

CHAPTER 2

Key issues

Introduction

2.1 The committee received 27 submissions to this inquiry, from a range of organisations including education providers (public and private, school and tertiary), unions and student associations and government departments and agencies (state and commonwealth).

2.2 The majority of submissions supported the bills. Broadly, submitters agreed that the changes would reduce the administrative burden on providers and improve options for students and their families, without significantly increasing potential risk.

2.3 In addition, many submitters highlighted the consultation process undertaken by the department in developing and refining the amendments, with several noting that potentially problematic changes had been averted through this process.

2.4 The department also noted that the bills address four of the recommendations of the 2013 Review of Higher Education Regulation, as noted in Chapter 1.¹

Streamlining regulation

2.5 In response to recommendations from the 2013 Review of Higher Education Regulation, a primary consideration for the bills was to more closely align the ESOS Act with the two domestic frameworks supporting quality and integrity in Australia's education system: the *Tertiary Education Quality and Standards Agency Act 2011* (TEQSA Act) and the *National Vocational Education and Training Regulator Act 2011* (NEVTR Act).²

2.6 In doing so, the bills will reduce unnecessary duplication and red tape, while continuing to ensure that Australia's international education system maintains its high quality reputation. The bills seek to clarify the roles of the Tertiary Education Quality and Standards Agency (TEQSA) and the Australian Skills Quality Authority (ASQA), including through the creation of the role of the ESOS Agency.

2.7 The department highlighted this change:

This provision gives clear decision making responsibility to TEQSA, ASQA and the Department of Education and Training under the ESOS Act. This responsibility incorporates, as appropriate, the national regulators' roles in assessing, monitoring and approving the registration of education

1 Department of Education and Training, *Submission 17*, p. 4.

2 Department of Education and Training, *Submission 17*, p. 5.

providers on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) under the ESOS Act.³

2.8 There was general agreement amongst submitters to this inquiry that reducing the regulatory burden on education providers is a positive development both for providers and regulators, as well as improving educational outcomes for students by rewarding quality providers.

2.9 The Australian Council for Private Education and Training (ACPET), for instance, noted that the measures contained in the bills would 'reduce provider compliance costs', allowing providers to 'focus on the delivery of quality education and training'.⁴ Similarly, the Council of Private Higher Education, the peak body representing higher education institutions independent of Australian public universities, supported the bills which, they argued, will:

reduce red tape and the unproductive compliance burden on providers, while strengthening the powers of ESOS Agencies, including regulators, to execute their functions for the better protection of students and the reputation of the international education industry.⁵

2.10 The Tuition Protection Service (TPS) provides international students with protection against loss of study options or money in the event that a provider closes unexpectedly. They were 'highly supportive' of measures in the bills which 'reduce regulatory burden on education providers'.⁶

2.11 Regarding schools, the Independent Schools Council of Australia (ISCA) argued that existing regulations and requirements pose a serious burden on the sector:

It is ISCA's view that the current level of administration and reporting required is acting as a disincentive for non-government school providers to continue to enrol overseas students. This is perhaps more pronounced in the schools sector than in other sectors because the profile of overseas students in the non-government schools sector is quite different to other sectors with most schools enrolling only small numbers of overseas students. We are aware of schools that have decided to let CRICOS registration lapse for this reason.⁷

2.12 The committee notes that the majority of submissions made to this inquiry supported the streamlining of regulations, which should decrease the regulatory burden on providers without compromising the protections afforded to students.

3 Department of Education and Training, *Submission 17*, p. 5.

4 Australian Council for Private Education and Training, *Submission 1*, p. 2.

5 Council of Private Higher Education, *Submission 18*, p. 1.

6 Tuition Protection Service, *Submission 14*, pp 1-2.

7 Independent Schools Council of Australia, *Submission 16*, p. 4.

Tuition Protection Service account

2.13 The proposed amendments to the bill remove the requirement for all non-exempt providers to maintain an account (referred to as the 'designated account') into which all tuition fees paid prior to commencement of a course are held.⁸

2.14 The department explained that the removal of this requirement will allow providers to invest that money in innovation and improving their courses, thus also improving quality.⁹

2.15 The department noted that students' protection is not lessened by the removal of this requirement:

Importantly, the removal of the designated account does not change a provider's obligations to protect students and pay the required TPS levies, nor does it change the protections students receive from the TPS.¹⁰

2.16 Submitters - particularly education providers - argued that the existing arrangement is burdensome and inefficient, and reported that its removal would give them the flexibility to invest tuition fees on their receipt into the course itself, thereby improving course standards.

