

# Education Services for Overseas Students Legislation Amendment Bill 2010

## Introduction

1.1 On 23 June 2010, the Hon. Jason Clare MP, the then Parliamentary Secretary for Employment, introduced the Education Services for Overseas Students Legislation Amendment Bill 2010 (the bill) in the House of Representatives. On 24 June 2010, on the motion of Senator Parry, the Senate referred the provisions of the bill to the Senate Standing Legislation Committee on Education, Employment and Workplace Relations. The committee was to report by 24 August 2010.<sup>1</sup>

1.2 Due to the prorogation of the 42nd Parliament the committee was unable to conclude its inquiry in this timeframe. In the 43<sup>rd</sup> Parliament the bill was introduced in the Senate on 27 October 2010<sup>2</sup> and on 28 October 2010 was again referred to the committee, for report by 22 November 2010.<sup>3</sup>

## Conduct of the inquiry

1.3 At the time the bill was first introduced, notice of the inquiry was posted on the committee's website and advertised in *The Australian* newspaper, calling for submissions by 30 July 2010. The committee also directly contacted a number of interested parties, organisations and individuals to notify them of the inquiry and to invite submissions.

1.4 In the 43<sup>rd</sup> Parliament submitters who had already provided submissions during July and August 2010 were contacted and asked to review and resubmit their submissions. Additional submissions were invited online by 8 November 2010. A total of 12 submissions were received, as listed in Appendix 1.

1.5 The committee decided to prepare its report on the basis of the submissions received and thanks those who assisted by providing submissions to the inquiry.

## Background

1.6 This bill is familiar ground for this committee as there have been a number of previous inquiries into the Education Services for Overseas Students (ESOS)

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1 *Journals of the Senate*, 24 June 2010, p. 3774.

2 *Journals of the Senate*, 27 October 2010, p. 1.

3 *Journals of the Senate*, 28 October 2010, p. 253.

Act. This committee has reported on the ESOS Act ten times since 1991,<sup>4</sup> most recently in 2009. In 2009, the closure of several private education providers and allegations of corruption and substandard education services revealed weaknesses in the regulation of providers in the sector. The Education Services for Overseas Students Amendment (Re-registration of Providers and Other Measures) Bill 2009 was an interim measure intended to address immediate matters of concern regarding regulation of the industry, pending a review of the ESOS Act by former Liberal MP, the Hon. Bruce Baird.

1.7 On 8 August 2009, the then Minister for Education, the Hon. Julia Gillard MP, announced that Mr Baird would review and consider the need for improvements to the ESOS legal framework in four key areas:

- supporting the interests of students;
- quality;
- effective regulation; and
- sustainability of the international education sector.

1.8 Mr Baird's final report was released on 9 March 2010<sup>5</sup> and made 19 recommendations to strengthen and simplify the ESOS Act.<sup>6</sup> The report's key

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4 The reports were by the Senate Standing Committee on Employment, Education and Training, or the Senate Employment, Education and Training Legislation Committee: *Education Services (Export Regulation) Bill 1990* (tabled 7 May 1991); *Operation of the Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991 (ESOS Act)* (tabled 1 December 1992); *The Efficacy of the Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991 in the Light of the Collapse of the Australian Business College in Perth in January 1993* (tabled 19 August 1993); *Overseas Students Tuition Assurance Levy Bill 1993 and Education Services for Overseas Students (Registration of Providers and Financial Regulation) Amendment Bill 1993* (tabled 9 December 1993); *The Nature, Implementation and Effects of the Statutory Rules 1994 Nos 146 and 154 – Being Regulations Pertaining to the Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991* (tabled 28 June 1994); *Consideration of the Provisions of the Education Services for Overseas Students (Registration of Providers and Financial Regulation) Amendment Bill 1998* (tabled August 1998); Senate Employment, Workplace Relations, Small Business and Education Legislation Committee: *Consideration of the Provisions of the Education Services for Overseas Students Bill 2000, Education Services for Overseas Students (Assurance Fund Contributions) Bill 2000, Education Services for Overseas Students (Registration Charges) Amendment Bill 2000, Education Services for Overseas Students (Consequential and Transitional) Bill 2000 and the Migration Legislation Amendment (Overseas Students) Bill 2000*, (tabled November 2000); *Bills relating to the establishment of Carnegie Mellon University 2005*, (tabled November 2005), which included the *Education Services for Overseas Students Amendment Bill 2005*; Senate Education, Employment and Workplace Relations Legislation Committee: *Education Services for Overseas Students Amendments (Re-registration of Providers and Other Measures) Bill 2009*, October 2009.

