SENATE EMPLOYMENT, WORKPLACE RELATIONS, SMALL BUSINESS AND EDUCATION LEGISLATION COMMITTEE

Consideration of the Provisions of the
Education Services for Overseas Students Bill 2000
Education Services for Overseas Students (Assurance Fund Contributions) Bill 2000
Education Services for Overseas Students (Registration Charges) Amendment Bill 2000
Education Services for Overseas Students (Consequential and Transitional) Bill 2000
Migration Legislation Amendment (Overseas Students) Bill 2000

NOVEMBER 2000

ISSN 1441-9890

This document was produced from camera-ready copy prepared by the secretariat of the Senate Employment, Workplace Relations, Small Business and Education Legislation Committee. The report was printed by the Senate Printing Unit, Parliament House, Canberra.

MEMBERS OF THE COMMITTEE

Chair: Senator John Tierney	(LP) NSW	Senator Jacinta Collins	(ALP) VIC
Deputy Chair: Senator Kim Carr	(ALP) VIC	Senator Jeannie Ferris	(LP) SA
Senator George Brandis	(LP) QLD	Senator Natasha Stott Despoja	(AD) SA

Substitute members

Senator Trish Crossin (ALP) NT substituted for Senator Jacinta Collins for the ESOS bills package inquiry.
Senator Andrew Murray (AD) WA substitutes for Senator Natasha Stott Despoja (AD) SA for matters relating to Workplace Relations and Small Business.

Participating members

Senator Eric Abetz	(LP) TAS	Senator Brian Gibson	(LP) TAS
Senator Lyn Allison	(AD) VIC	Senator Brian Harradine	(IND) TAS
Senator Ron Boswell	(NPA) QLD	Senator Leonard Harris	(PHON) QLD
Senator Bob Brown	(AG) TAS	Senator John Hogg	(ALP) QLD
Senator Geoffrey Buckland	(ALP) SA	Senator Steve Hutchins	(ALP) NSW
Senator Paul Calvert	(LP) TAS	Senator Susan Knowles	(LP) WA
Senator George Campbell	(ALP) NSW	Senator Philip Lightfoot	(LP) WA
Senator Grant Chapman	(LP) SA	Senator Joseph Ludwig	(ALP) QLD
Senator Helen Coonan	(LP) NSW	Senator Kate Lundy	(ALP) ACT
Senator Barney Cooney	(ALP) VIC	Senator Sue Mackay	(ALP) TAS
Senator Winston Crane	(LP) WA	Senator Brett Mason	(LP) QLD
Senator Trish Crossin	(ALP) NT	Senator Julian McGauran	(NPA) VIC
Senator Rosemary Crowley	(ALP) SA	Senator Kerry O'Brien	(ALP) TAS
Senator Alan Eggleston	(LP) WA	Senator Marise Payne	(LP) NSW
Senator John Faulkner	(ALP) NSW	Senator Chris Schacht	(ALP) SA
Senator Allan Ferguson	(LP) SA	Senator John Watson	(LP) TAS
Senator Brenda Gibbs	(ALP) QLD		

Secretariat

John Carter
Geoff Dawson
Anne Domitrovic
Helen Winslade

Address
S1.61
Parliament House
CANBERRA ACT 2600

Phone (02) 6277 3520
Fax (02) 6277 5706
E-mail eet.sen@aph.gov.au
Website: www.aph.gov.au/senate/committee/eet_ctte

CONTENTS

REPORT

1.1 The ESOS Bills package aims to reform the regulation of education services to overseas students. The main motives are:

- to better protect overseas students against the risk of a provider collapsing;
- to better protect Australia against visa fraud.

1.2 The bills are:

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

1.3 The measures of interest are in the Education Services for Overseas Students Bill 2000 (concerning regulation of education providers) and in the Migration Legislation Amendment (Overseas Students) Bill 2000 (concerning regulation of student visas). The other bills contain machinery provisions of no independent interest. 'The bill' or 'the ESOS bill' mentioned below is the Education Services for Overseas Students Bill 2000.

1.4 The bills were introduced into the House of Representatives on 30 August 2000, debated on 8-9 November and passed by the House (with amendments moved by the government) on 9 November.[1] The Senate referred the bills to this committee on 6 September 2000, on the recommendation of the Senate Selection of Bills Committee. The Selection of Bills Committee noted as issues for consideration: 'These Bills introduce sweeping and radical revision to the regulatory regime surrounding Australia's education export industry. Many of the changes proposed will be controversial within the industry.' Issues include detail of the effect of new legislative requirements on providers; extension of role and powers of the Commonwealth; new financial arrangements and requirements; increased role for State/Territory Governments.[2]

1.5 The Committee advertised the inquiry on 23 September, received 23 submissions (see APPENDIX 1) and held a hearing on 13 November (see APPENDIX 2).

Background

1.6 In the last decade the Australian education and training export industry has increased greatly.[3] The industry has been estimated to be worth $3 billion per annum and to be the fifth

---

1 House of Representatives *Hansard*, 30 August 2000, p.19609ff; 8 November 2000, p.19836ff; 9 November 2000, p.19900ff

2 Senate *Hansard,* 6 September 2000, p.17456

3 This section draws on C Kempner and N Hancock, *Education Services for Overseas Students Bill 2000*, Department of the Parliamentary Library, Bills Digest No. 62 of 2000-2001

largest export industry. Overseas students (people studying in Australia on student visas) have increased from an estimated 50,000 in 1990 to 150,000 in 1999.[4] The number of private education providers has expanded to about 1000. In the publicly administered and funded education sector, reliance on overseas students as a source of revenue has also increased. In the higher education sector where 50 per cent of overseas students are enrolled, fee-paying overseas students now account for 8.3 per cent of revenue.

The ESOS Act

1.7 The *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991* (ESOS Act) was introduced to protect Australia's reputation as an exporter of education services in response to problems experienced following the closure of a number of private education providers. A reduction in student numbers, as a result of government visa processing backlogs and tighter visa entry requirements to control the high incidence of visa non-compliance, had affected the viability of some of these providers. Many were non-financial when they closed, and were unable to refund pre-paid fees. This incurred a significant cost to the Commonwealth Government when it stepped in to provide refunds.

1.8 The focus of the ESOS Act is on regulation of providers to protect the interests of students, and to ensure that taxpayers are not called on to compensate students let down by the failure of providers. The main measures are:

- providers and courses offering to overseas students, in addition to being registered under State laws, must be registered in the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS).
- providers must deposit pre-paid course fees in a 'notified trust account', and give refunds from the account if the provider defaults on providing the course. The regulations exempt providers that are administered by a State or Territory education authority or recurrently funded by the Commonwealth.
- providers must belong to a Tuition Assurance Scheme (TAS). Tuition Assurance Schemes aim to ensure that students of defaulting providers have access to equivalent tuition from other members of the scheme. The regulations exempt providers that are administered by a State or Territory education authority or recurrently funded by the Commonwealth. As well, a provider can elect to have insurance or a parent organisation guarantee instead of joining a TAS.
- the Commonwealth Minister can suspend or cancel CRICOS registration for breaches of the Act.

