher education providers continue to meet their requirements as a higher education provider under HESA.¹⁷

2.15 Cost recovery arrangements are currently in place for VET Student Loans, including an application fee¹⁸ and a provider charge levied on approved providers as a tax.¹⁹ These charges are set in regulations.

2.16 No cost recovery charges for HELP currently apply to higher education providers. However an administrative charge is currently in place for

¹⁴ Under the *Education and Other Legislation Amendment (VET Student Loan Debt Separation) Act 2018*, VET Student Loans will become a separate program from HELP from 1 July 2019.

¹⁵ Ms Carol Ey, *Higher Education Loan Program (HELP) and other student loans: a quick guide*, Research paper series 2016-17, Parliamentary Library, Canberra, 2017.

¹⁶ Department of Education and Training, *Submission 18*, p. 1.

¹⁷ Department of Education and Training, *Submission 18*, p. 1.

¹⁸ *VET Student Loans Act 2016*, s. 31.

¹⁹ *VET Student Loans (Charges) Act 2016*, s. 6.

full-fee-paying students: a 25 per cent loan fee paid by some undergraduates accessing FEE-HELP. The purpose of the loan fee is to recover some of the costs of financing the scheme:

The loan fee is designed to compensate the Commonwealth for the cost of lending amounts that can be significantly higher than those loaned to Commonwealth supported students and therefore may take significantly longer to be repaid.²⁰

- 2.17 In contrast to the FEE-HELP loan fee, the charges proposed in the bills seek to recover some of the regulatory costs of the HELP scheme.

Overview of the higher education provider charge

Commencement date

- 2.18 The introduction of the provider charge would commence on 1 January 2019.²¹ However, the Second Reading Speech indicates that higher education providers would receive their invoice for the annual charge for the 2019 calendar year in 2020, after reconciliation of providers' HECS-HELP and FEE-HELP student enrolment data has occurred.²² The Cost Recovery Bill Explanatory Memorandum further notes that verification of student enrolment data for a calendar year usually occurs around mid-May in the following year.²³

Amount of higher education provider charge

- 2.19 The Charges Bill provides that the amount of the provider charge for a year is the amount (including a nil amount) prescribed by the regulations for that year; or worked out for that year in accordance with a method prescribed by the regulations.²⁴
- 2.20 The Explanatory Memorandum for the Charges Bill states that setting the amount of the charge via regulation provides necessary flexibility, which would 'ensure that the Commonwealth recovers the likely costs of administration of HELP, as the cost of administration increases or decreases'.²⁵
- 2.21 Furthermore, the Charges Bill provides that before the Governor-General makes regulations for the purposes of determining the amount of the charge,

²⁰ Ms Coral Dow, Higher Education Support Amendment (FEE-HELP Loan Fee) Bill 2010, *Bills Digest no. 26, 2010-11*, Parliamentary Library, Canberra, 2010. Note: This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

²¹ Higher Education Support (Charges) Bill 2018, cl. 2.

²² The Hon. Dan Tehan MP, Minister for Education, *House of Representatives Hansard*, 19 September 2018, p. 9467.

²³ *Explanatory Memorandum*, Higher Education Support Amendment (Cost Recovery) Bill 2018, p. 8.

²⁴ Higher Education Support (Charges) Bill 2018, subcl. 7(1).

²⁵ *Explanatory Memorandum*, Higher Education Support (Charges) Bill 2018, p. 6.

the Minister must be satisfied that the effect of those regulations will be to recover no more than the Commonwealth's likely costs in connection with the administration of the HESA.²⁶

2.22 The Charges Bill would also allow the regulations to provide for indexation of amounts specified in the regulations.²⁷

2.23 The Explanatory Memorandum clarifies that prior to the introduction of regulations, a fees schedule would be determined (consistent with the Cost Recovery Guidelines) and documented in the Implementation Statement.²⁸

Exemptions from higher education provider charge

2.24 The Charges Bill would enable the regulations to provide for exemptions for higher education providers from having to pay the higher education provider charge.²⁹ The Explanatory Memorandum does not provide further guidance on how exemptions from the charge would apply.

Regulations

2.25 The Charges Bill includes a standard regulation making power, allowing the Governor-General to make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.³⁰

Administration of the higher education provider charge

2.26 The Cost Recovery Bill contains enabling provisions which would allow the department to administer the annual charge introduced by the Charges Bill.

2.27 The Cost Recovery Bill would require higher education providers to pay the annual charge introduced by the Charges Bill as an ongoing requirement of the approval under HESA. The Explanatory Memorandum for the Cost Recovery Bill states that the government anticipates that the amount of the annual charge would differ depending on the size of the provider, recognising the impost of such a charge on smaller providers.³¹ The government's proposed method of calculating the charge is discussed in Chapter 3.

2.28 Subdivision 19-E of HESA sets out the existing compliance requirements for higher education providers. The basic requirements include that providers must comply with the Act and regulations, the *Higher Education Provider*

²⁶ Higher Education Support (Charges) Bill 2018, subcl. 7(2).

²⁷ Higher Education Support (Charges) Bill 2018, subcl. 7(3).

²⁸ *Explanatory Memorandum*, Higher Education Support Amendment (Cost Recovery) Bill 2018, p. 2.

²⁹ Higher Education Support (Charges) Bill 2018, cl. 8.

³⁰ Higher Education Support (Charges) Bill 2018, cl. 9.

³¹ *Explanatory Memorandum*, Higher Education Support Amendment (Cost Recovery) Bill 2018, p. 2.

Guidelines, and any condition imposed on the provider's approval as a higher education provider.³²

- 2.29 The Cost Recovery Bill would insert a new requirement for higher education providers to pay the charge, and any penalty for late payment of the charge, when it is due and payable.³³
- 2.30 A failure by a provider to pay the charge (or a late payment penalty) would constitute a breach by the provider of the quality and accountability requirements of HESA, for which the Minister can take action.³⁴ The Explanatory Memorandum does not provide further guidance on action the Minister may take.
- 2.31 The Explanatory Memorandum indicates that providers would have 30 days from the date of the issued invoice to pay the charge.³⁵

Higher Education Provider Guidelines

2.32 The Cost Recovery Bill also provides that the *Higher Education Provider Guidelines* may provide for all or any of the following matters:

- the issuing of notices setting out the amount of the higher education provider charge payable by a provider;
- when the higher education provider charge is due and payable;
- the issuing of notices extending the time for payment of the higher education provider charge;
- penalties for late payment of the higher education provider charge;
- to whom the higher education provider charge and any penalties for late payment are payable;
- the refund, remittal or waiver of the higher education provider charge or a late payment penalty;
- the review of decisions made under the *Higher Education Provider Guidelines* in relation to the collection or recovery of the higher education provider charge; and
- any other matters relating to the collection and recovery of the higher education provider charge.³⁶

³² *Higher Education Support Act 2003*, s. 19-65.

