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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]

Submission by **ENGLISH AUSTRALIA**

Background

The purpose of the Bills is to make amendments to the Education Services for Overseas Students Act 2000 (the ESOS Act) to implement the Government's second phase response to recommendations from the recent review of the Education Services for Overseas Students legislative framework. The review was conducted by the Hon Bruce Baird AM and the report, *Stronger, simpler, smarter ESOS: supporting international students* (the Baird Review) was released on 9 March 2010. The first phase of legislative amendments to the ESOS Act, in response to the review, was enacted on 8 April 2011.

On 13 October 2011 the Senate jointly referred the Bills for inquiry and report.

The Committee is seeking written submissions from interested individuals and organisations.

English Australia – introduction

English Australia welcomes this opportunity to provide input to the Senate Education, Employment and Workplace Relations Committee's inquiry into the ESOS Amendment Bills. 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.

English Australia, formerly known as the ELICOS Association, is the national peak body and professional association for the English Language Intensive Courses for Overseas Students (ELICOS) sector. English Australia was established in the early 1980s and incorporated in 1990.

English Australia represents 106 member colleges, with over 130 NEAS¹ accredited centres across Australia. More than 80% of all overseas students who study English in Australia do so with an EA member college. English Australia has both public sector (eg attached to a university or TAFE) and independent language centres among its membership.

Currently international education is Australia's fourth largest source of export income with the ELICOS sector accounting for about ten per cent or \$1.5 billion per annum.

The centrepiece of the Bills under consideration is reform to strengthen tuition protection to ensure students receive the tuition they have paid for or, as a last resort, a refund. English Australia broadly supports the proposed Tuition Protection Service (TPS) framework subject to the issues raised in this submission.

¹ National ELT Accreditation Scheme

Previous Parliamentary inquiries have justifiably devoted considerable attention to those elements of the ESOS Act relating to protection of students' fees. This is justified because Australia's international reputation as a whole as well as that of the international education industry is damaged if the interests of overseas students are not adequately protected in the event of a college closure.

The current legislation is based on Tuition Assurance Schemes (TAS) backed up by an Assurance Fund. English Australia has operated a TAS since 1990, even before the legislation was first amended to provide for the establishment of such Schemes, and is one of the two major TASs currently operating. For almost 20 years the EA TAS was not called on to place any students as no member colleges closed during that time.

Since 2009, however, the EA TAS has dealt with 12 closures and placed over 2,000 students in equivalent courses in other EA member colleges. English Australia believes that its TAS has fulfilled all of its obligations in a timely manner to the satisfaction of both students and the government authorities. Hence English Australia believes it is well placed to assist the Committee with this inquiry.

The ELICOS sector has a 100% international focus as it provides courses only to students from overseas and has no domestic education focus. The ELICOS sector plays a critical role in preparing international students with the language skills they need for further study in Australia.

As the first step in the educational 'pathway' for international students, the ELICOS sector is the first to experience any shift in demand. The sector is highly vulnerable to changes in the external environment, with short courses (average course length is 12.6 weeks) and short lead-times for enrolments.

The Bills encompass changes to the ESOS legislative framework that will impact significantly on the operations of providers delivering courses to international students. As such it warrants due attention to what the potential impact will be and whether the right balance has been achieved in providing tuition protection for students and yet not overly burdening the sector with compliance costs and other requirements that will ultimately make them uncompetitive internationally.

The Bills are extremely complex, and with the introduction of significant penalties it will important for information to be made available to providers in plain English to ensure clarity regarding the new obligations and the potential penalties that will be applied for cases where they are breached.

English Australia – summary of recommendations

English Australia has ten recommendations. Of these, Recommendation 9 (relating to pre-paid fees) is seen as one of the most important to the ELICOS sector, with the highest level of potential negative impact (see p9 for more detail).

