



**Australian Government**  
**Department of Education**

Associate Secretary  
**Robert Griew**

Mr Jason McNamara  
Executive Director  
Office of Best Practice Regulation  
Department of the Prime Minister and Cabinet  
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Dear Mr McNamara

### **Regulation Impact Statement – final assessment second pass**

I am writing in relation to the attached Regulation Impact Statement (RIS) prepared for higher education reforms announced in the 2014-15 Commonwealth Budget. The regulatory burden to business, community organisations and/or individuals has been quantified and offsets have been identified and quantified using the Regulatory Burden Measurement framework. These have been agreed with your office.

I am satisfied that the RIS addresses the concerns raised in your letter of 13 August 2014:

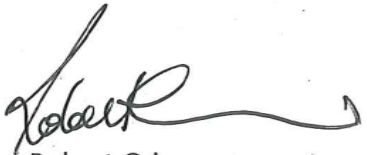
- The problem section (entitled *The challenges facing higher education in Australia*) more clearly describes the nature of higher education in Australia and defines the problem through regulatory and market failure lenses.
- The consultation section provides greater detail on the specific issues that were raised through the consultation process.
- The impact analysis section provides a greater depth of analysis on potential impacts of the proposed options and is more complete in terms of addressing all issues defined in the consultation section of the RIS.

Attachment A to this letter describes in more detail how the department has addressed each of the issues raised by you in your letter.

Accordingly, I am satisfied that the RIS now meets best practice consistent with the *Australian Government Guide to Regulation*.

I submit the RIS to the Office of Best Practice Regulation for formal final assessment.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Robert Griew', with a long, sweeping flourish extending to the right.

Robert Griew

Associate Secretary, Higher Education, Research and International  
Department of Education

20 August 2014

## Department of Education's responses to issues raised by the Office of Best Practice Regulation (OBPR) on the first pass Regulation Impact Statement (RIS)

The OBPR's letter includes an attachment that describes in detail those specific issues that the department must address in the final version of the RIS. These issues are categorised according to three sections of the RIS: the problem section (Section 3 *The challenges facing higher education in Australia*), the consultation section (Section 5 *Consultation*), and the impact analysis section (Section 6 *Impact of the policy options*). Each specific issue raised by OBPR is listed below followed by a description of how each has been addressed by the department.

### Problem section

#### Overall OBPR comments

The OBPR believes that the problem section should be re-written to focus on the key problems – regulatory and market failure.

#### Overall Department of Education response

The department has restructured the problem section (Section 3 *The challenges facing higher education in Australia*), which now addresses each issue outlined by the OBPR. The structure of this section comprises sub-sections discussing: the key drivers of Australia's higher education system; the current regulatory environment; the regulatory and market failure of the current environment; and why the government needs to intervene. Further details of the restructure are provided below.

#### OBPR issue 1

Discuss the key drivers in the higher education market. This section is to provide some context in order to understand the main problems.

- Explain what services are provided by the main sub-sectors, including the market shares by revenue, government subsidies, number of students and courses undertaken.
- Explain the nature of the market, ie, domestic/regional but also international.

#### Department of Education response

The first sub-section of the section (Sub-section 3.1 *Key drivers in the higher education market*) more clearly illustrates the nature of the higher education system in Australia and includes sub-sections that consider *Market shares and government subsidies*, the *Number of students and courses undertaken*, and *Distributional aspects* of various student groups and types. More information on the character and nature of the industry is provided in Appendix C, which now includes a breakdown of student numbers by domestic/international, and remoteness (metropolitan/regional/remote).

#### OBPR issue 2

What is the current regulatory framework?

- How are the key sub-markets regulated?
- Explain how subsidies and price caps work/worked.
- Discuss how demand and supply dictates the current market rather than price.
- Are current regulatory frameworks fragmented, leading to less efficient markets?

### **Department of Education response**

A new sub-section (Sub-section 3.2 *Current Regulatory Environment*) has been added to Section 3 and provides a snapshot of how the Government currently influences the nature of the higher education sector.

The passage entitled *Government subsidies and price caps* in Sub-section 3.2 discusses how tuition fees are regulated, and the regulation of student numbers before and after the introduction of the demand driven system. The passage entitled *Current higher education market forces* in Sub-section 3.2 discusses the limited competition on price in the sector due to price caps, and how this impacts opportunity, quality, and access to lower cost courses. This sub-section also discusses such impacts in light of the introduction of the demand driven system in 2012.

### **OBPR issue 3**

Why is there a regulatory (and or market) failure?

- What is the problem with the government regulating the price for various courses?
- Is there a market failure? What would happen if supply is lifted and prices are allowed to be set by the market? Is there competition in the market?
- Reform in 2012 removed the supply cap, but this was partial only and had led to other problems, ie, fiscal position as subsidies increased given growth of students.
- Does the current regulatory framework favour one sub-market over another?

