Higher Education and Research Reform Bill 2014

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Social Policy Section

This Bills Digest should be read in conjunction with the Bills Digest for the Higher Education and Research Reform Amendment Bill 2014.

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Date introduced: 3 December 2014
House: House of Representatives
Portfolio: Education
Commencement: The commencement date for each Schedule is provided in section 2 of the Bill.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through the Australian Parliament website.

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website.
History of the Bill

The Government announced a series of higher education reforms in the 2014–15 Budget.¹ Broadly these endeavoured to allow universities and other higher education providers to source their own revenue through increased fees. At the same time, government expenditure would be reduced and lower indexation applied to expenditure over time. Some of these savings would be used to finance the expansion of the demand-driven system to qualifications below bachelor level and all private providers.

This would have the result of shifting to a more inherently ‘user-pays’ system of higher education.

These measures were subsequently contained in the Higher Education and Research Reform Amendment Bill 2014 (generally referred to as ‘the previous Bill’), which was to generate savings of $3.9 billion from 2014–15 to 2016–17 in its original form.² The previous Bill was introduced into the House of Representatives on 28 August 2014.

Following recommendations in the report of the Senate Education and Employment Legislation Committee,³ and as part of negotiations with crossbench Senators, the following policy amendments were proposed in an attempt to secure support through the Senate:

• retaining the current measure for Higher Education Loan Programme (HELP) debt indexation, the Consumer Price Index (CPI), rather than utilising the Treasury ten year bond rate as the indexation measure from 1 January 2016 (as proposed in the previous Bill)

• introducing an indexation pause on HELP debts for primary carers of children aged under five who are earning under the minimum repayment threshold

• creating a structural adjustment fund of $100 million to support universities that may have difficulty in transitioning to a fully deregulated higher education market

• establishing a series of programmes for universities with high proportions of low socio-economic status (SES) students to assist the participation and academic success of students from disadvantaged backgrounds and

• changing legislative guidelines to clarify that non-Commonwealth supported students, including overseas students, should not be charged less than the level of tuition fees and subsidies available for Commonwealth-supported students.⁴

Following continued opposition by the Australian Labor Party, the Australian Greens, and a number of crossbench senators, the second reading of the previous Bill was negatived in the Senate on 2 December 2014 and the Higher Education and Research Reform Amendment Bill 2014 was not proceeded with.

Subsequently, the Minister for Education, Christopher Pyne, introduced the Higher Education and Research Reform Bill 2014 to the House of Representatives on 3 December 2014. This Bill essentially replicates the previous Bill, taking into account the proposed Government amendments and necessary technical changes.

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Structure of the Bills Digest

The provisions in this Bill are equivalent to provisions in the Higher Education and Research Reform Amendment Bill 2014. Background and analysis of these measures were set out in the relevant Bills Digest. As analysis and background of the major policy changes have already been provided, this Bills Digest will focus on the policy compromises set out in this Bill and recent stakeholder reaction to the reform proposals since the previous Bill was not proceeded with.

Purpose of the Bill

The purpose of the Higher Education and Research Reform Bill 2014 (the Bill) is to amend the Higher Education Support Act 2003 (HESA), the Australian Research Council Act 2001 (ARC Act) and related legislation to give authority to a variety of higher education measures emerging out of the 2014–15 Budget and subsequent policy decisions.

These measures include:

• deregulation of fees for Commonwealth Supported Places (CSPs) at universities
• attempting to ensure equity in fee pricing by requiring higher education providers to not charge non-Commonwealth supported students less in fees than Commonwealth-supported students
• extending Commonwealth support to higher education qualifications below the level of bachelor degrees
• extending Commonwealth support to a broader market of providers, including private universities and non-university higher education providers
• creating a structural adjustment fund over three years for higher education providers who may have difficulty in a fully deregulated market
• establishing a series of participation programmes to increase disadvantaged students’ access to higher education, with a focus on supporting institutions who already have a high intake of disadvantaged students
• restructuring and reducing Commonwealth subsidies for CSPs
• increasing funding caps for research funding
• enabling universities to charge Research Training Scheme (RTS) (higher degree research) students a capped tuition fee
• removing loan fees and lifetime limits for FEE-HELP and VET [Vocational Education and Training] FEE-HELP loans
• abolishing the HECS [Higher Education Contribution Scheme]-HELP benefit
• changing HELP debt arrangements by reducing the minimum payment threshold for HELP debts and creating a pause on debt indexation for primary carers of children under five who are earning below the minimum payment threshold
• changing indexation arrangements for programs funded under the HESA
• reflecting the creation of Federation University Australia through the merger of the University of Ballarat and the Gippsland campus of Monash University and
• allowing certain New Zealand citizens access to HELP loans.

