



## Education Services for Overseas Students Legislation Amendment Bill 2007

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## Education Services for Overseas Students Legislation Amendment Bill 2007

**Date introduced:** 22 March 2007

**House:** House of Representatives

**Portfolio:** Education, Science and Training

**Commencement:** Sections 1 to 3 commence on Royal Assent. The operative provisions (Schedule 1) commence on 1 July 2007.

### Purpose

The main purpose is to amend the *Education Services for Overseas Students Act 2000* to make some relatively modest changes to the Commonwealth's administration of the regulatory regime covering the provision of education and training to overseas students in Australia.

### 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 a \$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 and the administrative effort of the Commonwealth Department of Education, Science and Training (DEST) and the Commonwealth Department of Immigration and Citizenship (DIAC) and the 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

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of Practice for Registration Authorities and Providers of Education and Training to Overseas Students (National Code).<sup>2</sup>

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 assessed the effectiveness of the ESOS Act in achieving its objectives to:

- provide nationally consistent registration of education and training providers for overseas students studying in Australia
- minimise the presence in the industry of providers lacking integrity or who facilitate student breaches of their visa conditions
- ensure students receive either alternative tuition or a refund if they are unable to receive the tuition for which they have paid, and
- support migration policy

The evaluation commenced in May 2004 and reported in June 2005 (the [2005 Evaluation](#)). The 2005 Evaluation 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

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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 2005 Evaluation team made 41 recommendations to improve the framework's effectiveness many of which were implemented in the amendments to the Act in 2006.<sup>5</sup>

The ESOS Act was also touched upon in a 2004 report of the Joint Standing Committee on National Capital and External Territories. The report, the [\*Indian Ocean Territories: Review of the Annual Reports of the Department of Transport and Regional Services and the Department of the Environment and Heritage\*](#), recommended that the ESOS Act be amended so that it applied to the Indian Ocean Territories.

The Bill inserts some of the remaining recommendations of the 2005 Evaluation. It also makes some amendments to reflect changes to the National Code that are due to come into effect in July 2007.<sup>6</sup> Finally, it also makes changes designed to, in the words of the Explanatory Memorandum:<sup>7</sup>

provide flexibility in the allocation of the roles and responsibilities between the Australian Government and the states and territories governments under the Act.

Whilst the practical effect of these 'flexibility' changes is not detailed in the Explanatory Memorandum, the Minister has stated in his second reading speech that the:<sup>8</sup>

Measures made possible by this amendment will enhance national consistency and minimise any perception of duplication in compliance monitoring by the designated authorities and the Australian government.

## Financial implications

The Explanatory Memorandum states that there will be no financial costs to either the Commonwealth or education providers.

## Main provisions

Amendment of the *Education Services for Overseas Students Act 2000*

**Item 1** inserts **new sections 4A and 4B**.

**New section 4A** sets out objects for the ESOS Act. They are:

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- to provide financial and tuition assurance to overseas students for courses for which they have paid; and
- to protect and enhance Australia's reputation for quality education and training services; and
- to complement Australia's migration laws by ensuring providers collect and report information relevant to the administration of the law relating to student visas.

Insertion of objects into the Act was recommended in the 2005 Evaluation as their absence was causing 'confusion about the purpose of the legislation across governments and the Australian education export industry'.<sup>9</sup> The new objects are broadly consistent with those recommended by the Report.

**New section 4B** provides that, with some specific exceptions,<sup>10</sup> the ESOS Act is to apply to Christmas Island and Cocos (Keeling) Island. Currently, the National Code specifically excludes service delivery in the Australian External Territories from its scope. However the 2005 Evaluation supported the Christmas Island District High School and Chamber of Commerce proposal to be included in the legislative framework to enable the High School to offer Years 11 and 12 to overseas students. The evaluation stated 'the policy and practical difficulties which apply to a sweeping extension of scope to all External Territories do not apply to Christmas Island High School and an amendment to the ESOS Act is proposed to enable the High School to be registered to deliver courses to overseas students'.<sup>11</sup>

The 2004 Committee report referred to above also recommended increasing coverage of the ESOS Act to the Indian Ocean Territories, although its discussion focussed on Christmas Island.

**Items 2-3, 5-8, 10, and 19-21** collectively make technical amendments to various provisions that, where the relevant education providers are in different states, will enable designated authorities<sup>12</sup> to approve arrangements for course delivery for all relevant providers, including those located outside the jurisdiction of the designated authority in question.

Section 9 sets out the conditions that must be met before an approved education provider can be placed on CRICOS. **Item 9** deletes the phrase 'that the provider complies with the national code' in paragraph 9(2)(c) and substitutes the new phrase 'in the form approved by the Secretary for the purposes of this paragraph for the State, relating to the provider's compliance with the national code'. The Explanatory Memorandum comments:

The purpose of this amendment is to provide flexibility in the allocation of the roles and responsibilities between the Australian Government and the states and territories governments under the Act.

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It is not immediately clear what this means regarding who has responsibility for certifying that the provider in question complies with the National Code.