5 The Hon. Julia Gillard MP, 'Baird Review into International Students Final Report', *Media release*, 9 March 2010.

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themes included the need to focus on the interests of students and acknowledge that the diversity of the sector means a one-size-fits-all approach to regulation is not adequate.<sup>7</sup>

1.9 In response to the Baird Review, the then Deputy Prime Minister, the Hon. Julia Gillard MP, indicated there would be a staged approach to the implementation of its recommendations. In-principle support was given to the following recommendations, either as changes to the ESOS Act (marked with an asterisk) or, following further consultation with key stakeholders, as changes to associated legislative instruments such as the National Code or the ESOS Regulations:

- require providers to demonstrate appropriate course delivery arrangements which support student visa integrity and quality, and that English language entry levels and support are appropriate for the course (recommendation 1);
- strengthen registration criteria to ensure a focus on financial viability and sustainability of management and business practices\* (recommendation 2);
- take a risk management approach to registration and ongoing monitoring\*(recommendation 3);
- apply financial penalties to a broader range of non-compliance behaviour\*(recommendation 5a);
- ensure standards are objective and enforceable (recommendation 5b);
- publish targets and regular reporting on regulatory activity\*(recommendation 5d);
- improve complaints and appeals processes for students\*(recommendation 8); and
- strengthen obligations on providers to ensure ethical recruitment practices, including by the education agents they use (recommendations 12a,c and e).<sup>8</sup>

1.10 This bill proposes amendments to the *Education Services for Overseas Students Act 2000* (ESOS Act) as well as to the *Ombudsman Act 1976* and the *Privacy Act 1988* to give effect to the above measures indicated with an asterix.<sup>9</sup>

1.11 The Department of Education, Employment and Workplace Relations (DEEWR) advised that the government has consulted with the sector on proposed

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6 The Hon. Bruce Baird, *Stronger, simpler, smarter ESOS: supporting international students*, Final report, 26 February 2010.

7 The Hon. Jason Clare MP, Parliamentary Secretary for Employment, second reading speech, *House of Representatives Hansard*, 23 June 2010, p. 8.

8 DEEWR, *Submission 11*, p. 2.

9 DEEWR, *Submission 11*, p. 2.

regulatory changes related to provider obligations for education agents, and this will inform the government's next response to the Baird Review in 2011.<sup>10</sup>

### **Purpose of the bill**

1.12 The bill is the first stage of the government's response to the Baird Review. It comprises two schedules of amendments:

- Schedule 1 – Amendment of the ESOS Act; and
- Schedule 2 – Amendment of the *Ombudsman Act 1976* and the *Privacy Act 1988*.

1.13 The bill extends the risk management approach introduced in the 2009 bill and also focuses on more effective enforcement. Changes include:

- strengthening the provider registration criteria to certify the viability of businesses;
- risk-based monitoring which shifts the regulatory burden to those providers that present the greatest risk to the integrity of the sector;
- the ability to put conditions on providers' registration if required;
- publishing of industry targets and reporting of regulatory activities; and
- expanding the role of the Commonwealth Ombudsman for external complaints relating to private providers.<sup>11</sup>

1.14 The bill makes consequential amendments to the *Ombudsman Act 1976* to extend the jurisdiction of the Commonwealth Ombudsman to include overseas students of private registered providers currently without access to a statutorily independent complaints body. It also makes consequential amendments to the *Privacy Act 1988* to enable any complaints made initially to the Privacy Commissioner to be transferred to the Commonwealth Ombudsman.<sup>12</sup>

### **Key issues**

1.15 This section will briefly describe the main provisions in the bill and the key issues raised in submissions.

#### ***Risk management approach to the regulatory framework***

1.16 The 2009 bill introduced a risk management approach to the re-registration process. This bill will extend the approach to all registrations and throughout the

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10 DEEWR, *Submission 11*, p. 2.