2.17 For example, English Australia described the requirement for private providers to keep tuition fees in a separate bank account as 'administratively cumbersome and costly' and that it was 'anti-competitive both for private versus public institutions as well as Australia as a whole'.¹¹

2.18 International Education Association of Australia (IEAA) noted that the TPS is in:

such a sound financial position that the Australian Government Actuary has advised that the removal of the current ESOS designated tuition fee account provision will not involve a risk to our nation's tuition protection arrangements.¹²

2.19 On that basis, the IEAA argued:

requiring private education providers to retain pre-paid fees in a designated account is not a quality assurance measure and its removal will have no bearing on the quality of Australia's education providers. The current designated account requirements are also inequitable as they act as a

8 Explanatory memorandum, *Education Services for Overseas Students Amendment (Streamlining Regulation) Bill 2015*, p. 10.

9 Department of Education and Training, *Submission 17*, pp 10-11.

10 Department of Education and Training, *Submission 17*, p. 12.

11 English Australia, *Submission 15*, p. 2.

12 International Education Association of Australia, *Submission 3*, p. 1.

blanket provision not imposed according to the risk of individual providers. For the above reasons, all eight industry associations strongly support the removal of the current designated account requirements as per the wording in the Bills before the Parliament.¹³

2.20 Education provider Navitas also argued strongly against the existing provision in the Act and supported the amendment:

Navitas strongly supports the removal of this requirement as it has placed an extremely burdensome financial and administrative requirement on private institutions to maintain student tuition fees in a designated bank without providing a material level of additional protection for students. In Navitas' case this single piece of regulation has required the company at times to retain up to \$100m of additional funding facilities than would otherwise be required. This has added a considerable annual cost in commitment fees to retain these accounts, in direct funding cost, increased debt servicing costs and the lost opportunity cost of employing that capital for improved delivery services.

And most tellingly the evidence demonstrates that it has failed to protect student tuition fees in the instances of closures since its introduction and the introduction of the TPS.¹⁴

2.21 Some submitters, however, argued the amendment served to undermine the guarantee for students that refunds on courses not commenced would be straightforward and readily accessed.

2.22 The Tasmania University Union, for instance, argued that the measure requiring providers to keep fees in a separate account serves as an accountability measure:

If students do not start a course they initially enroll in, it is essential that they be refunded their payment. The requirement that Universities have a separate account for the funds paid by overseas students prior to commencing their course streamlines the process of checking that students have been refunded. Removing this process not only removes transparency from the use of overseas students fees; but also increases the work involved in overseeing refunds.¹⁵

2.23 The National Tertiary Education Union (NTEU), noting that the original provision was designed in response to perceived level of risk in the sector, contended that the problem has not been fully resolved:

However, given the recent evidence of widespread problems within the private vocational sector (summarised in a recent Senate report into the sector), we are concerned that both the Government and the sector are

13 International Education Association of Australia, *Submission 3*, p. 1.

14 Navitas, *Submission 19*, p. 4.

15 Tasmania University Union, *Submission 4*, p. 4.

seriously underestimating the current levels of provider risk. As such, the assumption that it is fine to pull back on regulatory protections is being made under a false premise.¹⁶

2.24 The NTEU maintained that the designated account, along with the restrictions on students paying more than 50 per cent of the course fee before commencing study:

act like the ‘seat belts’ in international education, which act to lessen the financial damage inflicted on students should their provider fail them.¹⁷

2.25 The TPS, the body responsible for administering the system, noted their concerns with this amendment:

With limits on the collection of pre-paid fees retained, the removal of the requirement to hold fees in a designated account reduces the risk to the OSTF measurably, nevertheless, it remains an area of potential risk for the TPS. Whilst the TPS would prefer the retention of this integrity measure, it is also persuaded [sic] by the many views of the stakeholders who advocated for its removal.