³³ This would be a new section in the Act, section 19-66.

³⁴ *Explanatory Memorandum*, Higher Education Support Amendment (Cost Recovery) Bill 2018, p. 8.

³⁵ *Explanatory Memorandum*, Higher Education Support Amendment (Cost Recovery) Bill 2018, p. 8.

³⁶ *Explanatory Memorandum*, Higher Education Support Amendment (Cost Recovery) Bill 2018, p. 8.

Overview of the higher education provider application fee

- 2.33 The Cost Recovery Bill implements an application fee for registered higher education providers that apply for approval as a higher education provider to offer FEE-HELP (payable upon submission of an application for assessment).³⁷
- 2.34 The Explanatory Memorandum for the Cost Recovery Bill explains that the purpose of the application fee is:
- ...to fund the FEE-HELP provider application process, including the costs of administration and assessment of the applications from prospective providers seeking approval as a higher education provider under HESA.³⁸
- 2.35 The Explanatory Memorandum further states that the application fee would be set at a level that will recover the government's full costs of administration and assessment of applications from prospective FEE-HELP providers.³⁹
- 2.36 The Act sets out the existing requirements for applications for approval as a FEE-HELP provider. Currently, applications for approval must be in a form approved by the minister, and accompanied by such information as the minister requests.⁴⁰ The Cost Recovery Bill would amend the Act to require an application for approval to be accompanied by the fee that would be prescribed by, or worked out in accordance with the method prescribed by, the *Higher Education Provider Guidelines*.⁴¹

³⁷ *Explanatory Memorandum, Higher Education Support Amendment (Cost Recovery) Bill 2018*, p. 2.

³⁸ *Explanatory Memorandum, Higher Education Support Amendment (Cost Recovery) Bill 2018*, p. 2.

³⁹ *Explanatory Memorandum, Higher Education Support Amendment (Cost Recovery) Bill 2018*, p. 2.

⁴⁰ *Higher Education Support Act 2003*, s. 16-40.

⁴¹ *Explanatory Memorandum, Higher Education Support Amendment (Cost Recovery) Bill 2018*, p. 7.

Chapter 3

Key Issues

- 3.1 The aim of the Higher Education Loan Program (HELP) is to ensure that the cost of study is not a barrier to students undertaking tertiary education. This is a longstanding enabling policy objective of successive governments which has contributed greatly to the success of Australia's higher education sector:

The Higher Education Loan Program (HELP), and before it the Higher Education Contribution Scheme (HECS), has enabled millions of Australian students to obtain a university qualification without up-front tuition fees. This transformative public policy has contributed to the expansion of the Australian Higher Education system over the last 30 years.¹

- 3.2 The Department of Education and Training (the department) emphasised this point, submitting that without HELP 'it is inconceivable that growth in the higher education sector in recent years could have been achieved'.² In 2017, 622 313 places were funded at higher education institutions, an increase of 153 239 places since 2009.³
- 3.3 The cost of the administration of HELP by the department is currently borne by taxpayers. The proposed cost recovery measures are designed to link 'the cost of services to those who benefit from them'.⁴
- 3.4 This chapter sets out the government's rationale for the Higher Education Support (Charges) Bill 2018 and Higher Education Support Amendment (Cost Recovery) Bill 2018 (the bills), and looks at several issues raised in submissions.
- 3.5 This chapter is structured according to the following topics:
- Basis for introducing cost recovery;
 - The annual charge;
 - Impact on providers;
 - Impact on students;
 - Charging based on number of enrolments;
 - Details of the annual charge;
 - Amount of the charge;
 - Scope of the charge;

¹ University of Canberra, *Submission 16*, p. 1.

² Department of Education and Training, *Submission 18*, p. 2.

³ Department of Education and Training, *Submission 18*, p. 2.

⁴ The Hon. Dan Tehan MP, Minister for Education, *House of Representatives Hansard*, 19 September 2018, p. 9466.

- Consultation with the higher education sector;
- Commencement date of annual charge;
- Application fee; and
- Expected total revenue.

Basis for introducing cost recovery

- 3.6 In introducing the measures, the Minister for Education, the Hon. Dan Tehan MP, explained the government's rationale for implementing cost recovery for HELP:

The HELP cost recovery measures are consistent with the Australian Government Charging Framework and link the cost of services to those who benefit from them.

In this case, the higher education providers will be required to meet the cost for the regulatory arrangements from revenues they raise from students.

Currently these costs are borne by the general public...⁵

- 3.7 The department submitted that higher education providers benefit from 'having access to the Commonwealth Government balance sheet to provide low cost, income contingent student loans on terms that would not be available under any commercial financing arrangement'.⁶ Further, the department submitted that providers benefit from HELP as it is a 'central element of the arrangements that support a well-resourced and growing sector'.⁷
- 3.8 The proposed annual charge is the main vehicle for delivering cost recovery, with the application fee recovering a much smaller amount, as set out in Chapter 1. Accordingly, most submissions focussed on the annual charge. The application fee is separately discussed later in this chapter.

The annual charge

- 3.9 As outlined in Chapter 2, the proposed annual charge would partially recover the costs of HELP's administration. As could be expected, stakeholders were more supportive of partial rather than full cost recovery.⁸ For example, Universities Australia noted that partial cost recovery 'takes into consideration the significant economic contributions that the university sector and its graduates make to society as a whole'.⁹

⁵ The Hon. Dan Tehan MP, Minister for Education, *House of Representatives Hansard*, 19 September 2018, p. 9466.

⁶ Department of Education and Training, *Submission 18*, p. 2.

⁷ Department of Education and Training, *Submission 18*, p. 2.

⁸ See, for example, Universities Australia, *Submission 15*, p. 2; and Avondale College of Higher Education, *Submission 5*, p. 1.

⁹ Universities Australia, *Submission 15*, p. 2.

3.10 The Avondale College of Higher Education shared this view:

We consider that it is reasonable for the Government to recover the costs of administering the HELP schemes. However, we maintain that the Government itself (through appropriate allocations) should also contribute a share to the cost of administering and regulating the higher education sector. After all, the higher education sector itself makes a substantial contribution to the Australian economy as a major employer and through the highly valuable education export industry.¹⁰

3.11 A number of stakeholders expressed conditional support for the proposed annual charge.¹¹ For example, The College of Law indicated its support for 'any reasonable initiative to enhance the sustainability of the HELP system'.¹²

3.12 Some stakeholders including the Group of Eight and Universities Australia queried whether higher education providers should pay for the administration of HELP. These stakeholders emphasised that the costs of administering HELP are already shared by the higher education sector and government.¹³ The University of Newcastle submitted that, 'like other universities, [it provides] a range of administrative and student services' to ensure that HELP funding is properly administered.¹⁴ Indeed, universities and other providers act as a delegate of the Secretary of the Department of Education and Training in considering requests for remission of HELP.¹⁵

3.13 The University of Melbourne endorsed the positions of the Group of Eight and Universities Australia, arguing:

The principle of asking universities to meet the costs of Government administration is an unfortunate precedent and one which should be, at the very least, interrogated, particularly given the constraints placed by Government on universities' capacity to raise revenue.¹⁶

3.14 Public universities, who receive a large proportion of their revenue from the government, expressed the greatest concern about the annual charge. A particular concern for public universities was whether they would be able to

¹⁰ Avondale College of Higher Education, *Submission 5*, p. 1.