11 The Hon. Julia Gillard MP, Minister for Education, 'Changes to International Education Sector to provide added Security for International Students', *Media release*, 23 June 2010.

12 DEEWR, *Submission 11*, p. 3.

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registration period. The risk management approach will also be used to target regulatory activity.<sup>13</sup>

1.17 The risk management approach was supported by submissions. For example, Universities Australia told the committee:

Universities Australia has been pleased with the risk management process used in the CRICOS [Commonwealth Register of Institutions and Courses for Overseas Students] re-registration process and endorses similar approaches in these subsequent ESOS amendments.<sup>14</sup>

1.18 English Australia (EA) also endorsed a risk management approach. It advocated that the criteria used to determine risk should be transparent and consistently applied across jurisdictions, with the aim of minimising the workload for providers that operate across jurisdictions.<sup>15</sup>

1.19 The risk management approach was also welcomed by the Independent Schools Council of Australia (ISCA), which anticipated that the majority of independent schools would be assessed as 'low risk' providers. It explained this was because independent schools already comply with 'an exhaustive range of reporting and accountability requirements; compliance costs and administrative burden for providers is already high'.<sup>16</sup> ISCA advised that each independent school is separately registered on CRICOS and responsible for compliance with the ESOS Act and the National Code 2007 regardless of the number of overseas students enrolled. It contrasted this with the state departments of education, which hold a single provider registration covering any number of state schools.<sup>17</sup>

1.20 The National Tertiary Education Union (NTEU) agreed with the risk management approach where providers assessed as high risk are subjected to the greatest scrutiny. However, it advocated for a review of the criteria used to determine levels of risk 'to determine whether the criteria are sufficiently rigorous and whether the risk profile matrix achieves its objective of identifying the appropriate level of risk'.<sup>18</sup>

1.21 While supporting the introduction of a risk management approach to regulation, the Australian Council for Private Education and Training (ACPET) expressed concern with the capacity of regulatory agencies to develop a 'robust and meaningful risk framework for the sector'. It recommended that the development of a risk management approach be informed by appropriate independent risk assessment

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13 *Explanatory Memorandum (EM)*, p. 2.

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

15 English Australia, *Submission 4*, p. 4.

16 ISCA, *Submission 3*, pp 4-5.

17 ISCA, *Submission 3*, p. 2.

18 NTEU, *Submission 9*, pp 1-2.

expertise. It also recommended that the proposed framework be tested and validated in consultation with the sector.<sup>19</sup>

1.22 DEEWR indicated that details of the risk management approach will be developed in consultation with stakeholders, including state and territory regulatory bodies to ensure a nationally consistent approach to risk management.<sup>20</sup>

1.23 The committee notes that the purpose of the risk management approach is to better tailor regulation to risk which should result in reduced regulatory burden for low risk providers. It also notes advice from DEEWR that there will be further consultation with the sector to address concerns about increased regulatory burden.<sup>21</sup>

### ***Strengthening registration requirements***

1.24 Building on the amendments in the 2009 bill introducing two new registration criteria, this bill introduces provisions to further strengthen the registration process. Providers will have to demonstrate access to the financial resources to meet the objectives of the ESOS Act; have a sustainable business model; and have the capability, governance structures and management ability to deliver education of an appropriate standard.<sup>22</sup>

### ***Assessing access to adequate financial resources***

1.25 Proposed subparagraph 9(2)(c)(iii) specifies the additional matters to be addressed by a designated authority when considering whether a provider has evidenced the criteria of 'demonstrated capacity'. These include but are not limited to, having an appropriate business model and access to adequate financial resources.<sup>23</sup>

1.26 EA endorsed the proposal to assess a provider's access to the financial resources to meet the objectives of the ESOS Act and the sustainability of their business model 'particularly in light of recent college closures for business failure reasons'. However, EA questioned whether regulatory bodies have the expertise to undertake this assessment and suggested that they be given access to appropriate expertise. EA also urged transparency in the application of this provision.<sup>24</sup>

1.27 ISCA expressed concern that the assessment of adequate financial resources would be in addition to 'existing financial viability requirements for non-government school accreditation and on-going obligations under the *Schools Assistance Act 2008*,

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19 ACPET, *Submission 10*, p. 2.

