

CHAPTER 1

Introduction

1.1 On 22 March 2012, the Migration Legislation Amendment (Student Visas) Bill 2012 (Bill) was introduced into the House of Representatives by the Hon. Chris Bowen MP, Minister for Immigration and Citizenship (Minister).¹ On the same date, the Senate referred the Bill to the Legal and Constitutional Affairs Legislation Committee (committee) for inquiry and report by 18 June 2012.² The Bill was introduced into the Senate on 10 May 2012.³

Purpose of the Bill

1.2 In December 2010, the Australian Government commissioned the Hon. Michael Knight AO to independently review the Student Visa Program (Knight Review), with a view to enhancing the quality, integrity and competitiveness of Australia's international education sector.

1.3 The resulting report, *Strategic Review of the Student Visa Program*, was released on 22 September 2011, accompanied by an announcement that the Australian Government had accepted all 41 recommendations of the Knight Review. The government intends to implement the majority of those recommendations throughout 2012-13.⁴

1.4 One of the recommendations of the Knight Review – Recommendation 24 – is to abolish the automatic cancellation of student visas, and replace that regime with a system in which information conveyed by student course variations is used as one factor to be taken into account in a more targeted and strategic analysis of non-compliance.⁵

1 *House of Representatives Hansard*, 22 March 2012, p. 14.

2 *Journals of the Senate*, No. 87-22 March 2012, p. 2350.

3 *Journals of the Senate*, No. 90-10 May 2012, p. 2443.

4 The Hon. Chris Bowen MP, Minister for Immigration and Citizenship and Senator the Hon. Chris Evans, Minister for Tertiary Education, Skills, Jobs and Workplace Relations, Boost to International Education Sector in Response to Knight Review, Joint Media Release, 22 September 2011.

5 Australian Government, *Strategic Review of the Student Visa Program*, 30 June 2011, p. 98. It is intended that reports of non-compliance with a prescribed condition of a student visa will in future be determined under the discretionary visa cancellation framework in the *Migration Act 1958*: Explanatory Memorandum, p. 1. This is consistent with Recommendation 9 of the *Review of the Education Services for Overseas Student (ESOS) Act 2000* conducted by the Hon. Bruce Baird in 2010: see Department of Industry, Innovation, Science, Research and Tertiary Education, *Submission 18*, p. 2.

1.5 The Bill amends the *Education Services for Overseas Students Act 2000* (Education Act) and the *Migration Act 1958* (Migration Act) to implement Recommendation 24 of the Knight Review.⁶

1.6 According to the Explanatory Memorandum, the proposed amendments will:

- stop registered providers from sending a notice under section 20 of the Education Act to a student visa holder who has breached a prescribed condition of the visa, effectively ceasing the automatic cancellation of the visa under section 137J of the Migration Act;
- allow for consistency in the treatment of alleged breaches of Student Visa Condition 8202 (which relates to unsatisfactory course attendance or course progress),⁷ enabling each case to be considered on its merits and leading to fairer outcomes for student visa holders;
- reduce the administrative burden associated with students who attend an office of the Department of Immigration and Citizenship (DIAC) to stop the automatic cancellation process or apply for revocation of a cancellation, allowing integrity resources to be more strategically targeted toward risk;
- enable relevant government agencies to access the most up-to-date contact information held by education providers for accepted students, enabling better contact with students, particularly for the purposes of resolving their visa status should they be subject to any report of non-compliance.⁸

1.7 In his second reading speech, the Minister stated:

These measures are intended to support the international education sector, which is one of Australia's largest export industries and is important to Australia in supporting bilateral ties with key partner countries, supporting employment in a broad range of occupations throughout the Australian economy, as well as delivering high-value skills to the economy.⁹

1.8 The Knight Review's Regulation Impact Statement notes that international education is Australia's third biggest export industry, generating income of \$18.3 billion in 2010.¹⁰

6 Explanatory Memorandum, p. 1.

7 Schedule 8 of the Migration Regulations 1994.

8 Explanatory Memorandum, pp 1-2.

9 *House of Representatives Hansard*, 22 March 2012, p. 16.

10 Australian Government, *Strategic Review of the Student Visa Program*, 30 June 2011, Regulation Impact Statement, p. 1.

Provisions of the Bill

1.9 The Bill proposes five amendments to the Education Act:

- insertion of a definition of 'contact details' into section 5 (item 1 of Schedule 1);
- insertion of contact details into paragraph 19(1)(a), requiring a registered provider to give the Secretary of the Department¹¹ the contact details of each person who becomes an accepted student of that provider within 14 days after that event occurring (item 2 of Schedule 1);
- insertion of proposed new subsection 19(1A), to require a registered provider to give the Secretary of the Department particulars of any change in the contact details or other prescribed details of an accepted student within 14 days of the provider becoming aware of the change (item 3 of Schedule 1);
- clarification of the ability of a registered provider to send a notice to a student who breaches a prescribed visa condition prior to commencement of the Bill (item 4 of Schedule 1);
- insertion of proposed new subsection 20(4A), which prohibits a registered provider from sending a notice to a student who breaches a prescribed visa condition after commencement of the Bill and triggers the automatic cancellation of a student visa under section 137J of the Migration Act (item 5 of Schedule 1).

1.10 The Bill proposes two amendments to the Migration Act:

- amending the Note in subsection 137J(1), to clarify that it is the first of two notes in the subsection (item 6 of Schedule 1); and
- adding Note 2 to subsection 137J(1), to cross reference and alert readers to proposed new subsection 20(4A) of the Education Act (item 7 of Schedule 1).

Conduct of the inquiry

1.11 Details of the inquiry, the Bill and associated documents were placed on the committee's website. The committee also wrote to 25 organisations and individuals, inviting submissions by 27 April 2012.

1.12 The committee received 18 submissions, which are listed at Appendix 1. All submissions are available on the committee's website at http://www.aph.gov.au/senate_legalcon.

11 In this instance, the Department of Innovation, Industry, Science, Research and Tertiary Education.

1.13 The committee held a public hearing in Canberra on 11 May 2012. A list of witnesses who appeared at the hearing is at Appendix 2, and copies of the *Hansard* transcript are also available through the committee's website.

Acknowledgement

1.14 The committee thanks those organisations and individuals who made submissions and gave evidence at the public hearing.

Notes on references

1.15 References to the Committee *Hansard* are to the proof *Hansard*. Page numbers may vary between the proof and the official *Hansard* transcript.