

The Senate

Education, Employment
and Workplace Relations
Legislation Committee

Education Services for Overseas Students
Legislation Amendment (Tuition Protection
Service and Other Measures) Bill 2011
[Provisions]

Education Services for Overseas Students
(TPS Levies) Bill 2011 [Provisions]

Education Services for Overseas Students
(Registration Charges) Amendment (Tuition
Protection Service) Bill 2011 [Provisions]

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RECOMMENDATIONS

Recommendation 1

2.13 The committee recommends that the Department of Education, Employment and Workplace Relations provides explanatory guides for industry stakeholders outlining compliance obligations and related potential penalties.

Recommendation 2

2.35 The committee recommends that Schedule 1, Part 1, Division 2, Subdivision A, Clause 46B of the Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Bill 2011 be amended to require providers to notify the regulator within three working days of a provider default.

Recommendation 3

2.36 The committee recommends that Schedule 1, Part 1, Division 2, Subdivision B, Clause 47C of the Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Bill 2011 be amended to require providers to notify the regulator within three working days of a student default.

Recommendation 4

2.83 The committee recommends that the Australian Government ensures providers of education services for overseas students are kept up to date in regard to the implementation of the new Tuition Protection Service arrangements.

Recommendation 5

2.88 The committee recommends that the bills be passed subject to the foregoing recommendations.

CHAPTER 1

Background

Reference

1.1 On 13 October 2011, the Senate referred the provisions of the Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Bill 2011, the Education Services for Overseas Students (TPS Levies) Bill 2011 and the Education Services for Overseas Students (Registration Charges) Amendment (Tuition Protection Service) Bill 2011 to the Senate Standing Legislation Committee on Education, Employment and Workplace Relations for inquiry and report by 1 December 2011.

Conduct of the inquiry and submissions

1.2 The committee initially advertised the inquiry in *The Australian* on 26 October 2011, calling for submissions by 1 November. Details of the inquiry were placed on the committee website. The committee subsequently sought permission from the Senate to extend the tabling of its report until 27 February 2012, and established a new closing date for submissions, 2 December 2011.

1.3 The committee contacted a number of organisations inviting submissions to the inquiry. Submissions were received from 11 individuals and organisations, as listed in Appendix 1.

1.4 A public hearing was held in Melbourne on 2 February 2012. The witness list for the hearing is at Appendix 2.

Acknowledgement

1.5 The committee thanks those organisations and individuals who contributed to this inquiry by preparing written submissions and giving evidence at the hearing.

Background

1.6 Between August 2009 and March 2010 the Hon Bruce Baird AM conducted a review of the *Education Services for Overseas Students (ESOS) Act 2000* (the Act), with a view to improving regulation of Australia's international education sector following an extended period of growth. The review considered the need for enhancements to the Act in four key areas:

- i. Supporting the interests of international students;
- ii. Delivering quality as the cornerstone of Australian education;

iii. Effective regulation; and

iv. Sustainability of the international education sector.¹

1.7 The final report of the Baird review, *Stronger, simpler, smarter ESOS: supporting international students*, was published in March 2010 and recommended a series of immediate changes designed to improve the experience of international students in Australia.

1.8 The first phase of policy reforms in response to the review's recommendations was enacted on 8 April 2011, following an inquiry and report from this committee. Those reforms focused on strengthening registration, enforcement, risk management and student access to complaints and appeals processes.² Further consultation was subsequently undertaken between December 2010 and April 2011, prior to the introduction of this second phase of the Government's response to the review.

1.9 The Baird review also recommended the strengthening of tuition protection arrangements. Specifically, Recommendation 16 of the review supported the establishment of a single tuition protection service (TPS):

16. That ESOS be amended to establish a single Tuition Protection Service that:

- a. provides a single mechanism to place students when a provider cannot meet its refund obligations and as a last resort provide refunds
- b. allows placement with any appropriate provider
- c. makes the cost of being a member of a tuition protection scheme risk based
- d. requires providers to regularly maintain student contact details in PRISMS [Provider Registration and International Students Management System] and other information on a risk basis
- e. removes providers having ministerial exemptions from membership of a tuition protection scheme.³

1 Department of Education, Employment and Workplace Relations, *Submission 5*, p. 1.

2 Department of Education, Employment and Workplace Relations, *Submission 5*, pp 1–2.

3 The Baird review, *Stronger, simpler, smarter ESOS: supporting international students*, available at http://www.aei.gov.au/About-AEI/Current-Initiatives/ESOS-Review/Documents/ESOS_REview_Final_Report_Feb_2010_pdf.pdf (accessed 14 October 2011).

Purpose of the bills

1.10 Consistent with the above recommendation, the central component of these bills aims to strengthen tuition protection for international students, ensuring that they receive the tuition they have paid for and entitling them to a refund if they do not.

1.11 To achieve this, the bills seek to:

- establish a new Tuition Protection Service (TPS). The TPS would function as a single mechanism to place overseas students when providers cannot meet their obligations, or, as a last resort, enable them to access refunds of unexpended money;
- limit the refunding of pre-paid course fees to the portion of the course not yet delivered in the event that a course provider should cease operations;
- limit the amount of pre-paid course fees providers can collect so as to reduce potential refunds;
- require non-exempt education providers to keep initial pre-paid student fees in separate accounts until students commence study, to ensure that refunds are made in cases where study visas are refused;
- strengthen providers' record keeping obligations regarding student contact details and academic progress to help support placements and refunds;
- establish a national registration system for providers who operate in multiple jurisdictions; and
- introduce a series of technical amendments to repeal the Act's re-registration provision, clarify definitions of tuition fees and accepted students, and undertake minor changes which will strengthen enforcement and monitoring options.

The ESOS Act

1.12 The ESOS legislative framework regulates the provision of education and training services to overseas students in Australia. The framework comprises the:

- *Education Services for Overseas Students Act 2000* (the Act);
- *Education Services for Overseas Students Regulations 2001* (ESOS Regulations);
- National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007 (the National Code);

- *Education Services for Overseas Students (Registration Charges) Act 1997;* and
- *Education Services for Overseas Students (Assurance Fund Contributions) Act 2000;*

1.13 The ESOS Act and ESOS Regulations set out legislative requirements for the registration of providers, providers' obligations, operation of the ESOS Assurance Fund, enforcement of the legislative framework and establishment of the National Code.

Key provisions of the Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Bill 2011

1.14 The Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Bill 2011 is comprised of eight Schedules. This section outlines some of the key amendments proposed by the Bill.

Schedule 1 – Tuition Protection Service

1.15 The bill seeks to repeal Part 5 of the ESOS Act, which established the ESOS Assurance Fund to protect the interests of overseas students, in its entirety. The repealed Part 5 would be replaced with a new Part 5 intended to deal with the Tuition Protection Service.