20 DEEWR, *Submission 11*, p. 3.

21 DEEWR, *Submission 11*, p. 7.

22 EM, p. 2.

23 EM, p. 23.

24 English Australia, *Submission 4*, p. 4.

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specifically the Financial Health Assessment Framework'. ISCA argued that this appears to contradict the aim of streamlining the existing regulatory framework.<sup>25</sup>

1.28 The Australian Federation of International Students (AFIS) agreed with providers being required to demonstrate that they have access to appropriate financial resources and recommended that students be able to access the risk level of colleges 'in order to make informed choices'.<sup>26</sup>

1.29 Regarding student access to the risk level of colleges, DEEWR advised that risk information is potentially commercially sensitive when used out of context.<sup>27</sup>

1.30 The committee again notes the advice from DEEWR that the details of the risk management approach will be further developed in consultation with students and the sector.<sup>28</sup> This consultation will also address concerns about increased regulatory burden.<sup>29</sup>

### *Registration timeframe*

1.31 Currently the Commonwealth does not have the ability to limit the period of a provider's CRICOS registration and providers are registered for an unlimited period. Item 5 inserts proposed subsections 9(10) and (11) to limit a provider's registration period to five years.<sup>30</sup> Proposed item 27 is a transitional provision to ensure that all registered providers are re-registered with an end date no later than five years after limited registrations are introduced.<sup>31</sup>

1.32 DEEWR advised that these amendments would:

...introduce consistency into the registration regime to allow ESOS to formally recognise and align with limited periods of registration for each provider set by the states and territories under state/territory legislation and domestic quality assurance frameworks.<sup>32</sup>

### *Conditions may be placed on registration*

1.33 Currently the Commonwealth can only recognise conditions imposed on a provider by a state/territory or impose new conditions as a sanction against non-compliance. The proposed amendment allows conditions related to risk to be

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25 ISCA, *Submission 3*, p. 8.

26 AFIS, *Submission 8*, p. 1.

27 DEEWR, *Submission 11*, p. 9.

28 DEEWR, *Submission 11*, p. 9.

29 DEEWR, *Submission 11*, p. 7.

30 EM, p. 24.

31 EM, p. 29.

32 DEEWR, *Submission 11*, p. 4.

placed on a provider's registration by the Commonwealth when first registered or at any time throughout the registration period.<sup>33</sup>

1.34 Conditions may be placed on a provider's registration at the initiative of the Commonwealth/Secretary of DEEWR. Item 7 amends subsection 14A(2) to include the Secretary as an authorised person also able to impose a condition on a provider's registration. Item 8 inserts proposed section 14B which enables the Secretary to impose a condition on a provider's registration on the Secretary's own initiative. The Secretary may impose a condition when the provider is registered or at any time during the registration period.<sup>34</sup>

1.35 ACPET supported the proposed changes allowing the Commonwealth Secretary or Minister 'to act on his or her own initiative where they deem conditions are needed on a provider's registration, rather than as is currently the case, only on the recommendation of a designated authority'.<sup>35</sup>

1.36 While endorsing the application of conditions, EA urged caution in applying conditions that may affect business levels and provided the following example:

ELICOS [English Language Intensive Courses for Overseas Students] institutions only deliver courses to international students and...any condition that might apply limits to the numbers of international students they can enrol would have the potential to impact severely on their business model. EA also notes that in the ELICOS sector course lengths are very short (12.1 weeks on average) and that student flow is therefore essential.<sup>36</sup>

1.37 EA urged the government to ensure that conditions are appropriate to the level of risk and will not have an overly adverse effect on business levels.<sup>37</sup>

### ***Broader range of financial penalties***

1.38 The bill introduces financial penalties for a broader range of non-compliant behaviour to better address emerging issues in the international education sector such as recruitment activity and maintenance of student records.<sup>38</sup>

1.39 The changes to penalties for breaches of the Act were supported by ACPET.<sup>39</sup> ISCA expressed concern about the potential for 'overzealous application of punitive measures to adversely affect low risk providers' and provided the following example:

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33 DEEWR, *Submission 11*, p. 4.