1.9 The ESOS Act is one of three tiers in the regulatory framework for the education of overseas students. The other two are:

- State and Territory legislation and standards and requirements for provider and course quality. Compliance is a prerequisites for CRICOS registration. State and Territory

4 Appendix B of the Explanatory Memorandum to the ESOS Bill 2000 gives an overview of Australia's education export industry.

education and training authorities therefore have primary responsibility for quality assurance.

- Industry level voluntary codes of practice for providers.

1.10 The original ESOS Act was to expire 1 January 1994. This sunset clause has been extended several times. The latest extension - to 1 January 2002 - was made in response to a perceived need to ensure 'continued confidence and maintained stability in Australia's international education industry' in light of the Asian economic downturn.[5]

Roles of DETYA and DIMA

1.11 While Commonwealth regulation of education providers is the responsibility of the Department of Education, Training and Youth Affairs (DETYA), immigration matters relating to overseas students are the responsibility of the Department of Immigration and Multicultural Affairs (DIMA). These two regulatory regimes are interlinked. Conditions for student visa eligibility and compliance include enrolment with a CRICOS registered provider and course, minimum course attendance requirements and/or educational achievements, and limitations on paid work. Information flows and collaboration between DIMA, Commonwealth, State and Territory education authorities and providers are therefore critical for the effective regulation of providers and control of overseas students.

Reconsideration of the ESOS Act

1.12 There have been a number of inquiries into the ESOS Act. For example, the Senate Employment, Workplace Relations, Small Business and Education Committee and its predecessors have made six reports on the ESOS Act.[6] Issues included the appropriate form of regulation; the scope of regulation in relation to overseas student and provider categories; coordination between Commonwealth, State and Territory Governments; extension of the sunset clause; establishment of and access to notified trust accounts; and financial reporting and accountability.

1.13 During the last few years the closure of a number of colleges, together with the high incidence of visa breaches in specific colleges, has drawn attention to the performance of this regulatory framework. The focus of concern this time, however, has been more on allegations that some education providers are facilitating visa fraud and illegal immigration, than on

---

5 Education Services for Overseas Students (Registration of Providers and Financial Regulation) Amendment Bill 1998, Explanatory Memorandum, p.8

6 The reports were by the Senate Standing Committee on Employment, Education and Training, or the Senate Employment, Education and Training Legislation Committee: *Education Services (Export Regulation) Bill 1990* (tabled 7 May 1991); *Operation of the Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991 (ESOS Act)* (tabled 1 December 1992); *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); *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 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); *Consideration of the Provisions of the Education Services for Overseas Students (Registration of Providers and Financial Regulation) Amendment Bill 1998* (August 1998). The last named (at p.3) summarises the previous reports usefully.

student protection. This package of bills, together with some administrative changes already initiated, follows a DIMA review of the overseas student visa program in late 1998 and a DETYA review of the ESOS Act from August 1999. The DETYA review identified the following weaknesses:

- the failure of the notified trust account and insurance arrangements to protect students' fees in the event of a provider collapsing;
- the voluntary nature of many of the responsibilities of providers such as reporting on student non-attendance, which have made it difficult to monitor visa breaches;
- insufficient Commonwealth powers to deal with unscrupulous providers; and
- inconsistencies in the quality assurance and registration standards and practices of State and Territory education and training authorities.

1.14 According to the Government there is general agreement within the industry and also among Commonwealth, State and Territory agencies, that there are serious deficiencies with the existing regulatory framework and that there is a very strong case for changes to it. 'It is imperative that the regulatory framework promotes stability and integrity in the industry.'[7] On the matter of visa fraud the Government says:

> The industry is operating in the context of immigration fraud that has become more sophisticated with the development of a worldwide illegal immigration industry. Poor quality providers do not necessarily go out of business on the basis of consumer choice, if they offer non-bona fide students the chance to evade visa obligations. Consumer discontent is passed on in the home country and influences the choice of other students to study in a country other than Australia.[8]

1.15 On the matter of protecting overseas students from disreputable providers, the Government comments:

> The current provisions of the ESOS Act have not protected student fees against this risk [of default]. Since 1995, there have been 11 cases of collapse or voluntary liquidation amongst non-exempt providers… The total number of students affected by the three college failures that occurred in 1999 was approximately 1,200… The number of collapses is not large, however, each time a provider collapses and there are insufficient funds or delayed insurance payouts, there is considerable publicity on and off-shore, with the potential to damage the reputation of the entire industry and encourage prospective students to choose a study destination other than Australia.[9]

The ESOS bill

1.16 The ESOS bill retains the following features of the present Act:

- providers must have State/Territory approval and must be registered on CRICOS (which requires paying an annual registration charge);

---

7 Education Services for Overseas Students Bill 2000, Explanatory Memorandum, p.9

8 Education Services for Overseas Students Bill 2000, Explanatory Memorandum, p.9

9 Education Services for Overseas Students Bill 2000, Explanatory Memorandum, p.9

- providers must belong to a Tuition Assurance Scheme (unless exempted);
- the Commonwealth may suspend or cancel a provider's CRICOS registration for specified breaches.

1.17 The bill has the following new measures:

- States must certify compliance with a National Code, in approving providers for CRICOS registration. The National Code will include standards and benchmarks for the registration of providers and their courses. It will be made by the Commonwealth Minister after consultation with the States and Territories and with industry representatives. A draft Code is now under discussion.[10]
- Providers have to comply with the National Code.
- DETYA has discretion not to register a provider if the Minister has reason to believe that the provider does not, or will not, comply with the Act or National Code.
- Providers must inform of previous breaches/offences.
- DETYA has new powers to investigate providers.
- DETYA has new powers to impose sanctions. These will apply to breaches of obligations imposed on providers in the Act and the National Code. The sanctions will include conditions for continuing registration and infringement notices, as well as suspension and cancellation of CRICOS registration.
- Providers must contribute to the ESOS Assurance Fund created by the bill (unless exempted). This obligation replaces the obligation to place students' pre-paid course fees in a notified trust account (NTA).
- Providers must input student information into the electronic Confirmation of Enrolment (eCoE) system, including advice as to non-compliance with student visa conditions.
- Providers must send a notice to a student who is not complying with visa conditions relating to attendance or satisfactory academic performance. This notice will trigger an automatic visa cancellation process in some circumstances, under provisions in the Migration Legislation Amendment (Overseas Students) Bill 2000.
- Providers must keep student address records.
- The Minister for Immigration may issue a suspension certificate to a registered provider in respect of whom (in the Minister's opinion) a significant number of students are entering or remaining in Australia for purposes not contemplated by their visas.

1.18 The Migration Legislation Amendment (Overseas Students) Bill 2000 introduces a regime of automatic cancellation of student visas in certain circumstances, and gives DIMA monitoring and enforcement powers mirroring those in the ESOS bill.