1.16 Proposed section 45 of the bill provides a simplified guide to the newly proposed Part 5. Proposed sections 46A to 47H of Division 2 set out the obligations on registered providers in the event of a default by a registered provider, overseas student, or intending overseas student, and include penalties and sanctions that may apply. Division 2 also sets out the obligation on registered providers to provide refunds or alternative courses to students in the event of a default.

1.17 The bill also introduces Part 5A to the Act. Proposed section 51 provides a simplified outline to this proposed part 5A, which would see the establishment of the Overseas Students Tuition Fund (OSTF), the TPS Director and the TPS Advisory Board.

- The OSTF would be a Special Account for the purposes of the *Financial Management and Accountability Act 1997*. It would provide money for refunds under proposed Part 5 of the bill where registered providers fail to discharge their obligations to existing or intending overseas students. The purposes of the OSTF are set out in proposed section 52C of the bill.
- The TPS Director would be appointed by the Minister and would be responsible for managing the OSTF and facilitating alternative student

placement in the event of a default. Other functions of the TPS Director are set out in proposed section 54B of the bill.

- The functions and membership guidelines for the TPS Advisory Board are set out in proposed sections 55B to 55N. Proposed sections 56A to 56G set out guidelines pertaining to meetings of the board.

Consequential amendments

1.18 Section 4A of the Act describes its principal objects. Item 2 of Part 2 of the proposed bill would amend subsection 4A(a) to state that a principal object of the Act would be to provide tuition assurance, *and refunds*, for overseas students for courses for which they have paid.

1.19 Section 5 of the Act contains definitions. Items 4–19 of Part 2 of the bill seek to insert new definitions and repeal some terms to improve the operation of the Act in line with the proposed TPS.

1.20 Item 39 of the bill makes a consequential amendment to the *Tertiary Education Quality and Standards Agency Act 2011*, replacing a reference to the 'tuition assurance scheme' with the words 'TPS Director'.

Repeal of the Education Services for Overseas Students (Assurance Fund Contributions) Act 2000

1.21 Part 4 of Schedule 1 of the proposed bill repeals the *Education Services for Overseas Students (Assurance Fund Contributions) Act 2000* and replaces it with the *Education Services for Overseas Students (TPS Levies) Act 2011*.

The Education Services for Overseas Students (TPS Levies) Bill 2011

1.22 The Education Services for Overseas Students (TPS Levies) Bill 2011 outlines requirements for education providers to pay fees and levies designed to fund the TPS.

1.23 The TPS Levies Bill requires education providers to pay an annual TPS levy, money from which would go towards the OSTF established by the ESOS Amendment (Tuition Protection Service and Other Measures) Bill 2011. If providers default and do not meet their responsibilities under the revised ESOS Act, the OSTF would be drawn on to facilitate student placement in an alternative course, or, as a last resort, to pay a refund to the student. These refunds would be equivalent to the portion of the course the student paid for but was not delivered. Should students seek placement in a course of higher value, they would be required to meet the extra costs.⁴

4 Department of Employment, Education and Workplace Relations, *Submission 5*, pp 3–4.

1.24 The bill defines which providers are required to pay the fees and levies and the rates at which they are to be paid. Registration fees are set at \$100 plus \$2 per enrolment, and base fees at \$200 plus \$5 per enrolment. The bill also outlines a risk rated premium based on risk of provider default, and a special tuition protection levy which is intended to protect against future sector shock.

1.25 The TPS Levies Bill would provide the TPS Director with the power to set components of the risk rated premium and special tuition protection levy by legislative instrument.

1.26 The Director would be appointed by the Minister and would have statutory responsibility for the TPS Levy and the OSTF under the revised ESOS Act. The Director would thereby have the power to set the annual TPS levy, with advice from the TPS Advisory Board.

1.27 Members of the TPS Advisory Board would be appointed by the Minister. These appointments would be made on the basis of expertise, industry experience and the likely contribution the individual would make towards fulfilling the objectives of the TPS.

1.28 The Board would consist of a maximum of 12 members, drawn from government and industry. Its primary role would be to advise the TPS Director in relation to the determination of the TPS Levy. It would have administrative support from the TPS Secretariat, which would not play a role in student placement.

1.29 The TPS Director would also publish TPS Levy figures annually, and the risk-rated component of the levy set through a legislative instrument.

The Education Services for Overseas Students (Registration Charges) Amendment (Tuition Protection Service) Bill 2011

1.30 The Education Services for Overseas Students (Registration Charges) Amendment (Tuition Protection Service) Bill 2011 seeks to amend the way that registration fees are set by adopting a risk management-driven fee structure. Registration fees are payable by all registered providers of education services for overseas students, and are used to meet the costs of administering the ESOS Act and the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS).

CHAPTER 2

Key issues

2.1 This chapter discusses the key issues raised in submissions to the committee about the bills.

Tuition Protection Service

2.2 Establishing the proposed Tuition Protection Service (TPS) is at the core of this legislation. The TPS would be a universal scheme designed to strengthen tuition protection by providing:

- a single point of placement (or refund as a last resort service), which will provide a larger pool of resources and greater ability to deal with any closures;
- a full range of placement options and greater student choice;
- a more efficient and flexible service with one contact point for students, one set of fees for providers and greater accountability to Government;
- a more robust and sustainable system which will ensure enhanced reputational benefits for all providers across the sector and no future requirement for Government financial assistance;
- provider benefits through placing students affected by a closure; and
- improved sustainability and accountability mechanisms.¹

2.3 Rather than a body as such, the TPS is a concept for an overall system of tuition protection comprising the following elements:

- the TPS director;
- the TPS advisory board;
- a secretariat to support the director and board;
- a placement facility; and
- a TPS levy.

2.4 Submissions to the inquiry largely supported the establishment of a single layer TPS and recognised the benefits of streamlining the approach to refund

1 Department of Employment, Education and Workplace Relations, *Submission 5*, p. 3.

arrangements and student placement, despite some differing views on how best to achieve this.²

2.5 However, some potential drawbacks were identified. The Independent Schools Council of Australia (ISCA), for example, noted that:

...as amendments to the ESOS Act and the National Code of Practice are adopted, there is the potential for negative impacts on non-government schools, as well as changes that will be needed to current policies and procedures.³

2.6 To address the potential impacts on non-government schools, ISCA sought reassurance that the latter would not be financially penalized by the introduction of new compliance fees and charges.

