

E N G L I S H



A U S T R A L I A

Committee Secretary
Senate Education, Employment and Workplace Relations Committee
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Australia

EDUCATION SERVICES FOR OVERSEAS STUDENTS LEGISLATION AMENDMENT BILL 2010 (PROVISIONS)

Submission by **ENGLISH AUSTRALIA**

Background

In August 2009 Deputy Prime Minister the Hon Julia Gillard MP asked the Hon Bruce Baird AM to review the Education Services for Overseas Students (ESOS) Act 2000 and report back to Government with changes designed to ensure Australia continues to offer world-class quality international education.

The review considered the need for enhancements to the ESOS legal framework in four key areas: supporting the interests of students; delivering quality as the cornerstone of Australian education; effective regulation; and sustainability of the international education sector.

Mr Baird presented his final report to Government on Tuesday 9 March 2010 with recommendations for how the legislation can be changed to better protect international students and the integrity of the Australian international education sector.

On 23 June 2010 the Minister for Education the Hon Julia Gillard announced further details of the implementation of the Government's response to the Baird Review recommendations and introduced the first set of changes to Parliament.

The Education Services for Overseas Students Legislation Amendment Bill 2010 (Provisions) (the Bill) is the first round of changes to the ESOS Act recommended by the Baird review and proposes to make adjustments to the legislation as well as to the Ombudsman Act 1976.

The dual focus of this bill is risk management and more effective enforcement.

On 24 June 2010 the Senate referred the Bill to the Senate Education, Employment and Workplace Relations Committee for inquiry and report.

The Committee is seeking written submissions from interested individuals and organisations by 30 July 2010, with a reporting date of 24 August 2010.

Overview

The Bill will introduce provisions to strengthen the registration process for approved providers. As part of proving their demonstrated capacity to provide education of a satisfactory standard, providers will have to demonstrate access to the financial resources to meet the objectives of the ESOS Act, have a sustainable business model, and the capability, governance structures and management to deliver education of a satisfactory standard. The purpose of this measure is to build on the previous amendment which introduced two new registration criteria and to further raise the bar of entry into the international education sector.

Building on the risk managed approach to the re-registration process introduced by the previous amendment to the ESOS Act, this measure will extend a risk management approach to all registrations and throughout the registration period. The purpose is to better identify risk and ensure a consistent assessment of risk by all state designated authorities to reduce the number of high risk providers entering the international education sector, or set appropriate conditions on that registration, including for ongoing monitoring to better manage risk. This measure will mean that when assessing a provider for registration, the registering body will set a period of review, and any conditions that should apply arising from an assessment of the provider's risk profile. In addition to registration, a risk management approach will target regulatory activity to reduce duplication of effort and unnecessary regulatory burden.

The risk management approach will be supported by limiting a provider's registration period to no more than five years. This will also 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 domestic quality assurance frameworks.

Risk management will be further supported by enabling conditions to be placed on a provider's registration when the provider is first registered or anytime throughout the registration period related to risk. This measure allows the Commonwealth/Secretary to impose a condition on a provider's registration on its own initiative, rather than on a recommendation by a state designated authority and for reasons other than noncompliance. Imposing a condition on a provider's registration will arise from a provider's risk profile provided by the state designated authority or where risk is identified separately by the Commonwealth as part of ongoing compliance monitoring.

This measure will also extend existing sanctions and strengthen the ability to take effective enforcement action by introducing financial penalties for a broader range of non-compliant behaviour to better address emerging issues confronting the international education sector, such as unethical recruitment activity and maintaining student records.

To make ESOS stronger, the ESOS Review recommended that targets and regular reporting on all regulatory activities undertaken be published. This measure will allow the Secretary to publish any actions taken by the Commonwealth under Parts 6 and 7 of the ESOS Act (which deal with enforcement action, and monitoring and searching activities respectively). The appeals of providers against the enforcement action taken will be no bar to the publication of this information, with the publication corrected if the appeal is upheld.