---

10 Department of Education, Training and Youth Affairs, *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students*, Exposure Draft, no date

Issues raised in submissions

1.19 Some of the issues mentioned below have been taken up in Government amendments to the bill, introduced into the House of Representatives on 9 November 2000. The amendments are fully described in DETYA's submissions to this inquiry.[11]

The ESOS Assurance Fund

1.20 Under the bill, providers must contribute to the ESOS Assurance Fund (unless exempted). This obligation replaces the obligation to place students' pre-paid course fees in a notified trust account. The Fund will be responsible for placing the students of defaulting providers. The Fund will be funded by the industry, apart from a $1 million seeding grant announced by the Minister. A Fund Manager will determine contributions and a Contributions Review Panel will hear appeals by providers against their assessed contributions. DETYA, based on preliminary actuarial advice, envisages individually risk-assessed contributions varying around a base of 0.05% of fee income for a TAS member or 0.4% of income for a non-TAS member.[12] DETYA comments that 'the Assurance Fund will provide a collective assurance which, unlike notified trust accounts, does not depend on the honesty and good financial management of the individual provider.' DETYA envisages exemptions, similar to the present exemptions from the notified trust account provisions, for providers that are administered by a State/ Territory education authority or recurrently funded by the Commonwealth.[13]

1.21 Most submissions approved the Fund in principle. However, the Australian Council for Private Education and Training (ACPET) stressed that in previous consultations it had only supported the concept of a fidelity fund within a larger integrated scheme of industry self-regulation. ACPET is concerned about the open-ended power of the Fund Manager to make special levies, and believes that the administrative costs of an industry-run fund would be lower.[14] English Australia would prefer multiple funds, one for each Tuition Assurance Scheme (TAS), and a government operated fund for those who are not members of a TAS.[15] The Western Australian Private Education and Training Industry Association believes that the current notified trust account system is adequate.[16]

1.22 The Government argues that the present notified trust account scheme is fundamentally flawed because the money remains under the control of the operator of the business, and at times of crisis can be removed (and sometimes has been) before students can claim a refund. The Government argues that a single fund is preferable to multiple funds operated by TAS's because:

- it consolidates money and strengthens financial viability;

---

11 The Hon. P Worth, House of Representatives *Hansard*, 9 November 2000, p.19,924-5. Submission 22, Department of Education, Training and Youth Affairs

12 Education Services for Overseas Students Bill 2000, Explanatory Memorandum, p.14

13 Submission 22, Department of Education, Training and Youth Affairs, p.9

14 Submission 4, Australian Council for Private Education and Training, pp.7,12,14

15 Ms A Moore (English Australia), *Hansard*, Canberra, 13 November 2000, p.41

16 Submission 11, Western Australian Private Education and Training Industry Association Inc, p.1

- it reduces administration costs and takes advantage of economies of scale;
- it gives greater control over assets and revenue;
- it reduces the possibility of providers being locked out of funds;
- it prevents the creation of different levels of access to a fund, thus ensuring protection regardless of TAS membership;
- it precludes competitive market forces destabilising the fund.[17]

1.23 On the matter of administration costs, DETYA promises to ensure that the contract with the Fund Manager has controls to ensure prudent financial administration. The bill requires annual reporting to DETYA on the fund's operation by an independent consulting actuary.[18]

Who should contribute to the Fund?

1.24 Submissions disputed who have to contribute and who would be exempt. ACPET argues that the purpose of the fund is to protect the international reputation of Australia's education export industry. All providers benefit from that reputation, and accordingly all providers should have to contribute to the fund.[19] English Australia is concerned that exemptions give an unfair, anti-competitive advantage to the exempt institutions, and exempt bodies may not always be able to provide equivalent tuition (in the event of failure), as TAS members do. English Australia argued that at least criteria for exemption should be clearly published.[20]

1.25 On the other hand, the providers that are now exempt from notified trust account provisions - mainly, public institutions and Commonwealth-funded private schools - argue that they should continue to be exempt from Assurance Fund membership. They argue that they are already subject to public accountability requirements for public funding. They argue that the purpose of the fund is to cover the risk of failure: since they are effectively government-guaranteed, or subject to other accountability controls, they are not at risk of failing, and so should not have to contribute.[21]

1.26 The Government agrees with the second view, arguing that the accountability framework for Commonwealth funding, and the record of the providers currently exempted, justify a continuing exemption.[22]

1.27 Some submissions argued that members of Tuition Assurances Schemes, since they pose a low risk, should be exempt.[23] They are concerned at the prospect that TAS members, through the fund, would be obliged to bail out non-TAS members. In reply DETYA said:

---

17 Education Services for Overseas Students Bill 2000, Explanatory Memorandum, p.14

18 Submission 22, Department of Education, Training and Youth Affairs, p.10

19 For example, Submission 4, Australian Council for Private Education and Training, p.11

20 Submission 12, English Australia, p.1-2

21 For example, Submission 7, National Council of Independent Schools Associations, p.3. Mr S Hamilton (Australian Vice-Chancellors Committee), *Hansard*, Canberra, 13 November 2000, p.2

22 Submission 22, Department of Education, Training and Youth Affairs, p.9

> But there might be cases where refunds - which TAS's do not pay - would be needed, or scenarios with which the TAS could not cope. DETYA consider that the discounted Fund contributions that would be required of TAS members, and the Fund Manager's ability to take into account a provider's history of compliance with NTA provisions will properly reflect the greatly reduced risk which TAS members represent.[24]

1.28 The Committee notes that there is an obvious conflict of interest between the public providers and the public providers in regard to exemption from the Assurance Fund. The Committee accepts the Government's argument that the present exemptions from notified trust account requirements should continue in respect of the Fund. The Committee agrees that suggested difference between contribution rates for TAS members and non-members should fairly account for the different risks they pose. The Committee notes that the cost of fund membership will be offset by the savings from not having to run notified trust accounts or (in the case of TAS non-members) not having to have insurance.

Contributions to the Fund

1.29 The Australian Council for Private Education and Training (ACPET) was concerned that contributions to the Fund might threaten the viability of providers. ACPET does not think that a seeding grant of $1 million from the Government will be sufficient to create a viable fund. ACPET recommends that the bill should set a maximum percentage contribution level having regard to the financial viability of private providers.[25] DETYA comments:

> Some industry members argue that the Fund contributions should be in the Act. Such provision would lock in a rigid formula for contributions, and would not allow the Fund Manager to use his ability to assess risks and to develop contributions criteria accordingly. The Criteria will have to be approved by the Contributions Review panel, which will include 5 members representatives of the industry.[26]

1.30 The Committee accepts that it is impractical to specify contributions in the Act. The suggested contribution for TAS members (based on preliminary actuarial advice) is 0.05% - 5 cents in every $100 dollars of fee income. Even this will be offset to some extent by the savings from not having to run notified trust accounts. The Committee does not think this is a high price to pay for the reputation of Australia's education export industry.

