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Our Ref: K-02-005

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Senator Gavin Marshall
Committee Chair
Senate Education, Employment and Workplace Relations
Legislation Committee
PO Box 6100
Parliament House
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Dear Senator Marshall

Inquiry into Bills referred 13 October 2011: Tuition Protection Service

Universities Australia's original submission on the Education Services for Overseas Students Bills was made to the Senate Education, Employment and Workplace Relations Committee in early November. Following consultation with operational staff within universities, it is clear to Universities Australia that our compromise proposal of five days notification for student default is unworkable. We hope the Committee will kindly accept another brief supplementary submission.

As articulated in our earlier submission, there is significant concern from universities about the provisions of the TPS Bills, particularly those relating to the timeframes for notifications of provider and student defaults. Universities administer significantly larger student enrolments compared to providers in other sectors and the provisions relating to notification of defaults within 24 hours will not be able to be met by universities. As these timeframes are so unrealistic, universities do not want to be in the position of being penalised for non-compliance when they already have processes in place that are working well and provide international students with positive experiences while studying in Australia. The intent behind these proposed changes should be to establish a framework that is capable of being met and allows its participants to comply and provide the best outcomes for its students.

Detailed information from the Victorian International Directors Committee ESOS Group (which represents Victorian universities and is comprised of operational staff with hands-on experience of ESOS reporting) on why the proposed timeframes will not work is attached to this letter. It has not been clearly articulated how the sheer volume of potential notifications from all universities proposed under the Bills will be handled under the new arrangements and why this is required when the current process of providers notifying within 14 days is accepted, realistic and achievable. The current system allows for accurate reporting of situations that have been thoroughly investigated by universities.

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Universities Australia proposes that serious consideration be given by the Committee to keeping the current notification provisions of 14 days for universities. This is an appropriate notification period and universities have adequate pastoral care arrangements in place to ensure that any student welfare concerns are treated seriously and dealt with swiftly according to strict university policy. We raise this important issue for the Committee's consideration again in the hope that the Inquiry considers amending the notification clauses relating to student defaults for universities. Consulting on the detail behind the legislation in a legislative instrument once the Bills receive Royal Assent will not assist universities as the provisions as they stand are unworkable. The Committee may decide to exempt universities from these notification provisions.

Universities Australia would be pleased to appear before the Committee to discuss and elaborate on any of our claims in detail and explain why the five day notification provision offered as a compromise in our earlier submission will cause significant difficulty. Our view is echoed by a number of other submissions to this inquiry who say that such unrealistic timeframes do not suit large, complex organisations dealing with big student populations.

Universities Australia looks forward to working with government to ensure that we achieve the best possible outcomes for international students and international education providers.

Yours sincerely

Dr Glenn Withers AO
Chief Executive Officer

Additional Comments on the Proposed TPS Bills from the Victorian International Directors' ESOS Group (to be read in conjunction with Universities Australia's submissions)

24 Hour Notification Period and Nexus between Reporting and Action by TPS Staff

It is proposed that providers should notify the TPS Director of a provider or student default within 24 hours.

This does not demonstrate an understanding of the practicalities of administering student enrolments in a large institution such as a university which has thousands of international students. Nor does it take account of weekends or public holidays.

A provider default is defined as: a course not starting on the agreed start date or the provider not continuing to provide a course before a student has completed the course.

A student default is defined as: the student does not commence their course; withdraws from their course or their institution cancels their enrolment due to non-payment of fees, visa breach or misbehaviour.

The rationale for a short reporting timeframe for provider defaults is understandable as the TPS Director may have to act to protect the student's interests. Nonetheless, a reporting timeframe of 24 hours is not achievable as information must flow from the faculty to ESOS reporting staff and a reasonable time should be allowed for this to occur.

The rationale for a short reporting timeframe for student defaults (as currently defined in the proposed Bills) is not clear. Hundreds of students do not commence, withdraw from their courses or have their enrolments cancelled for the reasons stipulated every year. If these hundreds of reports are to be made to the TPS Director, what will the TPS Director do with these reports to justify the reduced reporting timeframe? The nexus between reporting these student defaults and action by the TPS Director is not clear to providers. It seems to be placing an unduly onerous obligation on providers without any explanation of what is to be done with the information to justify the shorter reporting timeframe. If it is a question of protecting the welfare of students, how will this be accomplished? In the case of any of the student defaults specified there might be no question of student welfare to be addressed. For example, a student may withdraw and transfer to another provider or return home or change visas.

Examples of Scenarios

A likely scenario is that a student withdraws from their course at their faculty, which then needs to process the withdrawal on the student management system. Subsequently, ESOS reporting staff download a report identifying the students whose withdrawal needs to be reported. This process can take at least a week.

In relation to non-commencements, a likely scenario is that students simply want to change their intake from say February 2012 to June 2012. What benefit will it serve to report this information to the TPS Director? It seems to have the potential to create more 'busy' work for providers and TPS staff for no apparent benefit.

Again, in relation to non-commencements, a likely scenario is that enrolments are not finally confirmed until a week after census date (to allow enrolment staff time to enter or alter enrolments if necessary). It will then take time to run the necessary reports and undertake the required ESOS reporting. The non-commencement will be seen as running from a week after census date as this is the final time that a university can determine that the student will not be enrolling. How will reporting this within 24 hours to the TPS Director result in any benefit to the student or the industry?

In relation to enrolments cancelled for visa breach (e.g. unsatisfactory academic progress for which the current reporting timeframe under the ESOS Act is 'as soon as practicable'), a possible scenario is that the enrolment is cancelled by a faculty and then advised to ESOS reporting staff. Reporting staff then audit the student file to ensure that the university has followed due process to allow the reporting to take place. This can take some time and certainly not less than 14 days.

Recommendation: Retain the current reporting periods under the ESOS Act: 14 days for the majority of student course variations and 'as soon as practicable' in the case of unsatisfactory progress or (for limited courses) attendance.

Obligation to Notify TPS Director of Refunds Where a Student Defaults

Under the current proposals, not only are providers required to notify the TPS Director of student defaults within 24 hours. They are also required to notify the TPS Director within 7 days after the end of the provider obligation period of any refund provided to the student. Again the nexus between this reporting requirement and any benefit to the student or industry is not clear. Universities refund hundreds of students every year when students do not commence, withdraw or have their enrolments cancelled for a variety of reasons. This refund information has never been provided to regulators in the past and there does not appear to have been any difficulties that have resulted from this. What benefit will it serve to report this information to the TPS Director? It seems to have the potential to create more 'busy' work for providers and TPS staff for no apparent benefit.

The proposed provision imposes a huge administrative burden on universities which will need to engage more compliance and finance staff to comply with it when they would prefer to divert their resources to areas which will have more tangible benefits for students.

Recommendation: Do not require that providers notify refund details to regulators in the case of a student default.

Limit on Pre-Paid Fees

For continuing students, it is proposed that providers must not receive tuition fees more than two weeks before the start of a study period. This does not take account of how universities operate. Many of our students pay by telegraphic transfer into the university's bank account. They can do this at any time and many choose to pre-pay as it may be difficult to get funds out of their country or their parents seek to pay at a time of convenience to them. This is a regular occurrence and it is simply not practical or sensible to suggest that universities should identify these funds let alone return them.

The intent of this proposal is to ensure that the TPS does not have to refund substantial fees in the event of a provider default. However, this has never been a risk posed by universities.

Recommendation: Do not require universities to place a timeframe on when they can accept pre-paid fees.