- EA Recommendation 1:** That the Committee establishes to its own satisfaction that the proposed timeline for establishing the TPS is realistic. 6
- EA Recommendation 2:** That the Committee establishes to its own satisfaction that the proposed approach to establishing the risk rated fee will be both transparent and equitable. 7
- EA Recommendation 3:** That the Committee establishes to its own satisfaction that adequate impact studies have been undertaken to ensure that the cost to providers will not be overly prohibitive as to make Australia uncompetitive internationally. 8
- EA Recommendation 4:** That the Committee considers amending ‘*Division 4—TPS Advisory Board, 55C Membership*’ . . . , to include provision for the seven non-government members of the Board to include representation from across the different sectors of international education. 8
- EA Recommendation 5:** That the Committee considers amending ‘*Part 2—The amount of the TPS levy, 5 TPS levy (4)*’ . . . to ensure that new providers pay an appropriate amount as a TPS Levy in their first year of operation. 8
- EA Recommendation 6:** That the Committee establishes to its own satisfaction that adequate modeling has been done to understand the sustainability of the new TPS framework. 9
- EA Recommendation 7:** That the Committee ensures that provision is made to detail the refund arrangements and associated penalties in plain English for providers to clearly understand their obligations. 9
- EA Recommendation 8:** That the Committee ensures that reporting requirements relating to student default are realistic, reasonable and purposeful. 9
- EA Recommendation 9:** That the Committee considers amending ‘*Schedule 3 – Pre-paid fees*’ . . . , to amend the proposed limit on pre-paid fees to 50 weeks, as long as these fees are held in a designated account to be drawn down only when each study period commences. 10
- EA Recommendation 10:** That the Committee establishes to its own satisfaction that an adequate consultation process is planned to ensure that as yet undetermined elements of the new TPS framework will have appropriate input from the education sector. 13

English Australia – input to the Inquiry

English Australia applauds the intention of the Bills and welcomes many of the key changes that the Bills propose.

English Australia welcomes the following aspects of the proposed changes:

- Providers will still be obligated under ESOS to provide students with a refund in the event of provider default or student default.
- The new TPS will be a single layer tuition protection mechanism when a provider fails to meet its obligations in the case of provider default, replacing the current combination of Tuition Assurance Schemes and the ESOS Assurance Fund.
- Contributions to the TPS framework will be universal, with the currently available provision for Ministerial Exemptions from the Assurance Fund arrangements removed and all providers of international education services required to pay an annual TPS Levy. This means that all providers must participate and no provider can be refused access to tuition protection cover.
- Students will have a greater role in the placement process.
- Providers will receive a placement incentive (the amount of their remaining unexpended pre-paid tuition fees) when they agree to accept a displaced student.
- There will be no compulsory placements. That is, a potential receiving provider is under no obligation to accept a student that has sought placement with them following a default.
- The refund arrangements will change from full refund to partial refund, and will cover only that portion of tuition for which the student has paid but for which tuition was not received.
- Providers will be required to make six monthly attempts to encourage students to update their contact details.
- There will be new requirements and penalties related to ensuring academic records are kept up-to-date.
- National streamlined registration and regulation will be introduced.
- Enforceable undertakings will be introduced.

English Australia has concerns regarding the following aspects of the proposed changes and would like to bring these to the attention of the Committee.

Schedule 1 – Tuition Protection Service (TPS)

The key element of these Bills is the creation of a Tuition Protection Service (TPS) to replace the current Tuition Assurance Scheme and Assurance Fund mechanisms.

Overall English Australia welcomes this proposal as we believe that it will be a significant improvement on the current mechanisms from the perspectives of both students and providers.

English Australia would like to make the following points related to the establishment and operation of the TPS.

The potential damage to Australia’s reputation if the TPS is not ready to operate effectively from 1 July 2012 will be severe. Whilst acknowledging the need to get a new system in place as soon as possible the sector would need to have the confidence that the timeline is appropriate for the Commonwealth to be able to establish the new TPS Director and Board, run the tender process to find the service provider to manage the new placement scheme and Fund, and have them in place with their staff recruited, trained and ready to take over by 1 July 2012.

English Australia does not propose deferring this deadline, however urges the government to ensure that appropriate resources are applied to ensure that the TPS will be ready to function effectively as of the date proposed.

EA Recommendation 1: That the Committee establishes to its own satisfaction that the proposed timeline for establishing the TPS is realistic.

The Explanatory Memorandum to the Bills states that the implementation of a new universal single layer TPS framework will “provide for transparent decision making and fee setting that better targets provider risk and ensures sufficient funds are collected from the sector to meet fluctuating requirements related to the risk of future provider default”².

It is proposed that the annual TPS Levy will comprise four tiers:

1. An *administrative fee* component payable by all providers except registered schools that have no international students.

