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Date introduced: 15 September 2016
House: House of Representatives
Portfolio: Indigenous Affairs
Commencement: Sections 1 to 3 commence on Royal Assent. Schedule 1, Part 1 commences on Proclamation or six months after Royal Assent, whichever is earlier. The commencement date for Schedule 1, Part 2 is dependent on the commencement of the Budget Savings (Omnibus) Act 2016. Schedule 2 commences the day after Royal Assent.

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 Federal Register of Legislation website.

All hyperlinks in this Bills Digest are correct as at November 2016.
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The Bills Digest at a glance

What the Bill does

- The Bill enables grants to be made to certain listed higher education providers in order to assist Indigenous students.
- Previously financial support for Indigenous higher education students was provided under various parts of the existing higher education legislation.
- The Bill consolidates existing support schemes under one part of the Act and one set of guidelines. It also notes where any financial support made to students by providers will be taken into account in the assessment for certain welfare benefits.
- The Bill also extends the provisions for information sharing under the Higher Education Loan Program (HELP) to ensure consistency across all the income-contingent loans offered by the Australian Government. This is intended to assist in the development, administration, or future administration of the HELP scheme.

How the Bill works

- The Bill establishes the ways in which eligibility criteria, conditions and amounts payable (including maximum amounts and roll over of grant payment) for new Indigenous student assistance grants may be defined.
- The Bill specifies that the Minister may make guidelines in relation to these new grants and indicates when a particular matter may be dealt with in the guidelines.
- The Bill inserts provisions into relevant welfare legislation reflecting the impact on potential welfare benefits.
- The Bill also addresses the use and disclosure of HELP information, as well as tax file numbers, to improve the administration of the HELP scheme.

Why the Bill has been introduced

- The Indigenous student support measures relate to a 2016–17 Budget measure.
- The HELP information sharing provisions appear to be a technical improvement.
Purpose of the Bill
The purpose of the Higher Education Support Legislation Amendment (2016 Measures No. 1) Bill 2016 (the Bill) is amend the Higher Education Support Act 2003 (HESA) by inserting a new Part which will provide for grants to higher education providers to assist Indigenous students.

In addition the Bill makes an administrative amendment to the HESA to ensure that the Department of Education and Training can collect tax file numbers to improve the administration of the VET FEE-HELP scheme.

Structure of the Bill
The Bill comprises two Schedules.

Schedule 1 of the Bill deals with the Indigenous higher education changes set out in two Parts:

• Part 1 inserts new Part 2–2A into the HESA to consolidate the rules about Indigenous student assistance grants. Part 1 also contains amendments to the Social Security Act 1991, the Social Security (Administration) Act 1999, the Student Assistance Act 1973 and the Veterans’ Entitlements Act 1986 to make reference in those statutes to the new Part 2–2A of the HESA and

• Part 2 specifies amendments contingent on the commencement of the Budget Savings (Omnibus) Act 2016.

Schedule 2 of the Bill deals with Higher Education Loan Program (HELP) information changes as set out in two parts:

• Part 1 amends the HESA to insert new rules for the disclosure and use of information for the HELP program

• Part 2 contains application and transitional provisions.

As the amendments in Schedule 1 and Schedule 2 of the Bill are different in nature this Bills Digest will set out the background, key provisions and key issues to each of the Schedules separately.

Committee consideration

Senate Standing Selection of Bills Committee
On 15 September 2016, the Committee reported that it had resolved to defer consideration of the Bill until its next meeting. At the next meeting on 13 October 2016, the Committee resolved to again defer consideration of the Bill.

Policy position of non-government parties/independents

Public statements in relation to this Bill from the non-government parties or independents could not be found at time of publication.

Position of major interest groups

The National Aboriginal and Torres Strait Islander Higher Education Consortium (NATSIHEC), an advocacy group for Indigenous higher education, has given support for the proposed change in commentary to the press. The Chairman of NATSIHEC believes the proposed changes are an improvement over the Indigenous Advancement Strategy model of amalgamated funding, as it allows for quarantined funding to be reserved for indigenous higher education students.

Public statements from other higher education peak bodies and representative groups in relation to the proposed changes to Indigenous student assistance or HELP information measures could not be found at time of publication.

Financial implications

According to the Explanatory Memorandum, the Bill has no financial impact.
Special appropriations
There are no special appropriations associated with this Bill.

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. The Government considers that the Bill is compatible.6

Parliamentary Joint Committee on Human Rights
The Parliamentary Joint Committee on Human Rights considers that the Bill does not raise human rights concerns.7

Schedule 1
Policy development—Indigenous student assistance
A fair chance for all
The participation of Indigenous students in higher education has attracted Australian Government interest since 1990, when the Hawke Government introduced its discussion paper on higher education, A Fair Chance for All.8 This framework listed five specific groups of students facing disadvantage in higher education, of which Aboriginal and Torres Strait Islander people were one grouping.9 It encouraged higher education institutions to meet a 1995 target of ‘doubling of Aboriginal and Torres Strait Islander enrolments in higher education and an improvement in the graduation rate of Aboriginal people to a rate comparable with the rest of the population’.10

This led to the development of appropriate statistical measures to track the participation and success of the defined equity groups in higher education – the Department of Education and Training publishes equity data as part of its higher education student statistics collection on an annual basis.11 The categories of student disadvantage are still based on those listed in A Fair Chance for All.