### **Department of Education response**

A new Sub-section (Section 3.3 *Regulatory and market failure of the current environment*) has been added to Section 3 and describes the four key areas of regulatory and market failure in higher education: Government capping the price for course delivery; limiting subsidised higher education by omitting Commonwealth support for private sector higher education providers; a lack of information for consumers; and the unsustainable rising costs to the Government. There are a number of passages through this sub-section discussing each of these regulatory and market issues in more detail.

### **OBPR issue 4**

Why does the Government need to intervene?

- Can deregulation of the market result in more competition and efficient allocation of resources?
- Will it result in more choice for students, and students being able to "vote with their feet"?
- Will it lead to more equitable outcomes, improved quality of service and greater innovation?
- What would happen in the absence of government intervention?

### **Department of Education response**

This sub-section of the RIS has been relabelled (Sub-section 3.4 *Why does the government need to intervene*) and the material in it has been restructured and now describes the potential for improved competition, allocation of resources, choice for students, equitable outcomes, quality, and innovation.

The question of 'what would happen in the absence of government intervention?' is dealt with implicitly throughout the entire section, particularly through the discussion of unsustainable rising costs of higher education provision in Australia, the current mismatch between supply and demand, the current limits to the competition in the market, etc. It is also discussed in detail in Sub-section 6.2 (*No change option*).

## **Impact analysis section**

### **Overall OBPR comments**

The OBPR expects more in-depth analysis of the likely impacts of the proposed options. This chapter needs to take into account the economic problem to be identified in the problem chapter. Namely, how market forces are expected to react as the government addresses the regulatory failures.

### **Overall Department of Education comments**

The department has re-worked the impact analysis section (Section 6 *Impact of the policy options*) to address the problems identified in the problem chapter and now also addresses those specific issues raised by the OBPR as discussed below.

### **OBPR issue 1**

The RIS notes that the bachelor market is saturated and limited growth is expected under the proposed reforms. How will this impact on the public university bachelor market, regional markets and metropolitan markets providing bachelor courses?

### **Department of Education response**

The *Market impacts* passage of Sub-section 6.1.2 (*The Government's proposed reforms – Higher education providers*) now includes a discussion of the bachelor degree market in Australia, noting that under the current conditions bachelor enrolments will continue to grow, in line with growth in the general population. Under a fully deregulated market, private providers will be able to drive increases in teaching-revenue from bachelor Commonwealth Supported Places (CSPs). The potential impact on public universities and their likelihood are also presented.

The *Regional universities* passage of Sub-section 6.1.2 (*The Government's proposed reforms – Higher education providers*) has also been expanded to explore the competitive advantages of regional universities, and how these are unlikely to be impacted by the Government's proposed reforms.

### **OBPR issue 2**

The RIS notes that the sub-bachelor market is currently relatively small, but that the entire growth of about 83,000 Commonwealth supported students will take place in the sub-bachelor market and bachelor market at private providers and NUHEPS. This suggests a significant change for a relatively small part of the industry. How is this expected to play out? Is growth expected beyond the forward estimates? The RIS needs to take a longer perspective in terms of the impacts on the sector. How will the market evolve over time?

### **Department of Education response**

The passage *Forecast demand response* (of Sub-section 6.1.1, *The Government's proposed reforms – Students*) presents a forecast of sub-bachelor participation over the next four years, and an estimated growth into 2021. This sub-section describes the importance of this growth for students that require a lower-risk entry point into the higher education sector.

The *Market impacts* passage of Sub-section 6.1.2 (*The Government's proposed reforms – Higher education providers*) has been expanded to include a forecast of bachelor degrees participation to 2017 of the bachelor degree market. Further, this passage describes some of the potential immediate market impacts at universities (universities to review and change business models, develop pricing strategies), some of the medium-to-long term market impacts at universities (universities to differentiate and specialise), and some of the new markets that might evolve in the university sector (universities will look to target needs of industry, link with private providers, and offer more innovative teaching options)

The *Private universities and NUHEPs* passage of Sub-section 6.1.3 (*The Government's proposed reforms – Higher education providers*) has been expanded to include a discussion on how public universities are likely to respond to the extension of demand-driven funding to the private providers drawing on a study of the recent deregulation of the vocational education and training market in Victoria.

### **OBPR issue 3**

How will smaller providers operate in a deregulated market where they may be disproportionately impacted by economies of scale, reputation, distance from main cities, online learning, etc?

### **Department of Education response**

A new passage entitled *Small providers* has been added to Sub-section 6.1.2 (*The Government's proposed reforms – Higher education providers*) that discusses the impact of a deregulated market on small higher education providers. It suggests that small providers will need to identify their strengths and how these strengths relate to student preferences. This sub-section discusses potential approaches that small providers will take to operate under the new reforms.

### **OBPR issue 4**

Will new markets develop driven by student demand, taking into account prices and quality of services offered?