2.7 In addition, ISCA raised the prospect of schools with smaller cohorts of international students being financially disadvantaged. ISCA pointed out that non-government schools with over 50 international students enrolled would benefit from a reduction in the new Annual Registration Charge. However, 87 per cent of independent, CRICOS (Commonwealth Register of Institutions and Courses for Overseas Students) registered schools have fewer than 50 overseas student enrolments. As a consequence, ISCA contends, independent schools with small numbers of overseas students could opt not to remain registered with CRICOS.⁴

Stakeholder consultation

2.8 The committee notes that some industry stakeholders were dissatisfied with the level of consultation prior to the legislation being introduced into Parliament. ACPET, in particular, expressed the following concerns:

Consultation with ACPET has been by way of a small number of irregular briefings from the Department of Education, Employment and Workplace Relations (“DEEWR”), typically by phone, regarding the high-level aims and components of the ESOS bills, prior to their introduction into parliament. ACPET welcomes this approach as an initial consultation strategy, but this approach alone does not constitute meaningful consultation, given the ‘devil’ is often in the detail of legislation. Consultation on the detail of complex legislation prior to its introduction

2 See for example Independent Schools Council of Australia, *Submission 2*, p. 12; English Australia, *Submission 1*, p. 1. Similarly, the Australian Council for Private Education and Training welcomed more rigour around refund policy. See Mr Michael Hall, Deputy CEO, ACPET, *Proof Committee Hansard*, 12 February 2012, p. 5.

3 Independent Schools Council of Australia, *Submission 2*, p. 12.

4 Independent Schools Council of Australia, *Submission 2*, p. 13.

into parliament assists the government in delivering rigorous, relevant and clear policy from the outset.⁵

2.9 The committee asked Mr Michael Hall, Deputy CEO of ACPET, about these concerns during the course of a public hearing held for this inquiry. In particular, the committee asked whether ACPET had received the discussion paper *Reforming ESOS: consultations to build a stronger, simpler, smarter framework for international education in Australia*, and was informed that Mr Hall believed ACPET would have received the document. The committee was therefore reassured that ACPET had every opportunity to make a submission during the government's consultation phase, before the legislation was introduced into Parliament.⁶

2.10 The committee put ACPET's concerns to DEEWR, and received the following response:

The department is committed to consultation and communication with stakeholders. Obviously this is a thing that is difficult to get right...That does not mean that we have always agreed with every stakeholder, and that does not mean that necessarily we have been able to have all the meetings they would have liked. However, we have always been accessible, and during the remainder of the process will remain accessible. We have regular contact with all of them. In 2011 the department considered 52 written submissions and held targeted discussions with all the key peak bodies to inform the development of the bills. Around five discussions were held with ACPET alone. There will be further consultation on any related legislative instruments. The tuition protection scheme advisory board will include representation across the sectors, ensuring industry participation and transparency in the risk component of the TPS charges.⁷

Committee view

2.11 The committee notes evidence given by representatives of DEEWR indicating that the department is currently drawing up a communications plan in order to ensure that stakeholders are aware of their rights and responsibilities if the proposed legislation is passed.⁸ The committee commends DEEWR on this initiative.

2.12 The committee supports and encourages continued communication between government and industry stakeholders, and believes adequate steps are being taken to ensure individual providers and peak bodies have the opportunity to provide input.

Recommendation 1

5 Australian Council for Private Education and Training, *Submission 4*, p. 4.

6 See *Proof Committee Hansard*, 2 February 2012, p. 3.

7 Mr Colin Walters, DEEWR, *Proof Committee Hansard*, 2 February 2012, p. 29.

8 Mr Colin Walters, DEEWR, *Proof Committee Hansard*, 2 February 2012, p. 35.

2.13 The committee recommends that the Department of Education, Employment and Workplace Relations provides explanatory guides for industry stakeholders outlining compliance obligations and related potential penalties.

National registration

2.14 The proposed legislative amendments seek to allow national registration for education providers operating in more than one state or territory, or in a number of locations within a single state.

2.15 Currently, the ESOS Act requires providers to be separately registered to provide courses in each state. In practice this means that providers routinely have more than one CRICOS registration. Addressing this would reduce duplication of effort, support risk management, streamline processes for providers and allow for more flexibility for national regulatory bodies by reducing the regulatory burden.⁹

2.16 However, concerns were raised in relation to transitional arrangements. Notably, the Australian Council of Private Education and Training (ACPET) stated:

Of concern to ACPET members is the apparent silence in the ESOS bills in relation to transitional arrangements and how registration fees paid beyond 1 July 2012 will be refunded and/or dealt with. A detailed description of how this change will be implemented needs to be provided.¹⁰

2.17 ACPET further expressed its concern about the viability of the TPS fund during the transition period, arguing that the proposed model risked funds '...being depleted by current and future calls during the transition period within this first year.'¹¹

Notification of default

2.18 Providers default when they do not provide the course a student has paid for. A student is considered to have defaulted if he or she:

- does not commence their course;
- withdraws from their course; or
- is withdrawn from the course for non-payment of fees, visa breach or misbehaviour.

9 Department of Employment, Education and Workplace Relations, *Submission 5*, p. 6.

10 Australian Council for Private Education and Training (ACPET), *Submission 4*, p. 5.

11 Australian Council for Private Education and Training (ACPET), *Proof Committee Hansard*, 2 February 2012, p. 1.

2.19 A number of submissions were unhappy with proposed changes to reporting timeframes relating to student and provider default, under which providers would be required to notify the Secretary of DEEWR and the TPS Director within 24 hours of a provider or student default.

2.20 The ESOS Act as it stands requires providers to give this notification of default within 14 days. Providers reported being satisfied with this notification requirement. However, DEEWR informed the committee that a significant number of providers were currently not meeting even this requirement, sometimes with serious consequences for students:

The requirement on providers to advise the delegate and the TPS director of a default promptly minimises delays in any necessary response to students. It starts the clock ticking for any refunds required. For student defaults, stringent notification requirements will also ensure that providers are closely monitoring student commencements and seeking to contact students who have not arrived at the expected time. The department has been aware of significant delays before providers have become aware that individual students have gone missing—some in very grievous circumstances—and these cases have been taken up directly with me by representatives of overseas governments. They are watched very closely. As another piece of context, in the last six months 37 per cent of notifications from universities have been late beyond the existing 14-day period. That compares with 17 per cent of notifications from other forms of providers.¹²

2.21 There was a clear indication that some submitters considered this timeframe unrealistic and unnecessarily burdensome for providers. English Australia warned of '...the potential to inundate the department with a flood of paperwork that will not necessarily produce outcomes.'¹³

2.22 A submission from Innovative Research Universities (IRU) echoed this view, adding that 24 hours was a '...very short period in which to have a legislatively driven requirement to act.'¹⁴

2.23 Australia was adamant that a 24-hour notification period was simply unrealistic and unnecessary:

This timeframe is unrealistic and cannot realistically be complied with. Universities enrol thousands of international students. Many international students may decide not to commence their course or withdraw from their course. This happens all the time and is reported to DEEWR and DIAC [Department of Immigration and Citizenship] via PRISMS [Provider Registration and International Students Management System] for which

12 Mr Colin Walters, DEEWR, *Proof Committee Hansard*, 2 February 2012, p. 28.

13 English Australia, *Submission 1*, p. 9.

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

providers have 14 days. The same applies in relation to enrolment cancellations based on non-payment of fees, visa breaches or misbehaviour. The number of potential notifications from all universities under the student default categories could number in the hundreds on any one day. A notification period of 24 hours simply cannot be met. Given that providers already have to report these student course variations via PRISMS within 14 days, it seems unnecessary to move to such a short timeframe.¹⁵

2.24 Universities Australia explained that a shorter notification period would necessitate more expenditure on staff, and pushed for the current 14 day notification requirement, to be left in place for student defaults at least:

The amount of additional compliance and finance staff that would be required to actually attempt to comply with the 24-hour reporting period, or even a 72-hour reporting period as was recommended by the House of Representatives committee, would be a very large impost for institutions.

