

SENATE EMPLOYMENT, EDUCATION AND TRAINING LEGISLATION
COMMITTEE

CONSIDERATION OF THE PROVISIONS OF THE EDUCATION
SERVICES FOR OVERSEAS STUDENTS (REGISTRATION OF
PROVIDERS AND FINANCIAL REGULATION)
AMENDMENT BILL 1998

AUGUST 1998

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ISSN 1326-9313

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Senator Kerry O'Brien (ALP) Tas
- Inquiry staff:** John Carter (Secretary)
Veronica Strkalj (Senior Research Officer)
- Phone:** (02) 6277 2521
- Fax:** (02) 6277 5706
- e-mail:** eet.sen@aph.gov.au

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CHAPTER 1 - INTRODUCTION

Progress and referral of the bill

1.1 The Education Services for Overseas Students (Registration of Providers and Financial Regulation) Amendment Bill 1998 was introduced into the House of Representatives on 24 June 1998. The second reading debate on the bill was adjourned on the same day.

1.2 On 1 July 1998, the Senate referred the provisions of the Education Services for Overseas Students (Registration of Providers and Financial Regulation) Amendment Bill 1998 to the Senate Employment, Education and Training Legislation Committee for inquiry and report by 13 August.

Background to the bill

1.3 The 1980s was a growth period for Australia's international education program with many overseas students choosing Australia as an alternative study destination. Australia's reputation as a reliable provider of quality education services was threatened, however, during the late 1980s and early 1990s after the closure of a number of private educational institutions whose providers were unable to refund prepaid course fees to overseas students who had been refused student visas. Concerns were also expressed during this period about the emergence of unscrupulous private education providers and evidence of unevenness in the quality of education services on offer. The Government sought to address these concerns by introducing, in 1991, the Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act (ESOS Act).¹ The ESOS Act was designed to provide assurance of education quality and financial protection to overseas students studying in Australia.

1.4 The objectives of the ESOS Act are to ensure that overseas students are able to:

- access reliable providers and receive the high quality education for which they have paid; and
- prevent taxpayers' funds from being used to compensate students for course fees that individual education and training providers are unable to repay.

1.5 To meet the first objective, the ESOS Act requires that international education and training providers must be registered in accordance with State or Territory approval and accreditation. Details of accredited institutions are provided to the Department of Employment, Education, Training and Youth Affairs (DEETYA) which administers the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS).

1.6 International students must provide evidence that they have enrolled in a CRICOS course before they will be issued with a student visa. The ESOS Act thus facilitates quality

1 Explanatory memorandum.

assurance for education services. The responsibility rests with States and Territories through their accreditation procedures to ensure that standards are upheld.

1.7 In addition, the Act also imposes certain financial conditions on private education providers. Where providers receive recurrent funding from the Commonwealth or where they are administered by a State or Territory education authority, the providers must abide by the relevant Commonwealth or State audit requirements. These providers are exempt from certain financial requirements under the ESOS Act. Providers that do not fall into these categories—non-exempt providers—are bound by the financial and tuition guarantee requirements of the ESOS Act, which include the maintenance of a Notified Trust Account (NTA), membership of a Tuition Assurance Scheme (TAS) as well as other tuition guarantee arrangements.²

1.8 Non-exempt providers are required to deposit 80 per cent of prepaid course fees from overseas students into a NTA, which is subject to annual auditing requirements. Under the ESOS Act, moneys may be refunded to students where a provider has defaulted.

1.9 Providers, who do not have grounds for exemption, must also belong to a TAS. The TASs, which are operated by peak industry bodies, must

- cover any administrative costs associated with placing students, who are affected by the closure or default of a provider, with an alternative member-provider;
- ensure students are placed in a course which is equivalent to the course they were originally enrolled in;
- ensure that students are not required to pay for any part of a course for which they have already paid.

Provisions and objectives of the bill

1.10 The purpose of the Education Services for Overseas Students (Registration of Providers and Financial Regulation) Amendment Bill 1998 is to extend the operation of the principal Act by a further three years from 1 January 1999 until 1 January 2002.³

1.11 Recent changes in the economic circumstances of several Asian countries, which are source markets for Australia's international education industry, have led to expectations of a significant downturn in the number of overseas students pursuing studies in Australia in the short to medium term. The Government's decision to seek an extension to the sunset clause of the ESOS Act is based on the need for 'continued confidence and maintained stability in Australia's international education industry'⁴ during this period of uncertainty.