The TPS notes that in the absence of the requirements to maintain designated accounts, the Bill provides for regulators to impose conditions at any time during a provider’s registration which may include conditions that would place stronger requirements on the use of pre-paid tuition fees by a provider considered by the regulators to be an integrity risk. The TPS is of the view that these provisions could perhaps be further clarified by a specific reference to conditions on collection and use of prepaid fees in explanatory material or other appropriate elements of the ESOS legislative framework.¹⁸

2.26 Some submitters suggested a compromise on this point is possible. The Council of Australian Postgraduate Associations (CAPA) advocated for a response which falls between the current system and the bill's amendment:

It is CAPAs suggestion that while a course is in the first 2 years the fees from students are kept in an account that cannot be touched by providers as with the current system but from the third year of successful and continuous registration fees can be accessed as soon as paid to ensure that they may be used to improved course delivery. This compromise will provide both a security measure from scam providers as well as incentivise those course providers that are seen as doing the right thing in their first 2 years of operating. This system adds little red tape to the current system as the timing is based around the registration fees for that course.¹⁹

16 National Tertiary Education Union, *Submission 9*, p. 4.

17 National Tertiary Education Union, *Submission 9*, p. 4.

18 Tuition Protection Service, *Submission 14*, p. 3.

19 Council of Australian Postgraduate Students, *Submission 20*, p. 3.

2.27 Similarly, TAFE Directors Australia (TDA) suggested that a compromise between the current system and the proposed amendments might provide the best solution:

In the current environment where there is so much public concern surrounding the actions of some less reputable private education providers, TDA feels it imperative that the requirement for retaining pre-paid student fees in a 'designated account' remains.

TDA instead advocates that the current requirements (for private education providers to hold student fees in a designated account) be revised to reflect the 'risk-level' of individual providers. At present the requirements are inequitable, as they impose the same blanket provision to both high and low-risk private providers.²⁰

Committee view

2.28 While noting the submissions which opposed or suggested alternatives to this point, the committee is persuaded by the majority of submissions which supported this amendment and recognises that flexibility and red-tape reduction for providers will enable them to improve their course offerings for students, while also pointing to the ongoing protections for students.

Upfront fees

2.29 The removal of the restriction on students paying more than 50 per cent of their tuition fees before the course begins was a measure discussed in the majority of the submissions received. The department's submission noted that this issue was also frequently identified during the consultation process undertaken before the introduction of the bill.²¹

2.30 Most submissions favoured this change as providing greater flexibility for students and providers alike, while maintaining protections for students by making the option a choice for students, rather than a requirement a provider could enforce.

2.31 ACPET, in supporting the amendment, noted some of the reasons why this option for students and their parents might be an attractive one:

The amendments will enable students to make prepayments of more than 50 per cent where it suits their circumstances. For example, the payment of tuition fees up front may assist students on scholarships or other sponsored arrangements. This will not only assist these students but reduce some provider administrative burden.²²

20 TAFE Directors Australia, *Submission 27*, pp 1-2.

21 Department of Education and Training, *Submission 17*, p. 10.

22 Australian Council for Private Education and Training, *Submission 1*, p. 3.

2.32 Australian Government Schools International (AGSI) made similar points in their submission, noting that often it is not the students themselves who are responsible for paying for their course, but either parents, governments or other organisations, all of whom might prefer the option to pay all fees upfront:

Removing the restriction on payments of 50% of tuition fees provides parents and students with greater choice and flexibility. Parents often request payment of a whole year to take advantage of favourable exchange rates. A number of AGSI members have agreements with provincial Ministries of Education overseas who provide scholarships for their students to study in an Australian government school for a year and they wish to pay the full year tuition fees upfront. The restriction on the payment is regulation required for a very small number of unethical providers who should be dealt with through the CRICOS registration process. The National code provides students and parents with protection. These changes assist them further by providing greater flexibility.²³

2.33 Submitters noted that the amendments introduced flexibility, still allowing students (and others responsible for paying fees) choice in the matter. For example, the IEAA argued:

The Bills, before Parliament, would allow them [students] to choose to pay more than 50% upfront, but would still prohibit providers from requiring a greater payment, thereby protecting the students. This proposed change would allow students, their families, and sponsors the flexibility to pay fees when there are favourable exchange rates or when it suits their personal situations. The current restriction has disadvantaged some students rather than providing protection.²⁴

2.34 Government Education and Training International noted that the added flexibility does not come at the expense of security for students:

The National Code provides students and parents with protection. These changes assist them further by providing greater flexibility.²⁵

2.35 English Australia also supported the amendment:

The introduction of restrictions on institutions receiving more than 50% of tuition fees in the 2012 changes had several unintended and very negative consequences. On one hand, it created significant administrative and financial burden for institutions. On another, it caused difficulty by limiting choice for international students, parents and other funding bodies, such as government scholarship funds, that wished to prepay more than 50% of their tuition upfront. Meanwhile, this restriction has potentially enabled negative behaviours, such as onshore course hopping, that have negative

23 Australian Government Schools International, *Submission 10*, p. 1.

24 International Education Association of Australia, *Submission 3*, p. 1.

25 Government Education and Training International, *Submission 26*, p. 1.

impacts on quality providers, student outcomes, 'brand Australia', and, to a degree, the integrity of the Australian visa program.²⁶

2.36 Universities Australia noted that, while the issue does not affect many students in universities, the current provision does impact some students negatively. In addition to arguments made by other submitters, Universities Australia noted that some parents would prefer to make payments of more than 50 per cent:

because of the difficulty of getting funds out of some countries due to internal unrest or restriction. Some parents would prefer to make tuition payments upfront in these circumstances rather than leaving large sums of money in students' everyday accounts in Australia.²⁷

2.37 Universities Australia made a further point in support of the removal of this restriction, noting that the administrative burden would decrease for universities:

For universities this change will bring about an additional benefit as it will remove the considerable administrative burden associated with returning funds to students who have inadvertently paid in excess of the limit. The process for returning funds can be quite complicated as students must respond to a request for bank details to which to return the excess funds and entails additional university reporting on refunds to the TPS.²⁸

2.38 The University of Adelaide supported this proposal, noting that the existing requirement:

has been particularly problematic with shorter courses such as those offered by our English Language Centre which are shorter than one year in duration.²⁹

2.39 TPS noted their concerns with removing all restrictions on the amount of fees students would be required to pay before the course began, but supported the amendments as presented in the bill:

The TPS is pleased that the proposed provisions in the Streamlining Bill retain the limit on the collection of pre-paid fees (albeit modified appropriately to allow students and third parties to pay more than 50 percent only if they request to do so).³⁰

2.40 The Department of Immigration and Border Protection noted that the amendments reflect Australia's visa program:

Increasing the flexibility of education providers to claim more than 50 per cent of tuition fees upfront complements Australia's student visa

26 English Australia, *Submission 15*, p. 2.

27 Universities Australia, *Submission 13*, p. 2.

28 Universities Australia, *Submission 13*, p. 2.

29 University of Adelaide, *Submission 22*, p. 1.

30 Tuition Protection Service, *Submission 14*, p. 2.

framework, in which some students are required to show that they have sufficient financial resources to cover course fees, living expenses and travel costs in order to obtain a student visa. The financial requirements for student visas are designed to reduce the risk of international students experiencing financial hardship while in Australia and ensure that international students have adequate financial support for the duration of their studies.³¹

2.41 While most submitters supported this amendment, for the reasons outlined above, several submissions included concerns with the provision.