We would like to see 14 days. We do not see that that has created problems in the past. In DEEWR's submission they indicated that they want a shorter reporting period because students might need to be referred to the TPS or because there might be some welfare issue. I understand that in terms of provider default we do not have a concern about there being a shorter reporting period for provider default, because students might need to be referred to the TPS director to be placed in another institution, or something like that, if that were to occur. It is the issue around student default, where the students would not need to be referred to the TPS unless further down the line they did not get a refund in time.¹⁶

2.25 IRU initially supported amending the proposed legislation to include a 72-hour notification requirement:

In response to these concerns, raised by IRU and other parties, the House of Representatives Standing Committee on Education and Employment recommended that the 24 hour requirement be amended to a 72 hour reporting requirement. The IRU supports this proposal as a viable means to ensure there are protections in place to deal with those providers unable to fulfil their obligations to students and to identify students in breach of their visas while permitting universities and other committed providers of education services to international students to operate effectively without risk of failing to meet unrealistic reporting requirements.¹⁷

2.26 IRU's position changed during the course of the inquiry, following discussion with member universities:

15 Universities Australia, *Submission 7 attachment*, p.1.

16 Ms Emma Lincoln, Associate Director, Compliance and Quality, Swinburne University of Technology, *Proof Committee Hansard*, 2 February 2012, p. 9.

17 Innovative Research Universities, *Submission 9*, p. 2.

Further discussions with IRU member universities, and their respective international offices, have indicated very serious concerns about the feasibility of the proposed reporting requirement timeframe even if extended to 72 hours. Due to the large number of international students and consequent array of minor changes to planned enrolments the requirements of the Bill are impossible to meet. They would result in unwarranted penalties for non-compliance in regard to notifications for minor changes in arrangements and minor breaches of formal requirements.

IRU strongly endorses a system which protects student welfare and ensures students receive a quality learning experience in Australia. Universities already have systems in place which address international student default reporting into DEEWR (now DIISRTE) and DIAC via the Government's PRISMS system – allowing 14 days for notification.¹⁸

2.27 As with IRU, Universities Australia initially supported a 72 hour reporting requirement, but shifted to the view that even this was unrealistic following consultation with member universities.¹⁹

2.28 The Queensland Department of Education and Training International also called for the reporting timeframe to be extended:

This impact of legislated timeline notifications on all education providers is extremely high...Natural justice should allow a sufficient period of time to elapse prior to reporting of student default.²⁰

2.29 This view was bolstered by a submission from Australian Government Schools International, which held that a 24 hour reporting requirement was unrealistic for large government school providers and would not be able to be complied with.²¹

2.30 However, ACPET reported receiving feedback from members indicating displeasure at the reporting requirement, but found the requirement reasonable and fair '...if they [providers] have access through PRISMS of the software system and they can report on that.'²²

2.31 Having heard and taken on board the message from providers across the education sector, the committee sought an explanation from DEEWR as to the significant shortening of the notification period being proposed. Representatives of DEEWR told the committee that setting the notification requirement was a judgement

18 Innovative Research Universities, *Submission 9 additional information*, p. 1.

19 See Universities Australia, *Proof Committee Hansard*, 2 February 2012, pp 9–11.

20 Queensland Department of Education and Training International, *Submission 6*, p. 7.

21 Australian Government Schools International, *Submission 10*, p. 3.

22 Mr Michael Hall, Deputy Chief Executive Officer, Australian Council of Private Education and Training, *Proof Committee Hansard*, 2 February 2012, p. 5.

call, '...whether you make it 24[hours], 48, a week, two weeks',²³ but that there was a definite need to draw providers' attention to the importance of reporting defaults promptly:

As to it being 24 hours, you have heard the arguments about that period; it can be argued one way or the other, and it is a judgment call. We felt that that was the best way of drawing attention to the importance of the universities and the other providers keeping records, keeping track of the students and letting us know as soon as there is an apparent problem. It is going to be perfectly easy on the system to reverse those entries; if a plane has been delayed or something like that, it can easily be fixed up. But we felt it necessary to recommend a significant escalation of the current requirement in order to emphasise the importance of that.²⁴

Committee view

2.32 The committee notes that this was one of the key issues submitters raised regarding the proposed legislation, and appreciates the point that complying with the 24 hour notification requirement would come at considerable cost to many providers.

2.33 That notwithstanding, the committee concurs with DEEWR in that '...[t]he welfare of overseas students in this country is a serious concern, and providers have a duty of care.'²⁵ Furthermore, the committee notes DEEWR's assurance that the notification system for providers will certainly be online, making reporting a relatively straightforward process.²⁶

2.34 The committee also appreciates that setting the notification requirement is, as DEEWR pointed out, a matter of judgement. The committee is not convinced that providers would find this requirement impossible to comply with, and believes providers will take the necessary steps to ensure that adequate resources are directed towards this end. At the same time, the committee questions whether a 24 hour notification requirement is necessary, particularly given the implications arising from a default the day before a weekend or public holiday, when no one would be available to receive the notification, as emerged in evidence.²⁷ The committee believes that

23 Mr Colin Walters, DEEWR, *Proof Committee Hansard*, 2 February 2012, p. 29.

24 Mr Colin Walters, DEEWR, *Proof Committee Hansard*, 2 February 2012, p. 30.

25 Mr Colin Walters, DEEWR, *Proof Committee Hansard*, 2 February 2012, p. 29.

26 Mr Colin Walters, DEEWR, *Proof Committee Hansard*, 2 February 2012, p. 29.

27 During the course of a public hearing the committee posited that there was little justification for reporting a default which occurred on a Friday afternoon, given that '...there would normally be nobody operating within the department over the weekend to receive that [the notification].' See Mr Craig Johnston, Director, Strategic Support Unit, International Quality Branch, DEEWR, *Proof Committee Hansard*, 2 February 2012, p. 30.

amending the provision in question to require notification within three working days, instead of 24 hours, is a solid compromise and the best way forward.

