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11 August 2006, no. 13, 2006–07, ISSN 1328-8091

## **Education Services for Overseas Students Legislation Amendment (2006 Measures No.1) Bill 2006**

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## **Education Services for Overseas Students Legislation Amendment (2006 Measures No.1) Bill 2006**

**Date introduced:** 31 May 2006

**House:** House of Representatives

**Portfolio:** Education, Science and Training

**Commencement:** 1 January 2007

### **Purpose**

The Bill amends the *Education Services for Overseas Students Act 2000* and the *Education Services for Overseas Students (Registration Charges) Act 1997* to strengthen and clarify the consumer protection aspects of the regulatory framework that governs the provision of education and training to overseas students.

### **Background**

The provision of education and training to overseas students in Australia is a responsibility shared by the Commonwealth and the State and Territory governments. The States and Territories have primary responsibility for the quality control of education providers and their courses and exercise this through their processes of approving, registering and monitoring providers and their courses.

The Commonwealth's interest is in protecting the reputation of this \$7 billion per year export industry<sup>1</sup>, maintaining the integrity of the migration program and protecting the interests of overseas students as consumers.

The regulatory framework therefore involves Commonwealth and State/Territory legislation, administrative oversight by the Commonwealth Department of Education, Science and Training (DEST) and the Commonwealth Department of Immigration and Multicultural Affairs (DIMA) and State/Territory education and training authorities.

The [\*Education Services for Overseas Students Act 2000\*](#) (ESOS Act) and associated legislation is the legal framework governing the responsibility of education providers to overseas students who come to Australia on a student visa in the higher education, vocational education, secondary school or English language sectors. The associated legislation is the *Education Services for Overseas Students (Registration Charges) Act 1997*, *Education Services for Overseas Students Regulations 2001* and the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students (National Code).<sup>2</sup>

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The ESOS Act introduced substantial changes to the Commonwealth's arrangements for strengthening the regulatory arrangements of education services to overseas students.<sup>3</sup>

The arrangements under the ESOS Act include:

- provisions for the registration of education providers and their courses on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS)
- the compulsory membership by providers of a tuition assurance scheme
- contributions by providers to an assurance fund to ensure that there are funds to pay for student tuition in cases of provider collapse
- reporting obligations on providers – for example in relation to disclosure of provider activities such as previous breaches or breaches of associates, and in relation to student breaches
- a compulsory national code which sets standards and benchmarks for providers and their courses in order to qualify for registration and which serves to guide States and Territories in their approval, registration and monitoring activities
- compulsory compliance with the national code, and sanctions for being in breach of both the Act and the National Code, and
- Commonwealth powers to investigate providers; impose sanctions and remove non *bona fide* operators from the industry.

Section 176A of the ESOS Act required an independent evaluation of the operation of the Act within three years of Assent. The evaluation commenced in May 2004 and reported in June 2005. The evaluation team concluded that

The architecture of the quality benchmarks represented by the ESOS framework is sound: standards for providers of education and training that are mandatory and operate nationally; a cooperative national regulatory model; the characterisation of the student-institution relationship in consumer terms; and the integration of export education and migration policy.<sup>4</sup>

However the evaluation team made 41 recommendations to improve the framework's effectiveness. Many of the recommendations require changes to the National Code. Others require amendments to the ESOS Act and related legislation. The amendments in the Bill are the first stage implementation of some of the evaluation's recommendations. Consultation is still taking place on the proposed changes to the National Code. Those and other changes have been flagged as amendments to be submitted in the spring sittings.

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## **Financial implications**

The Explanatory Memorandum states the Bill will be Budget neutral and will not increase costs to the Commonwealth or the education export industry. However there are possible financial implications for education providers in the strengthened regulations implemented by the Bill.

## **Main provisions**

The amendments are of a technical nature and relate to the credentials of education providers and the strengthening and clarification of consumer protection aspects of the regulatory framework.

The main amendments are usefully summarised at page 2 of the Explanatory Memorandum. Some of the following descriptions of the main provisions are based on this summary.

### **Registration and the 'fit and proper' test**

Only providers who are registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) are able to offer education and training to overseas students. Providers must firstly satisfy state and territory government laws. However the Federal Government retains the final power to register a provider on CRICOS and must be satisfied they comply with the ESOS legislation. Providers must demonstrate they are 'fit and proper' to be registered.

The ESOS Act evaluation noted inconsistencies in interpretation of the term 'associate' in the 'fit and proper' person regulations and recommended enhancing the 'fit and proper' person test (Recommendation 9).