1.12 This inquiry is a response to industry concerns following requests from the sector providers that the Government extend the sunset clause.

2 Explanatory memorandum. The requirements for a Notified Trust Account and membership of a Tuition Assurance Scheme for non-exempt providers were included in amendments to the ESOS Act in 1993.

3 Explanatory memorandum.

4 Explanatory memorandum, p. 8.

Previous Committee inquiries

1.13 The Committee has had a continuing interest in the education export industry having examined matters relating to the regulation of education services on five previous occasions.

1.14 The Committee has tabled the following reports on these matters:

- **Education Services (Export Regulation) Bill 1990** (tabled 7 May 1991)

The main recommendations were:

that the term ‘trust account’ be replaced with ‘special account’ to better reflect the nature of the account to be established;

to substitute bonding arrangements for insurance;

to vary the conditions applying to the withdrawal of funds from special accounts; and

that the operation of the bill, if passed as an Act, be referred back to the Committee within 12 months.

- **Operation of the Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991 (ESOS Act)** (tabled 1 December 1992)

The main recommendations were:

that the sunset clause be extended by one year so that the Act would cease on 1 January 1995;

that the Commonwealth Education department undertake consultations to determine the most appropriate form of regulation for the industry;

that financial reporting continue on a yearly basis; and

the provision of a 28 day time limit on the repayment of fees to students

- **The Efficacy of the Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991 in the light of the collapse of the Australian Business College in Perth in January 1993** (tabled 19 August 1993)

The main recommendations were:

that the sunset clause be extended to 1 January 1997;

that proposals to amend the Act be referred to the Committee as soon as they were tabled in the House of Representatives;

that the ‘draw down’ limit from trust accounts be limited to 45 per cent of tuition fees;

that relevant providers of education services must belong to a Tuition Assurance Scheme and the principles of such a scheme be outlined in the Act; and

that providers be allowed to nominate the date for the provision of annual returns.

- **Overseas Students Tuition Assurance Levy Bill 1993 and Education Services for Overseas Students (Registration of Providers and Financial Regulation) Amendment Bill 1993** (tabled 9 December 1993)

The main conclusions were:

that the Act provides the necessary protection for overseas students' pre-paid fees through measures including the trust accounts and draw down limits; and

that, despite early difficulties in devising a suitable regulatory framework, Tuition Assurance Schemes were an essential part of these protections.

- **The Nature, Implementation and Effects of the Statutory Rules 1994 Nos 146 and 154 – Being Regulations Pertaining to the Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991** (tabled 28 June 1994)

The main conclusions were:

that regulations should be comprehensive enough to cover all overseas students and all non-exempt providers;

that in establishing regulations aimed at securing the required comprehensive level of protection, sufficient flexibility, cost-minimisation and exemptions be made available; and

that providers only be required to deposit 80 per cent of pre-paid fees into trust accounts to avoid 'topping up procedures'.

The Committee's current inquiry

1.15 The Committee advertised its current inquiry on Saturday, 11 July 1998. The Committee received six submissions and held one public hearing in Canberra on Thursday, 16 July. Details of submissions received and witnesses who appeared at the hearing are listed at Appendix 1.

1.16 The international education and training industry is Australia's fifth largest export industry⁵ with an annual return of over \$3 billion dollars. In addition to its economic return, the industry has many other benefits including

- fostering an understanding of Australian culture, law, institutions and business practices overseas;
- benefits from the exchange of international perspectives; and
- diversification of fields of study in response to international demand.⁶

5 Submission No. 3 (ACPET), p. 15.

6 Explanatory memorandum.

1.17 The Committee, in undertaking this brief inquiry, recognises the importance of this industry to Australia's economic and social well being. It is hoped that this inquiry will serve as a catalyst for further consultations on the most effective way to manage this industry.

1.18 The Committee notes that the Government has proposed seven alternative regulatory and non-regulatory measures for achieving the stated objectives of the ESOS Act. A table summarising these options, which was included in the bill's Explanatory Memorandum, is attached at Appendix 2 for information.

1.19 While these proposals are not within the scope of the current inquiry, the Committee foreshadows that these options will be considered in any future reference undertaken by this Committee in relation to the operation of the ESOS Act.

Acknowledgment

1.20 The Committee would like to record its appreciation for those organisations and individuals who were, at short notice, able to provide submissions or appear at the public hearing.

CHAPTER 2 - ISSUES RAISED IN EVIDENCE

2.1 Evidence presented to the Committee ranged from support for the cessation of the Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act on 1 January 1999, for a 12 month or three year extension of the Act, to the continuing operation of the Act. A number of perceived problems with the Act in its present form were raised with the Committee along with proposals for greater self-regulation of the international education services industry.