34 EM, pp 24-25.

35 ACPET, *Submission 10*, pp 3-4.

36 English Australia, *Submission 4*, p. 5.

37 English Australia, *Submission 4*, p. 5.

38 DEEWR, *Submission 11*, p. 4; EM, p. 3.

39 ACPET, *Submission 10*, p. 3.

...failure to change a course start date in PRISMS [Provider Registration and International Students Management System] within 14 days of a student arriving late at the start of a school year is a relatively minor offence, and could easily be committed unintentionally by a staff member new to the role of international student admissions during this hectic time. Yet this nonetheless has the potential under legislation to attract not only a financial penalty for each occurrence, but to result in being publicly reported with consequential reputation damage out of all proportion to the offence committed.<sup>40</sup>

1.40 EA supported the option to apply financial penalties and urged transparency and consistency in the application. It pointed out that appeal mechanisms available to providers are not specified in the bill and requested clarification on the appeal mechanisms that will be available to providers.<sup>41</sup>

1.41 The committee notes advice from DEEWR that the amendments will provide the department with more options and flexibility regarding enforcement activity and will enable it to take corrective action for relatively minor non-compliance issues without restricting a provider's ability to operate.<sup>42</sup>

### ***Publishing results of enforcement and monitoring***

1.42 The ESOS review recommended that targets and regular reporting on all regulatory activities undertaken be published.<sup>43</sup> Item 25 inserts proposed section 170A to require the publishing of targets and the regular reporting of regulatory activities.<sup>44</sup>

1.43 ACPET agreed with these proposed changes, noting that they would provide the Commonwealth with powers similar to those held in Victoria by the Victorian Registration and Qualifications Authority. ACPET commented that:

..greater transparency within the sector will be of benefit to students and to the great majority of providers of international education who deliver education and training of the highest quality.<sup>45</sup>

1.44 ISCA advised that it did not agree with proposed provision 170A for the Secretary to publish results of enforcement and monitoring before a provider has had the opportunity to appeal a decision to do this. It argued:

Subsequent publishing of results of a review that finds in favour of a provider, is, in ISCA's view, a denial of natural justice, and can not

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40 ISCA, *Submission 3*, p. 9.

41 English Australia, *Submission 4*, p. 5.

42 DEEWR, *Submission 11*, p. 4.

43 DEEWR, *Submission 11*, p. 4; EM, p. 3.

44 EM, p. 28.

45 ACPET, *Submission 10*, p. 3.

adequately compensate for possibly unjustified reputation damage suffered by a provider during this process.<sup>46</sup>

1.45 EA also stressed that 'reputation is critical for providers in ensuring the ongoing trust and confidence of students, their families and agents'. It argued:

The publishing of enforcement actions that have been undertaken that have not been yet finalised following the potential for appeal seems to have the potential to recklessly endanger a provider's business reputation and thus impact on student flows and the success of the business.<sup>47</sup>

1.46 EA called for the publication of enforcement action to follow any and all appeal processes.<sup>48</sup>

1.47 DEEWR responded that appeals of providers against enforcement action taken will not stop publication of the information but that the information will be corrected if the appeal is upheld.<sup>49</sup> DEEWR explained that:

...it is intended that only serious non-compliance action would be made public. The ability to use financial penalties for a greater range of non-compliance behaviour will give more flexibility for regulators to act without being excessively punitive. It should also be noted that any decisions reversed through an appeals process will be publicly noted.<sup>50</sup>

### ***The Overseas Student Ombudsman***

1.48 To improve access to a statutorily independent external complaints body, the jurisdiction of the Commonwealth Ombudsman will be extended to include overseas students of private registered providers. DEEWR noted that:

While these providers must provide access to an external complaints body (as required under Standard 8 of the National Code), students of these providers currently do not have recourse to a statutorily independent external body, such as an ombudsman, competent to hear and investigate their complaints in a consistent and quality assured manner.<sup>51</sup>

1.49 Item 1 amends the long title of the Ombudsman Act to include a reference to the Overseas Student Ombudsman (OSO). Item 2 inserts proposed part IIC which establishes the Office of the OSO and sets out the powers and functions of the OSO.<sup>52</sup>

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46 ISCA, *Submission 3*, p. 9.

