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Education Services for Overseas Students
(Consequential and Transitional) Bill 2000

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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No. 64 2000–01

Education Services for Overseas Students (Consequential
and Transitional) Bill 2000

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31 October 2000

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Education Services for Overseas Students (Consequential and Transitional) Bill 2000

Date Introduced: 30 August 2000

House: House of Representatives

Portfolio: Education, Training and Youth Affairs

Commencement: Sections 1 and 2 commence on Royal Assent. Most of the remaining provisions commence on Proclamation or six months after Royal Assent, whichever ever occurs first. However, commencement of Schedule 4 is dependent upon commencement of changes to the legislation establishing the Administrative Appeals Tribunal.

Purpose

Package Overview

This Bill is associated with a number of related Bills. The whole package is as follows:

- | | |
|--|---|
| • 'the Principal Bill' | Education Services for Overseas Students Bill 2000 |
| • 'the Assurance Fund Bill' | Education Services for Overseas Students (Assurance Fund Contributions) Bill 2000 |
| • 'the Consequential Bill' | Education Services for Overseas Students (Consequential and Transitional) Bill 2000 |
| • 'the Registration Charges Bill' | Education Services for Overseas Students (Registration Charges) Amendment Bill 2000 |
| • 'the Migration Bill' | Migration Legislation Amendment (Overseas Students) Bill 2000 |

A complete background to the context surround this legislative package is provided in the [Bills Digest](#) to the Education Services for Overseas Students Bill 2000.

Warning:

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This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

This Bill

The purpose of this Bill is to:

- repeal the *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991* (the ESOS Act) and amend the *Education Services for Overseas Students (Registration Charges) Act 1997* (the Registration Act) accordingly
- provide for application and transitional matters relating to the repeal of the ESOS Act and the enactment of the Principal Bill and related obligations and requirements
- amend the *Migration Act 1958* to permit cooperation between relevant agencies in relation to performance of functions and information sharing, and
- amend the proposed *Education Services for Overseas Students Act 2000* to take into account amendments proposed in the Administrative Review Tribunal Bill 2000.

Main Provisions

Schedule 1 repeals the ESOS Act and amends the Registration Act to substitute a reference to the proposed *Education Services for Overseas Students Act 2000*.

Application and Transitional Matters

Schedule 2 deals with application and transitional matters.

Item 1 deals with the application of certain obligations on registered providers under **proposed sections 19, 20 and 21** of the Principal Bill. These obligations relate to

- the provision of information regarding accepted students (**proposed section 19**)
- the sending of notices of student visa breaches (**proposed section 20**), and
- the keeping of records of accepted students (**proposed section 21**).

The Minister must publish a notice in the *Gazette*, and write to each registered provider, specifying the starting day for these obligations (and giving at least 28 days notice). Generally the obligations arise in relation to events occurring on or after the starting day. However, the Minister may postpone the application of these obligations in relation to changes in studies or courses and student visa breaches. He or she may also allow existing registered providers extra time to comply with record keeping requirements.

Item 2 carries over details regarding a provider's registration or suspension status.

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Item 3 permits the National Code to allow existing registered providers extra time to comply with code requirements.

Item 4 deals with the application of requirements relating to the ESOS Assurance Fund. Generally, the existing notified trust account (NTA) arrangements continue to apply until the commencement and application of the Assurance Fund provisions in the Principal Bill.

These Assurance Fund provisions commence on Proclamation or six months after Royal Assent. However, requirements they impose apply to 2001 and later years (**item 4(2)**). The Minister may postpone these requirements so that they apply in 2002 and later years (**item 4(3)**) and the NTA arrangements continue to apply in the interim (**item 4(4)**).

Item 5 revokes trust obligations relating to course monies held in notified trust accounts following the repeal of the ESOS Act.

Item 6 provides for regulations relating to transitional measures.

Migration Issues

Schedule 3 amends the *Migration Act 1958* to permit cooperation between the Departments of Immigration and Multicultural Affairs (DIMA) and Education, Employment Training and Youth Affairs (DETYA).

Background

Section 488 of the *Migration Act 1958* deals with access to information kept by DIMA 'for the purposes of [the *Migration Act 1958*] in relation to the entry of persons into, and departure of persons from, Australia'. Access and use of such information is prohibited.

However the DIMA Minister may authorise a DIMA officer to read, examine, reproduce, use or disclose such information for a range of listed purposes including immigration, customs and excise, quarantine or health, and law enforcement (sub-paragraphs 488(2)(a)(i)–(v)). He or she may also authorise an officer from other listed agencies to perform actions but only for a purpose relevant to that agency (paras 488(2)(b)–(e)).¹

Amendment

Part 1 deals with disclosure of migration information.

Item 1 expands the range of purposes for which information may be accessed and used. It includes disclosure for the purposes of the ESOS Act (**proposed sub-para 488(2)(a)(vi)**) and for 'prescribed Commonwealth, State or Territory legislation' (**proposed sub-para 488(2)(a)(vii)**). In this way, it permits the DIMA Minister to prescribe by regulations the relevant State and Territory legislation relating to education services for overseas students.

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Item 2 expands the range of officers that may be authorised for access and use. It includes DETYA officers (**proposed sub-para 488(2)(f)**)² and prescribed employees of prescribed agencies of the Commonwealth, State or Territory (**proposed sub-para 488(2)(g)**).

Part 2

Item 4 extends the power to make regulations under the Migration Act 1958 to include purposes associated with the amendments in **Part 1**.

Merits Review Issues

Schedule 4 amends the proposed ESOS Act in order to make adjustments in terminology that would be required following enactment of the Administrative Review Tribunal Bill 2000.

Concluding Comments

One matter is worth noting in relation to the proposed migration amendments. The power to expand by regulation the range of purposes and officers associated with access and use of migration information may significantly alter the current arrangements. As indicated, the power to permit access and use is tightly controlled and limited in respect of particular legislation and particular agencies. Yet, the amendments permit the Government to add by regulation other legislation and agencies, *including State and Territory legislation and agencies*, without any necessary link with education services or other existing subjects.

Endnotes

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- 1 For example an officer from the Attorney-General's Department may read, examine, reproduce, use or disclose information for the purposes of the *Family Law Act 1975*.
 - 2 Or officers in the Department administering the *Education Services for Overseas Students Act 2000*.

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