2.42 The University of South Australia supported the change in a broad sense, but noted potential problems with the amendment's wording and feared that it could actually lead to increased administrative burdens on providers:

We however have a concern with the exact wording/interpretation of the amendment. If a student or third party pay more than 50 per cent of their tuition fees to a provider without "formally requesting" to pay more than the required amount, this should also be allowed (as an implied request), rather than having to separately ask the student for their express approval. This would create an unnecessary administrative burden.³²

2.43 The Overseas Students Ombudsman (OSO) noted the amendment's benefit for students on scholarships but, based on their experience, raised concerns about the potential for students to be pressured into paying more than 50 per cent of their fees upfront:

However, in relation to non-scholarship students, we would like to note the concerns raised about this change at the National Overseas Student Complaint-Handlers Forum, which we hosted in Melbourne on 9 July 2015 with over 30 complaint-handlers from a range of organisations around Australia. Concerns were raised about how it can be demonstrated that it was the student or payee's choice to pay more than 50% of the fees upfront. For example, could some providers or education agents seek to pressure students to request to pay 100% of the fees prior to course commencement for the provider's benefit, without a genuine desire on the part of the student to pay the total fees? Alternatively, could providers request more than 100% of the fees upfront without telling students they have a right to choose to only pay 50% upfront? We expect we may receive complaints where the student claims they did not request to pay more than 50% of the fees upfront but the education provider states that it received such a request from the student or the student's education agent.³³

2.44 As a response to this, the OSO recommended increased safeguards:

31 Department of Immigration and Border Protection, *Submission 5*, p. 2.

32 University of South Australia, *Submission 2*, p. 10.

33 Overseas Students Ombudsman, *Submission 7*, p. 5.

To ensure there are sufficient safeguards in place in introducing this change, we recommended in our submission to DET that it provide clear guidance to education providers and students about what constitutes a request to pay more than 50% of tuition fees prior to commencement for courses over 25 weeks long. We recommended that DET include a requirement that such a request be recorded in writing and retained by the provider to be produced in case of any future disputes.³⁴

2.45 While noting that the amendment ensures that choice remains in the hands of students, the Tasmania University Union suggested that this amendment may lead, over time, to an expectation from providers that students pay higher proportions of their fees before the course begins:

Although the provision does not require students to pay more than 50 percent of course fees before they commence; the Tasmania University Union believes that allowing students to do so will lead to an expectation for them to pay up to the full cost of their course before commencing.³⁵

Committee view

2.46 The committee notes that the vast majority of submissions favoured amending the existing legislation to allow for increased flexibility in the upfront payment of tuition fees. The committee also notes that when students do pay their fees upfront, the administrative burden on providers will be reduced.

2.47 Importantly, the bill retains the element of choice and continues to offer students – along with their parents or governments and other organisations who often pay for their studies – a choice in whether or not to take up the option offered by this amendment. When students do pay their fees upfront, providers will have a reduced administrative burden and increased flexibility.

2.48 The committee acknowledges that some submissions did raise concerns or objections to this amendment. However, the committee is confident that the increased options for students – and flexibility for providers – do not undercut the students' ability to choose how they pay their fees.

TPS director

2.49 The bill strengthens and increases the powers of the Tuition Protection Service (TPS) Director. The TPS was established in 2012 to protect the rights of international students in Australia. Should a provider close unexpectedly, the TPS will help students to either find a place in a new course to continue their studies or pay them a refund of their tuition fees. This refund is paid out of the Overseas Students

34 Overseas Students Ombudsman, *Submission 7*, p. 6.

35 Tasmania University Union, *Submission 4*, p. 5.

Tuition Fund (OSTF), collected by the TPS from an annual levy on all providers of education to international students.³⁶

2.50 While the TPS Director can share information about providers with regulatory agencies under current legislation, the amendments will expand that role to enable the TPS Director to make a recommendation to an ESOS agency that they take enforcement action against a particular provider.³⁷

2.51 These amendments should serve to ensure that the TPS Director 'has a more direct role in supporting quality and integrity in the international education sector'³⁸, and therefore were broadly supported by submitters to this inquiry.