2.2 The Committee heard that while the education and training industry contributes in excess of \$3 billion a year to Australia's economy it also brings a number of intangible benefits that cannot be measured such as developing contacts for future trade, progressing ideas and contributing to Australia's international standing.

2.3 The education and training industry is an important and valuable industry for Australia, and the Committee heard it requires the continuing support that the existing cooperative framework between the Commonwealth, state/territory governments and industry affords. The Committee heard that the ESOS Act is the key national element in this cooperative framework.

2.4 The Committee also believes there is still some risk that a small number of unscrupulous providers may undermine the integrity of the education services provided by all Australian providers, including public institutions.

2.5 While there were calls for greater deregulation of the sector the Committee also heard an opinion that the industry is not yet able to provide the universal protection necessary to protect Australia's international reputation.

2.6 DEETYA advised the Committee that in the absence of the regulation provided by the Act there is a risk of a return to the environment which existed before the introduction of the Act, including the financial collapse of providers and the potential use of taxpayers money to refund overseas students. DEETYA also advised that the national register, known as the Commonwealth Register of Institutions and Courses for Overseas Students, and the financial and tuition guarantee provisions in the ESOS Act ensure that Australia's international reputation is not damaged.

2.7 DEETYA is of the view that in the absence of the national register there could be a risk to the integrity of Australian education which could impact on student demand for places. Accordingly, education services for overseas students cannot solely be viewed in terms of markets or by analogy to other industries. The provision of education services involves complex interactions and is not a simple commodity exchange.

2.8 The Australian Council for Private Education and Training (ACPET), and several other witnesses, referred to the factors currently impacting on Australia's education export industry which they predict will result in an estimated 40 per cent downturn in the overseas market. However, Government figures show that the number of overseas students studying in Australia in 1998 is 1.4 per cent less than in 1997. These factors include:

- the recent Asian economic currency crisis;
- publicity given to the statements emanating from One National Party;

- · the lack of a coordinated national marketing promotion; and
- · continual changes and additions to regulatory compliance.

2.9 The Committee notes that in addition to these issues, a number of matters raised in evidence and in submissions are beyond the scope of this inquiry and will be referred to in point form at the end of this chapter as items for further consideration. The Committee would, however, like to comment on each of the following issues:

Regulation of the education export industry

2.10 In past inquiries, the Committee has heard evidence that the education export industry was too regulated. While the Government has addressed this issue, several witnesses still expressed concern about the extent of industry regulation. The Committee heard that regulation of education services was a key factor amongst overseas students, with some 70 percent of students saying that levels of protection afforded by government was a factor of which they were aware. DEETYA advised that not only was the level of protection offered important but that if it became widely known that the government was thinking of removing those protections it could have an adverse effect on the reputation of Australia's education and training industry overseas.

2.11 ACPET, which represents some 80 per cent of all Australian private education services providers, noted that while publicly funded providers, consisting primarily of all universities, TAFEs and schools, were exempt from the regulatory provisions of the ESOS Act , its member had to comply with a plethora of different state and Commonwealth regulations, including

- · mandatory compliance with multiple variations of competency based training curricula;
- · mandatory compliance with an internationally unrecognised Australian qualifications framework;
- · mandatory state/territory and Commonwealth charges for CRICOS;
- · mandatory TAS or insurance cost;
- · mandatory annual trust account audits;
- · mandatory compliance with revised quality registration;
- · changes in the export market development grant;
- · increasing Australian Vocational Educational Education and Training Management Information Systems Statistics compliance and multiple other government agency statistical returns; and
- · mandatory compliance with training packages.

2.12 Private providers who operate across Australia are required to comply with nine different government regulatory frameworks and interpretations of policy. Furthermore, in the Commonwealth sphere, providers are subject to policy directives from not only the Schools and Vocational Education and Training Minister and the Higher Education Minister, but also from the Immigration and Multicultural Affairs Minister and Trade Minister.

2.13 The Committee recognises that few providers operated in more than one state at the time when much of the regulatory framework was being devised, and that the increasing burden of compliance has arisen with the growth of the industry across State boundaries over the past decade.

The education export industry and its Asian markets

The recent currency crisis

2.14 Various figures were provided to the Committee about the probable impact of the current Asian currency crisis on the education export industry. The Committee notes that much of the decline is in the ELICOS and schools sector, with an increase in numbers being experienced in higher and vocational education.