Structure of the Bill

The Bill contains 11 Schedules. They are virtually identical to those in the Higher Education and Research Reform Amendment Bill 2014 except where indicated.

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### Schedule 1 contains five parts:

- **Part 1** extends Commonwealth support to all registered higher education providers and to sub-degree courses, and restructures Commonwealth contributions for CSPs
- **Part 2** contains transitional arrangements for existing students
- **Part 3** contains minor consequential amendments to other Acts
- **Part 4** amends the Commonwealth Grant Scheme Guidelines and the Other Grants Guidelines (Education)\(^7\) and
- **Part 5** repeals the Higher Education (Designated Courses of Study) Specification 2011.

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### Schedule 2 creates the Commonwealth Scholarship Scheme.

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### Schedule 3 changes the indexation of HELP debts.

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### Schedule 4 changes the minimum repayment threshold for HELP debts.

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### Schedule 5 has four parts:

- **Part 1** increases funding caps under the **ARC Act**
- **Part 2** allows for the charging of fees to RTS students
- **Part 3** repeals a determination prohibiting the charging of fees to RTS students and
- **Part 4** makes associated changes to the Other Grant Guidelines (Research) 2012\(^8\)

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### Schedule 6 has two parts:

- **Part 1** abolishes the loan fee and removes the lifetime cap on VET FEE-HELP and
- **Part 2** contains transitional arrangements.

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### Schedule 7 abolishes HECS-HELP Benefit.

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### Schedule 8 changes the indexation arrangements for programmes funded under the **HESA**.

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### Schedule 9 removes the reference in **HESA** to the University of Ballarat and inserts Federation University into the list of Table A providers.

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### Schedule 9A creates a new series of programmes, the Higher Education Participation Programmes, to support disadvantaged students.

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### Schedule 10 amends **HESA** to allow certain New Zealand citizens to access HELP loans.

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**Source:** Compiled from the Higher Education and Research Reform Bill 2014 and the Higher Education and Research Reform Amendment Bill 2014.

**Background**

As previously stated, the Higher Education and Research Reform Amendment Bill 2014 was not proceeded with following debate in the Senate and a defeat during the second reading stage.

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The Australian Labor Party, Australian Greens, and Palmer United Party Senators, joined with independent Senators Xenophon and Lambie to defeat the Bill.\(^9\)

The Liberal, National and Liberal-National Party Senators voted to continue the second reading along with Family First Senator Day, Liberal Democrat Senator Leyonhjelm, Australian Motoring Enthusiasts Party Senator Muir, and Independent Senator Madigan.\(^10\) Senator Madigan stated at the time that his vote was to be taken as support for proper procedure and did not indicate support for the Bill as it stood.\(^11\)

**Public Information Campaign**

Subsequent to the previous Bill’s defeat and the current Bill’s introduction in the House of Representatives, the Australian Government also launched an information campaign to inform the public about the proposed reforms, which included a website, print and other advertising.\(^12\)

This campaign has proved controversial. Senator Kim Carr, Shadow Minister for Higher Education, Research, Innovation and Industry has written to the Secretary of the Department of Finance, alleging claims made by the public information campaign are ‘demonstrably untrue’ and sought an investigation into the campaign’s compliance with the appropriate guidelines.\(^13\) Senator Xenophon has also written to the Auditor-General seeking a similar investigation.\(^14\)

According to media reports, Senators Xenophon and Lazarus disagree with public expenditure to promote reforms that have not yet passed parliament.\(^15\)