2.52 ACPET, in supporting the changes, noted that:

The proposed amendments will include an enhanced ability to gather information from providers in support of the TPS Director's role and to share information with the ESOS regulators. ACPET strongly supports these measures which will contribute to a strengthening of the TPS and the broader regulatory arrangements. It will reinforce the clear message of Australia's commitment to a robust, high quality international education sector.³⁹

2.53 The OSO also supported this amendment:

The OSO transfers certain complaints to the TPS, where it is better suited to deal with those complaints. This includes complaints about provider closures and complaints about an unpaid refund following a student visa refusal, where the TPS can pay the refund directly to the student. Where the TPS identifies a serious breach by the provider, we understand the TPS can report this to the relevant regulator. Therefore, we support this change to ensure the TPS can provide relevant information about potential breaches of the ESOS Act or National Code to the ESOS Agency for consideration.⁴⁰

2.54 The TPS itself supported the amendment, arguing that the expanded powers of the TPS Director would:

make it easier for the TPS to monitor providers at risk of not meeting their obligations to students and to work more closely with the regulators in taking action against providers of concern which have come to the notice of the TPS.⁴¹

36 Tuition Protection Service, *Submission 14*, p. 1.

37 Explanatory memorandum, *Education Services for Overseas Students Amendment (Streamlining Regulation) Bill 2015*, p. 76.

38 Department of Education and Training, *Submission 17*, p. 8.

39 Australian Council for Private Education and Training, *Submission 1*, p. 3.

40 Overseas Students Ombudsman, *Submission 7*, p. 4.

41 Tuition Protection Service, *Submission 14*, p. 3.

Committee view

2.55 The committee notes the various arguments raised by submitters and is persuaded that strengthening the TPS Director's powers will serve to improve the quality of education in Australia by improving the capacity for regulators to monitor providers.

Reporting deadlines

2.56 Currently, all providers are required to report, to the Secretary of the Department of Education and Training and the TPS Director, any instances of student default within five days. The bill's amendment removes that requirement, with the exception of instances where the provider has paid a refund to the student. Other information about students, as defined in section 19 of the ESOS Act, must still be reported, albeit with a timeframe of 31 days, rather than the current 14.⁴²

2.57 The department explained that the current system has proved problematic, in part because five days 'was too short a period in which to determine a genuine student 'default' had occurred'.⁴³

2.58 Broadly, other submitters – particularly providers and especially universities – were in favour of the proposed amendment, on the grounds that the existing requirement is overly burdensome and unnecessary.

2.59 For instance, The University of South Australia described the current arrangement as a 'burdensome requirement' and supported its removal.⁴⁴

2.60 Similarly, Griffith University described the existing provisions as 'administratively and financially burdensome to a provider (especially a low-risk provider with a significant number of international students such as a university)' and the amendment as likely to result in 'a positive change in compliance costs'.⁴⁵

2.61 The University of Adelaide described the existing requirement as 'onerous and time-intensive' and strongly endorsed the bill's proposed amendments regarding reporting.⁴⁶

2.62 TPS added their support to this amendment, noting that the current system is unnecessarily burdensome on providers:

42 Explanatory memorandum, *Education Services for Overseas Students Amendment (Streamlining Regulation) Bill 2015*, pp 80-1.

43 Department of Education and Training, *Submission 17*, p. 12.

44 University of South Australia, *Submission 2*, p. 9.

45 Griffith University, *Submission 6*, p. 1.

46 University of Adelaide, *Submission 22*, p. 1.

We are pleased to see the proposed removal of section 47C of the ESOS Act which required providers to report the occurrence of all student defaults within five days. The modification of section 47H to further reduce reporting requirements is also welcomed. The TPS is of the view that the compliance costs of the current requirements far outweigh the potential benefits.⁴⁷

2.63 English Australia also supported the amendment:

The changes to requirements introduced by the bill, simply remove an administratively burdensome requirement for reporting that delivers little or no value while actually removing from institutions the ability to sensibly support students and resolve issues.⁴⁸

2.64 The Department of Immigration and Border Protection (DIBP) noted that removal of these deadlines may have an impact on their monitoring of students on visas:

Extending the period for education providers to report student default or course variations may have a minor impact on visa processes where an international student's family members apply for student visas to join the student in Australia after a course variation occurred. This may affect visa processing officers' access to the most current information on the student's enrolment status when assessing the family member's visa application. The Department intends to monitor the impact of these measures on the integrity of the student visa programme.⁴⁹

2.65 The Queensland Government Department of Education and Training broadly supported this amendment, but with a caveat regarding student welfare:

Repealing the current 5 day reporting requirement where the student default does not create a welfare concern (such as those relating to refund reporting) is supported.