¹¹ Avondale College of Higher Education, *Submission 5*, p. 1; Navitas, *Submission 8*, p. 1; and The College of Law, *Submission 6*, p. 1.

¹² The College of Law, *Submission 6*, p. 1.

¹³ See, for example, Universities Australia, *Submission 15*, p. 2; Science and Technology Australia, *Submission 11*, p. 5; Innovative Research Universities, *Submission 9*, pp. 1–2; Grattan Institute, *Submission 12*, pp. 2–3; University of Canberra, *Submission 16*, pp. 1–2; and Group of Eight, *Submission 17*, p. 1.

¹⁴ University of Newcastle, *Submission 14*, p. 1.

¹⁵ Innovative Research Universities, *Submission 9*, p. 2; and Department of Education and Training, *Cost Recovery Implementation Statement, Cost recovery activities for HECS-HELP and Fee-HELP programs, Financial Year 2018-19*, 31 October 2018, p. 10.

¹⁶ University of Melbourne, *Submission 13*, p.1.

raise funds from domestic students to pay the charge. The University of Canberra submitted that as a Table A provider, the maximum fees it can charge students are set by government.¹⁷ Similarly, the Group of Eight considered that public universities would not have the power to charge students to recoup the costs of the annual charge.¹⁸ Accordingly, it is expected that public universities would need to absorb the costs, rather than passing them on.¹⁹

- 3.15 The University of Melbourne was similarly concerned that the proposed arrangements would mean the government would be effectively taking back part of the financial allocation made to universities:

Since public universities are prohibited by law from charging tuition fees to their domestic students, the apparent suggestion is that universities return a portion of the funding received for student education in the form of a tax.²⁰

- 3.16 Some submitters considered that any cost recovery for the administration of HELP should be directed to students rather than providers. For example, the Grattan Institute asserted that students, rather than providers, are the main beneficiaries of HELP and therefore 'a student charge added to their HELP loan may more closely match the cost recovery policy'.²¹ The University of Canberra similarly concluded that 'while the University of Canberra does not endorse it, a loan fee would be more appropriate than a tax on universities'.²²

Committee view

- 3.17 The committee notes the various views expressed regarding the annual charge. The committee further notes that there are a number of efficiencies that may be gained from implementing cost recovery. Firstly, the government has indicated that 'cost recovery will encourage higher education providers to offer more comprehensive information for students to reduce the volume of enquiry services required by the department'.²³ The committee understands that the

¹⁷ University of Canberra, *Submission 16*, p. 2.

¹⁸ Group of Eight, *Submission 17*, pp. 1 and 5.

¹⁹ Group of Eight, *Submission 17*, p. 5.

²⁰ University of Melbourne, *Submission 13*, p. 2.

²¹ Grattan Institute, *Submission 12*, p. 3.

²² University of Canberra, *Submission 16*, p. 2.

²³ Department of Education and Training, *Cost Recovery Implementation Statement, Cost recovery activities for HECS-HELP and Fee-HELP programs, Financial Year 2018-19*, 31 October 2018, p. 4. Some submitters, for example the University of Melbourne, (*Submission 13*, p. 3) contested this point.

department tracks the number of queries it receives,²⁴ making it possible to determine the level of reduced demand under the new measures.

- 3.18 Secondly, the committee notes the department's view that the proposed measures can 'increase the efficiency, productivity and responsiveness by the department, as service levels can be streamlined where possible'.²⁵ The government provided further explanation on this point:

Charging for regulatory activities could promote efficiency, in potentially reducing the number of compliance issues identified by the department's desktop audits. It is anticipated that providers would improve their compliance with HELP policy and legislation, which would allow the department to conduct faster and fewer investigations and audits, and therefore reduce the cost to providers.²⁶

- 3.19 Furthermore, as similar charging measures already exist for tertiary education sector regulators and for student loans in the vocational education and training sector,²⁷ the proposed HELP cost recovery measures 'will ensure consistency and fairness across the whole of the tertiary education sector'.²⁸

Impact on providers

- 3.20 There were some concerns that partial cost recovery would adversely impact higher education providers, including in relation to students, research and the international education sector.²⁹ The University of Melbourne considered that the measures would divert funds that could otherwise be used for teaching.³⁰ In relation to the impact on the international education sector, Science and Technology Australia contended that there was a potential for universities to 'over-rely on international fee-paying students to cross-subsidise the cost of domestic student education' which could contribute to a 'market concentration risk'.³¹

²⁴ Department of Education and Training, *Cost Recovery Implementation Statement, Cost recovery activities for HECS-HELP and Fee-HELP programs, Financial Year 2018-19*, 31 October 2018, p. 9.

²⁵ Department of Education and Training, *Cost Recovery Implementation Statement, Cost recovery activities for HECS-HELP and Fee-HELP programs, Financial Year 2018-19*, 31 October 2018, p. 4. Some submitters, for example the University of Melbourne, (*Submission 13*, p. 3) contested this point.

²⁶ Department of Education and Training, *Cost Recovery Implementation Statement, Cost recovery activities for HECS-HELP and Fee-HELP programs, Financial Year 2018-19*, 31 October 2018, p. 18.

²⁷ Department of Education and Training, *Submission 18*, p. 2.

²⁸ The Hon. Dan Tehan MP, Minister for Education, *House of Representatives Hansard*, 19 September 2018, p. 9466.

²⁹ Science and Technology Australia, *Submission 11*, p. 3; Australian Catholic University, *Submission 3*, p. 2; and Council of Australian Postgraduate Associations, *Submission 1*, p. 3.

³⁰ University of Melbourne, *Submission 13*, p. 2.

³¹ Science and Technology Australia, *Submission 11*, p. 4.