Bradley Review
The next key review of participation and performance of Indigenous students in higher education emerged out of the final report of the Review of Australian Higher Education (the Bradley Review). Commissioned by then Minister for Education, Julia Gillard, the Bradley Review attempted to examine and report on ‘the future direction of the higher education sector, its fitness for purpose in meeting the needs of the Australian community and the options for ongoing reform’.12

The Bradley Review found that Indigenous students continued to be ‘vastly underrepresented in higher education’.13 No specific recommendations were made regarding what improvements should be made to higher education funding, structure, or regulation to better support Indigenous higher education students. Rather, Recommendation 30 of the Bradley Review urged the Australian Government to:

Regularly review the effectiveness of measures to improve higher education access and outcomes for Indigenous people in consultation with the Indigenous Higher Education Advisory Council [an advisory body to government at the time].14

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6. The Statement of Compatibility with Human Rights can be found at pages 36 to 47 of the Explanatory Memorandum to the Bill.
8. P Baldwin (Minister for Employment and Education Services), A fair chance for all, media release, 16 May 1990.
9. Ibid.
10. Ibid. See Department of Education, Employment and Training, A fair chance for all: national and institutional planning for equity in higher education: a discussion paper, Canberra, AGPS, February 1990 for background to the development of the announced policy.
13. Ibid., p. 32.
Behrendt Review
The Review of Higher Education Access and Outcomes for Aboriginal and Torres Strait Islander People (the Behrendt Review) was conducted across 2011 and 2012. In relation to specific programs, Recommendation 13 of the Behrendt Review specified:

... the Australian Government reform funding for supplementary Aboriginal and Torres Strait Islander support programs, including the Indigenous Support Program and the Indigenous Tutorial Assistance Scheme – Tertiary Tuition (ITAS-TT), in time for the 2013 academic year, based on the following design principles:

• Allow universities greater flexibility to provide locally relevant, tailored support for Aboriginal and Torres Strait Islander students and staff.
• Target available funding to achieve an improvement in current enrolment levels but also with a greater emphasis on retention and completion rates.
• Ensure that funding would be simple to administer.
• Ensure that funding would support clear outcome-focused accountability for universities.\(^{15}\)

It is unclear from the recommendation as to whether this more flexible approach to funding was meant to extend to a redesign of the Commonwealth Scholarships Program as well. These recommendations were not implemented prior to the 2013 federal election.

Reform proposals from 2014 to the present day
Since the election of the Coalition government following the 2013 Federal election, Indigenous policy has continued to attract significant interest and effort. The National Commission of Audit’s recommendation in relation to Indigenous programs was that the Australian Government should undertake the following:

• significantly consolidating and rationalising Commonwealth Indigenous-specific programmes, bodies, committees, councils and boards, and ensuring programmes and reporting are focussed on outcomes. The existing 150 or so Commonwealth Indigenous programmes and activities should be consolidated into no more than six or seven programmes;
• redirecting funds from administrative savings or the termination of less effective programmes to a new means-tested and needs-based voucher programme to assist Indigenous children with the costs of attending accredited education and training from early childhood through to primary school and tertiary education, including fees, travel and boarding costs;
• establishing over the next two to three years a new, separate agency for Indigenous Affairs reporting to the Prime Minister, with responsibility for Commonwealth Indigenous specific programme delivery, development of a robust evaluation strategy and coordination with mainstream and specific providers at the Commonwealth and State levels;
• working directly with the States to establish new bilateral agreements which clarify and delineate responsibilities between jurisdictions, are outcomes based with clearly measurable performance indicators and involve pooled funding where appropriate; and
• reconfiguring mainstream services to ensure they are designed and delivered in collaboration with Indigenous people, with clear reporting requirements on access by Indigenous people and associated outcomes.\(^{16}\)

Indigenous Advancement Strategy
The overarching aim of consolidating and rationalising Australian Government support for Indigenous Australians led to the development of the Indigenous Advancement Strategy (IAS). Announced in the 2014–15 Budget, this involved streamlining over 150 existing programs into five streams: jobs, land and economy; children and schooling; safety and wellbeing; culture and capability; and remote Australia strategies.\(^{17}\) The new IAS was intended to commence from 1 July 2014, soon after the release of the 2014–15 Budget on 13 May 2014.

\(^{15}\) L Behrendt, Review of higher education access and outcomes for Aboriginal and Torres Strait Islander people: final report, (the Behrendt Review), Department of Industry, Innovation, Science, Research and Tertiary Education, Canberra, July 2012, p. 78.


The Department of the Prime Minister and Cabinet (P&MC) would have responsibility for implementation and service delivery following changes to administrative arrangements.

The implementation of the IAS was criticised by provider groups, the Australian Labor Party (ALP) and the Australian Greens (the Greens). In response to that criticism, the tendering arrangements for the IAS were subject to an inquiry by the Senate Standing Committee on Finance and Public Administration.

Current situation

In May 2016, the Australian Government announced that as part of the 2016–17 Budget, it would:

- consolidate three existing programs from 1 January 2017 to create a new program to improve progression and completion rates for Indigenous higher education students. The new program will replace the Commonwealth Scholarship Program, the Indigenous Support Program and the Indigenous Tutorial Assistance Scheme — Tertiary Tuition, giving universities more flexibility to implement responses that best meet the needs of individual students, for example, by providing scholarships, counselling, and tutorial assistance.

