Attachment 2

Department of Education, Employment and Workplace Relations comments on common themes made in submissions to the House of Representatives Standing Committee on Education and Employment Inquiry into the Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Bill 2011 Education Services for Overseas Students (Registration Charges) Amendment (Tuition Protection Service) Bill 2011 Education Services for Overseas Students (TPS Levies) Bill 2011

The Department welcomes the 20 submissions from industry stakeholders received by the House of Representatives Standing Committee on Education and Employment in relation to the Education Services for Overseas Students (ESOS) Bills currently before the Parliament. In that context the Department noted the strong overall support across submissions for the proposed reforms, especially in relation to establishing a more robust and simpler Tuition Protection Service (TPS), national registration and stronger record-keeping requirements.

In terms of the main common themes across the submissions to the House of Representatives Standing Committee on Education and Employment the Department offers the following broad comments:

1. Default notification requirements

A common theme raised by stakeholders is in relation to the reporting timeframe given to providers and students in the case of a provider or student default. A number of providers view the 24 hours defined in the Bill to be too short.

In the case of a provider default it would not seem unreasonable that a notification could be provided to the Secretary and TPS Director within 24 hours. To the extent possible notifications will be simplified and automated through the PRISMS computer system.

In case of a student default, the 24 hour notification is from the day of student default, for example where the provider refuses to deliver a course to a student for one of the reasons specified in the Bill or due to non-commencement of the student. There are provisions in the Bill that take into consideration instances where students don’t commence on the initially agreed starting day by arrangement between the student and the provider. This timeframe has been developed to reduce delays should the student be referred to the TPS, especially in situations where student welfare concerns are paramount. The Baird Review noted concerns in relation to delays in student placements. The timeframe will also avoid situation where responsible authorities hear about critical incidents involving students for the first time through media outlets. Extension of the reporting timeframe will dilute the advantage of prompt reporting.

Importantly, the details of the notification requirements will be set out by the Minister in a legislative instrument, the development of which will include consultation with the sector.

2. Limits on prepaid fees

Currently providers are able to collect full or part course fees from students on enrolment, before their visa is approved. This can involve considerable sums of money which may have to be refunded if the provider is unable to deliver the course or the student is not approved for a student visa. This practice can also undermine quality, as once all fees are paid the incentive for providers to ensure students continue to be satisfied with the service being provided is reduced.

It also 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. 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.

The main objective of setting limits on pre-paid fees 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.

- Concern about the impact on business models and timeframe for businesses to make adjustments

The Government's view is that a proposed commencement of 1 July 2012 for limiting pre-paid fees gives providers sufficient notice and time to make any changes to their business practices.

Limiting pre-paid fees is consistent with the new registration criteria introduced in March 2010 and increased scrutiny of the financial viability of providers. In Victoria, many providers have already been required to set up similar accounts for prepaid fees.

Further, other than for courses of less than 6 months duration, taking full fees in advance is most common for English language, foundation programs and school courses but occurs to some extent in all sectors.

This means that the majority of providers currently have financial and administrative systems in place to manage more than one collection of fees. It also supports the view that a measure to limit pre-paid fees to one study period is relevant to all sectors rather than just targeted to particular sectors.

- Problems for providers arising from the requirement that study periods are no more than 24 weeks and restrictions on the collection of prepaid fees (subsequent to the initial study period) to less than 2 weeks prior to the start of each study period

The limit on study periods up to 24 weeks was chosen because it is an average semester, approximately 6 months. 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.

Following consultation with English Australia the proposed study period was increased from 20 weeks to 24 weeks to better accommodate short courses and, as drafted, allows a provider to collect prepaid fees for more than one short course in a study period as long as together they still fall within a 24 week period.

Under the proposed amendments, providers will still be able to collect up to 50 per cent of the total cost prior to the students commencing their studies to give sufficient business flexibility and better secure the commitment of the student. This means, for example, a student enrolled in a three year degree course with 6 semesters costing $50,000 may be asked to pay $25,000 for the first semester on enrolment with $25,000 distributed over the remaining semesters. The Government considers this a generous upfront limit and for this reason has proposed restricting providers taking subsequent prepayments until 2 weeks before each successive study period. This is to prevent providers from undermining the policy objective of the measure by demanding the rest of the fees as soon as the student commences study.