Other concerns about the Fund

1.31 Several submissions argued that industry should be represented on the Contributions Review Panel. The Government proposes an amendment to this effect.[27]

---

23 For example, Submission 3, South Pacific Association of Bible Colleges, p.1; Submission 11, Western Australian Private Education and Training Industry Association Inc, p.1

24 Submission 22, Department of Education, Training and Youth Affairs, p.10

25 Submission 4, Australian Council for Private Education and Training, p.12-14

26 Submission 22, Department of Education, Training and Youth Affairs, p.9-10

27 Submission 22, Department of Education, Training and Youth Affairs, p.10

1.32 Submissions argued that the annual independent audit report on the Fund should be given to the Contributions Review Panel as well as to the Minister. The Government proposes an amendment to this effect.[28]

1.33 Submissions were concerned about the powers of the Fund Manager. The South Pacific Association of Bible Colleges pointed out that the Fund Manager's role in arranging alternative tuition (clauses 50 and 77) implies educational as well as financial expertise. It is uncertain where this would be obtained.[29] The National Liaison Committee for International Students in Australia argued that students should have a say in deciding whether an alternative course is adequate.[30] English Australia argued that clause 26(1) (a provider must tell the Fund Manager of any change in circumstances that might cause the Fund Manager to increase its contribution) is too broad, as it requires the provider to know what is in the mind of the Fund Manager.[31]

1.34 In particular, submissions were concerned about the open-ended power of the Fund Manager to impose special levies.[32] DETYA comments:

> DETYA understands that providers would wish to avoid the uncertainty of a special levy if they can. There is a trade-off between the size of reserve which the Fund creates and the likelihood of a special levy. On the advice of the Australian Government Actuary, we believe that a reserve of roughly $2m would avoid the need for a special levy other than in the kind of exceptional event which might occur, say, once in ten to fifteen years. The Minister's offer of a once-only $1m seeding grant to the Fund is extended to help with set-up costs and the establishment of the reserve.[33]

1.35 As well, the Government proposes an amendment that the Fund Manager must obtain the approval of the Contributions Review Panel before imposing a special levy.

The National Code

1.36 The National Code will establish a set of requirements for registration of providers on CRICOS, and place certain obligations directly on providers. Under the bill, the National Code is gazetted by the Commonwealth Minister. The bill provides that compliance with the code is a prerequisite for CRICOS registration, and the Minister may suspend or cancel registration for non-compliance with the code. According to DETYA, there is widespread support for the establishment of a National Code, and DETYA promises that 'the content of the Code will be sharpened in the light of comments on the Exposure Draft'.[34]

---

28 Submission 22, Department of Education, Training and Youth Affairs, p.11

29 Submission 3, South Pacific Association of Bible Colleges, p.2

30 Submission 19, National Liaison Committee for International Students in Australia, p.3

31 Submission 12, English Australia, p.4

32 Submission 3, South Pacific Association of Bible Colleges, p.2. Submission 4, Australian Council for Private Education and Training, p. 12. Submission 12, English Australia, p.3

33 Submission 22, Department of Education, Training and Youth Affairs, p.10

34 Submission 22, Department of Education, Training and Youth Affairs, p.6

1.37 Submissions made various comments about the content of the National Code. This is now under discussion between DETYA and the industry, and is beyond the scope of this inquiry into the bill. Submissions relevant to the powers in the bill were:

- The Minister's powers in relation to the Code are excessive. The bill should provide for consultation with industry and parliamentary review of the Code.[35]
- The Code should be subject to agreement by the Ministerial Council on Employment, Education, Training and Youth Affairs (MCEETYA).[36]
- The scope of the Code's possible contents should be more clearly legislated.[37] (The bill lists possible contents of the Code, including 'any other matters that are necessary or convenient' - clause 38(i)).
- The bill should be postponed pending agreement on the Code.[38]

1.38 The Government proposes amendments to require consultation with industry, and to make the Code a disallowable instrument. On the matter of possible approval by MCEETYA, the Government says that it has been consulting with the States and Territories and will aim for consensus on the Code, but 'in view of the urgency of reform and the Commonwealth's responsibility for Australia's migration regime and its international reputation, it does not think it appropriate to make the Code subject to agreement by MCEETYA.' The Government does not agree that the scope of the Code's possible contents should be more closely specified in the bill. Without a catch-all clause, any amendment to Code not foreseen in the listed items would require an amendment to the Act - a cumbersome process.[39]

Automatic visa cancellation

1.39 The ESOS bill provides that a provider must send a student a written notice if the student has breached a visa condition relating to attendance or satisfactory academic performance (clause 20). A student who receives such a notice must attend at an immigration office within 28 days to explain their circumstances. The Migration Legislation Amendment (Overseas Students) Bill 2000 provides that if the student does not do so, the student's visa is automatically cancelled. This applies even if the student claims not to have received the notice. According to DIMA, this is intended to stop students claiming non-receipt or avoiding receipt of the notice (under the Migration Regulations students must keep providers informed of their current address). To avoid unintended consequences for genuine students in exceptional circumstances, there are provisions for applying to have an automatic cancellation revoked.[40]

---

35 Submission 4, Australian Council for Private Education and Training, p.21. Submission 6, Australian Vice-Chancellors Committee, p.1-2. Submission 17, Council of Australian Postgraduate Associations, p.8. Submission 20, National Tertiary Education Union, p.1

36 Submission 6, Australian Vice-Chancellors Committee, p.1. Submission 7, National Council of Independent Schools Associations, p.4. Submission 17, Council of Australian Postgraduate Associations, p.8.

37 Submission 17, Council of Australian Postgraduate Associations, p.9

38 Submission 12, English Australia, p.6

39 Submission 22, Department of Education, Training and Youth Affairs, p.7.

40 Submission 23, Department of Immigration and Multicultural Affairs, p.4-6

1.40 Several submissions claimed that these provisions are oppressive - particularly the fact that automatic cancellation applies even though there is no proof that the student received the notice. Submissions argued that the 28 day period to present at an immigration office is too short, particularly when students may be at home overseas during holidays.[41] ACPET argued that providers should not have to do DIMA's work for it by notifying students that they are breach of visa conditions.[42]

1.41 DIMA argued that these concerns fail to take account of the relationship between providers and their students. Providers are best placed to know when students are in breach. Students are legally obliged to keep providers informed of their current residential address. Students who do not attend classes for genuine reasons should make appropriate arrangements with their providers. Automatic cancellation, as the default outcome after the notice is sent, is necessary since students in breach often avoid postal notices. Compliance costs for providers should not increase: the new electronic confirmation of enrolment system will include a pro-forma 'section 20' notice for providers to use. Providers will have a duty to ensure the accuracy of information, but this would apply whether they send the notice to DIMA or directly to the student.

1.42 DIMA also promises to take steps to publicise the effects of these provisions to students and prospective students.[43]

1.43 The Committee accepts that the provisions are reasonable. It is impractical to expect DIMA to prove that a notice has been received, since students in breach may deliberately avoid postal notices. There are reasonable provisions allowing cancellation to be revoked in bona fide cases.