The news section of the PM&C website advised:

- The Government and universities have worked together to develop reforms to improve Aboriginal and Torres Strait Islander university participation and attainment.
- From 1 January 2017, universities will have greater capacity to design their scholarships, tutorial support and other assistance to ensure Aboriginal and Torres Strait Islander students are on the pathway to success.
- Funding will be provided to universities through a flexible and outcomes-based model. A special loading will also recognise the extra needs of the many students coming from remote and regional Australia.
- Universities will be more accountable for ensuring that students are not only enrolled, but also progressing and completing university studies in greater numbers.
- The measure cuts red tape while promoting the involvement of Aboriginal and Torres Strait Islander people in university decisions.
- Special assistance to the Batchelor Institute of Indigenous Territory Education will also be consolidated through the Department of Education and Training under this measure.

Key provisions

Existing Indigenous higher education assistance framework

The HESA sets out the funding framework for higher education in Australia. Chapter 2 of the HESA details who are higher education providers, and the three kinds of grants that may be made. In particular, Subdivision 16–B of the HESA deems that those providers who are listed providers are automatically entitled to receive grants for higher education assistance. They are categorised into three tables: A, B and C. Other higher education providers must be specifically approved by the Minister in order to be eligible for funding.

The three types of grants that may be made to higher education providers are:

- the Commonwealth Grant Scheme, which provides for subsidised places at public universities.
• a series of Other Grants, largely designed to support specific needs such as research, equality of opportunity and student support, capital and infrastructure provision, and Commonwealth Scholarships.

As well as being authorised under the HESA, guidelines exist to further specify the eligibility and conditions associated with these grants.

The HESA does not currently make specific provision for assistance to Indigenous students. Separate legislation exists to provide support for Indigenous students across a variety of education settings. This is the Indigenous Education (Targeted Assistance) Act 2000 (IETA).

The key programs designed to support Indigenous students in higher education operate under both the HESA and the IETA. These programs are all discretionary and there is no requirement for the Australian Government to make payments under these programs. Typically each program has a maximum grant amount authorised by the Minister, which also allows for funding reductions dependant on government policy of the day.

The programs are as follows:

• the Indigenous Support Program (ISP) is authorised by the Other Grants Guidelines (Education) under HESA, and allows for grants to be made directly to higher education providers to assist with the support they provide to their Indigenous students.

• the Commonwealth Scholarships Program (CSP) is authorised by the Commonwealth Scholarships Guidelines (Education) under HESA and allow for payments to be made to eligible Indigenous students to assist them with the costs of higher education.

• the Indigenous Tutorial Assistance Scheme – Tertiary Tuition (ITAS–TT), authorised under the IETA, does not appear to still exist, as there is no public information on the departmental website and the latest edition of the program guidelines that could be recovered date from 2012.

Proposed framework

The announcement on the PM&C website and the Minister’s speech both indicate that consultation with the university sector and with Indigenous higher education staff assisted in developing these amendments. A record of this consultation process could not be found on the relevant departmental websites, and the current Government abolished the Aboriginal and Torres Strait Islander Higher Education Advisory Council, the formal advisory body on Indigenous higher education, in the 2015–16 Budget.

The amendments set out key parameters for the operation of the proposed Indigenous grants. Item 7 of Part 1 in Schedule 1 to the Bill inserts proposed Part 2–2A into the HESA. The new Part sets out eligibility for grants, by way of notifiable instrument, the conditions that are imposed on a grant by

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27. HESA, Part 2–4.
28. See PM&C, 'Indigenous Support Program,' PM&C website for explanatory material. The program is authorised under sections 1.15 through 1.35.10 of the Other Grants Guidelines (Education) 2012.
29. See PM&C, 'Commonwealth Scholarships Programme (for university students)', PM&C website for explanatory material. The program is authorised under Chapter 2 of the Commonwealth Scholarships Guidelines (Education) 2010.
30. The latest Indigenous Tutorial Assistance Scheme – Tertiary Tuition (ITAS–TT) program guidelines relate to the 2009–2012 funding cycle, with a placeholder page available on the Department of Education and Training website. Subsequently, the program would have been transferred to the then Department of Industry, Innovation, Science, Research and Tertiary Education and its successor departments under the Gillard and Rudd governments from late 2011 to late 2013. Responsibility for Indigenous higher education was subsequently transferred to the Department of the Prime Minister and Cabinet but no reference to the ITAS–TT scheme can be found on the departmental website.
31. M Cormann (Minister for Finance), Smaller government – transforming the public sector, media release, 11 May 2015. For a listing of the work of the Aboriginal and Torres Strait Islander Higher Education Advisory Council, see DET, 'Aboriginal and Torres Strait Islander Higher Education', DET website, last modified 11 December 2015.
32. HESA, proposed section 38–10.
33. HESA, proposed section 38–20.
34. Under section 7 of the Legislation Act 2003, notifiable instruments are not subject to Parliamentary scrutiny. Nor are they subject to automatic repeal 10 years after registration.
the Minister, and the limits on the amount of a grant. In addition, proposed Part 2–2A provides that if a higher education provider fails to spend an amount of an Indigenous student assistance grant and the Secretary determines, by notifiable instrument, that proposed section 38–40 is to apply to that provider, then the unspent amount of money is taken to be granted to the provider under Part 2–2A for the next following year. These provisions are consistent with those in Part 2–3 of the HESA which deal with Other Grants.