Recommendation 2

2.35 The committee recommends that Schedule 1, Part 1, Division 2, Subdivision A, Clause 46B of the Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Bill 2011 be amended to require providers to notify the regulator within three working days of a provider default.

Recommendation 3

2.36 The committee recommends that Schedule 1, Part 1, Division 2, Subdivision B, Clause 47C of the Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Bill 2011 be amended to require providers to notify the regulator within three working days of a student default.

Pre-paid fees

2.37 Schedule 3 of the ESOS Legislation Amendment (Tuition Protection Service and Other Measures) Bill 2011 proposes changes to the way that providers may deal with student tuition fees.

2.38 Currently, some course fees are able to be paid entirely upfront. Under the proposed changes, providers would be limited in the amount of pre-paid fees they could collect, and required to place these fees into a designated account in order to ensure adequate funds are available when refunds are needed. This, DEEWR stated:

...will ensure providers are able to meet their refund requirements should the provider default or the student's visa application be refused and will assist in encouraging sustainable business practices. This proposal will also make study in Australia more affordable for students as they will no longer be required to pay large amounts of course fees up front to their provider.²⁸

2.39 In terms of limitations on the collection of fees, providers would still be able to collect up to 50 per cent of course fees before a course commences, and no more than one study period in advance after the course commences. The 50 per cent limitation would not apply when the relevant course has only one study period, of up to 24 weeks. The principal objective of setting this limit is to:

...support the sustainability of the tuition protection service by reducing the potential refund liability of the entire sector. At the same time this measure seeks to balance protecting student fees with the need to give providers

some certainty of income and ensure overseas students have sufficient resources to meet ongoing costs while studying in Australia.²⁹

2.40 Some submissions, such as that from English Australia, felt the move toward limiting pre-paid fees was a misguided 'one size fits all' approach stemming from a lack of understanding of how English Language Intensive Courses for Overseas Students (ELICOS) providers work, and risking a range of negative consequences. English Australia argued that the approach had the potential to:

...seriously de-stabilise a provider's business model as they can no longer make accurate predictions regarding ongoing enrolments.³⁰

2.41 These billing challenges, English Australia argued, would be significant:

If the whole course is eight weeks, you would be able to charge only four weeks upfront, which means that in four weeks time you will have to re-invoice the student. There are international transfer fees, it is a greater cost to the student and it is a greater administrative burden; it just seems not to reflect the reality of how an English-language sector operates.³¹

2.42 The approach taken by the bill, English Australia added, is based on the erroneous assumption that ELICOS providers function similarly to universities, which have set 24-week semester dates with a long break in which to attend to the administrative work the proposed changes would create.³²

2.43 A number of other submitters were similarly opposed to this particular provision. ACPET told the committee that the limitation would 'not be an issue to some providers but to others it would be extremely detrimental.'³³ Furthermore:

While this may be appropriate in many cases, some providers may be adversely affected due to the type of course they offer – given some disciplines, like aviation, high end manufacturing, construction, hospitality, require large capital outlays prior to commencement of a course.³⁴

29 Department of Employment, Education and Workplace Relations, *Submission 5 Attachment*, p. 14.

30 English Australia, *Submission 1*, p. 11.

31 Ms Sue Blundell, Executive Director, English Australia, *Proof Committee Hansard*, 2 February 2012, p. 17.

32 English Australia, *Submission 1*, p. 11.

33 Mr Michael Hall, Deputy Chief Executive Officer, Australian Council of Private Education and Training, *Proof Committee Hansard*, 2 February 2012, p. 5.

34 Australian Council for Private Education and Training (ACPET), *Submission 4*, p. 4.

2.44 Those providers who find themselves adversely affected could use assistance to adjust their business models, the committee heard.³⁵

2.45 Navitas agreed with English Australia, submitting that the provision was of particular concern for the English language education sector, which has a shorter teaching cycle, no break between teaching cycles and insignificant variations in student outcomes. Given these factors, Navitas felt that a limit on pre-paid fees would be feasible:

...encourage student poaching and student churn, further contributing to the current challenging operating environment for ELICOS providers.³⁶

2.46 DEEWR acknowledged that the changes would have an impact on a small number of providers, but pointed out that this impact would be minimal and outweighed by the benefits:

Requirements to limit pre-paid fees and place pre-paid fees into designated accounts seek to balance policy objectives related to protecting the interest of students and the sustainability of the tuition protection framework, against what may be considered a reasonable regulatory impost on providers given the significant amounts of money involved. The number of providers impacted by these measures will be minimal given that the requirement to place pre-paid fees into designated accounts will be targeted according to risk and providers in receipt of recurrent government funding will be exempt.³⁷

2.47 DEEWR further informed the committee that only seven per cent of students currently pay for more than a semester in pre-paid tuition fees, adding:

Proportionally, this is higher in the English Language Intensive Courses for Overseas Students (ELICOS) and the schools sector. These measures appear to be reasonable in the light of recent experience which has identified serious consequences for students, government and the sector when providers have unsustainable business models heavily reliant on pre-paid fees and do not meet their refund obligations.³⁸

2.48 Allowing providers to collect pre-paid fees also:

35 Mr Michael Hall, Deputy Chief Executive Officer, Australian Council of Private Education and Training, *Proof Committee Hansard*, 2 February 2012, p. 6.

36 Navitas, *Submission 8*, p. 4.

37 Department of Employment, Education and Workplace Relations, *Submission 5*, p. 5.

38 Department of Employment, Education and Workplace Relations, *Submission 5*, p. 5.

...encourages poor business practices with some providers starting up with little capital to fall back on should there be a down-turn in enrolments or an increase in visa refusals as recently highlighted.³⁹

2.49 DEEWR further pointed out that collecting tuition fees from students on enrolment can involve considerable sums of money and result in reputational damage abroad. Often students enrol in courses before applying for appropriate visas to study in Australia. Money they have paid then has to be refunded if their visa applications are rejected:

For the period June 2010 to May 2011, for example, approximately 14,000 student visa applications offshore were refused and around 2,000 applications were withdrawn. Significantly providers have not met their refund obligations in 43 cases of provider closures between 2008 and 2011. Not only has this impacted on students but it has exacerbated the pressure on the current ESOS Assurance Fund and damaged the reputation of Australia's education system.⁴⁰

2.50 On top of this, the practice of collecting pre-paid fees can have a negative effect on the quality of courses provided, '...as once all fees are paid the incentive for providers to ensure students continue to be satisfied with the service being provided is reduced.'⁴¹

Designated accounts

2.51 All but the lowest risk providers will have to keep pre-paid fees in a designated account for the first study period (up to 24 weeks or one semester in length). Designated accounts will:

