

E N G L I S H



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EDUCATION SERVICES FOR OVERSEAS STUDENTS LEGISLATION AMENDMENT (TUITION PROTECTION SERVICE AND OTHER MEASURES) BILL 2011;

EXPLANATORY MEMORANDUM

EDUCATION SERVICES FOR OVERSEAS STUDENTS (REGISTRATION CHARGES) AMENDMENT (TUITION PROTECTION SERVICE) BILL 2011;

EXPLANATORY MEMORANDUM

EDUCATION SERVICES FOR OVERSEAS STUDENTS (TPS LEVIES) BILL 2011; AND EXPLANATORY MEMORANDUM

[THE BILLS]

Supplementary Submission by **ENGLISH AUSTRALIA**

Background

English Australia welcomes the opportunity to make this **supplementary submission** which addresses developments in relation to the ESOS Bills under review since our original submission was lodged. **English Australia would be pleased to provide further information to assist the Committee's deliberations and would welcome the opportunity to present to a public hearing of the Committee.**

The Senate Standing Committee responsible for education has played an invaluable role reviewing and recommending amendments to the original ESOS legislation in the early 1990s and subsequent amendment bills which have followed the regular reviews of the Acts. English Australia and the ELICOS Association, as it was originally named, have made numerous submissions to this Committee and its recommendations frequently accepted by the Government of the day have improved the operation and regulation of international education.

As the Committee is well aware, the ESOS Bills under review are part of a larger package of measures which represent the most fundamental legislative and regulatory reform of international education since the introduction of the first ESOS Act. Notwithstanding the specific issues raised in this submission, English Australia supports the thrust and intent of the measures and commends the Parliament for the expeditious manner in which they have been treated.

As the operator of one of the largest Tuition Assurance Schemes, English Australia welcomes the advent of a single, national Tuition Protection Scheme and commends Senator Evans and DEEWR for reconciling the existing sector-specific approach with the proposed new unified approach. However, as detailed below and in other submissions to this Committee, there is need for more flexibility in some parts of the Bills.

English Australia is particularly concerned that the issue it raised about pre-paid fees was not addressed by the House of Representatives Committee.

The House of Representatives Standing Committee on Education and Employment report into their inquiry into the Bills made five recommendations, none of which addressed this issue. When the House of Representatives Committee report was tabled on 1 November, it was stated that:

“The inquiry received 22 submissions, 20 of which were from public and private service providers and their representative bodies. The concerns of industry were so clearly demarcated and defined in the submissions that the committee considered it unnecessary to take further evidence from these organisations.”

By choosing not to take further evidence, an opportunity was missed by the House of Representatives Committee to explore in more detail the most significant concerns held by the industry regarding aspects of the proposed changes. **English Australia would like to focus this supplementary submission on one aspect of the Bills that we believe will have a significant negative impact on the industry. English Australia believes that this concern warrants more thorough investigation into the impact of the proposed changes and what alternative solutions are available.**

English Australia Recommendation

These Bills propose a change to the way that providers are allowed to deal with student tuition fees. There are two key components to these changes:

- a) limiting the amount of pre-paid fees that providers can collect; and
- b) introducing a requirement for providers to place the initial study period fees into a designated account

Whilst understanding the policy intent of this proposal, English Australia questions the need for both of these requirements to be introduced whilst one on its own (and extended slightly) would have the desired impact.

The aim of a) is to minimise the amount of refunds that might be required, whilst the aim of b) is to ensure that funds are available to provide refunds.

This would seem to be a duplication of regulation that is not only unnecessary but that has the potential to cause a range of associated issues (as outlined above) that could be avoided.

English Australia would make the following recommendation.

EA Recommendation 1: That the Committee considers amending ‘Schedule 3 – Pre-paid fees’¹, to amend the proposed limit on pre-paid fees to a maximum of 50 weeks, as long as these fees are held in a designated account to be drawn down only when each study period commences.

English Australia would argue that if pre-paid fees are required to be held in a designated account, with the fees only available to be drawn down at the commencement of each study period, then this alone would meet the policy intent.

¹ Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Bill 2011 p90

English Australia comments – Schedule 3: Pre-paid Fees

The House of Representatives Committee report noted stakeholder concerns with:

- the requirement to set maximum periods of study;
- the requirement that no more than 50 per cent of pre-paid fees be collected and that these fees be collected no more than two weeks prior to the course commencement;

What is being proposed?

The Bills propose to implement two mechanisms, the **limiting of pre-paid course fees** and **requiring initial fees to be placed in a separate account**, with the policy intent to complement strengthened tuition protection arrangements, through:

- ensuring providers are better able to meet their refund obligations to students
- improving outcomes for students upon provider default
- encouraging providers to establish sustainable business models
- reducing the potential refund liability on the tuition protection system
- supporting the DIAC visa application assessment process.

Providers will be able to collect no more than one study period in advance. Additionally, no more than 50 per cent of the total course cost can be charged in any one study period (except for courses that fall within one study period).

