



Education Services for Overseas Students Amendment Bill 2005

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Education Services for Overseas Students Amendment Bill 2005

Date Introduced: 14 September 2005

House: House of Representatives

Portfolio: Education, Science and Training

Commencement: The main amendments (Schedule 1) commence at the same time as Schedule 1 to the Higher Education Legislation Amendment (2005 Measures No. 4) Act 2005

Purpose

To amend the Education Services for Overseas Students Act 2000 (the ESOS Act) to:

- permit the operation of a foreign higher education provider; and
- ensure that registered providers can continue to charge overseas students tuition fees that include an amount for any action that the provider is required to undertake because of the ESOS Act or the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students.

Background

Foreign Institutions

The ESOS Act regulates education services for overseas students. At present, the Act requires that an education provider must be a resident of Australia in order to be registered.

On 29 October 2004 the State of South Australia and Carnegie Mellon signed Heads of Agreement expressing their intention to collaborate in the establishment of a privately-owned university in Adelaide. The new institution will be part of Carnegie Mellon University, which is resident in Pittsburgh, USA. It is intended that the institution will provide courses to both Australian and overseas students.

In order to permit the operation of this foreign institution in Australia, amendments are required to both the ESOS Act and the *Higher Education Support Act 2003* (the HESA). The Higher Education Legislation Amendment (2005 Measures No.4) Bill 2005 contains the necessary amendments to the HESA. Readers should consult the Digest for that Bill for background on the Carnegie Mellon proposal.

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.

Tuition Fees and Support Services

The Bill adds a **new sub-section 18-2** to the ESOS Act. This states that a registered provider does not breach its obligations under this Act or any other Act relating to education if it charges overseas students 'tuition fees' which include amounts for actions that the provider is required to undertake because of the ESOS Act or the National Code. The latter is a reference to the 'National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students'.¹ Providers registered under the ESOS Act are required to comply with this Code. The Code contains the following:

Student support services

45. The registered provider must have in place appropriate support services and be able to demonstrate the advice provided to intending overseas students on these services. These must include appropriate arrangements for independent grievance handling/dispute resolution, which are inexpensive and include a nominee of the student if the student so chooses. The procedures must allow for prompt resolution having regard to the duration of the overseas student's stay in Australia on a student visa.

46. The registered provider must ensure that upon arrival, overseas students have access to information or counselling services in the following areas:

46.1 Orientation

46.2 Academic progress

46.3 Further study

46.4 Accommodation

47. The registered provider must discharge their responsibility under DIMA requirements to approve accommodation/welfare arrangements for overseas students under 18 years of age.

48. The registered provider must appoint a suitably qualified person as student contact officer, and ensure that the officer is aware of their responsibilities. The registered provider must advise commencing students of the contact details for this officer. The officer will be responsible for provision of support services to overseas students, including counselling, which will:

48.1 Promote the successful adjustment by overseas students to life and study at an Australian institution.

48.2 Assist students to resolve problems which could impede successful completion of their study programs.

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Section 7 (2) of the ESOS Act provides that money received by a registered provider from an overseas student for a course ('course money') includes:

- (a) tuition fees; and
- (b) any amount received by the provider that the provider is to pay, on behalf of the student, to a registered health benefits organisation (within the meaning of the National Health Act 1953); and
- (c) any other amount that the student had to pay the provider, directly or indirectly, in order to undertake the course.

The amendment thus enables registered providers to recoup the cost of the support services required by the Code as it is part of the student's tuition fee and would come within the meaning of 'course money'.

However, how the amendment works alongside the Higher Education Support Amendment (Abolition of Compulsory Up-Front Student Union Fees) Bill 2005 (the VSU Bill) currently before Parliament may be of issue. The VSU Bill contains the following provision:

A higher education provider must not require a person enrolled with, or seeking to enrol with, the provider to pay to the provider or any other entity an amount for the provision to students of an amenity, facility or service that is not of an academic nature, unless the person has chosen to use the amenity, facility or service.²

It might be argued that this provision could have the effect of preventing higher education providers who are also registered as providers under the ESOS Act from recovering the cost of the support services for overseas students required by the Code.

While neither the Minister's Second Reading Speech, nor the *Explanatory Memorandum*, makes any reference to the VSU Bill in connection with the new provision, it would appear that the proposed amendment will remove any possible constraint on the ability of providers to impose compulsory charges on overseas students for those support services mandated by the Code.

Main Provisions

Item 3 of Schedule 1 substitutes a **new section 16** with the effect of permitting the registration of non-resident providers if they are included in Table C of the HESA.³

Item 4 of Schedule 1 clarifies that a Table C provider does not breach its obligations under the national Code merely because the provider is not a resident of Australia.

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Item 6 of Schedule 1 adds a **new sub-section 18(2)** which permits registered providers to charge a tuition fee which includes amounts for actions the provider is required to undertake because of the ESOS Act or the National Code.

Endnotes

- 1 The Code can be obtained from:
http://www.dest.gov.au/sectors/international_education/publications_resources/other_publications_resources/esos_national_code/
- 2 Proposed sub-section 19-37(2) contained in Item 1 of Schedule 1 of the VSU Bill.
- 3 See the Digest for the Higher Education Legislation Amendment (2005 Measures No. 4) Bill 2005 for a description of the categories of higher education providers authorised by the HESA.

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