2.15 One witness advised that there had been evidence of a decline in overseas student numbers from some Asian countries, including Taiwan and Korea, before the emergence of the currency crisis. While it was felt that the decline may have bottomed out with respect to some countries, various estimates were provided on the expected downturn in other markets, including an annual drop of around 20 per cent from Malaysia, 17 per cent from Thailand, 10 per cent from Hong Kong ; 22 per cent from South Korea, 3.9 per cent from Indonesia, combining in an overall reduction from the Asian region estimated at 5.5 per cent.

2.16 The Committee recognises that the relationship between economic circumstances and fluctuations in overseas student enrolments are complex and worthy of more comprehensive research and analysis.

The 'One Nation factor'

2.17 Several witnesses spoke of the impact of One Nation Party statements on Asian source markets, particularly their potential to affect Australia's image as an attractive study destination. While potential clients from some countries appear to have responded in an immediate and negative way to the 'One Nation factor', this does not appear to be the case for several other Asian countries.

2.18 The Committee heard evidence that during a recent IDP information day in Hong Kong, one in five students considering studying in Australia specifically asked not to receive information on Queensland. ACPET estimates that as a result of recent political events in Australia, a downturn in overseas students in the order of 20 per cent could be expected.

2.19 Witnesses from the ELICOS Association also stated that the 'One Nation factor' did not draw the same response from all Asian countries, observing that while the 'Taiwanese market went off almost immediately', the 'Japanese market tends to not take much notice of the actions of a One Nation party'.

2.20 Another witness concurred with this assessment, stating that while the 'One Nation factor' had had an adverse impact in Taiwan, Hong Kong and to a lesser extent Thailand, Indonesia and South Korea were more affected by economic factors.

2.21 The Committee believes that in order to counteract any negative images of Australia that may result from the coverage of certain political viewpoints in the Asian media, relevant

government authorities should be prepared to present a much broader picture of Australia, its institutions and culture to markets in Asian countries. A failure to do so may result in overseas students opting for alternative study destinations at great loss to Australia's economic, academic and social circumstances.

New export markets

2.22 The Committee also notes that there are a number of potential markets which are presently subject to restrictions, including China and South America. The Committee believes that, given the obvious economic, social and cultural benefits, the opening up new education export markets should be urgently addressed.

2.23 While the small increase in students from northern Europe choosing Australia as a study destination is welcome, the Committee believes that more efforts should be made to encourage students from the Asia/Pacific region to study in Australia.

2.24 The Committee believes that these factors all point to a climate of increased cost pressures and exposures to trading difficulties that increase the possibility of default on behalf of providers.

2.25 The Committee heard that during the current volatile period in many of Australia's major source markets it is important to maintain confidence in Australia's international education and training industry by maintaining a stable domestic environment.

The effectiveness of Notified Trust Accounts (NTAs)

2.26 While some witnesses expressed support for the maintenance of NTAs, particularly in the current climate, some criticism was levelled at the ability of trust accounts to provide sufficient financial protection to overseas students. Several witnesses also identified other problems associated with the administration of trust accounts.

2.27 Circumstances surrounding the collapse of several education service providers were detailed to the Committee, including instances where trust accounts were found to be empty following a collapse.

2.28 Witnesses indicated that there were a number of problems with the way in which trust accounts were managed. Problems which make the trust accounts an ineffective way of providing financial security, include

- · the infrequent auditing of accounts;
- · inadequate coverage of costs other than tuition fees that may be incurred by a student in the event that a provider closes (with the TAS having to cover the difference);
- · the tendency of operators to dip into the account when in financial difficulties with the result that no funds remain should the provider subsequently close; and
- · the impact of scholarships and half-scholarships for providers who have to take on students from a college that has closed.

2.29 Trust accounts can also place extra administrative burdens on education providers through

- · the difficulty in determining how much money should be in the trust account at any one time;
- · the difficulty in getting overseas agents to deposit the correct amounts into the fund; and
- · the current requirement to deposit 80 per cent of prepaid fees into the account which leaves an insufficient amount left to cover agent fees.

2.30 The Committee considers that the continued use of NTAs in their present form warrants further examination in the light of matters outlined above. Some Senators felt that consideration should be given to a centrally administered Notified Trust Account that would both remove the ability to inappropriately remove funds and relieve some of the administrative burdens placed on providers.