**Items 1, 5, 6, 7-12, 15-16, 20 and 23** of the Bill deal with extending the 'fit and proper' test to 'high managerial agents' who represent the provider in relation to the business of providing courses. Sections 9, 11, 17 and 83 of the ESOS Act will now apply to high managerial agents, in the same way these provisions currently apply to associates of providers.

**Item 24** provides for automatic suspension of a provider's registration where the provider no longer meets the 'fit and proper' test during their registration. It allows the Minister to impose sanctions against a registered provider if the Minister believes on reasonable grounds that the provider is not 'fit and proper' to maintain registration.

**Item 26** implements recommendation 14 of the ESOS Act evaluation by allowing for the automatic suspension of the registration of a provider who fails to pay the Annual Registration Charge (ARC) by the due date. The suspension will be removed on payment of the amount owing, any late payment penalty and the reinstatement fee.

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**Item 8** requires that the initial registration charge be paid before registration. This requires a consequential amendment to the *Education Services for Overseas Students (Registration Charges) Act 1997*.

**Item 25** requires that the reinstatement fee is paid before the removal of the suspension of, or a condition on, the registration of a provider. Item 25 provides for notification and reinstatement procedures similar to those in section 89, but the decision to allow removal of a suspension or condition must now be notified to the provider.

A ‘high managerial agent’ as defined in new section 5 ‘means an employee, agent or officer of the provider with duties of such responsibility that his or her conduct may fairly be assumed to represent the provider in relation to the business of providing courses.’ The Explanatory Memorandum gives examples as officers with management responsibility, teachers, consultants and principals of the provider. According to the Minister, extending the ‘fit and proper test’ to high managerial agents will ‘prevent former providers with an adverse history in the industry from taking up positions of influence with other providers’.<sup>5</sup> The Minister states that ‘in introducing these amendments, my Department has been mindful of the need to avoid unnecessary regulation’.<sup>6</sup> However although the extension of the ‘fit and proper test’ may provide further guarantee of the credentials of registered providers it may prove onerous for large providers such as those in the higher education sector with high staff numbers.

### **Strengthening consumer protection**

**Item 13** implements recommendation 10 of the ESOS Act evaluation by clarifying that where a registered provider is involved in the delivery of a course with another provider, course money may be received and disbursed by one of the other providers, as long as there is an agreement in writing which allows this. However, the registered provider is deemed responsible, as if the money had been paid to the registered provider.

**Item 14** clarifies that the Tuition Assurance Scheme (TAS) coverage now relates to each course that a provider offers to overseas students.

**Item 18** clarifies that, in the event of provider default, a provider is relieved of its obligation to offer a student a refund if the student accepts an alternative course offered by the provider at their own expense, or a suitable alternative course through their TAS. The student must accept the offer in writing.

**Item 19** requires that a provider who is unable to meet their refund obligations inform the Secretary of the Department of Education, Science and Training as well as the ESOS Assurance Fund Manager.

**Item 34** implements recommendation 25 of the ESOS Act evaluation by extending the Secretary’s authority to give information obtained for the purposes of the ESOS Act to tuition assurance schemes and persons listed in the regulations.

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These provisions are largely technical and should have a minimal regulatory impact whilst strengthening the consumer protection aspects of the framework.

## Concluding comments

With the exception of the extension of the ‘fit and proper test’ to ‘high managerial agents’, the provisions in the Bill are largely of a technical nature and result from recommendations made in the evaluation of the ESOS Act.

## Endnotes

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1. The economic benefits of international education to Australia are now estimated to be around \$7.5 billion of which \$6.9 billion is from spending by onshore students. See: Department of Education, Science and Training, *Annual Report 2004-05*, p.113.
2. See [Easy guide to ESOS](http://www.dest.gov.au/sectors/international_education/policy_issues_reviews/key_issues/esos/easy_guide_to_ESOS.htm) on the Department of Education, Science and Training website: [http://www.dest.gov.au/sectors/international\\_education/policy\\_issues\\_reviews/key\\_issues/esos/easy\\_guide\\_to\\_ESOS.htm](http://www.dest.gov.au/sectors/international_education/policy_issues_reviews/key_issues/esos/easy_guide_to_ESOS.htm) .
3. For details on the background to these changes, see *Bills Digest, Nos. 62-66, 2000-01*.
4. PhillipsKPA and LifeLong Learning Associates, *Evaluation of the Education Services for Overseas Students Act 2000* (Australian Education International, Department of Education, Science and Training, Canberra 2005), p. xxxiii.
5. Julie Bishop, Second Reading Speech, *Debates*, 31 May 2006, p.7.
6. *ibid.*

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