The Minister for Education, Christopher Pyne claimed that the information campaign was the result of a request from Senator Madigan; however the Senator subsequently denied this.\(^16\)

**Stakeholder reaction to the amended reform package**

The Australian Labor Party, Australian Greens, and Palmer United Party continue to oppose the Bill even with proposed amendments, as does the National Tertiary Education Union, based on a general position that the changes would weaken educational participation and equity.\(^17\)

The National Union of Students, the Council of Australian Postgraduate Associations and the University of Melbourne Graduate Student Association also agree the reforms should be rejected.\(^18\)

The Australian Medical Association continues to oppose the policy changes due to concern about the impact of increased debt upon possible graduates in the medical profession.\(^19\)

Belinda Robertson, Chief Executive of Universities Australia said in response to the new Bill:

> Regrettably the new Bill does not provide any relief on the 20 per cent cut to funding - a cut which amounts to around $2 billion to be stripped from universities...Without moderation, this cut will put significant upward pressure on student fees and will make it difficult to win the support of the university sector or the crossbench.\(^20\)
Ms Robertson also called on the Government to provide a $500 million structural adjustment fund and to create an independent advisory body to oversee the introduction of the proposed reforms. Universities Australia has also been criticised as the result of its overall support for the reform package, with University of Canberra Vice-Chancellor Stephen Parker describing them as a ‘fraud on the electorate’ and stating that they would be the peak body’s ‘death knell’.21

The Innovative Research Universities also expressed concern about the proposed quantum of reduction in government investment. It also supports a $500 million structural adjustment fund, as well as pooling of the Commonwealth Scholarships Scheme (rather than being tied to a specific institution) and to reject the proposed changes to research student funding.22

The Regional Universities Network called for an increased structural adjustment fund (without specifying a quantum) to better support research-intensive regional universities, and looked forward to receiving more detail on how the proposed new participation programme would work.23

The Group of Eight are supportive of the reform package in the Bill, as are TAFE Directors Australia, and the Australian Council for Private Education and Training.24

John Dawkins, a former Labor Minister who introduced HECS in 1988, was recently quoted as saying it was a ‘small and unremarkable’ reform to allow different universities to charge different levels of fees.25 This was taken by Minister Pyne as support for fee deregulation.26 However it is unclear if Mr Dawkins was advocating for full deregulation, or for universities to set differential student contributions – which they can, under a current capped maximum. In the same interview, Mr Dawkins criticised the intent of the proposed reforms as being ‘focused totally on the desire to shift the cost of higher education from the government to individuals’.27

Committee consideration

The Senate Standing Committee on the Selection of Bills deferred consideration of the Bill.28

The previous Bill was considered by the following Committees:

• the Parliamentary Joint Committee on Human Rights, which requested further advice from the Minister for Education as to whether the measures in Schedules 1–8 of the previous Bill were compatible with human rights, with a particular focus on how the measures in Schedules 1, 3 and 4 impacted on women with a view to the rights to equality and non-discrimination on the grounds of gender29

• the Senate Standing Committee for the Scrutiny of Bills, which raised some concerns regarding the delegation of legislative powers and30

23. Regional Universities Network (RUN), RUN urges the Senate to pass the new Higher Education Bill with changes, media release, 3 December 2014, accessed 2 January 2015.
24. Group of Eight, Need for reform remains pressing, media release, 8 December 2014; TAFE Directors Australia, TAFE students will be locked out if higher education reforms continue to be blocked, media release, 3 December 2014; and Australian Council for Private Education and Training, Disadvantaged students the real losers in an and R Lewis, Dawkins backs uni reforms, The Australian, 28 January 2015, pp. 1, accessed 5 February 2015.
27. K Loussikian and R Lewis, op. cit.
28. Senate Standing Committee on the Selection of Bills, Report No. 16 of 2014, The Senate, 4 December 2014, accessed 27 January 2015. Note that Report No. 16 refers to the Higher Education and Research Reform Amendment Bill 2014 but the Selection of Bills Committee secretariat has confirmed that this was an error. It should have referred to the current Bill.
Higher Education and Research Reform Bill 2014

Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.