- 3.21 Additionally, the Regional Universities Network argued that the annual charge would divert funding from activities undertaken by regional universities that contribute to the economic, social and cultural development of regional Australia.³² There was also a concern that the proposed measures impose an additional compliance burden on higher education providers.³³
- 3.22 However, these regulatory costs are currently borne by taxpayers. The committee notes that providers can meet these costs from the revenues they raise from students, or other sources. The annual charge, representing only partial cost recovery, is also a relatively small impost on providers. As noted in Chapter 1, the annual charge is expected to be \$13.8 million over the period 2019-20 to 2021-22.³⁴ When this figure is dispersed across the 40 odd institutions in Australia's higher education sector, the department estimates that the annual charge will not exceed \$97 000 per provider.³⁵ In contrast, in 2017 the operating revenue for the University of Sydney was \$2.346 billion and the Australian National University's was \$1.226 billion.³⁶ The committee notes that when viewed in the context of the large budgets of most higher education providers, the annual charge is unlikely to have a material impact.
- 3.23 Some stakeholders acknowledged that the total charge was relatively small.³⁷ For example, the University of Newcastle considered that 'the total amount charged per year is not considerable in the context of the University's total budget'.³⁸
- 3.24 The Council of Australian Postgraduate Associations concurred that the charge was not considerable:
- ...the charge will initially be small in comparison to providers' total budgets. It has therefore not been subject to the same level of criticism as other recent changes to higher education funding.³⁹
- 3.25 The potential impact on students is considered separately below.

³² Regional Universities Network, *Submission 4*, p. 1.

³³ University of Divinity, *Submission 7*, p. 2; and University of Melbourne, *Submission 13*, p. 2.

³⁴ *Explanatory Memorandum, Higher Education Support (Charges) Bill 2018*, p. 2.

³⁵ Department of Education and Training, answers to questions on notice, 2 November 2018 (received 15 November 2018).

³⁶ University of Sydney, *Annual Report 2017*, April 2018, p. 47; and Australian National University, *Annual Report 2017*, April 2018, p. 16.

³⁷ See, for example, Council of Australian Postgraduate Associations, *Submission 1*, p. 4.

³⁸ University of Newcastle, *Submission 14*, p. 1.

³⁹ Council of Australian Postgraduate Associations, *Submission 1*, p. 3.

Committee view

- 3.26 The committee notes the concerns raised regarding the potential financial impact of the proposed cost recovery measures on higher education providers. However, in the context of the typical revenues available to the higher education sector, the committee considers that the charges will not materially impact the overall budgets of providers.

Impact on students

- 3.27 As noted above, there were some concerns that partial cost recovery would impact negatively on tertiary students. Some stakeholders considered that the proposed annual charge could divert funds from other university activities and programs and/or increase costs for students.⁴⁰

- 3.28 For example, Navitas expressed in-principle support for the bills, but considered that:

Any additional cost imposed on higher education providers shifts money away from investment in quality student experiences and outcomes. This cost also has potential to be passed on to students depending on the approach of the education provider.⁴¹

- 3.29 Some stakeholders argued that partial cost recovery would unfairly penalise students of private providers, who may have no option but to pass on the charges to students.⁴² Navitas asserted that students of independent providers are already disadvantaged by the FEE-HELP 25 per cent loan fee and lack of access to Commonwealth Supported Places.⁴³ In this regard, Avondale College of Higher Education submitted that imposing 'the same levy on both public and independent institutions is to exacerbate the present inequities placed on students in independent providers'.⁴⁴

- 3.30 However, the government has indicated that the method for calculating the annual charge will take into account the size of a provider, by including a per-student component.⁴⁵

⁴⁰ Council of Private Higher Education, *Submission 10*, pp. 1–2; Innovative Research Universities, *Submission 9*, p. 1; National Tertiary Education Union, *Submission 2*, p. 1; and Council of Australian Postgraduate Associations, *Submission 1*, p. 3.

⁴¹ Navitas, *Submission 8*, p. 2.

⁴² See, for example, Council of Private Higher Education, *Submission 10*, p. 2.

⁴³ Navitas, *Submission 8*, p. 2.

⁴⁴ Avondale College of Higher Education, *Submission 5*, p. 1.

⁴⁵ Department of Education and Training, *Cost Recovery Implementation Statement, Cost recovery activities for HECS-HELP and Fee-HELP programs*, Financial Year 2018-19, 31 October 2018, p. 13.

Committee view

- 3.31 Given the relatively small quantum of the annual charge, particularly once it is distributed across the broader higher education sector, the committee considers that the overall impact of the annual charge on students, including equity outcomes, will be minimal. Furthermore, as the charge is being introduced across the board, it not expected to disproportionately disadvantage students of independent providers.

Charging based on number of enrolments

- 3.32 The proposed annual charge includes a 'per student' component, which is based on the number of students enrolled with a provider. Stakeholders supported this approach over broad-banded categories, which can disadvantage providers with enrolments at the lower end of a band.⁴⁶ In this regard, the Council of Private Higher Education stated that it 'welcomes the intention of the charging regime to fairly reflect the relative size of institutions through basing the charge on enrolment numbers'.⁴⁷ However, the Council of Private Higher Education cautioned that consideration should be given to institutions which enrol international and up-front full-fee-paying students as these cohorts 'place no demand on HELP schemes':

Using the definition of student as defined by the HESA would result in application of the per student HELP charges to all enrolled students. COPHE members enrol international and domestic up-front fee-paying students who place no demand on HELP schemes. These student enrolments should not be included in the calculation of per student charges levied to administer the HELP schemes.⁴⁸

- 3.33 The Higher Education Support (Charges) Bill 2018 (Charges Bill) does not address this issue, as it states that the method and amount of the annual charge is to be prescribed by the regulations.⁴⁹ However, the department has since clarified that the annual charge will be based on HECS-HELP and/or FEE-HELP student numbers.⁵⁰

Details of the annual charge

- 3.34 The administrative details for the collection and recovery of the proposed annual charge will be set out in the *Higher Education Provider Guidelines 2012*. These details will include when assessment notices will be given to providers,

⁴⁶ Navitas, *Submission 8*, p. 2.

⁴⁷ Council of Private Higher Education, *Submission 10*, p. 6.

⁴⁸ Council of Private Higher Education, *Submission 10*, p. 6.

⁴⁹ *Explanatory Memorandum*, Higher Education Support (Charges) Bill 2018, p. 6.

⁵⁰ Department of Education and Training, answers to questions on notice, 2 November 2018 (received 15 November 2018) p. 3.

whether there are penalties associated with late payment of the charge, and when and how extensions of time to pay the charge can be given.⁵¹

- 3.35 A lack of information concerning the annual provider charge was of concern to some submitters.⁵² For example, the National Tertiary Education Union sought further clarity on what the specific costs of the charge would be.⁵³
- 3.36 Since the introduction of the bills into Parliament, the department has provided additional information about how the annual charge would be implemented in a draft Cost Recovery Implementation Statement (Implementation Statement). The Implementation Statement was released for consultation on 31 October 2018, which has impacted the ability of stakeholders to take into account the Implementation Statement when they provided a submission.⁵⁴
- 3.37 The Implementation Statement explains that the proposed annual charge will introduce partial cost recovery for the department's 'ongoing compliance and monitoring' activities, including:
- 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.⁵⁵
- 3.38 Based on historical data, the department expects to handle, on average, 6000 enquiries per annum.⁵⁶ The annual charge estimate for each of the activity outputs is set out below in Table 3.1.
- 3.39 The Implementation Statement also explains that the annual charge will comprise of:
- A **student-based amount**, 'representing costs that are incurred in greater proportion for providers with more students, such as communications, enquiries and stakeholder engagement'.⁵⁷

⁵¹ The Hon. Dan Tehan MP, Minister for Education, *House of Representatives Hansard*, 19 September 2018, p. 9466.