This measure means that providers will only ever be able to collect fees for one study period at a time rather than, in some cases, 100 per cent of course fees up-front for courses delivered over quite long timeframes. Providers will be required to define the length of a study period for a course, generally to reflect units of academic attainment, such as a semester. Study periods must be a maximum of 24 weeks in length.

The second measure will require all providers not in receipt of recurrent government funding, to place all pre-paid course fees for the first study period into a designated account which can only be drawn down when the student's first study period begins. Providers must establish a mechanism for keeping pre-paid fees separate from day-to-day operating expense accounts, so that if a refund is payable before the student commences, the refund can be made in full and in a timely way without impact on the financial operations of the business or recourse to the tuition protection system.

English Australia supports the second measure to keep pre-paid fees in a designated account, however believes that with this mechanism in place there is no reasonable justification for the first measure of limiting the amount of pre-paid fees as also proposed.

Despite information in DEEWR FAQs on this topic, English Australia believes that there are no benefits to providers nor students in this proposal.

What are the issues?

In his comments to the House of Representatives Committee, Colin Walters from DEEWR stated:

“The main objective of setting some limits on prepaid fees is to support the sustainability of the Tuition Protection Service by reducing the potential refund liability of the entire sector. At the same time, this measure seeks to balance protecting students fees with the need to give providers some certainty of income and ensure overseas students have sufficient resources to meet ongoing costs while studying in Australia.”

English Australia strongly believes that the proposal to limit pre-paid fees does not get this balance right.

The House of Representatives Committee report noted the following:

“Many industry stakeholders observed that the proposed maximum length of a study period was not appropriate

The Committee supports the considerable increase in security provided to overseas students provided by a 24 week maximum study period as offsetting the relatively minor inconvenience to providers of education services and the overseas purchasers of these services and thus supports Clause 22.”

English Australia would contend that setting a maximum study period of 24 weeks and limiting the amount of pre-paid fees is not a “relatively minor inconvenience to providers” and will in fact have a major negative impact.

Such a move will, in fact, deliver outcomes that directly conflict with the intent of the Baird Review, ie. making ESOS stronger, simpler and smarter. This proposed change:

- does not align with the risk-based approach taken by other ESOS reforms;
- will encourage poaching and discounting, with students attracted to cheaper courses once onshore;
- will result in more students staying in Australia unlawfully;
- will impose a considerable additional financial burden on education providers;
- will impact on providers’ capacity to plan and resource programs effectively, thus impacting on quality;
- will result in poor outcomes for students;
- will be contrary to the wishes and best interests of many “customers”, including students, their families, governments and scholarship funding bodies;
- will make Australia less competitive internationally.

The Baird report noted the problems associated with poaching. The Baird report also noted that an approach to managing how providers receive fees could be considered for high risk providers rather than mandating across the whole industry:

“Risk is not static. ESOS needs to support the regular review of providers and allow an avenue for imposing additional scrutiny on providers where needed. For example, a provider that has a higher financial risk should have conditions applied at registration that require additional financial assurance. This may involve requiring the provider to have in place measures to better assure financial viability through a bank guarantee, regular assessment of financials, only allowing fees to be taken in arrears or having the parent company indemnify the risk.”²

Colin Walters gave the following “simple” example to the House of Representatives Committee to demonstrate how the proposal would work in practice:

“Under the proposed amendments providers will still be able to collect up to 50 per cent of the total cost prior to the students commencing their studies. This means, for example, that a student enrolled in a three-year degree course with six semesters costing \$50,000 may be asked to pay \$25,000 for the first semester on enrolment with \$25,000 distributed over the remaining semester. The government considers this generous upfront limit and for this reason has proposed restricting providers taking subsequent prepayments until two weeks before each successive study period. This is to prevent providers undermining the policy objective of the measure by demanding the rest of the fees as soon as the student commences study.”

The example chosen is taken from the university sector and shows a lack of understanding of how differently other sectors operate.

Once again we are confronted with legislation where the assumption is that “one-size will fit all” and that ELICOS providers function in the same way as universities with nice neat 24 week semesters and a break in which to manage the administrative work that this proposal would entail.

DEEWR claims that “the benefit of these measures to providers is improved business practices and the fact that providers will not have to refund large amounts of money to students”³, however these proposals show a lack of understanding of how the ELICOS sector operates and will cause a range of negative consequences. In fact, the proposed changes have the potential to seriously de-stabilise a provider’s business model as they can no longer make accurate predictions regarding ongoing enrolments.

It is common practice for sectors delivering award courses to accept payments on a semester basis, however the ELICOS sector operates differently.

² Review of the Education Services for Overseas Students (ESOS) Act 2000 | Final report—February 2010 | p19

³ DEEWR, Education Services for Overseas Students Act 2000, TPS and Other Measures Bill 2011, Questions and Answers p9

In the secondary education, higher education and vocational education sectors, students commit to a program of study that will deliver a qualification at the end. Usually these programs of study are longer than one year. The numbers of students who switch between courses/providers are relatively low as a proportion of the whole cohort. There are breaks between semesters (holidays for students and time for providers to undertake administrative tasks).