47 English Australia, *Submission 4*, p. 6.

48 English Australia, *Submission 4*, p. 6.

49 DEEWR, *Submission 11*, p. 4.

50 DEEWR, *Submission 11*, p. 7.

51 DEEWR, *Submission 11*, p. 4.

52 EM, p. 30.

1.50 Along with investigating complaints, the OSO will provide advice and training to private registered providers to facilitate best practice complaint handling and may report on broader systemic issues across the international sector.<sup>53</sup> Proposed section 19ZS(5) makes it clear that annual reports by the OSO may detail any trends in complaints or any broader issues that arise from investigations. The Commonwealth Ombudsman noted that annual reports may also include details of recommendations made to private providers and that:

...By sharing such information, the Commonwealth Ombudsman may alert regulators and relevant stakeholders to areas requiring action or review to protect overseas students' rights and Australia's reputation as an exporter of international education services.<sup>54</sup>

1.51 The committee notes the current gap for students of private registered providers wishing to access an external independent complaints body. The Commonwealth Ombudsman explained that:

Overseas students enrolled with public education providers can complain to the relevant state or territory ombudsman, or in the case of the Australian National University, the Commonwealth Ombudsman, as the external, independent complaints body. Overseas students enrolled with private registered providers can complain to state and territory education departments and state and territory statutory authorities responsible for registering and accrediting education providers. However, South Australia is the only state providing access to a distinct complaints handling body, the Office of the Training Advocate, which is independent of the registration and accreditation authority for private registered providers.<sup>55</sup>

1.52 The Commonwealth Ombudsman supported the proposed new role for the OSO and noted:

Amending the Ombudsman Act 1976 to extend the Commonwealth Ombudsman's jurisdiction to include private registered providers would ensure fair and consistent access to external complaints mechanisms for all overseas students. The system will have the benefit of a complaints handling body which is not only independent of the private registered provider, but the state and territory designated authority as well. It will strengthen consumer protection for overseas students and ensure they have free access to having their complaint dealt with by the Commonwealth Ombudsman in a consistent and quality-assured manner.<sup>56</sup>

1.53 The committee notes that under the *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007*, Standard 8, it is a requirement that providers have an internal

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53 EM, p. 3. See also Commonwealth Ombudsman, *Submission 2*, p. 4.

54 Commonwealth Ombudsman, *Submission 12*, p. 6.

55 Commonwealth Ombudsman, *Submission 12*, p. 4.

56 Commonwealth Ombudsman, *Submission 12*, p. 4.

complaints and appeals process and also have 'arrangements in place for an independent external person or organisation to hear the complaints or appeals where the provider's internal process has been completed and the student remains dissatisfied'.<sup>57</sup>

1.54 Universities Australia supported the intention of the amendments 'to ensure students of private providers have access to a suitable external complaints body'.<sup>58</sup> The establishment of the OSO was also strongly supported by ISANA International Education Association. However, ISANA added that it will be important to ensure that students with a lower level of education and/or English proficiency are able to easily access and understand the service.<sup>59</sup>

1.55 On the point of students with poor English proficiency, DEEWR noted that:  
...the Commonwealth Ombudsman sees education and communication with students and providers as critical to their proposed new role....<sup>60</sup>

1.56 AFIS welcomed the extension of the jurisdiction of the Commonwealth Ombudsman to include students of private registered providers as '[t]his will provide an independent body to handle student complaints'. AFIS also recommended student awareness sessions to make students aware of the complaint mechanism.<sup>61</sup>

1.57 The committee notes that the Commonwealth Ombudsman intends to provide information sessions for students and providers.<sup>62</sup>