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. In addition to investigating complaints, the Commonwealth Ombudsman will provide advice and training to private registered providers to facilitate best practice complaint handling. The Commonwealth Ombudsman will also review and investigate complaint handling and may report on broader systemic issues across the international education sector.

English Australia – preliminary comments

English Australia welcomes this opportunity to provide input to the Australian Senate's Education, Employment and Workplace Relations Committee.

English Australia would be pleased to provide further information to assist the Committee's considerations and would welcome the opportunity to make a presentation to the Committee.

English Australia would like to table some preliminary comments regarding the implementation of the ESOS Act before providing detailed comment on the content of the Bill.

Much has been said and written regarding the ESOS legislative framework that regulates international education in Australia.

In tabling the Bill, the Parliamentary Secretary for Education stated that the ESOS Act “is widely recognised as one of the best legislative frameworks for international education in the world”.

English Australia endorses the need to review the Act to ensure that it continues to keep pace with change in the industry, however wishes to state in the strongest terms that any legislation is only as effective as the **enforcement** regime and in this respect, the industry has been poorly served to date.

Government regulatory bodies have not increased their resourcing to match the growth in the number of providers. Unless governments apply adequate resources to enforcing the legislation, no amount of amendments will achieve the improved outcomes they are intended to achieve. English Australia calls for commonwealth and state governments to ensure that **appropriate resources** are applied so that confidence in the efficacy of the legislation can be restored.

In tabling the Bill, the Parliamentary Secretary for Education also stated that “as with re-registration, the details of the risk management approach, such as the broad indicators of risk and type of conditions that should apply, will be further developed in consultation with states and territories through ministerial council processes and the sector more broadly, prior to implementation.” English Australia would like to emphasise the need for

ongoing consultation with the industry as well as across the various jurisdictions. It will be critical that any proposed changes are examined from the provider perspective to ensure that there are no unintended consequences that might impact negatively on this important industry.

English Australia – input to the Inquiry

English Australia welcomes the dual focus of this bill on risk management and more effective enforcement. EA believes that both of these areas have been sorely lacking in the application of the provisions of the ESOS Act to date.

English Australia supports the aims of the Bill to:

- better identify risk;
- ensure a consistent assessment of risk by all regulators;
- ensure there are no high-risk providers entering the international education sector;
- enable better targeting and reduced duplication of compliance efforts;
- shift the regulatory burden to those providers that present the greatest risk to the student experience and the reputation of the sector as a whole;
- create incentives for providers to reduce their risk by rewarding low-risk providers with less onerous monitoring regimes.

The EA submission emphasises the need for transparency and fairness in the application of new provisions.

EA endorses the proposal to assess an organisation'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. EA does, however, question the expertise of the regulatory bodies to undertake this assessment. It will be important for regulatory bodies to have access to appropriate expertise and that this be sourced from both financial experts as well as from the industry itself. Transparency in how this provision is applied will also be important.

1) EA requests clarification regarding how the appropriate expertise will be sourced.

EA endorses a risk management approach, however is concerned that this should be both transparent and consistently applied across all jurisdictions. Providers need to understand what criteria the regulatory authorities are using to determine risk. Questions have also been raised about the application of a risk management approach for providers who operate across jurisdictions, with an emphasis on the need to minimise the workload for such providers.

2) EA requests transparency in the risk management process and consistent application across all jurisdictions.

3) EA calls for a specific approach to minimise the workload for providers operating across jurisdictions.

EA endorses a risk management approach that will reward/incentivise good providers as well as manage high risk providers more effectively, however this again needs to be transparent. Providers assessed as being low-risk will seek concrete examples of the advantages in relation to compliance costs in both human and financial resources.

4) EA requests further detail regarding the ability of the Bill to facilitate the minimization of compliance costs for low-risk providers.