Eligibility will be restricted to Table A or Table B providers under the HESA: being the major public and not-for-profit universities. Non-university higher education providers and for-profit universities will not be eligible for the funding. Grants will only be able to be used to assist Indigenous students to undertake higher education. Proposed subsection 38–10(2) specifies that this assistance may be provided through a variety of means, including scholarships, academic support and supplementary tuition, pastoral care, and strategies to accelerate improvements to Indigenous student outcomes in higher education and fostering culturally-safe learning environments in higher education. These essentially cover the chief aims of the existing Indigenous Support Program, Commonwealth Scholarship Program and Indigenous Tutorial Assistance Scheme – Tertiary Tuition and should allow for a relatively easy transfer of existing administrative arrangements and funding to the new grant arrangements.

As with Part 2–3 and Part 2–4 of the HESA, the proposed Part 2–2A makes these grants discretionary: it is within the power of the Minister to determine the size of the grant, the grant recipient, and whether grants will be approved at all.

The use of delegated legislation

Item 12 of Part 1 in Schedule 1 to the Bill amends subsection 238–10(1) of the HESA to empower the Minister to make guidelines in relation to Indigenous Student Assistance Grants. The guidelines may specify particular types of grant, the relevant grant objectives, extra conditions of eligibility, the maximum grant amount (and the indexation of that amount in succeeding years), the amount of a grant (or the method by which the amount is to be determined), the years for which the grants are payable, and grant conditions. It is likely these will be similar to existing grant guidelines under the HESA, however the use of delegated legislation and the probable detail contained within these resulting guidelines makes it difficult to assess the overall effectiveness of the proposed grants.

Technical amendments

Items 13–29 of the Part 1 of Schedule 1 to the Bill amend the Social Security Act, the Social Security (Administration) Act, the Student Assistance Act and the Veterans’ Entitlements Act to enable Indigenous student assistance grants to be treated in equivalent terms under those statutes as existing scholarships authorised by Part 2–4 of the HESA.

Item 16 in Part 1 of Schedule 1 to the Bill inserts proposed subsection 23(24) into the Social Security Act to authorise the Secretary, by legislative instrument, to specify a scholarship which is a disqualifying accommodation scholarship or a disqualifying education costs scholarship. Consistent with that provision, item 15 inserts two new definitions into the Social Security Act. A disqualifying accommodation scholarship is a scholarship under proposed Part 2–2A of the HESA and which has been specified by the Secretary under proposed subsection 23(24). A Commonwealth Accommodation Scholarship is also a disqualifying accommodation scholarship.

Similarly, a disqualifying education costs scholarship is a scholarship under proposed Part 2–2A of the HESA and which has been specified by the Secretary under proposed subsection 23(24). A Commonwealth Education Costs Scholarship is also a disqualifying education costs scholarship.

Items 17–21 make consequential amendments to the Social Security Act to replace existing references to Commonwealth Education Costs Scholarship with references to disqualifying education costs scholarship and

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35. HESA, proposed section 38–25 and proposed section 38–45.
36. HESA, proposed section 38–30.
37. HESA, proposed subsection 38–10(1).
38. Item 11 of Part 1 in Schedule 1 to the Bill amends subsection 238–5(1) of the HESA so that the Minister’s power to determine maximum payments for grants cannot be delegated to the Secretary or an APS employee.
39. HESA, proposed section 38–15.
existing references to Commonwealth Accommodation Scholarship with references to disqualifying accommodation scholarship.

The remaining items in Part 1 of Schedule 1 to the Bill amend other statutes to make references to the two new definitions.

The amendments in Part 2 of Schedule 1 to the Bill are contingent on the commencement of the provisions in Schedule 11 to Budget Savings (Omnibus) Act 2016, which are due to commence on 1 July 2017. Schedule 11 of the Budget Savings (Omnibus) Act removes grandfathering arrangements for current recipients of the Student Start-Up Scholarship, terminating that benefit. While the substance of those amendments is not relevant to the Bill, the structural changes they will make to provisions in the Social Security Act and the Student Assistance Act (basically removing subsections from two sections) mean that amendments to the same provisions by the Bill (to change references to ‘Commonwealth Education Costs Scholarship’ to ‘disqualifying education costs scholarship’) will need to be framed differently depending on whether the changes to provision structure proposed by Schedule 11 of the Budget Savings (Omnibus) Act have been made.

As set out above, Part 1 of Schedule 1 will commence on a proclaimed date or six months after Royal Assent, whichever is earlier. If Part 1 of Schedule 1 commences before 1 July 2017, such that the amendments made by Schedule 11 of the Budget Savings (Omnibus) Act have not been made, then the Bill’s amendments can refer to the provisions of the Social Security Act and the Student Assistance Act as they currently stand (as above, with the relevant sections divided into subsections). In this circumstance, the amendments set out in Division 2 of Part 2 of Schedule 1 are in the correct format and will commence at the same time as Part 1 of Schedule 1 to the Bill. In that situation, the amendments in Division 1 of Part 2 of Schedule 1 will not be needed and will not commence.