- the Senate Standing Committee on Education and Employment, of which the majority Coalition Senators recommended passage of the Bill, with amendments. Labor Senators and Greens Senators both delivered separate dissenting reports. 31

Financial implications

The overall reform package is estimated to produce savings of $451 million from 2013–14 to 2017–18, and $5.84 billion over the ten years to 2023–24. 32

The increase to the Australian Research Council (ARC) funding cap (Schedule 5) will be $760 million to 30 June 2018. 33

Extending eligibility to HELP for certain New Zealander citizens (Schedule 10) was estimated to cost $10.6 million over the forward estimates, at the time of the 2013–14 Budget when the policy was announced. 34

According to media reports, Minister Pyne has expressed willingness to negotiate over almost $2 billion in cuts to win support for the deregulation of university fees. 35

Statement of Compatibility with Human Rights

As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. 36 The Government considers that the Bill is compatible.

This Bill has not yet been considered by the Parliamentary Joint Committee on Human Rights. For a brief summary of the previous Bill’s consideration by that Committee, please see the section ‘Committee consideration’ above or the previous Bill’s Bills Digest.

Key issues and provisions

Overview

Broadly, two issues emerged in the commentary around the previous Bill which still have not been explicitly addressed by the Government in this Bill or accompanying material:

- the contested nature of the higher education market and
- the real cost of providing higher education services.

It should be noted that the continuing push for a reduced government outlay in the higher education sector and the shift of cost from government to student makes implicit judgements about the role of the higher education sector and its relationship with the broader Australian community.

The contested nature of the higher education market

The overall thrust of the reform—the deregulation of fees—relies in part on competition to constrain fee increases, although additional measures have been taken in the Bill to provide a level of security for higher education providers (see analysis of Schedule 1, below).

Commentators such as Ross Gittins have repeatedly discussed the imperfect nature of the higher education market. 37 This market is dominated by elite providers in the form of the Group of Eight institutions, which are located in major cities, with capacity to charge higher prices based on reputational advantages and student offerings associated with long-standing investments in capital. 38 Newer universities in metropolitan areas or regional cities do not have the same reputational advantages and so may not be able to charge similar

33. Ibid., p. 5.
34. Ibid., p. 5.
premiums. The market is further fragmented due to the presence of smaller regional and rural providers who often provide what is essentially a monopoly service to a particular local area—regional students may only have one serious option for their higher education, taking into account the transactional costs associated with moving to a metropolitan area.

As graduates receive a higher than average wage for their investment, young people are encouraged to participate in higher education. At the same time, the tuition fee is not directly connected to the product they receive, as the reputational incentives for universities require the institution to not focus on teaching, but on research and publication, so there is asymmetry in the relationship between the purchaser-student and the provider-institution.

The Bill and its associated documentation do not directly respond to criticism that mainstream economic drivers may not be able to operate in a fragmented market in which higher education is purchased for both public and private purposes.

The real cost of providing higher education services
As the previous Bills Digest makes clear, there is still no detailed understanding of the ‘cost’ of providing services by a higher education provider, whether it be to support tuition or research. There is no accepted underpinning as to what an ‘appropriate’ operating budget would be to allow a particular number of students at a given institution access to quality teaching or research – essentially, through the student contribution, we ask students to pay for a product without knowing if it’s actually what they wanted to purchase.

The Minister for Education stated the following in his second reading speech:

The Government doesn’t have adequate information about how much it costs an institution to deliver a course, so why should it dictate the price?

Fee deregulation is being proposed as the only possible option to allow institutions to gather the income they need. At the same time, without accurate information as to appropriate operating costs, higher education providers could conceivably charge prices well in excess of their costs.

Information asymmetry exists for students who are unaware of what their fees may go to support and whether this seems an acceptable ‘price’. Higher fees may still result in inadequate services, if fee increases reduce student numbers over time and government revenue continues to take up a decreasing share of the operating cost.

Without understanding what expectations students, researchers and broader Australian society place on higher education institutions, and the costs of those expectations, it is difficult to formulate an appropriate funding settlement.

Changes from the previous Bill
As mentioned previously, this Bills Digest will only examine substantive policy changes from the previous Bill.

