

LABOR SENATORS' ADDITIONAL COMMENTS

Key Issues

1.1 Labor Senators support in part the streamlining regulatory and reporting requirements as outlined in the Education Services for Overseas Students Amendment (Streamlining Regulation) Bill 2015 and Education Services for Overseas Students (Registration Charges) Amendment (Streamlining Regulation) Bill 2015.

1.2 The changes proposed by the Government come in two parts. The first part, according to the explanatory memorandum, is to streamline the current registration and monitoring of providers with the purpose of aligning reporting requirements and registration periods.

1.3 This is consistent with the Review of Reporting Requirements for Universities by PhillipsKPA, commissioned by the former Labor Government in August 2012 and released in April 2013.¹

1.4 The second part relates to the Government's deregulation agenda in higher education and seeks to remove a range of requirements that affect providers and were largely introduced in response to the last major crisis in the international education sector, following a series of collapses of colleges in 2008 and 2009.

1.5 This crisis was a result of a number of factors, including lax regulation around international education. In response the former Labor Government initiated a range of reforms including the creation of the Tuition Protection Service, and some of the requirements this Bill seeks to remove.

Student Protections

1.6 Some of the provisions in these bills undoubtedly remove or weaken student protections. This should be openly acknowledged.

1.7 Labor Senators understand that regulation must change as circumstances change. The student protections of 2009 or 2012 may not be appropriate for 2016. However, it must also be recognised openly and honestly that there is risk involved. It is wrong to argue that all deregulation is good and all regulation is bad, or for that matter vice versa.

1.8 The events of 2008 and 2009 show the perils of getting our regulatory settings wrong. A spate of college closures, the revelation that a number of providers were operating colleges as fronts for immigration scams and a surge of attacks on Indian students particularly in Melbourne brought into question Australia's reputation as a quality education destination.

1 PhillipsKPA Pty Ltd, *Review of Reporting Requirements for Universities: Final Report*, December 2012, <http://www.lhmartininstitute.edu.au/userfiles/files/news-media/FinalReportReviewofReportingRequirementsForUniversities.pdf> (accessed 30 November 2015).

1.9 In international education quality is everything. Reputational damage can undo the work of years. Our international education industry – now worth more than \$18 billion annually – depends upon a strong regulatory regime and appropriate student protections.

1.10 Unfortunately vigilance must be constant. The events this year with the sham contracting scam allegedly being run out of colleges such as St Stephen Institute of Education and involving Australia Post show that such issues cannot be assumed to be a relic of the past.

1.11 Our fear is that the Government, in its ideological zeal for creating a level playing field between the private and public sectors, may be repeating the mistakes of the former Howard Government.

Reasonable changes can be supported

1.12 Some of the proposed provisions are reasonable; some however leave Labor Senators with anxiety about the potential consequences.

1.13 Labor is prepared to support, with reservations, the provisions relating to the removal of the requirement to report all instances of student default, the definition of a 'study period', and the requirement for providers to enter into an agreement with each overseas student setting out the study periods for their enrolment and the tuition fees payable for each study period.

1.14 The Government has argued that these provisions are better dealt with through the National Code. That may be the case, but the Government is also embarking upon a project of revising the National Code and further information or disclosure of its intentions in this area would have been helpful in allaying our concerns.

1.15 Labor is also prepared to support the measure amending the restriction on education providers receiving more than 50 per cent of tuition fees for a course (if the course is longer than 24 weeks duration) before the student commences. The change will give students (or the person responsible for paying on their behalf, such as their sponsor) the ability to choose to pay more.

1.16 However, we have concerns about how this provision will work in practice. How will the authorities be able to ensure that student choice is indeed genuine, and not coerced? Labor Senators will be looking to the regulators to ensure that this provision is not abused.

Tuition Protection Service and the designated account

1.17 The explanatory memorandum to the Bill explains the provisions to remove the designated account requirement:

As part of the TPS arrangements introduced in 2012, non-exempt (private) providers are required to maintain an account in which all tuition fees paid by students prior to the course commencing must be kept until the student starts the course. Removing this requirement will be of significant deregulatory benefit to non-exempt providers, creating a more level playing field between public and private providers and encouraging competition and innovation in the sector.

1.18 The purpose of the designated account provision is to provide a source of funds for refunds to students should a provider cease operating. This lessens the need to call on the Tuition Protection Service and the Overseas Students Tuition Fund.

1.19 The designated account requirement was one of a range of measures introduced by the former Labor Government following the Baird Review of 2009. Together these measures have been successful in stemming reputational damage that had the potential to severely undermine Australia's international education sector.

1.20 The proposed legislation rolls back some of that framework.

1.21 The Tuition Protection Service has only been in operation since 2012. Some have argued that the designated account provision is not needed because the Overseas Students Tuition Fund (OSTF) undertakes the function of the designated account. That is not how it was envisaged. The OSTF should be called upon as a last resort, not as a right. If it is treated in that way, then in the event of another crisis like 2008-2009 its reserves could be expended quickly.

1.22 Other submitters also agree with Labor. TAFE Directors Australia opposes the removal of the designated account:

In the current environment where there is so much public concern surrounding the actions of some less reputable private providers, TDA feels it imperative that the requirement for retaining pre-paid student fees in a 'designated account' remains.

1.23 Government Education and Training International, an entity of the Tasmanian Government, has also suggested that the designated account should remain:

The designated account ensures private providers are able to guarantee consumer rights of students in times of provider failure.... The designated account should remain to provide this protection in the more vulnerable Private sector.

1.24 The Tuition Protection Service has provided this commentary on the designated account issue, which is deserving of further examination:

With limits on the collection of pre-paid fees retained, the removal of the requirement to hold fees in a designated account reduces the risk to the OSTF measurably; nevertheless, it remains an area of potential risk for the TPS. Whilst the TPS would prefer the retention of this integrity measure, it is also persuaded by the many views of the stakeholders who advocated for its removal.

1.25 At this time Labor Senators are not persuaded that a strong enough case has been made for the removal of this provision.

Recommendation 1

Labor Senators recommend that the Senate support elements the Bill that streamline reporting and regulatory requirements.

Recommendation 2

Labor Senators recommend that the Senate does not support provisions removing the requirement for a designated account.

Senator Sue Lines

Deputy Chair