

Submission

to

Senate Employment, Workplace Relations and Education
Legislation Committee

Inquiry into the Education Services for Overseas Students Amendment Bill 2005

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Australian Government

Department of Education, Science and Training

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October 2005

Introduction

The purpose of this submission is to provide information on the provisions of the *Education Services for Overseas Students Amendment Bill 2005* (the Bill).

In calling for submissions, the Committee indicated that it would examine in particular the implications of the Bill:

- on the overseas student market; and
- of foreign owned education providers being registered within the meaning of the *Education Services for Overseas Students Act 2000* (the ESOS Act).

The Department of Education, Science and Training (DEST) will use these considerations as the Terms of Reference for its submission.

Background

The provision of education and training to overseas students in Australia is regulated by the ESOS Act.

The ESOS Act aims to:

- ensure only courses and providers of those courses registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) offer or provide courses to students on student visas;
- ensure that international students in Australia receive the education and training for which they have paid;
- protect the reputation and integrity of Australia's education and training export industry; and
- strengthen public confidence in the integrity of the student visa program.

To be able to teach overseas students on a student visa, education and training providers must, *inter alia*:

- become registered on CRICOS;
- unless exempt, belong to a tuition assurance scheme; and pay annual contributions to the ESOS Assurance Fund;
- refrain from misleading marketing practices or deceptive recruitment of students;
- provide required support services; and
- refund student money in cases of default.

The ESOS Act also contains provisions for the Commonwealth to investigate and impose sanctions including conditions and suspension on provider's registration; and remove non bona-fide operators from the industry.

The legislation is supported by, and in part administered together with, the state and territory governments.

Overview of the Bill

The Bill will amend the ESOS Act to:

- enable foreign owned higher education providers who are listed as “Table C” higher education providers under proposed amendments to the *Higher Education Support Act 2003*, to also become registered providers within the meaning of the ESOS Act;
- clarify that a Table C provider does not breach its obligations under the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students (the National Code) merely because the provider is not a resident of Australia;
- clarify that a registered provider does not breach its obligations under the ESOS Act or any other Act relating to education by charging overseas students (or intending overseas students) an amount as part of the student’s tuition fee if the amount is for any action the provider is required to undertake because of the ESOS Act or the National Code; and
- make technical amendments in relation to legislative instruments.

Principal amendments to be considered

HIGHER EDUCATION PROVIDERS

Currently under the ESOS Act only providers who meet Australian residency requirements are eligible for registration on CRICOS to teach overseas students. The ESOS Act defines residency to mean:

- (a) in the case of a company, a company incorporated in Australia that carries on business in Australia and that has its central management and control in Australia; or
- (b) in the case of an unincorporated body, a body that carries on business in Australia and that has its central management and control in Australia.

Under one of the main amendments to the ESOS Act, the Australian Government is seeking to enable high quality foreign owned and operated higher education providers the ability to register on CRICOS to provide education and training services to overseas students in Australia.

It is a consequential amendment to changes being made to the *Higher Education Support Act 2003* (the HESA Act), which will establish a new category of “Table C” providers within that Act.

Without the amendment to the ESOS Act, quality foreign-owned institutions would be precluded through the ESOS Act’s Australian-residency requirements from operating as registered providers in their own right.

Response to Terms of Reference

International education brings a wide range of benefits to our society, including significant cultural, intellectual and economic rewards. An added benefit of our competition in the international market place is the stimulus to quality and innovation, which is in the interests of all students. In 2004, the industry had an estimated worth of some \$7.5 billion, sustaining at least 50,000 jobs. The reputation of this valuable industry, including the interests of students who choose to study here, is safeguarded by the ESOS Act and its complementary legislation.

This amendment enables Australia to respond to new and emerging demands in the international education industry, by giving prospective students a greater choice of providers. Through flexibility and diversity the export sector will continue to hold a pivotal role in Australia's future.

This amendment does not impose any additional legislative or financial requirements on providers.

STUDENT SUPPORT SERVICES

The second main amendment to the ESOS Act is to clarify that all providers of education and training to overseas students must meet their obligations of providing support services under the National Code. This includes providing:

- appropriate arrangements for independent grievance handling/dispute resolution; and
- access to information or counselling services in orientation, academic progress, further study and accommodation.

In doing so, the amendment will allow a provider to include an amount in their tuition fee (but not a separate fee) to cover the National Code support services requirements.

This amendment does not impose any additional legislative or financial requirements on providers. Instead, it is facilitative only and reinforces the obligation to meet current National Code requirements

Response to Terms of Reference

Protection and enhancement of Australia's reputation for providing reliable and high quality education is crucial to achieving sustainable growth of this important export industry.

The export industry differs from domestic education as it requires the support of migration policy and must provide relevant and accessible consumer protection. The services education and training providers provide must cater for the fact that students who travel to Australia cannot usually see before they purchase, and, if there is reason for discontent with the services they have obtained, they may not be able to remain in Australia to pursue the matter through courts.

One of the major attractions, therefore, for overseas students coming to Australia (rather than going to a competitor country) is the provision of quality support services to overseas students. This will continue to be a significant and beneficial feature of

Australia's international education export industry in a more challenging and competitive global industry.

This measure is consistent with the ESOS Act's underpinning principles of quality assurance and consumer protection.

Technical amendments to be considered

Changes required by the Legislative Instruments Act 2003

The Bill makes technical amendments to ESOS Act as required by the *Legislative Instruments Act 2003*, clarifying that any disallowable instruments made under those Acts are now legislative instruments.

Response to Terms of Reference

N/A