Other concerns

Exemption from Tuition Assurance Schemes

1.44 Some submissions were concerned that membership of a Tuition Assurance Scheme (TAS) seems to be compulsory (clause 22). They fear this means that a TAS would be unable to reject membership applications, and this would prevent them from controlling the quality of their membership. English Australia submitted legal advice that the effect would be to force TAS operators to accord procedural fairness to providers applying for membership.[44]

1.45 DETYA explained that the regulations will allow providers not to join a TAS under conditions similar to the present ones. The present exemption for those who have insurance will be replaced by an exemption for those who pay higher contributions to the ESOS Assurance Fund.[45] In effect, those who cannot find a TAS willing to take them will be forced

---

41 Submission 17, Council of Australian Postgraduate Associations, p.3. Submission 18, Wollongong University Postgraduate Association, p.2. Submission 19, National Liaison Committee for International Students in Australia, p.5. Submission 21, Swinburne University Postgraduate Association, p.3

42 Submission 4, Australian Council for Private Education and Training, p.16

43 Submission 23, Department of Immigration and Multicultural Affairs, p.4-5

44 Submission 4, Australian Council for Private Education and Training, p.17. Submission 12, English Australia, p.2 & attachment

45 Submission 22, Department of Education, Training and Youth Affairs, p.8. Education Services for Overseas Students Bill 2000, Explanatory Memorandum, p.21

to pay the higher contributions; but the same applies at present concerning insurance.[46] In light of this, the Committee concludes that the point about procedural fairness, if it applies, applies equally to the present provisions.

Suspension and cancellation of CRICOS registration

1.46 The bill allows the Commonwealth Minister to suspend or cancel CRICOS registration for a breach of the Act or the National Code. ACPET was concerned that there is no limit to a possible period of suspension: 'Providers should not be left in suspension for long periods without good reason…. there is a need for a method to be inserted into the legislation to ensure that suspension does not amount to a death sentence.'[47] English Australia argued that suspension, after a time limit, should convert to cancellation.[48]

1.47 English Australia also argued that 24 hours notice of proposed suspension (clause 93) is inadequate. The Government proposes to amend this to 72 hours except in urgent cases.[49]

Keeping students' addresses

1.48 Submissions argued that providers cannot be expected to know students' addresses except as provided by the student (clause 21(2)). The Government proposes an amendment to make this clear.[50]

Definition of 'agent'

1.49 The bill defines 'agent' as a person who acts on behalf of a provider 'or purports to do so' (clause 5). Some submitters were concerned that this might make providers liable for the actions of people purporting to be the provider's agent, whose existence the provider is unaware of.[51]

1.50 DETYA explained that the bill does not make providers responsible for the actions of people with whom they actually have no relationship:

> Where there is evidence of an agent acting, or purporting to act on behalf of a provider, and in breach of the National Code, the Minister could give a written notice to the provider stating that the provider, through this agent, appears to have breached a provision of the National Code [clause 93]...The registered provider would then have the opportunity to state all relevant facts in their written submission to the Minister, which could include a statement of no relationship with the agent. The Minister would be bound to consider the submission and only take a

46 Other present and continuing means of gaining exemption will be a parent organisation guarantee or an agreement to accept fees in arrears.

47 Submission 4, Australian Council for Private Education and Training, p.24

48 Submission 12, English Australia, p.7

49 Submission 12, English Australia, p.8. Submission 22, Department of Education, Training and Youth Affairs, p.14

50 Submission 22, Department of Education, Training and Youth Affairs, p.12

51 For example, Submission 7, National Council of Independent Schools Associations, p.3.

> next step if there are reasonable grounds to believe that the registered provider has breached the National Code.[52]

1.51 Including the reference to 'purported agents' is necessary for enforcement:

> If you leave out the words 'or purports to do so' you open the way for saying that no-one is your agent unless you have a written agreement with the person to the effect that he is your agent. If you go down that route, then obviously anybody who wants to use an agent in an improper way would take care not to appoint them in writing. So we thought it was better to have that in, but to give the safeguard that people do have the opportunity to explain themselves before any liability arises… the normal law of agency covers de facto as well as de jure agents, so all we are doing is making clear that the normal law of agency applies. [53]

Review

1.52 The bill contains no sunset clause. The Government in the Explanatory Memorandum proposed a review of its operation in 2005. Several submissions argued that the bill should include provision for an independent review in three years. The Government proposes an amendment to this effect.[54]

Conclusion

1.53 On many of the points raised in submissions the Government has proposed amendments to the bill which should satisfy the concerns of the industry. On other matters the Government has not taken up the suggestions made. In the Committee's view the submissions of DETYA and DIMA show that the Government has considered all views fairly. There are diverse interest groups involved, and it is not possible to satisfy all parties on all points. In the Committee's view the bill represents a fair balance between the interests of the different groups, the need for efficient administration, and the over-riding purpose of protecting the reputation of Australia's education export industry and preventing visa fraud.

The Committee recommends that the bill, with the Government's amendments, should be passed.

Senator John Tierney

Chair

---

52 Submission 22, Department of Education, Training and Youth Affairs, p.13

53 Mr R Horne (Department of Education, Training and Youth Affairs), *Hansard*, Canberra, 13 November 2000, p.71

54 Submission 22, Department of Education, Training and Youth Affairs, p.14-15

MINORITY REPORT BY LABOR SENATORS

1.1 Education export is Australia's fifth most valuable export industry, worth over $4 billion per annum. It facilitates and enhances international contact and communication, in culture, business and personal relationships. It leads to fringe benefits for Australia in tourism and in other export opportunities and contributes significantly to international understanding.

1.2 Yet this industry is seriously at risk. Rapid change in the climate and context in which the international education industry operates over the last several years has rendered obsolete and inadequate the current cumbersome regulatory framework, at both national and State/Territory level. Unscrupulous operators have been able to enter the industry undeterred, and existing highly reputable private providers, publicly-funded universities and TAFE Colleges have experienced damage to their reputations due to lack of regulatory protection as much as naiveté. This situation has far-reaching implications: the continued success of the industry depends above all on Australia's reputation for high quality and integrity in educational provision. Further, our economic wellbeing in a more general sense is dependent on our international standing as a highly educated nation, with a skilled workforce. If our education system becomes known around the world for as a site for scams, criminal activity and low quality, then our very economic future is also at risk.

1.3 For over two years the Opposition has drawn attention to this situation, but, despite the obvious and overwhelming evidence of crisis, the Government has consistently ignored the problems until the introduction of the five bills making up the ESOS reform package. Nevertheless, the Labor senators agree with the general direction of the Majority Report by the Government. There remain, however, further issues that we believe must be addressed.

1.4 In the following discussion 'the bill' means the Education Services for Overseas Students Bill 2000.

1.5 Labor senators support the move to improve regulation of education services to overseas students. Regulation is essential to protect the reputation of Australia's education export industry. Even a few instances of bad practice by disreputable providers can seriously damage Australia's international reputation. Amongst a minority of dishonest providers, financial integrity has been absent, and students have not been protected when providers have collapsed. As well, significant problems of visa fraud have been experienced - involving people entering the country on student visas who work illegally, abetted by corrupt 'education' providers.

1.6 Labor senators regret that it has taken the Government two years to act on these matters. We believe that the Government has acted largely under pressure of the Opposition's continuing exposure of abuses in the industry. While we generally support the bill, in some areas, we believe, it does not go far enough and should be strengthened.