On the other hand, if the Budget Savings (Omnibus) Act commences before Schedule 1 to the Bill, the subsections will have been removed from the relevant sections of the Social Security Act and the Student Assistance Act and the amendments set out in Division 1 of Part 2 of Schedule 1 are in the correct format and will commence at the same time as Part 1 of Schedule 1 to the Bill. In that situation, the amendments in Division 2 of Part 2 of Schedule 1 will not be needed and will not commence.

Key issue — performance of Indigenous students in higher education

Measuring performance in higher education

The performance of disadvantaged groups in higher education can be measured against five different criteria: participation, access, retention, success and completion/attainment. These are the terms used in the departmental data on disadvantaged students in higher education, such as Indigenous students, and are current throughout research on higher education student performance:

- **participation** refers to the numbers of students in higher education and is measured by ascertaining whether there are more members of the given group than there were in the previous year. It allows a comparison with the broader population. For example, if only 1.5 per cent of the overall higher education student cohort was Indigenous, but three per cent of the Australian population was Indigenous, it could be argued that Indigenous students were underrepresented in higher education.

- **access** refers to the numbers of commencing students in higher education and is measured by ascertaining whether there are more members of the given group starting higher education than there were in the previous year. It allows a better understanding of whether certain policies or programs may be changing whether new students can access higher education.

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40. Budget Savings (Omnibus) Act 2016.


42. See DET, ‘2015 appendix 5—equity performance data’, op. cit., for an example of how these concepts are used in the official departmental statistics. The definitions in this section are also adapted from the departmental notes provided in that spreadsheet. For a broader discussion of these criteria and the issues involved in assessing the performance of disadvantaged students see A Harvey, ed., Student equity in higher education: twenty-five years of a fair chance for all, Springer, Singapore, 2016.
• *retention* refers to the students who continue their studies from the previous year. Retention metrics are fairly crude as students may take a year off formal study, undertake cross-institutional study (but only be ‘enrolled’ at one institution), or transfer to another university.

• *success* measures academic performance by comparing the effective full time student load of units passed to the number of units attempted.

• *completion/attainment* refers both to the number of completions (of qualifications) in a given year, as well as to the rate attained by the equity group. For example, one per cent of all completions at a given institution may be from Indigenous students: this is their attainment rate. This also allows for an examination of whether this amounts to an underrepresentation compared with the broader cohort of completions, but it does not take cohort effects into account.

Much of this data can be expressed in rate (percentage) or ratio forms, as well as raw figures. Ratios are particularly useful as they compare the performance of the equity group with the performance of the overall cohort: an Indigenous success ratio of 1.0, for example, indicates that Indigenous students are just as likely to pass their units of study as non-Indigenous students. A ratio of less than 1.0 indicates comparative underperformance, and a ratio of greater than 1.0 indicates comparative over-performance.

**Assessing Indigenous performance in higher education**

A key difficulty in assessing the benefit of the amendments proposed in Schedule 1 to the Bill is that there is no clear metric against which to judge success. Indeed, as discussed above, there are multiple ways of assessing performance in higher education. Importantly, there have been two major policy reviews, each with different proposed indicators for Indigenous performance, and each without a clear and coherent relationship to government policy.

As part of its findings, the Bradley Review suggested a series of benchmarks for Indigenous students in higher education: proportionality for Indigenous student *access rates*, through comparison with the broader Indigenous population aged between 15 to 64 years; for Indigenous students to reach at least 95 per cent of the *success rates* as those for non-Indigenous students; and for Indigenous students to reach at least 90 per cent of the *retention and completion rates* as those for non-Indigenous students. As these were findings rather than recommendations, they fell out of the scope of the formal government response to the Bradley Review.

The Behrendt Review provided Indigenous views on ‘what works’ and also recommended a national participation target for Indigenous staff and students in higher education, based on the 2.2 per cent of the population aged between 15 and 64 years that identified as Aboriginal or Torres Strait Islander at the time of the Review, with this figure to be updated in line with new census data. Rather than require hard targets to be set by the Australian Government, the Behrendt Review recommended that individual universities adopt their own targets for retention and completion, based on the ideal of parity between Indigenous and non-Indigenous students, but recognising the demographics of their own institutions and the makeup of specific disciplines where Indigenous students may currently be underrepresented. The then Minister referred to the Review as a ‘roadmap’ but did not appear to formally accept the recommendations.

So what can we say about the performance of Indigenous students in higher education? The higher education statistics collection, maintained by the Department of Education and Training provides a guide.

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44. For the government’s response to the Bradley Review, see Department of Education, Employment and Workplace Relations, *Transforming Australia’s higher education system*, Department of Education, Employment and Workplace Relations, Canberra, 2009. Appendix 3 lists the Bradley Review Recommendations and the Government’s position. Note the findings, including potential benchmarks for Indigenous participation in higher education, were not included.
Table 1: Access rates, Australia-wide, for Indigenous domestic students in higher education, 2009 to 2015

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<tbody>
<tr>
<td>Access rate (%)</td>
<td>1.61</td>
<td>1.58</td>
<td>1.63</td>
<td>1.65</td>
<td>1.69</td>
<td>1.75</td>
<td>1.88</td>
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The access rates can be contrasted with Australian Bureau of Statistics (ABS) data. While a strict comparison is not possible (higher education data runs on an academic year basis, and ABS statistics are on a financial year basis) it does provide some grounds to assess whether the proportional representation of Indigenous students has increased, decreased, or stayed the same.