However, where a provider holds welfare responsibility for the student and the default has welfare implications, it is recommended that the 14 day reporting period be reviewed with a view to retaining the current 5 day default reporting period.⁵⁰

2.66 While most submitters argued that the amendment removes an overly burdensome requirement which results in little benefit for students, CAPA argued against the change, noting that the current system exists to protect students:

The current amendment wishes to change the reporting of student default to cases where the provider only reports a default they have paid a refund to

47 Tuition Protection Service, *Submission 14*, p. 2.

48 English Australia, *Submission 15*, p. 2.

49 Department of Immigration and Border Protection, *Submission 5*, p. 2.

50 Queensland Government Department of Education and Training, *Submission 25*, p. 2.

the student (ESOS Amendment streamlining bill 2015, explanatory memorandum). It is a subtle difference but places the decision of a refund not in the hands of an external body but in the hands of the course provider. In most cases this may not be an issue however the protection of students from shonky providers is now placed directly in the hands of those same providers. Whilst the aim of this amendment is to reduce red tape, and the reporting of student defaults may seem an easy place to remove red tape, CAPA is of the opinion that the reporting of defaulting students of only selected cases may create as much red tape as just reporting all cases of student default. It is therefore CAPA's recommendation that this aspect of the bill be reviewed and perhaps expand reporting to any student that defaults but has paid any amount in course fees to a provider thus allowing the outside body to make the final recommendation in regards to a refund.⁵¹

Committee view

2.67 The committee notes that the majority of submissions agreed that the current system produces minimal benefit to students while placing an unnecessarily strict requirement and administrative burden on education providers.

2.68 The committee is therefore of the view that the amendment is a reasonable change that will reduce the compliance burden on providers, allowing them to be more competitive.

Internal review

2.69 Under the ESOS Act, providers who are unhappy with a decision made by an ESOS agency have the right to appeal that decision to the Administrative Appeals Tribunal (AAT). The amendments proposed by the bill retain that right, but add the option of providers requesting an internal review by the agency itself as a first step.

2.70 The Department of Education and Training explained the benefits of this amendment:

An internal review of certain decisions made by the ESOS agency will support a more cost effective and fairer approach to providers seeking redress where they disagree with the ESOS agency's regulatory decision. It will give providers the opportunity to have appeals dealt with quickly and in a less costly way than under the current arrangements. The provisions will align the ESOS Act with the TEQSA Act and NVETR Act, which allow an internal review or appeal of decisions made by the regulator.⁵²

2.71 The OSO also supported this amendment, noting that internal review provisions are:

51 Council of Australian Postgraduate Associations, *Submission 20*, p. 2.

52 Department of Education and Training, *Submission 17*, p. 7.

consistent with best practice complaint handling principles, which support the provision of an internal review right within the decision-making body prior to a review application being made to an independent, external complaints/review/appeal body.⁵³

Committee view

2.72 The committee agrees that adding the option of an internal agency review is of benefit to providers, and maintaining the existing right of appeal to the AAT ensures that providers unhappy with a decision by an ESOS agency are not in any way disadvantaged by this amendment.

Study period definition

2.73 The ESOS Act currently discusses a 'study period', which each provider must define in writing for each student, with such a period being a maximum of 24 weeks. The amendment does away with this concept, on the basis that the transparency around course length and the fees which relate to courses will still be defined for students under the national code.

2.74 The bill's removal of the maximum of 24 weeks for a defined study period was described in submissions as a necessary change to reflect the variable reality of the education sector.

2.75 In discussing this point, for instance, IEAA argued that:

The current requirement under the ESOS Act for a study period to be less than 24 weeks is an arbitrary period of time that, in the modern world, does not necessarily align with the study periods offered by education providers. This ESOS requirement is also at odds with Australia's National Code, wherein education providers can offer study periods that are "a discrete period of study within a course, namely a term, semester, trimester, short course of similar or lesser duration" as long as the study period does not exceed 6 months. The 24 week limitation also has a particular impact on the ELICOS sector as many of their providers have longstanding five week teaching block academic progression arrangements.⁵⁴