Need for national system of quality assurance

1.7 Front line responsibility for accrediting education providers and courses lies with State and Territory education authorities. The Commonwealth's registration of providers on CRICOS (the Commonwealth Register of Institutions and Courses for Overseas Students) is an extra layer of registration, consequent wholly upon State or territory accreditation. Providers must obtain CRICOS listing in order to offer courses to overseas students. The

chief significance of CRICOS registration is that the Commonwealth can unilaterally suspend or cancel registration for breaches of the Act or the National Code (clause 83 of the bill). However the initial approval is effectively delegated to the States (although the bill does allow the Commonwealth to refuse CRICOS registration, in spite of State accreditation, in certain circumstances - clause 9(1)(d)).

1.8 Labor senators do not think that this scheme adequately deals with the problems of quality assurance in the industry. We have concerns that the State and Territories, as well as DETYA, have inadequate resources for assessing the credentials of would-be providers and monitoring their activities once accredited. We have concerns, too, that standards may be inconsistent between States. The providers at the centre of problems experienced in the industry are vocational education providers that enjoy their status as Registered Training Organisations, listed in ANTA's National Training Information Service, as an automatic consequence of accreditation by State and Territory authorities. Recently, the Commonwealth and the States sought legal advice on the status of the national system known as the Australian Recognition Framework, intended to ensure national consistency in standards and qualifications in the VET system as a whole. This advice, provided by the legal firm Minter Ellison, concluded that the legal underpinnings of this national system were, essentially non-existent. This problem extends to RTOs operating in the international education industry.

1.9 The bill proposes a new National Code, setting out standards and requirements for both providers and State accrediting authorities, which will have legislative force (through clause 83 of the bill: the Commonwealth minister may suspend or cancel CRICOS registration for a breach of the Code). However most of its requirements are addressed to providers (section C of the Code). It has some provisions dealing with the actions of the approving authorities (section B of the Code: for example, assessment for registration should include at least one inspection of the provider's premises), but these are far from a complete scheme of nationally consistent quality assurance. For example, the provisions do not include consideration of the financial health of the provider. They scarcely address the quality of tuition.[55] In any case, there can be no sanctions against the approving authorities for non-compliance with the code.

1.10 The Senate Employment, Workplace Relations, Small Business and Education References Committee recently reported on Australia's vocational education and training (VET) system. The report found significant problems in quality assurance in VET, and problems of inconsistent standards between the States. It found that that 'leaving sole regulatory authority in the hands of the States has not worked… a new national quality framework is needed for VET.' The report recommended a National Code for Quality in VET. This would set standards both for providers, in respect of training delivery, and for the State and Territory authorities, in respect of accreditation and monitoring of providers. These standards should be legally enforceable through Commonwealth legislation.[56]

---

55 Department of Education, Training and Youth Affairs, *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students*, Exposure Draft, no date, p.6-7

56 Senate Employment, Workplace Relations, Small Business and Education References Committee, *Aspiring to Excellence - report into the quality of vocational education and training in Australia*, November 2000, p.xviii-xx

1.11 The situation in international education differs from that obtaining in VET more generally since, through the ESOS Act and the present bill, the Commonwealth does have some direct power over providers, should it wish to exercise it. But in practice the same problems apply. In effect the Commonwealth delegates to the States. The bill does not impose any duty on the Commonwealth, when considering a CRICOS application, to satisfy itself that the applicant complies (clauses 9(d) and 9(4) deliberately avoid this). The Commonwealth may rely on a certificate provided by the State authority. Similarly with monitoring and enforcement: the Commonwealth Minister may impose sanctions 'if the Minister believes on reasonable grounds [that a provider is breaching the Act or the National Code]' (clause 83); but this relies on the matter being brought to the Minister's attention. The bill does not impose any duty on the Commonwealth to monitor CRICOS providers periodically to check that they are still compliant.

1.12 The draft National Code provides a rule that CRICOS compliance should be monitored at least every five years. It is rather unclear, however, whether this rule (as with others in this section of the Code) is addressed to the Commonwealth or to the State authorities.[57] In practice monitoring and review would rely on State authorities. What happens if a State is deficient in carrying out the monitoring and review rules of the National Code? Under clause 83 of the bill, the Commonwealth may suspend or cancel a provider's registration if *the provider* has breached the Code; but it cannot act against a provider simply because *the State* has failed to monitor the provider. As noted above, the Commonwealth may act independently against the provider 'if the Minister believes on reasonable grounds [that the provider is in breach]'; but if the State has failed to monitor or advise, it is quite likely that the matter would not come to the Commonwealth Minister's attention.

1.13 Labor senators believe that these are significant weakness in the scheme of the bill and the National Code concerning quality assurance. The quality assurance rules in the Code need to be enhanced, in relation to both the standards for education providers and the approval and monitoring actions of the authorities. The Code needs to makes clear which authorities (Commonwealth or State) are responsible for which matters.

1.14 Equally important, however, is the matter of political will. Under the current ESOS Act there is provision for prosecutions and for the imposition of penalties on defaulting providers. Notwithstanding this, and despite, further, the succession of incidences of serious malpractice identified in the industry, the Commonwealth has failed to pursue miscreants and has not made a single prosecution under the powers of the Act. Similarly, at State level, the will to pursue providers in breach of State regulation has too often been lacking.

Inadequate resources for monitoring

1.15 Labor senators are concerned at evidence of inadequate monitoring and enforcement, whether through lack of determination or lack of resources, at both State and Commonwealth level. For example, ACPET said:

> …we believe there are probably sufficient controls available to both governments at this time, but there seems to be little evidence of a willingness to go in and do something about enforcing them. Whether or not further controls are needed is, I

57 Department of Education, Training and Youth Affairs, *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students*, Exposure Draft, no date, p.6-7.

> think, a matter that could be debated, and we may agree that there would be some. Our concern is that there has not been enforcement of those regulatory powers that are already in place.[58]

1.16 In spite of the collapses of recent years, including cases where notified trust accounts have been deficient, there have been no prosecutions under the ESOS Act.[59]

1.17 These problems are the more significant in view of the scheme of the bill in which the Commonwealth effectively delegates its responsibilities to the States. The new Commonwealth investigation and enforcement powers, though welcome, are regrettably not matched by any commitment by the Commonwealth, in the bill, to *using* those powers. However we are pleased to note that DETYA intends to increase its staff to administer the new powers which the bill provides.[60]

A 'fit and proper person' test for providers?

1.18 The bill provides that applicants for CRICOS registration must disclose previous CRICOS suspensions, cancellation or conditional registration. They must also disclose previous offences - but this requirement is limited to offences against the ESOS Act alone (clause 11).

1.19 Problems that have become endemic to a certain minority section of the industry have been characterised not only by financial failure and collapse, but by dubious and even criminal activity, including fraud, tax avoidance, visa scams and offences against the Corporations Law. In addition, some colleges have provided educational services of low quality and standard. As a result, Australia's international reputation has been placed at risk. The National Code makes no reference to the more general credentials of providers, and contains no provisions requiring accrediting authorities to check applicants' business credentials, general honesty or financial viability.