Administration of the ESOS Act

2.31 Concerns were raised about the costs of administering the ESOS Act. ELICOS expressed the view that the examination of a full breakdown of administration costs may reveal areas where savings could be achieved. This could enable other more effective regulatory mechanisms, such as spot audits, to be implemented without placing an additional financial burden on the government or the industry.

2.32 ACPET raised concerns that some colleges discounted fees below that of the CRICOS registered fee, and that the quality of the tuition provided may become questionable. ACPET submitted that the Act was flawed in this regard. ACPET submitted that the level of collapses in the industry was hidden, as it is common for providers on the brink of collapse to be taken over by another college.

2.33 The impact of staffing cuts on DEETYA's ability to properly monitor compliance with the Act was a matter raised with DEETYA at the public hearing. While one witness expressed the view that 'the effectiveness of DEETYA...has changed in the last few years, no doubt due to funding aspects', other witnesses indicated that they had observed no change in the quality of service provided by the department.

2.34 Officers from DEETYA gave assurances to the Committee that they had been able to compensate for an almost 50 per cent reduction in staff responsible for the administration of the ESOS Act by operating more efficiently. Some members of the Committee remained unconvinced that the same level of service could be maintained by the department.

Issues for further consideration

2.35 The Committee notes that, in addition to those briefly examined above, a number of issues which were raised in evidence and submissions also warrant further consideration by the Government in consultation with States and industry. These include:

- · lack of funding for research into the education export industry;

- · the current cost of student visas and its impact on the international competitiveness of the Australian education export industry;
- · lack of communication between regulatory authorities and Tuition Assistance Schemes on the continuing viability of providers;
- · the proposed removal of the exempt status from the Act;
- · the need to increase international student awareness of CRICOS;
- · the continuing need to address unethical marketing practices;
- · provision for easier alternative methods for students to recover debt;
- · the need to allow for students to be represented in debt recovery proceedings;
- · the proposal that courses run overseas by providers or providers in partnership with overseas agents be subject to CRICOS; and
- · the provision of clear guidelines for international students on how to raise complaints about providers for misleading or deceptive conduct.

2.36 In the light of these matters which require further consideration by the Government, the Committee sees some value in its continued oversight of this legislation. This oversight would include a progress report (in the year 2000) on the continuing need for regulation of the industry in its current form.

The Committee's recommendations

Recommendation 1

2.37 That the Senate passes the Education Services for Overseas Students (Registration of providers and Financial Regulation) Amendment Bill 1998 without amendment.

Recommendation 2

2.38 That, as a matter of priority, the issues raised in this report be the subject of consultations between the Commonwealth, State and Territory governments and representatives of the education export industry, addressing in particular, the need for greater conformity between states on the issue of registration requirements.

Recommendation 3

2.39 That the Senate refer to the Senate Employment, Education and Training Legislation Committee for inquiry and report by no later than the last sitting day of the Autumn sittings 2000, matters relating to the operation of the Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991.

John Tierney

Chair

APPENDIX 1

List of submissions

1. IDP Education Australia
2. ELICOS Association Limited
3. Australian Council for Private Education & Training
4. The University of Newcastle
5. National Liaison Committee for International Students in Australia
6. Phoenix English Language Academy

List of witnesses who appeared at the public hearing on 16 July 1998

GIFFING, Mr George, Principal Government Lawyer, Legislation Section, Legal and Review Division, Department of Employment, Education, Training and Youth Affairs (DEETYA)

GILBERT, Mr Rod, General Manager, Queensland Education Overseas Unit, Education Queensland

GRAHAM, Mr Clive, Chair, Australian Council for Private Education and Training (ACPET)

GRAY, Mr Brian, Director, Australian Council of Independent Business Colleges

MACKLIN, Dr Michael, Consultant to ACPET

MARTIN, Ms Robyn, Director, Legislation Administration Section, DEETYA

MOORE, Ms Alyson, General Delegate, National Council, English Language Intensive Courses for Overseas Students (ELICOS) Association

MORTLEY, Professor Raoul

POWER, Ms Margaret, Executive Officer, ELICOS Association

SEKULESS, Mr Peter, Consultant, ELICOS Association

THOMPSON, Ms Carmel, Deputy Chair, ACPET

VAN LEEST, Mr Adrian, A/g Assistant Secretary, Australian Education International Branch, DEETYA

WALTERS, Mr Colin, First Assistant Secretary, International, Equity and Youth Affairs Division, DEETYA

WARNKEN, Rev Russell, Canberra College of Theology (representative of the South Pacific Association of Bible Colleges)

APPENDIX 2

[This appendix is not available in electronic form]