- A view that limitations are seen as an unnecessary burden on providers, especially publicly funded providers, at low risk of not meeting default refund obligations.

The approach to the TPS is for a universal system to ensure a robust model that supports the reputation and competitiveness of Australia's international education. As already mentioned, the practice of taking full upfront fees is to some extent across all sectors both public and private and is at odds with reasonable business transactions where the consumer pays in instalments as they continue to be satisfied with the quality of the service being delivered. Having said this, to minimise unnecessary regulatory burden, publicly funded providers will be exempt from the requirement to maintain a designated account and for those that are non-exempt, this requirement is only on the collection of the first study period tuition fees. There are no regular reporting requirements attached to this account. Protecting the money in these accounts relies predominantly on strict liability offences that apply to the managerial agents and the fact that the money cannot be used for the payment of other debts. A more onerous reporting and audit regime would be necessary if designated accounts were to be ongoing so that providers can continue to take full fees in advance, as has been suggested. This is seen as unworkable for the same reasons that the option of trust accounts as a robust tuition protection mechanism was discounted by Mr Baird. The main objective of the designated accounts is to separate prepaid fees from operating accounts so timely refunds can be made if a visa is refused.

3. Timeframe to implement the measures

The Department notes the concerns from the sector regarding the implementation timeframes. The Department also notes that the Baird recommendations were publicly released in March of 2010.

The Department believes delay continues the risks associated with the current arrangements, including impacts on students, reputational damage and exposure of Australian taxpayers associated with future college closures. These concerns are well set out in the Baird Review.

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.

It is anticipated that the TPS Director would likely make a decision on the TPS levy in October 2012 and subsequently a legislative instrument would be brought before the Parliament shortly thereafter. These timeframes are not dissimilar from those that currently apply in relation to the decision making process the Contributions Review Panel currently undertakes in setting the annual contributions amounts paid by providers to the ESOS Assurance Fund.

4. Transparency regarding the risk component of the TPS Levy

The risk indicators and the risk component of the TPS Levy will be determined by the TPS Director, informed by a representative TPS Advisory Board comprised of industry and Commonwealth representatives with experience and expertise in the international education sector.

It is important that the mechanism to determine the risk component of the TPS Levy involves industry participation and ensures transparency. The Department envisages further consultation and actuarial advice to be sought once the TPS Director and Advisory Board are appointed.

The introduction of risk based charges is a key recommendation of the Baird review and will create greater incentive for providers to lower their risk.

There is a formula on the calculation of the risk-based levy in the legislation.

5. Ongoing consultation and communication with the sector

Some stakeholders have indicated their concerns about the timeframe available for them to consider and comment on the Bills.

There has been a comprehensive consultation process undertaken as part of the Baird Review including a cost-benefit analysis on different options for reforming the tuition protection framework conducted by Taylor Fry, external actuarial consultants to the review.

Following the release of the Baird Review in March 2010, further submissions were sought from the sector in December 2010 to inform the Government's response. 52 submissions were received, and the Government has taken these into account in formulating the Bills currently before the Parliament.

Subsequent targeted consultations were also conducted by the Government with key stakeholders. Key elements of the proposed TPS model and issues in relation to pre-paid fees were outlined at these targeted consultations.

While it may be an expectation by some stakeholders, it is not common practice for an exposure draft of a Bill to be released for comment prior to introduction in the Parliament.

The Department is committed to ongoing consultation with key stakeholders on the implementation details and associated changes arising from these Bills. Some of the comments in submission made to the committee can be considered in consultation about the detailed implementation of these arrangements.

As part of the implementation of the Baird Review recommendations, the Department is developing a comprehensive communication strategy to assist providers understand and prepare for the changes proposed. This will include, for example, question and answers and facts sheets on the AEI website, direct communication via PRISMS, stakeholder information sessions in all major capitals and regional centres.