1.20 Labor senators believe that this approach is dangerously narrow. It will fail to fix the serious problems in the industry that threaten the international standing and the viability of our international education industry. The aim of the ESOS Act should not only be to protect students from the providers' business failure, but also, if possible, to pre-empt the failure. When a provider collapses students are seriously inconvenienced and damage is done to Australia's reputation, even if the students are subsequently placed in alternative courses. There should be a broader 'fit and proper person' test for applicants for CRICOS registration, going to the credentials of the principals and managers of provider companies and also to those of the actual operators of the education providers.

1.21 Key witnesses agreed. The Australian Council for Private Education and Training pointed favourably to arrangements for licensing in the travel industry, which include the experience, qualifications and declaration of past convictions. The Australian Vice-

---

58 Mr M Schroder (Australian Council for Private Education and Training), *Hansard*, Canberra, 13 November 2000, p.14

59 Mr R Horne (Department of Education, Training and Youth Affairs), *Hansard*, Canberra, 13 November 2000, p.61

60 Mr R Horne (Department of Education, Training and Youth Affairs), *Hansard*, Canberra, 13 November 2000, p.65

Chancellors Committee recommends that the National Code should provide for accrediting authorities to investigate the business credentials of new providers, including the principals and directors.[61]

Franchising and other contractual arrangements

1.22 The deficiencies pointed to in the previous section must also be dealt with in relation to the actual operators of international education providers. This must extend to arrangements where actual teaching and/or other functions are provided under contract by another party. Labor senators are concerned that the bill does not do enough to control franchising and contracting out arrangements. Under the bill, a legal relationship extends between the authorities and the CRICOS-registered provider. The bill does not touch a third party who is the actual provider under contract to the registered provider.

1.23 There is obvious potential for unscrupulous providers to attach themselves to unwary institutions (registered providers) which may not be aware of, or may close their eyes to, what happens under their institutional imprimatur. In some instances, dubious or financially unviable private providers have been linked through various kinds of contractual arrangements and agreements to publicly-funded, internationally known universities. It is unsatisfactory that the Commonwealth has, under the bill, no means of imposing sanctions on any party other than the registered provider. Labor senators believe that this matter needs to be considered further.

1.24 Two measures, at least, are necessary: first, the National Code should make it clear that all its rules and requirements apply to the registered provider even when another actual provider is involved. At present this is explicit only in two sections (marketing and student information; student recruitment and placement); this might be taken by implication to exclude other sections of the Code.[62] Second, the 'fit and proper person' test referred to in the previous section should be applied to actual providers as well as to the principals of the CRICOS-registered company or individuals. Sanctions should be applicable to actual providers.

Regulation of offshore activities

1.25 The offshore activities of CRICOS-registered providers are significant and include the offering of courses in overseas countries, marketing and promotion and recruitment. They include also the provision of education through distance education, including use of the Internet. In May 1999 Australian universities offered 581 offshore programs, mostly in Singapore, Malaysia and Hong Kong.[63] These activities are of course just as important to the reputation of Australia's education export industry as onshore activities. In the case of Australian universities, these arrangements most commonly involve contractual arrangements with companies and/or education providers based in foreign countries. These are known as

---

61 Australian Council for Private Education and Training, further information 21 November 2000, p.23. Mr S Hamilton (Australian Vice-Chancellors Committee), *Hansard*, Canberra, 13 November 2000, p.4. TAFE Directors Australia, further information 23 November 2000, p.44

62 Department of Education, Training and Youth Affairs, *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students*, Exposure Draft, no date, p.8-9

63 Mr R Sercombe MP, House of Representatives *Hansard*, 9 November 2000, p.19918

"twinning" arrangements. In some instances, however, the Australian provider establishes its own autonomous campus and operations offshore. The Committee was told about the damage done in 1999 when the Business Institute of Victoria, registered in Melbourne and operating in Vanuatu, collapsed, stranding about 200 students as well as staff.[64] Mr Schroder (ACPET) said:

> I, and a number of professional bodies, have some grave reservations about off-shore activities of a so-called twinning nature - whether they are up to quality standards.[65]

1.26 This bill does nothing to control these activities. Labor senators believe this is a serious omission. Providers advertising and benefiting from CRICOS registration should be subject to regulation, wherever they are. Their customers deserve protection.

> There are many students who would like to come into Australia to study but because they are from gazetted countries such as Pakistan—perhaps even from some parts of China—they are not allowed to enter. They are very keen. They would buy a course tomorrow if we went and offered them one from a country such as Vanuatu or anywhere else. As long as these people are able to buy courses they must be protected under the legislation.[66]

1.27 There are precedents for offshore application of Australian laws. Some key witnesses to this inquiry agreed that regulation of offshore activities would be desirable.[67] Labor senators believe that the bill package would be considerably strengthened by the inclusion of provisions designed to regulate offshore activities of education providers.

Assurance fund membership

1.28 A contentious issue among parties before the Inquiry is the requirement for providers to be members of the proposed ESOS Assurance Fund. Labor senators believe that, while there should be provision for exemption from Fund membership, this should be limited to universities, higher education institutions that are listed on Schedule A of the *Higher Education Funding Act 1988* or that are publicly-funded Institutes or Colleges of Technical and Further Education that are members of State and Territory systems. Labor senators are not convinced that private education providers, including non-government schools and the private corporate arms of universities, should be exempted from the provisions relating to the Assurance Fund.

Notification of suspension from CRICOS registration

1.29 A further issue that has emerged as problematic, in the view of some stakeholders, is the provisions in the bill relating to notification of suspension of providers from CRICOS by

---

64 Ms F McGuigan, *Hansard*, Canberra, 13 November 2000, p.10ff

65 Mr M Schroder (Australian Council for Private Education and Training), *Hansard*, Canberra, 13 November 2000, p.23

66 Ms F McGuigan, *Hansard*, Canberra, 13 November 2000, p.11

67 Mr S Hamilton (Australian Vice-Chancellors Committee), *Hansard*, Canberra, 13 November 2000, p.5. Mr M Schroder (Australian Council for Private Education and Training), *Hansard*, Canberra, 13 November 2000, p.23

DETYA. Labor senators believe that the inclusion of provisions similar to those applying under the Corporations Law would be a fair, reasonable and consistent approach to this issue.

Student visa cancellation provisions

1.30 Student representatives and others appearing before the Inquiry expressed the opinion that the provisions in the bill for automatic cancellation of a student visas were too harsh, and did not allow a sufficient time-frame for students to respond to notices requiring them to present themselves at a DIMA office to explain their circumstances. Labor Senators, while generally supportive of the migration provisions associated with this package of bills, believe that consideration should be given to extending the timescale attached to this provision.

Tuition Assurance Schemes

1.31 Several witnesses before the Inquiry raised the matter of exemptions from the requirement to be a member of a Tuition Assurance Scheme. This is a matter for the minister to determine through regulation. Labor Senators consider that the current situation, whereby Commonwealth-funded institutions are exempt from this requirement, is appropriate. These institutions enjoy sufficient financial security and backing so that the risk of their failure is extremely small. However, we are concerned that the current regulations pertaining to the Parent Organisation Guarantee are unclear, opaque and, quite possibly, too loose in their potential application. The Labor senators urge the minister, in framing new regulations on the Parent Organisation Guarantee, to tighten and clarify the existing regulations in this area.