The ESOS legislation supports the integrity of the student visa programme through the provider reporting conditions. Under sections 19 and 20 of the Act, providers are obliged to report students who are not meeting the 'prescribed condition of the student visa'. Reporting conditions are clarified in Standards 10 and 11 of the National Code which allow providers to devise appropriate policies and procedures to monitor student progress and attendance. Visa conditions which must be reported are prescribed in the Education Services for Overseas Students Regulations 2001 (the ESOS Regulations) and in the Migration Regulations and are consistent with the conditions in the National Code. **Item 11** deletes the phrase 'explaining the breach' in paragraph 20(4)(b) and substitutes the new phrase 'making any submissions about the breach and the circumstances that led to the breach'. The Explanatory Memorandum comments:

The purpose of this amendment (and items 26 and 27 below)<sup>13</sup> is to ensure that the ESOS Act and the *Migration Act 1958* relating to breach notices for overseas students reflect the requirement that such notices must specify that the student is to attend before an officer for the purposes of making any submissions about the breach and circumstances that led to the breach.

There are two separate processes that result from an alleged breach of visa conditions relating to course progress or attendance. The first is the availability of an appeal to the education provider in question. The second, which presumably is somewhat dependent on the outcome of any appeal, is the decision-making process of the Department of Immigration and Citizenship regarding possible cancellation of the visa.<sup>14</sup>

**Items 12-15** amend various provisions in section 28. Section 28 deals with refunds of tuition fees in certain circumstances, assuming there is a written agreement between the provider and the student dealing with the issue. The amendments will require that, in their contract with students, education providers must include such a written agreement setting out the circumstances in which refunds are available in the cases where the student has defaulted (eg withdrawn from course, breached visa requirements etc). The amendments arise from changes in the National Code making written agreements mandatory.

Section 29 deals with refunds of tuition fees money if there is no written agreement about student default. **Items 16 and 17** amend section 29 to take account of amendments to section 28 inserted by **items 12-15** above.

Under existing section 43, where the Secretary of the administering Commonwealth Department has information that the National Code may have been breached, it must first notify the relevant State designated authority and request it to investigate the possible breach or taken other appropriate action.<sup>15</sup> **Item 18** requires the Secretary to notify the designated authority of the possible breach, but the Secretary is no longer required to

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request an investigation etc – this is now at the Secretary’s discretion. The Explanatory Memorandum comments:

The amendment allows for a reflection of the actual allocation of roles and responsibilities for investigating breaches of the National Code 2007 between the Australian Government and the state and territory governments.

A recent media report contains criticism by the Australian Council for Private Education and Training of perceived inaction by the Commonwealth against ‘suspect’ education providers.<sup>16</sup> However, the report also cites the Commonwealth education minister, Julie Bishop, as saying that the States has primary responsibility for dealing with any such providers. Statistics on the various enforcement and monitoring actions undertaken under the ESOS Act, including in regard to education providers, can be found [here](#).

### Amendment of the *Migration Act 1958*

**Items 24 and 25** amend the Migration Act to ensure consistency with the amendment to the ESOS Act inserted by **item 11**.

## 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. General Information on the ESOS regime can be obtained at: [http://www.dest.gov.au/sectors/international\\_education/policy\\_issues\\_reviews/key\\_issues/esos/#Introduction\\_and\\_Easy\\_Guide\\_to\\_ESOS](http://www.dest.gov.au/sectors/international_education/policy_issues_reviews/key_issues/esos/#Introduction_and_Easy_Guide_to_ESOS)
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. Education Services for Overseas Students Legislation Amendment (2006 Measures No.1) Bill 2006 and Education Services for Overseas Students Legislation Amendment (2006 Measures No.2) Bill 2006.
6. See <http://www.dest.gov.au/NR/rdonlyres/8863581F-F477-49B1-96C1-A38BF10E0701/15031/CurrentCodevRevisedCode.pdf> for more details on the changes to the National Code.
7. ‘Outline’ in the Explanatory Memorandum. Note that the pages of Explanatory Memorandum are not numbered.
8. The Hon. Andrew Robb. House of Representatives, *Debates*, 22 March 2007, p. 2.

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9. [\*Evaluation of the Education Services for Overseas Students Act 2000\*](#), p.x.
10. The Explanatory Memorandum comments that the exceptions are ‘to deal with references to State that are not applicable to Christmas Island and Cocos (Keeling) Islands’.
11. [\*Evaluation of the Education Services for Overseas Students Act 2000\*](#), p. xi.
12. A designated authority for a State is the person responsible under the law of the State for approving providers to run education courses to overseas students in the State.
13. The reference to items 26 and 27 is an error. It should refer to items 24 and 25.
14. See comments by the Minister in his second reading speech about the separation of education issues, such as a student’s course attendance, and DIAC’s role with regarding to determining the student’s ‘visa status’ - House of Representatives, *Debates*, 22 March 2007, p. 2–3.
15. Unless urgent action is required: subsection 43(3).
16. Geoff Maslen ‘Colleges fail to make the grade’ *Australian Financial Review*, 26 March 2007 p. 31.

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