Table 2: Estimated and projected population rates, for Indigenous Australians between 15–64 years, 2010–11 to 2014–15

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<tbody>
<tr>
<td>Indigenous Australians, as proportion of total population aged between 15 and 64 (%)</td>
<td>2.7</td>
<td>2.8</td>
<td>2.8</td>
<td>2.8</td>
<td>2.9</td>
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</tbody>
</table>

Source: Adapted from Australian Bureau of Statistics (ABS), Estimates and projections, Aboriginal and Torres Strait Islander Australians, 2001 to 2026, cat. no. 3238.0, ABS, Canberra, 2014; and ABS, Australian demographic statistics, Mar 2016, cat. no. 3101.0, ABS, Canberra, 2016.

Though there has been improvement in access rates since 2009, it can be seen that the proportion of Indigenous students commencing in higher education as given by the access rate remains lower than the proportion of Australians aged between 15 and 64 years who identify as Indigenous. This indicates that Indigenous Australians continue to be underrepresented in higher education.

Ratios also allow a quick understanding of whether parity has been achieved, as a ratio of 1.0 will indicate that the Indigenous cohort performs as well as the non-Indigenous cohort.

Table 3: Ratios for Retention and Success, Australia-wide, for Indigenous domestic students in higher education, 2009 to 2015

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<tbody>
<tr>
<td>Retention ratio</td>
<td>0.85</td>
<td>0.86</td>
<td>0.85</td>
<td>0.87</td>
<td>0.89</td>
<td>0.89</td>
<td>-</td>
</tr>
<tr>
<td>Success ratio</td>
<td>0.79</td>
<td>0.82</td>
<td>0.81</td>
<td>0.83</td>
<td>0.84</td>
<td>0.84</td>
<td>0.84</td>
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</table>

Source: Adapted from DET, ‘2015 appendix 5 – equity performance data’, DET website, published 23 August 2016. Retention ratios for 2015 are not available as the 2016 academic year is not yet complete.

There has been some increase in the retention and success ratios, indicating that a greater proportion of Indigenous higher education students are continuing with their studies year on year at the same institution, and completing their units of study. In a broader context of increased access rates (more Indigenous students in the higher education system) that may be expected. However, contrasted against the aspirations of the Bradley Review, retention rates do not quite meet the 90 per cent benchmark, which would be represented by a 0.9, nor do success rates meet the proposed benchmark of 95 per cent (0.95).

The main issue is that the causes of the (admittedly small) improvements in Indigenous higher education performance over the last few years are unclear. While not using the same set of statistics, the Review of the Demand Driven Funding System in 2014 found that what improvements there were to Indigenous participation between 2002 and 2012 were likely attributable to both the removal of caps on the number of undergraduate places, and higher education programs designed to support Indigenous, low socio-economic status students, and regional students.48 Working out the attribution of this mix of policies and their effect on Indigenous higher education performance is challenging.

48. Prior to 2012, universities were allocated a set number of undergraduate places, as per agreements between the Australian Government and individual institutions. These caps were removed through the introduction of what was termed ‘the demand driven system’, which allowed universities to accept as many students as they wanted, in line with their own individual applications processes and academic standards. For
Rationale for program consolidation
As per the Assistant Minister’s second reading speech, the stated rationale for the proposed amendments is the 2016–17 Budget measure, Indigenous Student Success in Higher Education. The original recommendation of the Behrendt Review to consolidate Indigenous programs and encourage more flexibility in how the funding was used is not acknowledged in the speech.

It is also unclear what relationship exists between the existing Indigenous programs and Indigenous performance in higher education to date: the Behrendt Review refers to an internal departmental analysis of selected Indigenous higher education programs, prepared to support the Behrendt Review’s deliberations, but this internal review remains unpublished. If existing higher education performance cannot be clearly traced back to the current Indigenous programs, it is difficult to know if program consolidation will achieve anything different.

Schedule 2—HELP information management
The nature of student loans
The Higher Education Loan Program (HELP) has received significant scrutiny from government, think tanks and media outlets in recent years. HELP consists of five types of income-contingent loans, allowing students in higher education and vocational education and training to defer costs associated with their studies. The Australian Government instead pays the relevant cost, and the student repays the debt to the government through the taxation system when they reach a set income threshold.

The Australian Government lists HELP debt as an asset as part of the budget papers, as there is an assumption that a HELP debt will be repaid. The budget papers give the fair value of HELP debt, a figure which aims to take into account bad and doubtful debts and deferral costs. The estimated fair value of HELP debt in 2015–16 was given as $37.1 billion at 30 June 2016, with it expected to increase to $69.2 billion by the end of the forward estimates (2019–20). As the doubtful debt increases (that is, debts unlikely to be repaid) this has an impact on the assumed underlying cash balance, as there will be fewer repayments made to government and the value of the HELP debt will continue to be downgraded.