Conclusion

1.32 In summary, Labor senators believe that the ESOS Bill 2000 needs to be amended in a range of areas. These are:

- The inclusion of a provision for a mandatory 'fit and proper person' test for providers and the principals of provider companies, covering registered providers and also the actual providers of educational services; and

- The inclusion of a clause with the effect of applying procedures similar to those currently applicable under the Corporations Law to the service of documents on providers giving notice of suspension of registration.

1.33 In addition, Labor Senators consider that the draft National Code should be strengthened to improve the existing provisions that go to the issue of quality assurance - at both State and Federal levels. The National Code should also state explicitly that its provisions relating to providers apply also to the actual deliverer of the services.

1.34 The regulations pertaining to the operation of the Tuition Assurance Schemes should exempt Commonwealth-funded providers and should tighten the provisions applying to the Parent Organisation Guarantee.

1.35 A further matter of serious concern to Labor senators is the lack of extraterritoriality provisions in the bill, relating to the activities of providers overseas. This is a complex issue, and means of regulating offshore activities and educational provision should be carefully examined, with a view to amending the new Act at the earliest possible time.

Senator Kim Carr **Senator Trish Crossin**

AUSTRALIAN DEMOCRATS' ADDITIONAL COMMENTS

Senator Natasha Stott Despoja

The Australian Democrats endorse the comments and recommendations contained in the Minority Report to the Committee, and make the following additional comments.

The Australian Democrats have long raised concerns with the inadequate regulation of the provision of education to overseas students, and the protection afforded overseas students in Australia.

In 1998, the Democrats acted on these concerns, opposing the extension of the sunset clause, believing that the existing scheme was inadequate. Submissions to the Senate Inquiry into the scheme made it clear that students were not protected from the consequences of a collapse of a private provider.

It is almost two years to the day since the Government and Opposition voted to extend the sunset clause to maintain the existing scheme, and only now is the Senate presented with a new regulatory scheme.

The Australian Democrats note the many concerns raised in evidence to the Committee in the course of this Inquiry, and reserve the right to introduce amendments to act on these concerns, in the Committee stage of debate on the Bill.

Senator Natasha Stott Despoja

APPENDIX 1: LIST OF SUBMISSIONS

SUBMISSION NUMBER	RECEIVED FROM
1	Mr Adam Johnston, NSW
2	RMIT Union, VIC
3	South Pacific Association of Bible Colleges (SPABC), ACT
4	Australian Council for Private Education and Training (ACPET), NSW
5	TAFE Directors Australia, ACT
5a	TAFE Directors Australia, ACT
6	Australian Vice-Chancellors' Committee (AVCC), ACT
7	National Council of Independent Schools' Associations, ACT
8	University of Queensland Union, QLD
9	Young Democrats, QLD
10	Sydney College of Divinity, NSW
11	Western Australian Private Education and Training Industry Association Inc., WA
12	English Australia/ELICOS Association, NSW
13	ACL, NSW
14	East Coast College of English, QLD
15	Pat Petronio, University of South Australia Students Association, SA
16	Ms Fiona McGuigan, VIC
17	Council of Australian Postgraduate Associations (CAPA), VIC
18	Wollongong University Postgraduate Association (WUPA), NSW
19	National Liaison Committee for International Students in Australia Inc., VIC
20	National Tertiary Education Union (NTEU), VIC
21	Swinburne University Postgraduate Association (SUPA), VIC
22	Department of Education, Training and Youth Affairs, ACT
23	Department of Immigration and Multicultural Affairs, ACT

APPENDIX 2: WITNESSES AT PUBLIC HEARING

MONDAY, 13 NOVEMBER 2000 - CANBERRA

The following witnesses gave evidence at the public hearing:

Australian Vice-Chancellors' Committee (AVCC)
Mr Stuart Hamilton, Executive Director
Mr Bob Goddard, Director International Relations
Mr Laurie Fisher, Project Manager, International Relations
Ms Fiona McGuigan
Australian Council for Private Education and Training
Mr David Pask, Company Secretary
Mr Max Schroder, Member, Board of Directors
Mr Tim Smith, National Executive Officer
Ms Barbara Glen-Feltis, Chair, Australian Council of Independent Vocational Colleges
TAFE Directors Australia
Ms Margaret Fanning, Executive Director
Mr David Endean, Director, International Centre, Holmesglen Institute of TAFE
Ms Helen Symes, Associate Director, Office of the Board of TAFE Queensland
National Tertiary Education Union
Mr Simon Kent
National Council of Independent Schools' Associations
Mr James Thomson, Executive Director
Ms Caroline Miller, Research Officer
English Australia/ELICOS Association (EA)
Ms Alyson Moore, Chairperson
Ms Lindy Babb, Executive Director
Ms Christine Bundesen, Council Member
Council of Australian Post Graduate Associations
Mr Bradley Smith, President
Ms Karen Mann, Portfolio Project Officer
National Liaison Committee for International Students in Australia Inc.
Mr Khee Kwong Tan, National Convenor
Department of Education and Youth Affairs
Mr Robert Horne, First Assistant Secretary, International Analysis and Evaluation Division,
Ms Sara Cowan, Assistant Secretary, International Policy Branch
Mr George Kriz, Chief Lawyer, Legal Business Assurance and Investigations Branch
Ms Susan Bennett, Director, ESOS Reform Group, International Policy Branch
Department of Immigration and Multicultural Affairs
Mr Abul Rizvi, First Assistant Secretary, Migration and Temporary Entry Division
Mr Todd Frew, Assistant Secretary, Temporary Entry Branch
Mr John Parker, Director, Students and Working Holiday Makers Section

APPENDIX 3: PAPERS TABLED AT HEARING

Date Received	**From: Description** [page reference in the committee's evidence]
13/11/00	English Australia: copies of correspondence 8pp [p41]
13/11/00	English Australia: copies of correspondence 44pp [p43]

APPENDIX 4: FURTHER INFORMATION

Further information accepted as evidence of the inquiry.

page	**dated**	**from: description**
1	14/11/00	Australian Council for Private Education and Training: extracts of report of Victorian audit of providers of education and training to overseas students, September 2000, 6pp
8	15/11/00	English Australia: copy of correspondence concerning fidelity funds, 5pp
13	16/11/00	English Australia; letter, 2pp
15	16/11/00	Department of Education, Training and Youth Affairs: further comment, 7pp
22	21/11/00	Australian Council for Private Education and Training: answers to questions, 2pp
24	21/11/00	Australian Council for Private Education and Training: further comment, 7pp
31	20/11/00	English Australia: answer to question, 1p
32	22/11/00	Department of Education, Training and Youth Affairs: answers to questions, 4pp
36	22/11/00	Department of Immigration and Multicultural Affairs: answers to questions, 8pp
44	23/11/00	TAFE Directors Australia: answer to question, 1p
45	24/11/00	Australian Vice-Chancellors' Committee: answer to question, 1p
46	24/11/00	National Council of Independent Schools Associations: further comment, 2pp
49	27/11/00	Department of Education, Training and Youth Affairs: copy of letter DETYA/ ACPET, 3pp