...protect the initial prepaid fees for students still offshore, including if the provider goes under administration. The designated account will militate against provider practice of using deposits as operating funds. Public providers are exempt from this provision because they have a more reliable funding source.⁴²

2.52 The National Union of Students (NUS) wanted to go further, calling for amendments extending the requirement for pre-paid fees to be placed in a designated account:

39 Department of Employment, Education and Workplace Relations, *Submission 5 Attachment*, p. 14.

40 Department of Employment, Education and Workplace Relations, *Submission 5 Attachment*, p. 14.

41 Department of Employment, Education and Workplace Relations, *Submission 5 Attachment*, p. 14.

42 Mr Colin Walters, DEEWR, *Proof Committee Hansard*, 2 February 2012, p. 28.

While the current legislation proposes that all prepaid course fees received by private providers be put into a designated account, it does not address our concerns of non coursework related fees prepaid to Higher Education Providers that are not covered by the proposed Tuition Protection Service.⁴³

2.53 Some submissions, such as from the International Education Association of Australia (IEAA), argued that it was unnecessary to place limits on the collection of pre-paid fees as long as fees were required to be kept in designated accounts, believing that the latter would be sufficient to meet the policy intent.⁴⁴

2.54 English Australia strongly argued this point in two submissions, questioning the need to *both* limit the amount of pre-paid fees that could be collected *and* introduce the requirement for providers to place fees in a designated account. This, they stated, appeared to be an unnecessary 'duplication of regulation'.⁴⁵

2.55 The committee carefully considered whether limiting the amount of pre-paid fees that could be collected *and* requiring collected fees to be placed in designated accounts was an unnecessary duplication of regulation. Evidence provided by DEEWR indicated that the department was well aware of the regulatory impost this would be on providers, but made a convincing argument for retaining both provisions:

[T]he two aspects to this measure are intended to be related but complementary and they do address different purposes. They will reduce the refund liability flowing to the tuition protection scheme and will reduce the risks for students, the tuition fund and the government.⁴⁶

2.56 DEEWR further reminded the committee of lessons to be learned from history and experience:

We have taken into account Bruce Baird's comments about designated accounts. He gives some analysis of the history. There is history of this in this country. The past history was that it did not work very well because, when providers collapsed, the money had vanished anyway and providers have found money of direct on those accounts. So, if you read Mr Baird's report, it is not a very happy history. Secondly, Mr Baird had looked into the New Zealand experience, where they have these accounts. He said there were considerable administrative difficulties coming up there which had led to a further development, which was that people were looking for insurance cover to back up those designated accounts.⁴⁷

43 National Union of Students, *Submission 3*, p. 3.

44 International Education Association of Australia, *Submission 11*, p. 1.

45 English Australia, *Supplementary submission*, p. 3.

46 Mr Colin Walters, DEEWR, *Proof Committee Hansard*, 2 February 2012, p. 28.

47 Mr Colin Walters, DEEWR, *Proof Committee Hansard*, 2 February 2012, p. 32.

So what we have gone for is a solution where we are making limited use of designated accounts. We are doing that purely in the case of people who have not commenced. Providers are going up to India and collecting a lot of prepaid money. We hope that this can be policed effectively; we try to put protections around that. We are requiring that money to be put in a designated account so that it cannot be used for the purposes of the current administration of the provider. The purpose is to stop a Ponzi scheme whereby ever-increasing amounts are coming in and the operation is being funded out of that but, at the moment there is a downturn, the entity becomes unviable, as in any Ponzi scheme.⁴⁸

Committee view

2.57 The committee understands the need for *both* limits on the collection of pre-paid fees and provisions regarding designated accounts. Provider risk is not always predictable, and having designated accounts alone is not a strong guarantee, since providers can default and then disappear along with the contents of their accounts. The committee also understands that limits on the collection of pre-paid fees are necessary to reduce instances of unforeseen defaults, thereby easing the pressure by decreasing the number of refunds that have to be issued.

Collecting fees two weeks before study period

2.58 The legislation would also restrict the timing of the payment of fees to no more than two weeks before the commencement of a study period for continuing students.

2.59 Navitas, an education provider operating in seven countries including Australia, expressed particular concern about the lack of certainty the measure would bring about. This, Navitas contended, would pose significant problems for education providers:

Planning and staffing will be compromised severely as providers will not have certainty over student levels until 2 weeks before classes commence. This is an unreasonable situation to place organisations in who have long time lines to manage in securing staff, planning timetables, facilities etc. The overwhelming performance of educational institutions in the past does not support this major constraint on operations.⁴⁹

2.60 Representatives of Universities Australia suggested that a better approach might be to draft a provision preventing providers from requiring students to pay their

48 Mr Colin Walters, DEEWR, *Proof Committee Hansard*, 2 February 2012, p. 32.

49 Navitas, *Submission 8*, p. 3.

fees more than two weeks before the commencement of a study period, as a form of 'built-in protection'.⁵⁰ This, they argued, would:

...allow students the freedom, flexibility and choice to pay what is a considerable amount of money for a semester at a university ahead of time if they have access to those funds.⁵¹

2.61 This was echoed by representatives of English Australia, who felt that the way forward could be to regulate against a mandated requirement for early payment while allowing the option of early payment.⁵²

2.62 DEEWR explained why a restriction on when payments can be collected was necessary:

Universities and the Independent Schools Council have argued against a restriction on collecting subsequent fees to no more than two weeks before each study period. The purpose of the two-week rule is to prevent providers from getting around the rule that they cannot collect more than 50 per cent of course fees in advance of commencement. If providers were allowed to collect the balance of the course fee at any time after commencement, they could simply ask for the balance the day after commencement.⁵³

Committee view

2.63 The committee is aware that putting limits on pre-paid fees and restricting the timing of the payment of fees to two weeks before course commencement is not popular with some providers. The argument for flexibility, that is, allowing students or their parents to pay fees well ahead of time is strong, and many providers and students may benefit from a system whereby fees are allowed, but not required, to be paid early.

2.64 However, the committee is of the view that this approach has a significant drawback. The costs involved with overseas study extend considerably beyond course fees. Once students arrive in Australia, they may easily find that although they have paid their fees, they lack adequate resources to support themselves while they study, leading to unforeseen stress and defaults. Limiting the collection of pre-paid fees is intended to minimise the number of unnecessary student defaults and the creation of

50 Mr Jeffrey Smart, Vice-President, International Development, Swinburne University of Technology, *Proof Committee Hansard*, 2 February 2012, p. 13.

51 Mr Jeffrey Smart, Vice-President, International Development, Swinburne University of Technology, *Proof Committee Hansard*, 2 February 2012, p. 13.