### **Department of Education response**

The *Market impacts* passage of Sub-section 6.1.2 (*The Government's proposed reforms – Higher education providers*) has been expanded considerably and now contains deeper discussion regarding likely changes to the higher education system as a result of the proposed reforms. Implicit in this passage is the notion that the reform package will create a more open and competitive market; and also that the new market will ultimately be driven by a combination of provider capabilities and student demand.

More specifically this passage contains a discussion of how universities will be incentivised to enter new markets, how collaboration between providers may lead to strategic partnerships and further diversification and specialisation, how online provision will continue to grow as providers seek a competitive advantage, and how the market for sub-bachelor degrees will become a more active 'new market' as the demand for bachelor degrees slows somewhat.

Other sections of the RIS (including the passage entitled *Course/study options for students* in Sub-section 6.1.1 and the passages *Tuition Fees* and *Summary* in Sub-section 6.1.2) have been adjusted to reference the impact that student demand will have on the future shape of the higher education market – including the possible redefinition of existing markets.

### **OBPR issue 5**

Will current geographical and regional markets be redefined as students seek alternative provision of services and providers respond accordingly?

### **Department of Education response**

The *Regional universities* passage of Sub-section 6.1.2 (*The Government's proposed reforms – Higher education providers*) has been expanded. It suggests that the reforms are unlikely to impact the competitive advantages of regional universities, and that it is expected that regional universities (and providers generally) will look to take advantage of online delivery methods, and also compete with metropolitan universities on convenience (for regional-based students and), lower living expenses and lower total study costs.

## **OBPR issue 6**

Given the outcomes from the market are unlikely to be predicted with certainty, more depth to your analysis should not mean more definitive statements and conclusions. The current impact analysis section does well at providing a range of feasible outcomes.

### **Department of Education response**

In expanding the impact analysis, the department has taken care to avoid definitive statements and conclusions, where appropriate. The introduction to Section 6 includes a plausible short-to-medium term scenario based on the department's knowledge of the higher education sector.

## **Consultation section**

### **Overall OBPR issue**

This section notes some issues and themes that have been raised by the public; however some of these concerns need to be discussed in more detail in the RIS and how they have been taken into account in the impact analysis and options presented. Responses to each issue are set out below.

### **Overall Department of Education response**

The department has expanded the consultation analysis section (Section 5 *Consultation*) to more clearly describe the breadth of consultation involved. Specific issues raised by the OBPR are discussed below.

### **OBPR Issue 1**

Stakeholders have raised concerns about confusion about the difference between sub-bachelor higher education and sub-bachelor VET qualifications.

### **Department of Education response**

Sub-section 5.7 (*Issues identified through the post-budget consultations*) has been amended to include a passage discussing the difficulty for students in distinguishing between VET sector and higher education sector sub-bachelor courses. This section describes how the deregulated market will create a greater incentive for providers to offer greater and clearer information.

Further, we draw your attention to the passage entitled *Information availability* of Subsection 6.1.1 (*Government's proposed reforms – Students*) that describes the impact the QILT surveys will provide for students to make informed decisions about their study options.

### **OBPR Issue 2**

There has been opposition to the proposed reduction in funding to particular disciplines (eg, engineering) and impacts on regional universities [*discuss in more detail*].

### **Department of Education response**

Sub-section 5.7 (*Issues identified through the post-budget consultations*) has been expanded to provide more detail of the issue of discipline subsidies.

With regards to the impact of the how the proposed changes to the government contribution will impact different study disciplines, we direct you to passages *Market impact* and *Discipline subsidies* within Subsection 6.1.2 (*Government's proposed reforms – Higher Education Providers*). Together, these passages describe how government subsidies have been streamlined into five clusters, noting that while the subsidy for some fields of study increases, the subsidy for other fields reduces, but ultimately (and more importantly) the new funding rates more closely reflect factors relevant to the cost of delivery.

**OBPR Issues 3 and 4**

*Issue 3:* Some have raised concerns about the proposal leading to a US style higher education system. It is not discussed what this means in the consultation section or in terms of the impact analysis.

*Issue 4:* Concerns have been raised about student debts. Have any of the submissions or inquiries provided any insights into this issue?

**Department of Education response**

Please see Sub-section 5.7 (*Issues identified through the post-budget consultations*).

**OBPR Issue 5**

Most notable are the issues or conclusions reached in the section about regional-specific issues (page 28). Were there any views by stakeholders that commented or provided evidence or feedback that the proposed reforms may negatively impact on them? It is important for the consultation section and the RIS in general to document all relevant views and for the impact analysis section to take into account the likely effects of these concerns.

**Department of Education response**

The passage entitled *Regional-specific issues* of Sub-section 5.7 (*Issues identified through the post-budget consultations*), has been reframed to discuss those elements that regional universities (through the Regional Universities Network peak body) that support and also elements they are concerned with.

Further, a new passage entitled *Regional universities* of Sub-section 6.1 (*Government's proposed reforms*) discusses the impact of the reforms in regional areas.