The following Schedules will therefore be considered, in light of the proposed changes:

• **Schedule 1** – amending guidelines to ensure non-Commonwealth supported students are not charged less than Commonwealth supported students and to create a structural adjustment fund

• **Schedule 3** – introducing a HELP debt ‘pause’ for primary caregivers of children under five who are below the minimum HELP payment threshold and removing the proposal to change the indexation of HELP debts from the CPI to the ten year bond rate and

• **Schedule 9A** – the creation of the Higher Education Participation Programmes.

Schedule 1
The differences from the previous Bill are contained in Part 4 of the Schedule, items 204A and 204B.

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39. This graduate wage premium is estimated to be between 30% and 75% depending on the research. See ABC FactCheck, ‘Christopher Pyne’s claim that graduates earn more is overblown’, ABC News, updated 9 September 2014, accessed 2 January 2015.
Item 204A repeals the existing Chapter 9 of the Commonwealth Grant Scheme Guidelines and substitutes a new version in relation to overseas and non-Commonwealth supported students.\(^{41}\)

New subsection 9.5.1 provides that the tuition fee for a non-Commonwealth supported student for a unit of study must not, except in exceptional circumstances, be less than the sum of the tuition fee a Commonwealth-supported student pays and the Commonwealth contribution amount.

In theory this may exert downward pressure on tuition fees for Commonwealth-supported students; it may also provide a form of delineation in contrast to overseas students (non-Commonwealth supported students are generally overseas students) and so ‘they’ will not get cheaper education than ‘us’. But all the section does is require one amount to be less than the other: if one category of student in a deregulated market were willing to pay $\infty$ as a tuition fee, non-Commonwealth supported students would simply be charged $\infty+1$.

As the two categories of student (and fee) are separate markets—a Commonwealth-supported student cannot seek out a non-Commonwealth-supported place—competition effects are likely to be minimal.

Item 204B makes provision for a structural adjustment fund in the Other Grants Guidelines (Education) 2012 by repealing the existing Chapter 6 and substituting a new chapter. The current Chapter 6 already allows for a structural adjustment fund.\(^{42}\) The major differences between the two funds are the size ($100 million under item 204B, $20 million in the existing Guidelines), and the method of allocation (ministerial direction under the amended Guidelines, as opposed to a competitive application process under the existing Guidelines). Both funds were established in recognition of the challenges some higher education providers face as the result of significant Australian Government reforms (the demand-driven system under the previous Government, and fee deregulation and funding reductions under this Government.)

New subsection 6.10 of the Other Grants Guidelines provides the Minister great discretion over the amount, criteria and awarding of grants from the new structural adjustment fund. Grants can be awarded to any higher education provider listed in Table A of HESA and the Minister ‘may’ take into account factors ‘such as the market in which the provider operates and its capacity to achieve additional revenue’. The lack of a competitive application process raises questions about accountability.

While the capacity for the Minister to award grants as needed under this subsection indicates a clear need for the provision of funding, the opaque nature of the process means that it is ultimately unclear if the institutions needing support will be those who get support.

Finally, without a clear understanding of the financial cost to higher education providers of a particular standard of teaching and learning, it is difficult to ascertain if the $100 million fund is adequate. Stakeholder groups (see ‘Stakeholder reaction to the amended reform package’) have suggested $500 million. It is also unclear if the three year time period for grants to be awarded (2016, 2017 and 2018) will be enough for institutions to successfully ‘structurally adjust’.

In the longer term, it is unclear what the Government’s policy position is should certain institutions fail to adjust within the three year period and cover revenue shortfalls with the proceeds of higher fees. Higher education providers offer public and private goods. Certain institutions exist as monopoly providers in rural and regional areas—the consequences of an ongoing fiscal shortfall for these institutions is not directly apparent. The Government may be burdened with further costs should political and market imperatives decide that a given provider is ‘too big to fail’.

Schedule 3

This Schedule introduces a five year pause in the indexation of HELP debts for primary care-givers of children under five whose income is below the minimum payment threshold. This indicates a societal judgement as to how we value primary care-givers above say, the young unemployed, or mature age students, who may also face financial barriers associated with growing HELP debts over time.