Concern about the debt profile of income-contingent loans is not a new phenomenon. However, there are structural reasons why some HELP debt will never be repaid, as compulsory repayment is based on an individual’s given income. Repayment may not occur because the debtor spends significant time outside of the workforce, due to unemployment, parenting or other caring responsibilities, or leaving the Australian taxation system by going overseas. A student debt arises as soon as a student takes out a loan in order to access higher education: outstanding student debts are written off at death.

Improvement of the structure of the scheme
In a 2014 analysis, the Grattan Institute identified that due to the structure of the HELP scheme, certain professions (and female workers) were less likely to repay their student loans, as their typical earnings would be less than the threshold at which loans were repaid. In order to address these design issues, the Grattan Institute recommended three key reforms to the HELP scheme:

- lowering the repayment threshold so as to capture more students with outstanding HELP loans

more information, see D Kemp and A Norton, Review of the demand driven funding system, Department of Education, Canberra, 2014. The finding in relation to improvements in Indigenous higher education performance is on p. 43.


50. Mentioned in Behrendt, Review of higher education access and outcomes for Aboriginal and Torres Strait Islander people, op. cit., at endnote DEEWR (2011k), p. 264. Excerpts are used throughout the Behrendt Review.


54. A Norton, Doubtful debt: the rising cost of student loans, Grattan Institute, Melbourne, April 2014.
• collecting HELP debt from overseas debtors and
• ending the HELP debt write-off that occurs upon death.\textsuperscript{55}

Lowering the repayment threshold was first proposed by the Australian Government as part of broader changes to higher education in the 2014–15 Budget.\textsuperscript{56} The other HELP reforms proposed at that time were to increase the interest rate on outstanding debts to better reflect the costs to government of underwriting student loans, and to remove the HECS-HELP benefit, which provides an incentive for graduates of particular courses to take up related occupations or work in specified locations by reducing their compulsory HELP repayments. These reforms would have had the result of requiring students to pay more to service their outstanding debts over time and to pay off their debts at a lower wage point than currently. The overall package of reforms was twice rejected by the Parliament.\textsuperscript{57}

Extending the HELP scheme to overseas debtors was first flagged in the 2015–16 Budget and resulted in legislative reform in late 2015.\textsuperscript{58} Two of the original 2014–15 Budget reforms, lowering the repayment threshold and removing the HECS-HELP benefit, were subsequently included in the Budget Savings (Omnibus) Bill 2016, which was enacted following agreement between the Government and the Opposition.\textsuperscript{59} These changes essentially mean that more students will be required to repay their HELP debts earlier in their working lives.

Problems arising from program administration

While these reforms addressed structural aspects of the scheme’s design that would otherwise increase outstanding HELP debt, analysis undertaken by the Parliamentary Budget Office in April 2016 found that the largest increases to the underlying cash balance were driven by policy decisions in 2009 and 2012 to expand HELP loans to a greater pool of students and providers.\textsuperscript{60} These policy parameters are still in place, meaning outstanding HELP debt will likely continue to increase.

The Parliamentary Budget Office pointed to the implications of policy decisions in assessing the sustainability of HELP debt. While not directly connected to the budgetary impact of student debt, in May 2016 the Australian National Audit Office released a review of the performance of the Department of Education and Training and the Australian Taxation Office in administering the HELP scheme.\textsuperscript{61} The performance review concluded:

The Higher Education Loan Program (HELP) is a mature program, based on a solid foundation of collecting student loan debt through the income tax system. Nevertheless, there is scope for the ATO and Education to make meaningful improvements to important aspects of the program’s administration. In particular, the program does not have a robust program of evaluation and review based on rigorous analysis of sound data. Program performance measures and reporting reflect a primary focus on access and there is limited measurement of the sustainability of the program despite Education’s projection that HELP debt will total almost $200 billion in 2024–25 and almost one-third of this debt will not be collected. In addition to a lack of focus on examining the growth in HELP debt to support policy design, there is no risk-based strategy to target compliance efforts; the ATO and Education are not fulfilling their broader program risk management responsibilities; and the controls for recording students’ HELP debts need to be improved.\textsuperscript{62}

Two key recommendations were made about the information available to support program monitoring, including public transparency of HELP outcomes:

\textsuperscript{55} Ibid.
\textsuperscript{60} Parliamentary Budget Office (PBO), Higher Education Loan Programme: supplementary analysis, ‘Figure 1’, Supplement to report, 2, 2016, PBO, Canberra, 2016.
\textsuperscript{61} Australian National Audit Office (ANAO), Administration of Higher Education Loan Program debt and repayments, Report, 31, 2015–16, ANAO, Canberra, 5 May 2016.
\textsuperscript{62} Ibid., pp. 7–8.
Recommendation No. 4: To support the design of HELP and better inform key stakeholders in the higher education sector, the ANAO recommends that Education and the ATO expand the information provided publicly to include a broader range of information such as the growth in HELP debt and collection of repayments, overall and for the separate HELP programs.

Recommendation No. 5: To enable informed decision making regarding HELP, the ANAO recommends that Education more fully analyses characteristics of debt and repayments, and consider this information to inform program design.  

In response to both these recommendations, the Department of Education and Training indicated that the Australian Government had approved the creation of an enhanced HELP database in November 2015, allowing for records held by the Department of Education and Training, the ATO and the Australian Government Actuary to be matched. The Explanatory Memorandum to the Bill states that the proposed amendments are designed to enable a HELP data improvement project, likely the enhanced HELP database referred to above.