⁵² See, for example, University of Melbourne, *Submission 13*, p. 3; Australian Catholic University, *Submission 3*, p. 3; and National Tertiary Education Union, *Submission 2*, p. 3.

⁵³ National Tertiary Education Union, *Submission 2*, p. 3.

⁵⁴ University of Melbourne, *Submission 13*, p. 3; and Universities Australia, *Submission 15*, p. 4.

⁵⁵ Department of Education and Training, *Cost Recovery Implementation Statement, Cost recovery activities for HECS-HELP and Fee-HELP programs, Financial Year 2018-19*, 31 October 2018, p. 10.

⁵⁶ Department of Education and Training, *Cost Recovery Implementation Statement, Cost recovery activities for HECS-HELP and Fee-HELP programs, Financial Year 2018-19*, 31 October 2018, p. 9.

⁵⁷ Department of Education and Training, *Cost Recovery Implementation Statement, Cost recovery activities for HECS-HELP and Fee-HELP programs, Financial Year 2018-19*, 31 October 2018, p. 13.

- A **student-based amount for non-university higher education providers (NUHEPs) and Table C providers**, 'related to provider management activities such as provider training, working groups, system support and legal support, investigations and audits representing costs that are incurred in a greater proportion for non-university higher education providers and Table C providers with more students'.⁵⁸
- A **risk-based element**, 'representing costs incurred according to the risks represented by the provider'.⁵⁹
- **University specific costs** 'allocated on a flat rate basis. These costs are in relation to provider management, financial viability checks and compliance'.⁶⁰

3.40 The Implementation Statement also indicates that the 'government has currently determined that the costs of administering payments, general administration and compliance will not be recovered from providers'.⁶¹

Amount of the charge

3.41 The amount of the annual charge will be set by regulation. The Implementation Statement outlines that For Table A and B universities, the annual charge is expected to be:

- a flat charge on every university (\$26 207); and
- a charge of \$1.82 for every 'registered student'.⁶²

3.42 For non-university providers and Table C universities, there will be an additional per-student charge of an estimated \$13.18 to cover additional 'provider management and compliance'. The institution charge is estimated to be between \$544 and \$2719, scaled on the basis of regulatory risk.⁶³ The department's charge estimates are set out in Table 3.1 below.

⁵⁸ Department of Education and Training, *Cost Recovery Implementation Statement, Cost recovery activities for HECS-HELP and Fee-HELP programs, Financial Year 2018-19*, 31 October 2018, p. 13.

⁵⁹ Department of Education and Training, *Cost Recovery Implementation Statement, Cost recovery activities for HECS-HELP and Fee-HELP programs, Financial Year 2018-19*, 31 October 2018, p. 13.

⁶⁰ Department of Education and Training, *Cost Recovery Implementation Statement, Cost recovery activities for HECS-HELP and Fee-HELP programs, Financial Year 2018-19*, 31 October 2018, p. 13.

⁶¹ Department of Education and Training, *Cost Recovery Implementation Statement, Cost recovery activities for HECS-HELP and Fee-HELP programs, Financial Year 2018-19*, 31 October 2018, p. 9.

⁶² Department of Education and Training, *Cost Recovery Implementation Statement, Cost recovery activities for HECS-HELP and Fee-HELP programs, Financial Year 2018-19*, 31 October 2018, p. 14.

⁶³ Universities Australia, *Submission 15*, pp. 1–2.

Table 3.1 – Annual charge for approved higher education providers

Activity Group	Effort Cost	Activity driver	Annual Charge Estimate
Stakeholder engagement and enquiries	\$1.63m	Number of students registered with a provider	\$1.82 per registered student for the provider
NUHEPs and Table C provider management and compliance	\$0.65m	Number of students registered with a NUHEP/Table C provider	\$13.18 per registered student at the NUHEP/Table C provider
NUHEPs and Table C providers financial viability	\$0.15m	Risk assessment and risk management of providers: high/not assessed yet, medium, low	NUHEP/Table C provider specific: Low: \$544 Medium: \$1631 High (or not assessed yet): \$2719
University provider management, compliance and financial viability	\$1.10m	Delivered equally across all universities	\$26 207 per university

Source: Department of Education and Training, Cost Recovery Implementation Statement, Cost recovery activities for HECS-HELP and Fee-HELP programs, Financial Year 2018-19, 31 October 2018, p. 14.

- 3.43 The department has indicated that the total amount of the annual charge is estimated to be between \$558 and \$97 000 per provider.⁶⁴
- 3.44 Some stakeholders were concerned that the amount of the charge had not been set and could increase substantially in the future.⁶⁵ For example, the University of Newcastle noted that the amount of the annual charge could 'at least theoretically' change significantly without consultation or Parliamentary

⁶⁴ Department of Education and Training, answers to questions on notice, 2 November 2018 (received 15 November 2018) p. 1.

⁶⁵ See, for example, Australian Catholic University, *Submission 3*, p. 3; and Council of Australian Postgraduate Associations, *Submission 1*, p. 4.

consideration.⁶⁶ Universities Australia shared these concerns and proposed a 'cap' or 'limit' on the charges.⁶⁷

- 3.45 However, the government has indicated that setting the annual charge via regulation is essential to ensuring that there is sufficient flexibility for the Commonwealth to accurately recover the costs of administration of HELP, as those costs increase or decrease over time.⁶⁸ The Implementation Statement also notes that the department will review the cost drivers for the application activity and ongoing monitoring, compliance and management activities on an ongoing basis. This will 'ensure that the application fee and annual charge rates reflect the efficient costs, the drivers of those costs and will include consultation with stakeholders'.⁶⁹
- 3.46 Furthermore, the Charges Bill includes a safeguard against excessive charges: the Minister must be satisfied that the effect of the regulations will be to recover no more than the Commonwealth's likely costs in connection with the administration of the *Higher Education Support Act 2003* (HESA).⁷⁰ The department advised that it considers this requirement is a sufficient restriction on the amount that can be charged.⁷¹

Scope of the charge

- 3.47 There was some concern that the bills do not sufficiently limit the scope of the activities subject to partial cost recovery.⁷² The Explanatory Memorandum for the Charges Bill indicates that the annual charge is intended to recover costs associated with data collection and analysis. However, the Group of Eight argued that these activities are geared towards government policy processes:

The data collection and analysis used through the Higher Education Data Collection is fundamental to a range of policies and programs managed by universities and the Government. This includes the work the Department is currently undertaking in respect of the Government's policy to implement performance contingent funding for universities.⁷³

- 3.48 The Implementation Statement notes that as part of ongoing compliance with HESA, 'all providers must supply the department with statistical information

⁶⁶ University of Newcastle, *Submission 14*, p. 1.