2.76 ACPET described the change as aligning the regulation to reality:

This simply responds to the market realities that see a range of programs being developed to respond to the needs of students. Providers will still need to provide students with full details (including costs) of their program of study in accordance with the requirements of the National Code.⁵⁵

53 Overseas Students Ombudsman, *Submission 7*, p. 4.

54 International Education Association of Australia, *Submission 3*, p. 1.

55 Australian Council for Private Education and Training, *Submission 1*, p. 3.

2.77 English Australia also noted that the amendment corrects an insufficiently flexible provision:

The introduction of the prescription of 24 weeks as a ‘study period’ failed to properly take into account short courses, particularly ELICOS, which offer 5-week programs. The minor change in the new Bill of the length of a ‘study period’ from 24 to 25 weeks will effectively lessen the administrative burden, particularly for, but not limited to, our universities. English Australia would certainly argue that even this is an unnecessary limitation, however, and that a ‘study period’ should be extended to a longer period of 36 or even 52 weeks to allow for more program flexibility and innovation.⁵⁶

2.78 ISCA also supported this change:

ISCA supports the removal of “study period” from the Act and the need to document the tuition fees for every study period in every written agreement. This measure will reduce the amount of administrative work involved in student enrolments and this information is in any case adequately captured in other enrolment and reporting processes. Under the requirements of the National Code, providers are still required to enter in written agreements with every student setting out the details of the course being undertaken and an itemised list of course monies payable.⁵⁷

2.79 The University of Adelaide described the existing requirement as 'anachronistic' and argued that removing this requirement would 'greatly enhance offer and admissions processes for international students and reduce confusion'.⁵⁸

2.80 While the majority of submitters supported this change, the OSO raised some concerns about how it might affect refunds and fee cancellation policies:

We note the intention to remove the requirement to specify a study period in a written agreement between the provider and student. This should not have any effect where the refund policy and fee cancellation policy refer to the course start date when setting out whether a student is eligible for a refund or liable to pay further fees in case of a student default. However, if the refund policy or fee cancellation policy refers to withdrawing from a course before or after the start of a study period, then a definition of study period should be included in the refund policy and any fee cancellation policy, to give meaning to this term in the written agreement.

For example, we see some written agreements which state that if the student withdraws from the course without giving a certain amount of notice, the fees for the next term or semester will still be payable. In order to apply this policy a definition of term or semester, and the proportion of the fees that apply to that period, would be necessary. Otherwise, providers may not be

56 English Australia, *Submission 15*, p. 2.

57 Independent Schools Council of Australia, *Submission 16*, p. 5.

58 University of Adelaide, *Submission 22*, p. 1.

able to implement their refund policy or fee cancellation policy if a reference to study period is made without a definition and without an explanation of what percentage of the total tuition fees this amounts to, in the absence of a list of tuition fees for each study period.⁵⁹

Committee view

2.81 Most submitters were in favour of the removal of the concept of the 'study period' from the ESOS Act, on the basis that it was overly restrictive and based on an arbitrary length. These arguments persuaded the committee that this amendment should increase flexibility for providers and students alike.

Committee view

2.82 The overwhelming majority of submissions to this inquiry supported the amendments contained within the bills, which were drafted following extensive consultation undertaken by the department. The committee therefore suggests that the amendments as proposed have received considerable scrutiny and input from those in the sector and have been improved and approved as a consequence.

2.83 In particular, the committee notes that these amendments to the ESOS Act will serve to improve education standards and course offerings for international students in Australia, increasing flexibility for both providers and students while maintaining protections and safeguards for each.

2.84 Key regulators in the sector – the TPS, TEQSA and ASQA – will all have increased and streamlined powers to address problems which arise, and providers will be better able to focus students and course offerings by reducing their administrative burden.

2.85 Students retain the majority of the safeguards which they currently have, while also being offered greater flexibility and more choice in their study and payment options.

2.86 The committee is of the view that the bills address key points of concern with the existing legislation and set in place a framework for Australia's international education system which will enable it to maintain its world-class reputation.

59 Overseas Students Ombudsman, *Submission 7*, p. 7.

Recommendation 1

2.87 The committee recommends that the Senate pass these Bills.

Senator McKenzie

Chair