**Improving the administration of the HELP scheme**

**The existing information sharing regime**

Existing Part 5–4 of the HESA relates to the management of information, including the disclosure and use of Higher Education Support Act information for certain purposes. The definition encompasses personal information for both higher education and VET students, as well as information received through surveys of students, and information obtained or created by a Commonwealth officer for the purposes of the HESA in certain circumstances.

Existing Part 5–5 of the HESA requires students to notify the appropriate officer of their higher education provider, or Open Universities Australia, and the Secretary of their tax file number. Within Part 5–5 of the HESA, section 190–1 authorises the Commissioner of Taxation to give written notice of the tax file number of a student to a higher education provider, Open Universities Australia and the Secretary. Essentially then, there is a flow of information to ensure that information which is relevant to the recovery of a HELP debt is available. However, under the HESA as it currently stands, the treatment of tax file number information is dealt with differently depending on whether the student is in higher education or vocational education and training. Unlike the provisions of Part 5–4 and 5–5, Schedule 1A of the HESA, which deals with loans for students in vocational education and training, does not include a requirement that VET students are to provide their tax file number to the Secretary of the Department of Education and Training, nor allow the Commissioner of Taxation to provide tax file numbers to the Secretary. As the student loans schemes are based on repayment through the taxation system, ensuring the adequate exchange of information between the Australian Taxation Office, policy and regulatory agents would likely support better administration of the scheme and improved repayment of outstanding student debt.

**Key provisions**

The proposed amendments aim to expand and improve the existing information disclosure regime under the HESA. **Item 2 of Schedule 2 to the Bill inserts proposed section 180–28 into the HESA.** In particular **proposed subsection 180–28(6) defines the term HELP program.** This definition provides clarification that the amended information disclosure regime is intended to assist in the development of the Commonwealth Grant Scheme (authorised under Part 2–2 of the HESA), and the various student loan programs (authorised under Chapter 3, Chapter 4 and Schedule 1A). As these are the most significant financial outlays under the HESA, the focus on these programs is not surprising.

**Proposed subsection 180–28(5) specifies that the purposes of information disclosure or use now cover policy formation, financial planning and projection, program design and conducting research.** **Item 1 amends existing paragraph 180–5(d) to ensure that the current information sharing regime under the HESA, referred to above, takes into account these purposes.**

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63. Ibid., p. 10.
64. Ibid, paragraph 5.29, p. 65.
66. HESA, Division 180, Part 5–4 of Chapter 5.
So now that the definition of what information sharing may be allowed under the HESA and the purposes for which information can be shared have been clarified by these amendments, the new definition of the HELP program Commonwealth officer in proposed subsection 180–28(7) provides clarity about who is authorised to undertake the sharing. As a whole, proposed section 180–28 enables the Secretary, Commissioner of Taxation, or other Commonwealth officer specified by the Minister to disclose information under the newly expanded section 180–5 for the purposes set out in proposed subsection 180–28(5). In addition, the provision allows the Secretary to disclose a student’s tax file number to the Commissioner of Taxation, and for the Commissioner to use this tax file number for the relevant purpose. Section 184–1 provides a simplified outline of Part 5–5 of the HESA, which deals with tax file numbers. Item 3 replaces the part of section 184–1 that sets out bodies to which the Commissioner may disclose tax file numbers. Currently, section 184–1 provides that the Commissioner may notify higher education providers or Open Universities Australia of matters relating to tax file numbers. The amendment made by item 3 will also provide for disclosure to the Secretary.

Items 5–17 of Schedule 2 to the Bill amend Schedule 1A of the HESA, which deals with the VET FEE-HELP Assistance Scheme. Items 5 to 7 deal with the tax file requirements in relation to vocational education and training student loans. These amendments ensure the tax file requirements for this type of loan are consistent with other student loans under the HELP scheme. Items 9–17 make consequential amendments to various clauses in Schedule 1A of the HESA to allow disclosure of tax file numbers to the Secretary.

Key issue: whether there is a problem with HELP

As noted previously, there are no clear outcomes associated with student loan programs. The fair value of HELP debt is increasing, but questions remain as to whether that is an issue: an income-contingent loan program such as HELP will always involve some debts remaining unpaid, as some debtors will invariably be underemployed, unemployed, or employed in low wage professions.

The proposed technical changes are intended to allow for better monitoring of HELP debt levels, but do not answer the fundamental question as to what level of HELP debt is deemed acceptable by government. That question will need to be answered before the long-term benefit of these amendments can be truly ascertained.

Concluding comments

What can the Australian Government do to increase the performance of the higher education sector? Indigenous students are not reaching parity in terms of their participation in the system, or their outcomes. Student loan debt is increasing. Administrative reforms such as those contained in this Bill often fail to address the fundamental connections between that question and the measures proposed. The relationship between the current system settings (three different Indigenous support programs, existing HELP scheme design) and current system performance is unclear, so methods to improve on existing performance are equally unclear.

Further, without greater clarity and transparency such as a stated target for Indigenous higher education student performance, or a benchmark for student loan debt, it is difficult to know what the government is aiming for. The proposed amendments will very likely improve administration of the relevant programs, but there is no obvious method to test their success in the longer-term.

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