⁶⁷ Universities Australia, *Submission 15*, p. 3.

⁶⁸ *Explanatory Memorandum*, Higher Education Support (Charges) Bill 2018, p. 6.

⁶⁹ Department of Education and Training, *Cost Recovery Implementation Statement, Cost recovery activities for HECS-HELP and Fee-HELP programs*, Financial Year 2018-19, 31 October 2018, p. 15.

⁷⁰ Higher Education Support (Charges) Bill 2018, subcl. 7(2).

⁷¹ Department of Education and Training, answers to questions on notice, 2 November 2018 (received 15 November 2018) p. 1.

⁷² Universities Australia, *Submission 15*, p. 2; and University of Divinity, *Submission 7*, p. 2.

⁷³ Group of Eight, *Submission 17*, p. 8.

and other data, such as student enrolment and course information, to continue as an approved provider under HESA'.⁷⁴ The Implementation Statement addresses the above concern, explaining that for the purposes of partial cost recovery, 'in-scope activities are related only to the provision of HECS-HELP and FEE-HELP loans'.⁷⁵

- 3.49 The Group of Eight was also concerned that the bills would allow the government to 'charge for activities that are unrelated to the administration of the HECS-HELP and FEE-HELP schemes',⁷⁶ such as activities undertaken by the Tertiary Education and Quality Standards Agency (TEQSA). The Group of Eight noted that administrative activities undertaken by TEQSA in respect of HESA are already subject to cost recovery arrangements.⁷⁷
- 3.50 Additionally, the Group of Eight was concerned about the potential for universities to be charged for costs specific to the regulation of non-university providers, such as the costs of financial viability checks.⁷⁸ Equally, the Group of Eight submitted that universities should not be required to meet the costs of the annual higher education provider workshops, which have previously included sessions on tuition assurance obligations (which do not apply to Table A providers).⁷⁹
- 3.51 Universities Australia expressed the following concern regarding the scope of the charge:

...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.⁸⁰

- 3.52 The National Tertiary Education Union was concerned that the drafting of the Charges Bill could allow cost recovery for the administration of the whole Act:

The administration of the Higher Education Support Act (HESA) (2003) goes well beyond the costs associated with the operation of HELP. Section 19 of HESA (2003) outlines the quality and accountability requirements which include financial viability, fairness, the need to enter into funding compacts and academic freedom. While many of these requirements are no doubt captured by TEQSA standards and therefore included within its

⁷⁴ Department of Education and Training, *Cost Recovery Implementation Statement, Cost recovery activities for HECS-HELP and Fee-HELP programs, Financial Year 2018-19*, 31 October 2018, p. 9.

⁷⁵ Department of Education and Training, *Cost Recovery Implementation Statement, Cost recovery activities for HECS-HELP and Fee-HELP programs, Financial Year 2018-19*, 31 October 2018, p. 9.

⁷⁶ Group of Eight, *Submission 17*, p. 1.

⁷⁷ Group of Eight, *Submission 17*, p. 3.

⁷⁸ Group of Eight, *Submission 17*, p. 4.

⁷⁹ Group of Eight, *Submission 17*, p. 6.

⁸⁰ Universities Australia, *Submission 15*, p. 3.

registration and re-registration processes, these are nonetheless costs incurred by the Commonwealth which from our reading could potentially be captured by this clause.⁸¹

Committee view

- 3.53 The committee acknowledges the concerns raised during the inquiry regarding the scope of the charge. The phrasing in the Charges Bill appears to be somewhat broader than that contained in the Explanatory Memorandum which suggests that the annual charge is intended to enable partial cost recovery for the administration of HELP,⁸² not for the purposes of recovering the costs of administering the whole Act.
- 3.54 In response to a question on notice, the department has since confirmed that the proposed cost recovery measures 'will partially recover the estimated regulatory and compliance costs of administering the HECS-HELP and FEE-HELP programs only'.⁸³ The department has also confirmed that the costs of administering OS-HELP and SA-HELP are excluded from the annual charge.⁸⁴

Consultation with the higher education sector

- 3.55 Submitters noted that there was no consultation with the higher education sector prior to the introduction of the bills into Parliament.⁸⁵ The Council of Private Higher Education submitted that stakeholder consultation on the development of the charging framework and ongoing performance measurement of the HELP schemes should be required.⁸⁶
- 3.56 However, since the bills were introduced, the department released the Implementation Statement for consultation with the higher education sector, with comments due by 23 November 2018. This gives stakeholders the opportunity to submit feedback on the cost recovery measures, including the method and amount of the cost recovery charges, prior to the bills being debated in Parliament.
- 3.57 The department has indicated that after the consultation period concludes, the finalised Implementation Statement is expected to be approved by the Education Minister and the Minister for Finance, the Hon. Mathias Cormann.

⁸¹ National Tertiary Education Union, *Submission 2*, p. 3.

⁸² *Explanatory Memorandum*, Higher Education Support (Charges) Bill 2018, p. 2.

⁸³ Department of Education and Training, answers to questions on notice, 2 November 2018 (received 15 November 2018) p. 3.

⁸⁴ Department of Education and Training, *Submission 18*, p. 3.

⁸⁵ See, for example, University of Newcastle, *Submission 14*, p. 1; Universities Australia, *Submission 15*, p. 3; Australian Catholic University, *Submission 3*, p. 3; and Group of Eight, *Submission 17*, pp. 1–3.

⁸⁶ Council of Private Higher Education, *Submission 10*, p. 1.

The Implementation Statement would then be published on the department's website.⁸⁷

- 3.58 The department has also committed to ongoing stakeholder engagement on the cost recovery charges in early 2019.⁸⁸ The Implementation Statement indicates that stakeholders will be consulted on the charging measures 'on an ongoing basis, including on specific operational matters on a case-by-case basis'.⁸⁹

Commencement date of annual charge

- 3.59 Another issue raised relates to the proposed commencement of the annual charge. As noted in Chapter 2, the annual charge would commence from 1 January 2019, and higher education providers would receive their invoice for the charge for the 2019 calendar year in 2020, after reconciliation of higher education providers' HECS-HELP and FEE-HELP student enrolment data has occurred.⁹⁰

- 3.60 Although the government has articulated the timeframes for the annual charge, some stakeholders were concerned that insufficient time had been allocated to higher education providers to ensure a smooth transition.⁹¹ For example, the Council of Private Higher Education submitted that delaying the commencement of the charging regime until 2020 enrolments would be less disruptive, as 'providers have already developed business plans and operational budgets for 2019'.⁹²

- 3.61 The Council of Private Higher Education further submitted:

Amending the implementation to 2020 enrolments will also provide greater transparency for students and better enable providers to publish their student fees in accordance with the requirements of the Higher Education Provider Guidelines.⁹³

Committee view

- 3.62 The committee notes that the financial impacts of the measure will be experienced by providers a year after the costs are initially incurred by the

⁸⁷ Department of Education and Training, *Submission 18*, p. 3.