It is unclear what the policy rationale is for support cutting out when the relevant child reaches five years of age, beyond the stated preference of Senator Madigan. For example, income support for primary carers of children is provided through the Parenting Payment. This cuts out when the child reaches six years, for those parents with

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partners, and eight years for single parents who are primary carers.\textsuperscript{43} A more consistent approach across various governmental support (which would include the proposed HELP indexation pause) would enable primary carers to better understand their financial circumstances and plan accordingly.

While the revised Schedule 3 does drop the proposal to shift indexation for HELP loans to the ten year Treasury bond, the Minister continues to refer to this proposal in his second reading speech:

\textit{The Government sought to introduce a fair interest rate on loans to alleviate taxpayers of this cost burden.}\textsuperscript{44}

Despite the policy change, the initial proposal is still referred to as ‘fair’. The implication being that retaining CPI indexation continues to place an ‘unfair’ burden on taxpayers. This may indicate a continued argument for longer-term policy changes.

\textbf{Schedule 9A}

Schedule 9A repeals sections 1.40 to 1.85 of the Other Grants Guidelines (Education) 2012 and substitutes new sections 1.40 to 1.86. This eliminates the Higher Education Participation and Partnerships Program, which funded certain higher education providers:

\ldots to undertake activities and implement strategies that improve access to undergraduate courses for people from low SES backgrounds and improve their retention and completion rates.\textsuperscript{45}

This program was designed to support the previous Government’s ambition, in line with the Review of Australian Higher Education, of 20 per cent of domestic undergraduate students being from low SES-backgrounds by 2020. Comparatively speaking, it is difficult to see a persuasive evidentiary basis for a shift to a programme that is designed to:

\ldots increase the number of undergraduate and postgraduate domestic students from disadvantaged backgrounds who access, participate in and succeed in higher education, by providing grants to support access, participation and success in higher education by prospective and current students from those backgrounds. (Proposed section 1.40.1 of the Other Grants Guidelines (Education) 2012, at Item 9 of Schedule 9A of the Bill.)

The term \textit{disadvantaged backgrounds} is a broader category of potential student than \textit{low SES backgrounds}, and includes people with a disability, from rural and regional areas, Aboriginal or Torres Strait Islander peoples, people from a non-English speaking background and women in non-traditional areas of study, regardless of their SES status. It is notable that these equity goals are not broadened further to include, for example, lesbian, gay, bisexual and transgendered people, who have also faced historical social stigma.

The new series of programs, which includes a broad grants program, a scholarships fund, and ‘national pool’ grants do not have the same level of detail as the programs they replace, which include clear, transparent listing of grant objectives, detailed conditions on funding, and the calculation of grant amounts. As with the other proposed new grants, such as the structural adjustment fund, this puts a particular emphasis on Ministerial discretion.

The current Higher Education Participation and Partnerships Program also provides for an allocation of funding in the Guidelines of over $500 million in 2012 dollars. The amended guidelines do not provide for a funding allocation.

\textbf{Concluding comments}

The Higher Education and Research Reform Bill 2014 attempts to ameliorate some of the criticism of the previous Bill. The overall thrust of the package remains the same—fee deregulation, with some new support offered to institutions in the form of grants to manage changing market conditions and support potential students in doing the same. It is unclear as to whether this financial assistance will be enough, especially as the provisions in amended guidelines heighten the Minister’s discretion in determining the quantum of any grants awarded.

\textsuperscript{43} Department of Human Services (DHS), ‘Eligibility basics: parenting payment’, DHS website, accessed 7 January 2015.


\textsuperscript{45} Higher Education Support Act 2003 - Other Grants Guidelines (Education) 2012 (DIISRTE), chapter 1, accessed 5 January 2015.
It is interesting to note that compared to the existing grant programmes provided for under HESA, the new Bill emphasises ministerial discretion and authority in allocating grant funding, and removes existing targets and indicators associated with such grants. While this empowers the Minister to be more responsive to sector needs, it also reduces public and parliamentary capacity to evaluate the use and success of public funds in achieving the stated aim of the grants the Minister chooses to approve.