Although EA endorses the application of specific conditions on registration to better manage risk, EA urges caution in applying conditions that might affect business levels to the extent that it could drive the business to fail. The explanatory document states that:

“There may be a financial impact for some providers associated with conditions imposed on their registration based on their risk profile, for example, extra monitoring requirements or restrictions on the number of overseas students they are able to enrol (although this would not be a restriction on the number of domestic students enrolled within the overall capacity approved under domestic quality assurance).”

EA notes that ELICOS institutions only deliver courses to international students and that 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. The flow of students is not a tap that can be turned on and off at will. This condition should not be applied except in the most extreme circumstances.

5) EA urges the government to ensure that conditions are appropriate to the level of risk and will not have an overly adverse impact on business levels.

EA endorses the proposal to set varying limits to the period of registration depending on risk but would suggest that sectoral consultation would be necessary to ensure that appropriate variables are set that match the needs of each sector.

6) EA requests consultation regarding the length of registration periods appropriate to the ELICOS sector.

EA appreciates the value of having the option of applying financial penalties, however would stress the need for transparency and consistency in how they are determined and applied. Obviously there will need to be appeal mechanisms available to providers although this is not specified in the Bill itself.

7) EA calls for transparency and consistency in the application of financial penalties.

8) EA requests clarification regarding the appeal mechanisms that will be available to providers.

EA appreciates the value of targets and regular reporting but would like to stress that reputation is critical for providers in ensuring the ongoing trust and confidence of students, their families and agents. 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.

9) EA calls for the publishing of enforcement action to only be undertaken following any and all appeal processes.

EA supports the proposal for the jurisdiction of the Commonwealth Ombudsman to be extended to include students of private registered providers. EA agrees that the Commonwealth Ombudsman is well positioned to promote greater understanding of the complaints process and of provider obligations, as well as provide useful feedback to government on complaint trends to further inform policy.

EA also supports the proposal that the Commonwealth Ombudsman will be in a position to provide advice and training to private registered providers to facilitate best practice complaint handling.

EA is disappointed however that funding for this initiative has been diverted from AEI rather than new funding being sourced.

10) EA calls on the government to apply dedicated funds for this service to international students and not to divert funds from other important initiatives relating to international education.

Conclusion

In conclusion, English Australia would like to state its support for initiatives that recognise good providers and penalise those that are not meeting their responsibilities under the legislation nor acting in the best interests of international students.

English Australia does however stress the need for transparency and consistency in the application of a risk management approach and care in ensuring that the approach is appropriate to the various sectors.

English Australia & the ELICOS Sector

- ❖ English Australia (EA), formerly known as the ELICOS Association, is the national peak body and industry association for the English Language Intensive Courses for Overseas Students (ELICOS) sector. EA was established in the early 1980's and incorporated in 1990.
- ❖ EA represents over 100 member colleges, with over 130 NEAS¹ accredited centres across Australia. Over 80% of all overseas students who study English in Australia study with an EA member college.
- ❖ EA has both public sector (eg. attached to a university or TAFE) and independent language centres amongst its membership.
- ❖ Currently international education is Australia's fourth largest source of export income, with the ELICOS sector accounting for about ten per cent, over \$1.8 billion per annum out of a total of more than \$18 billion for international education as a whole.
- ❖ In 2009, 28 per cent of commencing overseas students holding student visas in Australia were undertaking English language courses (103,993 students). In addition a further 51,898 overseas students undertook English language courses using other visas, primarily Visitor or Working Holiday visas.
- ❖ The ELICOS sector has a 100% international focus as it provides courses only to students from overseas and has no domestic education focus. As such, it is uniquely positioned to provide comment on the needs of international students and international education more broadly.
- ❖ The ELICOS sector plays a critical role in preparing international students with the language skills they need for further study in Australia. As the first step in the educational "pathway" for international students, the ELICOS sector is the first to see any shift in demand.
- ❖ The ELICOS sector is highly vulnerable to changes in the external environment, with short courses (average course length is 12.6 weeks) and short lead-times for enrolments.

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[submission authorised by the Council of English Australia]

¹ National ELT Accreditation Scheme