⁸⁸ Department of Education and Training, *Cost Recovery Implementation Statement, Cost recovery activities for HECS-HELP and Fee-HELP programs, Financial Year 2018-19*, 31 October 2018, p. 18.

⁸⁹ Department of Education and Training, *Cost Recovery Implementation Statement, Cost recovery activities for HECS-HELP and Fee-HELP programs, Financial Year 2018-19*, 31 October 2018, p. 16.

⁹⁰ The Hon. Dan Tehan MP, Minister for Education, *House of Representatives Hansard*, 19 September 2018, p. 9467.

⁹¹ Council of Private Higher Education, *Submission 10*, pp. 1 and 4–5.

⁹² Council of Private Higher Education, *Submission 10*, p. 4.

⁹³ Council of Private Higher Education, *Submission 10*, p. 5.

department. The financial impact in subsequent years will also be delayed by 12 months, allowing each institution sufficient time to determine the funding mechanism that best suits its individual circumstances. Accordingly, the committee considers that the proposed commencement date is reasonable.

Application fee

- 3.63 As noted in Chapter 1, the proposed fee for applications for approval as a FEE-HELP higher education provider under HESA is expected to deliver a saving of \$0.3 million over the forward estimates (2019-20 to 2021-22).
- 3.64 The proposed application fee was of less concern to submitters. Indeed, the proposed fee would impact a smaller number of stakeholders and would not impact providers that are already approved under HESA.⁹⁴ For instance, Universities Australia noted that they were less concerned with the application fee because their members already have access to FEE-HELP.⁹⁵
- 3.65 The Implementation Statement indicates that the application fee is expected to be \$12 926 per application. This fee is 'fully reflective of the costs of delivering this activity'⁹⁶ and overall represents a small impost. Although the Grattan Institute did not support the fee, it acknowledged that the fee was 'not likely to significantly undermine the policy goal of ensuring that domestic students do not need to pay upfront fees'.⁹⁷

Committee view

- 3.66 Given its low level and limited coverage, the committee considers that the application fee will not significantly impact providers seeking approval as a FEE-HELP higher education provider under the Act.

Expected total revenue

- 3.67 There was some confusion from stakeholders as to the expected total revenue for the proposed cost recovery measures.⁹⁸
- 3.68 As outlined in Chapter 1, the 2018 Budget papers report that the government expected to raise \$30.7 million over the forward estimates from the annual charge and the application fee.⁹⁹ The figure was revised down to \$14.1 million

⁹⁴ See, for example, University of Canberra, *Submission 16*, p. 2.

⁹⁵ Universities Australia, *Submission 15*, p. 1.

⁹⁶ Department of Education and Training, *Cost Recovery Implementation Statement, Cost recovery activities for HECS-HELP and Fee-HELP programs, Financial Year 2018-19*, 31 October 2018, p. 13.

⁹⁷ Grattan Institute, *Submission 12*, p. 5.

⁹⁸ Council of Private Higher Education, *Submission 10*, p. 5; Universities Australia, *Submission 15*, p. 6; University of Melbourne, *Submission 13*, p. 3; National Tertiary Education Union, *Submission 2*, p. 3; and Group of Eight, *Submission 17*, p. 7.

⁹⁹ Commonwealth of Australia, *Budget Measures 2018-19*, Budget Paper No. 2, 2018-19, p. 10. Note: the measure applies to the last three years of the forward estimates.

over the forward estimates in the Explanatory Memorandum.¹⁰⁰ This figure has been further refined in the Implementation Statement to \$11.3 million.¹⁰¹ The department explained that the figures have changed because of 'additional analysis undertaken by the department of the activities and costs associated with the administration of the loan program'.¹⁰²

Overall committee view

- 3.69 The committee acknowledges that the proposal to introduce an annual charge on all higher education providers whose students are entitled to HECS-HELP assistance or FEE-HELP assistance provoked a mixed response, most notably due to the lack of detail on the charge, and also due to concerns about the potential impact on providers and students.
- 3.70 The committee notes that the amount of the charge, which would be prescribed by regulation, would represent partial cost recovery and would be commensurate with the size of the provider. The committee also notes that the proposed measures are similar to existing charges that apply in the tertiary education sector for regulators and for student loans in the vocational education and training sector.
- 3.71 The committee considers that the levying of a charge on all higher education providers whose students are entitled to HECS-HELP assistance or FEE-HELP assistance is an appropriate option to recoup for taxpayers some of the costs incurred in administering HELP.
- 3.72 The committee notes that the department's Implementation Statement is currently in the consultative period with the higher education sector. While this does not prevent the Bill from passing, the committee encourages the department to continue consulting with key stakeholders to ensure the final implementation is fair and equitable.

Recommendation 1

- 3.73 The committee recommends that the Senate pass the bills.**

Senator Slade Brockman
Chair

¹⁰⁰ *Explanatory Memorandum, Higher Education Support Amendment (Cost Recovery) Bill 2018*, p. 2.

¹⁰¹ Department of Education and Training, *Cost Recovery Implementation Statement, Cost recovery activities for HECS-HELP and Fee-HELP programs*, Financial Year 2018-19, 31 October 2018, p. 17.

¹⁰² Department of Education and Training, *Submission 18*, p. 2.

Labor Senators' Additional Comments

- 1.1 Since the election of the Government in 2013, universities and students have been under constant attack with cuts, attempts at fee deregulation, policy chaos and uncertainty. The 2017 MYEFO decisions to cut \$2.2 billion from universities, effectively recap undergraduate places, and change the Higher Education Loan Program were reckless and unfair. Thousands of students will miss out on the opportunity of a university place because of the Government's cuts and capping of places.
- 1.2 In contrast, Labor has a positive plan for investing in our universities and our people. Labor has committed to return to the demand driven funding system, ensure three year funding agreements, fund more equity and pathway programs to encourage more students to go to university, and provide much needed funding for infrastructure through our \$300 million University Future Fund. Labor's positive policies will see around \$10 billion in additional funding flow to universities over the decade.
- 1.3 Labor won't oppose these bills because of the very small impact they will have on the sector, especially in the context of our policies to properly fund the sector.
- 1.4 Labor has concerns about how the charges and other aspects of the bill will operate over the long term. Labor will seek assurances that the new scheme must ensure there is not a negative impact on students—it is simply not fair for any of these small additional charges to flow through to students or undermine equity in Australia's university system.
- 1.5 Labor also notes our policy to undertake a once-in-a-generation National Inquiry into post-secondary education. This Inquiry will examine the current funding system and income contingent loans scheme to ensure they are sustainable and fair.