1.58 ISCA noted that the focus of the function of the OSO is on the investigation of complaints and that the need 'to have an independent body that can hear and make decisions about student appeals arising from providers exercising their obligations under the National Code of Practice (National Code) will not be properly recognised and addressed'. It submitted:

The word "appeal" is not used at all in this context in any of the documentation supporting proposed changes. This is surprising given Standards 8 in National Code of Practice is clearly designated "Complaints and appeals".<sup>63</sup>

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57 Information available from:  
[http://aei.gov.au/AEI/ESOS/NationalCodeExplanatoryGuide/PartD/Standard\\_8.htm](http://aei.gov.au/AEI/ESOS/NationalCodeExplanatoryGuide/PartD/Standard_8.htm) accessed 2 August 2010.

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

59 ISANA, *Submission 6*, pp 2-3.

60 DEEWR, *Submission 11*, p. 8.

61 AFIS, *Submission 8*, p. 2.

62 DEEWR, *Submission 11*, p. 9.

63 ISCA, *Submission 3*, p. 9.

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1.59 DEEWR advised that the proposed amendments are aligned with Standard 8 of the National Code and changes to the National Code will be made to reflect the changes to the Ombudsman Act when it is passed.<sup>64</sup>

1.60 ACPET supported the establishment of the OSO but was concerned that the industry's independent complaints handling mechanism, operating since April 2009, is not recognised. It reported that this mechanism has assisted 199 providers and students and is recognised by designated authorities. It advocated the continued use of existing arrangements with referral to the OSO only when matters cannot be resolved through existing mechanisms.<sup>65</sup>

1.61 Mr John Blahusiak explained that he supports measures to improve the experience of overseas students studying in Australia, which includes improving access to complaint mechanisms, but pointed out that the proposed mechanism will cover overseas students only:

Should a domestic student and an overseas student in a private provider have a complaint concerning the same issue – only the overseas student...would have a right of complaint to the Commonwealth Ombudsman...A domestic student of a private provider would presumably be reliant on any external complaint processes as are currently available – which, the ESOS Bill Schedule 2 seems to suggest are currently deficient.<sup>66</sup>

1.62 DEEWR provided the following response to this point:

...given the particular vulnerabilities of overseas students, the ESOS Legislation Amendment Bill is specifically responding to the Baird recommendation to improve access by overseas students attending non-government institutions to a rigorous statutorily independent complaints and appeals process.<sup>67</sup>

1.63 Mr Blahusiak also questioned whether the Commonwealth Ombudsman already has the capacity to act as student ombudsman or international student ombudsman under the Ombudsman Act as currently drafted.<sup>68</sup> DEEWR responded that:

...the capacity for the Ombudsman to act for students under s5(1)(c) of the Ombudsman Act is unclear. This provision does not apply to domestic students and it is open to interpretation whether, under s5(1)(c), there is any Commonwealth enactment which gives rise to a licence or authority in relation to international students. Given this uncertainty the ESOS Legislation Amendment Bill aims to expand the jurisdiction of the

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64 DEEWR, *Submission 11*, p. 7.

65 ACPET, *Submission 10*, p. 3.

66 Mr John Blahusiak, *Submission 5*, pp 1-2.

67 DEEWR, *Submission 11*, p. 8.

68 Mr John Blahusiak, *Submission 5*, pp 1-2.

Ombudsman to cover international students who currently do not have access to another statutorily independent body.<sup>69</sup>

### ***Committee comment***

1.64 The committee notes the powers of the OSO are consistent with the existing powers of the Commonwealth Ombudsman. It emphasises the intention that the OSO would be the mechanism for students to use when all other avenues have been exhausted. The committee also notes that proposed section 19ZS includes requirements for annual reporting by the OSO so that outcomes are recorded publicly.<sup>70</sup>

### **Conclusion**

1.65 The committee notes that this is the first set of amendments to the ESOS Act as a result of the recommendations of the Baird Review and that more will follow in 2011.

### **Recommendation 1**

**1.66 The committee recommends that the Senate pass the bill.**

**Senator Gavin Marshall**

**Chair**

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69 DEEWR, *Submission 11*, p. 8.

70 Commonwealth Ombudsman, *Submission 12*, p. 7.