52 Ms Sue Blundell, Executive Director, English Australia, *Proof Committee Hansard*, 2 February 2012, p. 20.

53 Mr Colin Walters, DEEWR, *Proof Committee Hansard*, 2 February 2012, p. 28.

high refund liabilities, a central aim of this legislation. For this reason, the committee supports the ESOS amendments as they stand.

Defining study periods

2.65 The legislation further proposes to set the length of each study period by way of a written agreement between students and providers. The length of these study periods would not be able to exceed 24 weeks.

2.66 This proposed amendment caused a degree of consternation among some providers, particularly those in the primary and secondary school sector:

The requirement to set out the length of each “study period” for the course could...be problematic for the school sector, where a “course” could be 5 or more years, and a “study period” might either be a term or a semester.⁵⁴

2.67 The committee heard that the limit was increased from 20 to 24 weeks after consultation and in order to better accommodate short courses.⁵⁵ Furthermore, the 24 week limit on study periods was chosen because it is the average length of a semester:

Anything longer than this would significantly dilute the effectiveness of the proposed measure. I note that the closure of a large multi-jurisdictional ELICOS provider due to the business decision of a foreign owner in 2010 affected over 2,000 students, most of whom had paid full fees upfront amounting to a total refund liability of \$11 million. If these controls had been in place, this would have significantly reduced the potential refund liability.⁵⁶

2.68 DEEWR explained the intended benefits of limiting the duration of study periods this way:

Provisions for limiting prepaid fees to one study period of no more than 24 weeks and prohibiting fees from being collected until two weeks before the next study period are intended to prevent a provider from taking large amounts of fees upfront, creating high refund liabilities...

...Within the 24-week limit they can define the study period to suit their own course delivery arrangements: a single school term or two terms, one university semester, a single short course or two short courses in one study period.⁵⁷

54 Independent Schools Council of Australia, *Submission 2*, p. 16.

55 Department of Employment, Education and Workplace Relations, *Submission 5 Attachment*, p. 15.

56 Department of Employment, Education and Workplace Relations, *Submission 5 Attachment*, p. 15.

57 Mr Colin Walters, DEEWR, *Proof Committee Hansard*, 2 February 2012, p. 28.

Strengthening record keeping

2.69 New provisions set out by the ESOS Amendment (Tuition Protection Service and Other Measures) Bill 2011 aim to strengthen record keeping requirements already in place under the ESOS Act. If the bills are passed, the amended ESOS Act will require providers to put in place documented procedures for updating student contact details and maintaining assessment records. This measure will help students in the event of a provider default by ensuring that they can be easily contacted and placed in an alternative course of study as soon as possible.⁵⁸

2.70 Submissions to this inquiry showed varied, but mostly positive, views on these initiatives. The Independent Schools Council of Australia (ISCA) sought reassurance that new requirements would not result in schools having to duplicate existing record-keeping practices:

Schools are already required under domestic registration and accountability processes to keep extensive and detailed records of student contact information and academic progress. Changes to record keeping requirements should not in any way duplicate existing school practices..⁵⁹

2.71 The Department of Education, Employment and Workplace Relations (DEEWR) informed the committee that these new requirements should not be a burden on most providers, as long as they already keep accurate and comprehensive records.⁶⁰ DEEWR also reminded that records were vitally important for students seeking alternative placement following a provider default:

This will help to ensure, in the case of provider default, that students can be easily contacted and placed with another provider in a timely manner.⁶¹

Committee view

2.72 The committee is of the view that proper record maintenance is of paramount importance in situations where provider defaults force students to seek alternative placement, and supports the proposed measures.

Timelines for implementation

2.73 Clause 2 of the ESOS Legislation Amendment (Tuition Protection Service and Other Measures) Bill 2011 sets out commencement information for provisions within the proposed legislation. With some exceptions, the measures outlined by the

58 Department of Employment, Education and Workplace Relations, *Submission 5*, p. 5.

59 Independent Schools Council of Australia (ISCA), *Submission 2*, p. 16.

60 Department of Employment, Education and Workplace Relations, *Submission 5*, p. 5.

61 Department of Employment, Education and Workplace Relations, *Submission 5*, p. 5.

bills would commence on the first 1 July following Royal Assent, effectively meaning 1 July 2012.

2.74 Some submissions expressed concern, questioning whether a 1 July 2012 commencement date allows enough time for a proper transition to the new arrangements for providers, and whether it is conducive to the TPS being set up effectively.⁶²

2.75 In this vein, submitters such as ISCA suggested pushing the commencement date back by six months, to 1 January 2013.⁶³ ACPET agreed:

ACPET believes that after the Director is appointed and TPS Advisory Board established, the new structure will need at least six months to establish its operational governance before it will be ready to deal with operational issues. If implementation is rushed and provider closures occur in June–August next year and these are poorly handled by a new and potentially ill-prepared team, there could be further serious damage to the reputation of Australia's already vulnerable international education sector.⁶⁴

2.76 Universities Australia also questioned the wisdom of the proposed commencement date for the TPS, adding:

It is important not to rush the implementation of such an important service and Universities Australia would support a start date of January 2013.⁶⁵

2.77 English Australia did not suggest deferring the commencement date, but pointed to potential reputational damage implementation if the TPS proves premature.⁶⁶

2.78 DEEWR noted these concerns in a supplementary submission, but expressed the view that delaying implementation would prolong the risks associated with current arrangements. These risks include reputational damage, negative impacts on students and '...exposure of Australian taxpayers associated with future college closures.'⁶⁷

2.79 DEEWR was not of the view that providers would be hard-pressed to prepare in time for the changes, and pointed to the later commencement date of the TPS levy:

62 See for example Mr Michael Hall, Deputy Chief Executive Officer, Australian Council of Private Education and Training, *Proof Committee Hansard*, 2 February 2012, p. 2.

63 Department of Employment, Education and Workplace Relations, *Submission 5*, p. 17.

64 Australian Council for Private Education and Training (ACPET), *Submission 4*, p. 4.

65 Universities Australia, *Submission 7*, p. 2.

66 English Australia, *Submission 1*, p. 6.

67 Department of Employment, Education and Workplace Relations, *Submission 5 Attachment*, p. 16.

A 1 July 2012 commencement date for the TPS, depending on the passage of this legislation, provides sufficient time for the sector to prepare for the changes. The Department notes that the major impact for providers in relation to the commencement of the TPS will be in relation to the TPS levy. The levy will not commence until 2013.⁶⁸

2.80 DEEWR further emphasised that the provisions of the legislation would not all take effect immediately:

This is a staggered introduction too, in the sense that, from 1 July, you will have the TPS and related changes, and then the first new levy under the new system will not kick in until 2013. By getting the new system introduced on 1 July, the TPS director will be able to consult the new board in setting the new levy which will kick in in 2013. So it is staggered to that extent. Furthermore, the Baird reforms overall have been staggered. The first set were in a bill that was introduced last year and the next set is in these three bills.⁶⁹

2.81 Finally, DEEWR assured the committee that preparations for implementation had been made:

I have to say we have done everything possible to be ready. The government has asked us to be ready, and so therefore we have worked on every part of this issue that can be done in advance of the legislation—for example, we have been working hard on job descriptions and things like that. Of course, we are not in control of when the legislation passes and it would be presumptive of me to make a comment on that. But on the assumption that there is not anything unforeseeable at the moment about the passage of the legislation, the department will be ready. You have heard views from all of the stakeholders on their own readiness and the readiness of providers, and it is obviously a judgment call. We would hope that we could do everything possible as the department to make things ready for them.⁷⁰

Committee view

2.82 The committee is satisfied that the proposed timeline for commencement of the bills' provisions is realistic and achievable, but urges the government to ensure industry stakeholders are kept adequately informed of progress.