Senator Gavin Marshall
Deputy Chair

Senator Deborah O'Neill
Member

Senator Louise Pratt
Participating Member

Australian Greens Senators' Dissenting Report

- 1.1 The Higher Education Support (Charges) Bill 2018 and the Higher Education Support Amendment (Cost Recovery) Bill 2018 impose a levy on the higher education sector already under pressure from funding cuts.
- 1.2 The bills have been introduced with insufficient consultation and without consideration of their impacts on higher education providers and students.
- 1.3 We continue to disagree with the decisions to hold no hearings for this inquiry and conduct the inquiry in a short period of time. Both decisions limited scrutiny of these bills. The Australian Greens thank all of the submitters to the inquiry, and acknowledge their efforts given the short submission period.
- 1.4 The Australian Greens are deeply concerned about the ongoing cuts to the higher education sector. The two proposed bills represent a worrying continuation in this Government's larger pattern of defunding the higher education sector and shifting the costs of providing higher education away from the Commonwealth.
- 1.5 The proposed charges must be considered in the context of recent cuts to higher education funding. The Australian Greens note that in December 2017, the current Liberal-National Government effectively slashed \$2.2 billion from the higher education sector by freezing Commonwealth funding for teaching and learning.
- 1.6 Despite the evidence provided and concerns raised by the majority of stakeholders, the Majority Report supported by the Government dominated committee has recommended that the bills be passed. The Australian Greens disagree with this recommendation.

Shifting the cost of higher education away from the Commonwealth

- 1.7 The bills propose shifting the cost of administering HELP loans to higher education providers, with yet another levy on higher education providers, who are already struggling under massive cuts to their budget by this Government. This is part of an ongoing pattern of the Commonwealth shirking its responsibility to fund the delivery and administration of higher education.
- 1.8 Universities Australia stated in its submission: "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..."¹ The University of Melbourne stated: "the principle of asking universities to

¹ Universities Australia, *Submission 15*, p. 2.

meet the costs of Government administration is an unfortunate precedent and one which should be, at the very least, interrogated..."²

- 1.9 Concerns about the proposed costs being passed on to individual students were also expressed by stakeholders. The Council of Australian Postgraduate Associations stated in its submission: "inevitably, cuts impact the delivery of teaching and research, the core functions of universities in Australia. Funding cuts will be passed onto undergraduate and postgraduate students, whether they are built into tuition costs for full fee-paying students, result in increased student to academic staff ratios, or lead higher education providers to otherwise reduce the 'cost of delivery' of education."³
- 1.10 The University of Newcastle stated in its submission: "the costs of administering HELP are already shared by the university sector and government—the University of Newcastle, like other universities, provides a range of administrative and student services in order to ensure it properly administers HELP funding."⁴
- 1.11 In the Australian Greens' view, shifting costs of administering student loans to higher education providers is not only wrong in principle, it also overburdens an already underfunded sector. Several submissions highlighted that these charges will mean higher education providers will be forced to divert resources away from teaching and learning,⁵ essential activities such as supporting equity outcomes,⁶ and overall provision of a quality education to students.⁷
- 1.12 Innovative Research Universities also highlighted in its submission that the proposal is an indirect charge on students, stating that the charges will "penalise students by further reducing the resources universities and other higher education providers have to deliver students a good education."⁸

Charges unclear and outside legislation

- 1.13 The Australian Greens are concerned that the proposed charges are not explicit and will sit wholly outside legislation, including the methodology to calculate these charges. This prevents appropriate parliamentary scrutiny of the proposed charges. The amount and calculation of the annual charge will be wholly determined by regulation which has not yet been drafted.

² University of Melbourne, *Submission 13*, p. 1.

³ Council of Australian Postgraduate Associations, *Submission 1*, p. 3.

⁴ University of Newcastle, *Submission 14*, p. 1.

⁵ Universities Australia, *Submission 15*, p. 2.

⁶ University of Newcastle, *Submission 14*, p. 1.

⁷ Innovative Research Universities, *Submission 9*, p. 1.

⁸ Innovative Research Universities, *Submission 9*, p. 1.

- 1.14 The University of Newcastle expressed this concern in its submission, saying “as the amount charged is set in regulation rather than legislation, we are concerned that it could, at least theoretically, change significantly without consultation or in-depth Parliamentary consideration.”⁹
- 1.15 In addition, there have been several different figures provided by the Government which have contributed to the confusion. The University of Melbourne stated: “there is significant uncertainty relating to key aspects of the changes proposed in the bills. The Financial Impact Statements contained in the bills indicate that the Government expects to save \$13.8 million over the forward estimates. This figure is significantly lower than the estimated savings of \$30.7 million over three years that were included in the 2018 Budget statements when the policy change was announced. There is a need for clarity on the financial impact of the bills, so that the Senate can make an informed assessment.”¹⁰

Short consultation period and no consultation prior to the bills

- 1.16 The Australian Greens are deeply concerned, along with many stakeholders who made submissions to the inquiry, about the short consultation period for the inquiry into these bills. The committee also resolved to not hold any public hearings and provided a short submission period. This further indicates the Government was not and is not genuine about consultation. It was only late on 31 October 2018, two days before submissions to this inquiry closed, that the Department released a Cost Recovery Implementation Statement (CRIS) to inform consultations. This is bad practice and sends a clear signal to stakeholders that this Government is not genuine about consultation.
- 1.17 The Group of Eight stated in its submission on the lack of consultation: “...the higher education sector has been promised consultation re this unacceptable cost recovery model. Consultation has not occurred—even as required by the Australian Government Cost Recovery Guidelines. This is untenable given 1 January is less than two months’ away.”¹¹
- 1.18 Universities Australia also signalled its disappointment at the “limited consultation with the sector on the proposal and DET’s failure to engage with the sector in a timely way.”¹²

⁹ Innovative Research Universities, *Submission 9*, p. 1.

¹⁰ University of Melbourne, *Submission 13*, p. 3.

¹¹ Group of Eight, *Submission 17*, p. 1.

¹² Universities Australia, *Submission 15*, p. 3.

Recommendation 1

1.19 The Greens recommend these bills not proceed.

**Senator Mehreen Faruqi
Member**

Appendix 1

Submissions and additional information

Submissions

- 1 Council of Australian Postgraduate Associations
- 2 National Tertiary Education Union
- 3 Australian Catholic University
- 4 Regional Universities Network
- 5 Avondale College of Higher Education
- 6 College of Law
- 7 University of Divinity
- 8 Navitas
 - 8.1 supplementary submission
- 9 Innovative Research Universities
- 10 Council of Private Higher Education
- 11 Science & Technology Australia
- 12 Grattan Institute
- 13 University of Melbourne
- 14 University of Newcastle
- 15 Universities Australia
- 16 University of Canberra
- 17 Group of Eight
- 18 Department of Education and Training

Answer to Question on Notice

- 1 Answers to written questions on notice from the Department of Education and Training. Asked by Senator Faruqi on 2 November 2018; received 15 November 2018.