The ELICOS sector, however, delivers non-award courses that have little differentiation and is therefore particularly vulnerable to 'poaching' and students shopping around for the lowest fee. Very few ELICOS providers have course breaks or 'holidays' between study periods and any delay in a student's payment of fees is going to impact on their financial status and has the potential to cause disruption to their study program.

The proposed changes only allow providers to receive subsequent fees 2 weeks before the next study period commences.

What is a provider's responsibility under ESOS if a student who has a confirmation of enrolment (and a visa) for 40 weeks does not pay the second lot of course fees at the end of 20 weeks? Is the college obliged to allow the student time to pay, can a provider suspend course registration or cancel the CoE? This could cause considerable disruption to classes, affect teacher employment and cost providers money in lost fees.

Under Clause 47A a student defaults if:

- (c) *the registered provider of the course refuses to provide, or continue providing, the course to the student at the location because of one or more of the following events:*
 - (i) *the student failed to pay an amount he or she was liable to pay the provider, directly or indirectly, in order to undertake the course;*⁴

The idea of restricting the pre-payment of fees to 24 weeks for ELICOS enrolments is a serious concern. Whilst the average ELICOS enrolment is much less than 24 weeks (15.6 weeks for student visa holders), there are still a significant number of students that enroll in ELICOS courses for longer. This proposal reduces the student's commitment to a maximum of 24 weeks, at which point they can leave with no risk of penalty since the provider is holding no more of their fees, although the provider may have been holding a place for them for well over 6 months.

Limiting pre-paid fees would encourage students who may already be inclined to 'shop around' for 'alternative' (read 'cheaper') providers after arrival to be able to do so more easily because they do not have the same financial commitment to the provider they originally enrolled with. This could also play into the hands of local agents who specialise in moving students from one school to another.

⁴ Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Bill 2011 p12

There is also a misalignment with the changes being implemented by DIAC in response to the Knight Review recommendations, specifically, the move to streamline visa processing for universities and their pathway providers. The limit to the amount of pre-paid fees an ELICOS provider can collect will certainly increase the risk of ELICOS students, who are packaged with universities and therefore eligible for streamlined arrangements, to arrive under AL1 arrangements and subsequently transfer to another provider (who may not have been eligible for the streamlined arrangements) after their initial study period (currently 24 weeks) is completed. This would be contrary to the intent of the proposed streamlining arrangements.

There will be considerable increase in administrative costs for ELICOS providers to chase unpaid fees. Changes will be required to databases to provide reports, invoicing and to monitor payment. In addition, both students and schools will incur further bank fees if payments come from overseas.

Will the pre-paid fees needing to be deposited in a designated account be net or gross of agent commission? If gross, then agents will have to wait for payment of the commission until the student has commenced their course. This will impact on agent business models and will make Australia less competitive for an agent looking at sending students to a range of destination countries.

“I can enrol my student for a 40 week course in the US and get my 20% commission now.....or.....I can send my student to Australia, get 20% commission on 20 weeks tuition when they start in 3 months time and then wait for the remaining 20% of 20 weeks tuition in another 5 months time when the student starts their next study period.”

There are many instances where providers need to be able to accept more than 24 weeks in pre-paid fees. There are sponsors who may wish to or indeed must use up their professional development funds for the given year – e.g. the Vietnam Ministry of Interior sends one provider 10-11 students at least once per year for 30 weeks and must allocate their funds for this purpose in one ‘go’ for a particular year. The provider is asked to invoice them for all aspects of the program up front. The same would apply to many Korean university partnership programs where there is government money provided for students under the Global Leadership Program. Middle Eastern sponsors may wish to pay a large amount at one time and with recent issues accessing ongoing funding for Libyan students, it would be preferable to be able to access full funding as and when this is available.

Providers assess a student’s capacity to pay (and therefore one aspect of their ‘genuineness’) by their capacity to pre-pay fees, as does DIAC “When assessing a student for a visa, the Department of Immigration and Citizenship considers the amount of pre-paid course fees as an indicator of the student’s commitment to studying in Australia.”⁵

⁵ Explanatory Memorandum p70

Conclusion

English Australia is not the only representative body to raise issues with this proposal and hopes that the Senate Committee will heed the serious concerns that are being raised.

English Australia was heartened by the statement made by the Minister representing Senator Evans in the House of Representatives at the conclusion of debate in that place.

“Further the Government notes that the Bills will be considered by a Senate Committee and that further recommendations may be made arising from that process. The Government is prepared to reconsider this issue in the light of any further recommendations that arise.”

English Australia submits that the need for greater flexibility in relation to pre-paid fees in Schedule 3 was not fully investigated by the House of Representatives due to a mistaken belief that the concerns of the English language training sector and other provider groups had already been addressed by DEEWR.

The Government and the officials of Australian Education International are to be commended for the work they have done translating the recommendations of the Baird review into legislation, however it is imperative that the legislation is practical and workable.

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[submission authorised by the Council of English Australia]