Recommendation 4

68 Department of Employment, Education and Workplace Relations, *Submission 5 Attachment*, p. 16.

69 Mr Colin Walters, DEEWR, *Proof Committee Hansard*, 2 February 2012, p. 31.

70 Mr Colin Walters, DEEWR, *Proof Committee Hansard*, 2 February 2012, p. 29.

2.83 The committee recommends that the Australian Government ensures providers of education services for overseas students are kept up to date in regard to the implementation of the new Tuition Protection Service arrangements.

Conclusion

2.84 The committee carefully weighed the evidence before it, especially on issues which appeared to be of particular concern for submitters.

2.85 One such issue was that of upfront fees. The committee is aware that the issue is of significant concern to some providers, and is cognisant of the fact that some students would quite likely prefer to pay fees upfront. However, there are too many examples of this practice having negative consequences, such as when providers have collected pre-paid fees and then ceased operations, leaving the Australian taxpayer to pick up the bill. Although this obviously does not occur in the majority of cases, the damage done in both a financial and reputational sense is considerable and cannot be overlooked. The committee is of the view that placing limits on the practice of collecting pre-paid fees will ultimately be beneficial for students, and manageable for providers. Although the proposed limitations and requirements may be moderately burdensome on some providers at the outset, in the long run this would bring about a more uniformly high-quality overseas education sector. In turn this would result in a reputational boost abroad that can ultimately only benefit providers and students. The committee considers the short-term impost and inconvenience of adjusting business models worth the substantial long-term benefits for the sector.

2.86 The question of notification periods for student and provider defaults was also of paramount importance for many providers. The committee gave this much consideration, and made two recommendations designed to strike the right balance between giving providers reasonable time to report defaults, and prioritising student welfare. The committee believes it has found a workable balance and urges all parties to work together to ensure requirements are complied with.

2.87 The committee believes the proposed reforms are critical to the future of Australia's overseas education sector, and subject to the foregoing recommendations, supports the passage of the bills.

Recommendation 5

2.88 The committee recommends that the bills be passed subject to the foregoing recommendations.

**Senator Gavin Marshall
Chair**

COALITION SENATORS' ADDITIONAL COMMENTS

1.1 The Coalition is concerned about the practical application of some aspects of this legislation.

1.2 After listening to the views of many stakeholders and the views of the Department of Education, Employment and Workplace Relations (DEEWR) the Government has still not sufficiently justified the following provisions.

Notification of default

1.3 The Education Services for Overseas Students (ESOS) Act 2000, as it currently stands, requires providers to give notification of default within 14 days. While the Coalition acknowledges some of the problems DEEWR has outlined with the current timeframe [i.e. 14 days] we are not convinced of the need for a proposed new 24 hour deadline.

1.4 The Government report suggested the timeframe in the legislation be changed to three business days and the Coalition does not oppose this. We are, however, concerned that the timeframes may still be too short, could add significantly to the burden of operators and may be impossible to meet.

Pre-paid fees into designated accounts

1.5 The Coalition acknowledges the significantly diverse nature of the providers who will be affected by this change and has some concern about the 'one-size-fits-all' nature of the way in which student tuition fees may be dealt with.

1.6 The legislative change allows operators to collect, in most circumstances, only a proportion of upfront course costs and for those fees to be placed in a designated account.

1.7 Many providers feel this scheme may result in a destabilisation of their existing business model; on the other hand, DEEWR believes allowing providers to collect pre-paid fees 'encourages poor business practices.'

1.8 We acknowledge that for many operators DEEWR's view is the correct one, but believe the Department has underestimated the diversity of the sector. For that reason the Coalition would have preferred a legislative scheme in which riskier operators are subjected to more regulation than less riskier operators in order to reflect this diversity.

Implementation timeframes

1.9 The timeframes given by DEEWR for the implementation of this significant suite of legislation also seem very short. The Coalition would have preferred to have seen a longer lead time to allow some providers more time to adapt their business model.

Conclusion

The Coalition is concerned about the above aspects of this important legislation and will continue to monitor its implementation.

Senator Chris Back
Deputy Chair

Senator the Hon. Brett Mason

APPENDIX 1

Submissions received by the Committee

1. English Australia
2. Independent Schools Council of Australia
3. National Union of Students
4. Australian Council for Private Education and Training
5. Department of Education, Employment and Workplace Relations
6. Queensland Department of Education and Training International
7. Universities Australia
8. Navitas Limited
9. Innovative Research Universities
10. Australian Government Schools International
11. International Education Association of Australia Inc.

Additional Information received by the Committee

1. Document tabled by the Department of Education, Employment and Workplace Relations on 2 February 2012
2. Document tabled by Universities Australia on 2 February 2012

APPENDIX 2

Witnesses who appeared before the Committee

*Cliftons Conference Centre, Melbourne, Victoria
3 February 2012*

BARTHOLOMEW, Mr Pete, *Principal Government Lawyer, Department of Education, Employment and Workplace Relations*

BENNETT, Ms Susan, *Branch Manager, Department of Education, Employment and Workplace Relations*

BLUNDELL, Ms Sue, *Executive Director, English Australia*

CLEARY, Ms Kim, *Director Policy Coordination Unit, Department of Education, Employment and Workplace Relations*

HALL, Mr Michael, *Deputy Chief Executive Officer, Australian Council for Private Education and Training*

JOHNSON, Mr Craig, *Director, Strategic Support Unit, Department of Education, Employment and Workplace Relations*

LANE, Ms Mariana, *Project Manager, Independent Schools Council of Australia*

LINCOLN, Ms Emma, *Associate Director Compliance and Quality, Universities Australia*

MATTHEWS, Associate Professor David, *Chair, English Australia*

MOORE, Ms Ainslie, *Assistant Director, Universities Australia*

SMART, Mr Jeffrey, *Vice-President International and Development, Universities Australia*

WALLETT, Mr Barry, *Deputy Executive Director, Independent Schools Council of Australia*