² Explanatory Memorandum p3

2. A *base fee* component paid by all providers, except registered schools that have no international students.
3. A *risk rated fee* component to recognise the risk of default associated with each provider.
4. A *special levy*, initially set at zero, will be charged during times of more buoyant sector circumstances in order to insure against future systemic shocks experienced by the sector.

With regards to the *risk rated fee*, the Explanatory Memorandum states that “as public institutions are effectively publicly underwritten they would not pay this component”³. It is important that the approach to recognising the risk of default associated with each provider be both transparent and equitable. The sector needs to be engaged in the process of determining how the risk of default will be ascertained.

EA Recommendation 2: That the Committee establishes to its own satisfaction that the proposed approach to establishing the risk rated fee will be both transparent and equitable.

The question remains as to whether the financial cost of dealing with college closures and displaced students should rest solely on the shoulders of providers rather than be shared by the government who is ultimately responsible for managing the regulatory regime that allows providers to operate.

The TPS Levy is only one of many charges/fees incurred by providers who wish to deliver courses to international students. Compliance costs for Australian providers are already extremely high when compared with those experienced by providers in competitor countries such as the UK, USA and Canada.

The table below shows the costs for a sample college which only includes the direct costs of compliance (indirect costs would make this total even higher). Most colleges that operate in competitor countries would only have to pay accreditation fees – a minimal amount when compared with the costs of doing business in Australia.

ELICOS Sector Compliance Costs (direct costs only)	2010
Annual Registration Charge (ARC)	\$27,060
NEAS accreditation	\$3,560
CRICOS registration (state/territory fee)	\$2,244
ESOS Assurance Fund contribution	\$20,013
Tuition Assurance Scheme	\$10,200
	\$65,087

³ Explanatory Memorandum p3

Overall compliance costs need to be maintained at a level that does not damage Australia's international competitiveness. Australian providers have to pass on compliance costs to international students in their tuition fees, with high compliance costs adding to the damage already experienced by the strong Australian \$ in making Australia an expensive study destination. Australia is already one of the most expensive destinations for international students to learn English. If compliance costs increase further through a high TPS Levy then Australia risks no longer being competitive.

EA Recommendation 3: That the Committee establishes to its own satisfaction that adequate impact studies have been undertaken to ensure that the cost to providers will not be overly prohibitive as to make Australia uncompetitive internationally.

It will be critical that an ELICOS sector perspective be included on the TPS Advisory Board which will advise the TPS Director in relation to the determination of the annual TPS Levy.

EA Recommendation 4: That the Committee considers amending *'Division 4—TPS Advisory Board, 55C Membership'*⁴, to include provision for the seven non-government members of the Board to include representation from across the different sectors of international education.

The changes are proposed "to better target provider risk", however English Australia notes that it is proposed that new providers only have to pay a TPS Levy of \$300 in their first year of operation. New providers pose a particular risk of closure and although they may not enroll substantial numbers of students it would be fair to existing providers who contribute to the OSTF to ensure that new players also have to contribute an appropriate amount. One way of calculating this amount might be to use the provider's own projections for student numbers for the first year of operations as identified in their business plan.

EA Recommendation 5: That the Committee considers amending *'Part 2—The amount of the TPS levy, 5 TPS levy (4)'*⁵ to ensure that new providers pay an appropriate amount as a TPS Levy in their first year of operation.

⁴ Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Bill 2011 p31

⁵ Education Services for Overseas Students (TPS Levies) Bill 2011 p4

The Explanatory Memorandum to the Bills states that the new TPS framework will ensure “sufficient funds are collected from the sector to meet fluctuating requirements related to the risk of future provider default”.

The funds collected through the TPS Levy are intended to pay not only the amounts of refunds to students and funds to accompany placed students, but also the costs of the Advisory Board and the placement service itself. It would seem at first glance that the new framework will potentially cost more to operate than the existing framework. The sector would welcome clarification that adequate modeling has been done to ensure the sustainability of the new framework.

EA Recommendation 6: That the Committee establishes to its own satisfaction that adequate modeling has been done to understand the sustainability of the new TPS framework.

There are a number of strict liability offences introduced by the Bills which are related to the refund obligations of providers under the Act. Whilst welcoming the policy intent of these amendments to better enforce compliance with the provider refund obligations under the ESOS Act, it is evident from reading through the Bills that the refund provisions are extremely complex and do not necessarily demonstrate an understanding of the practicalities of administering student enrolments. With significant penalties attached to non-compliance, it will be important to ensure that providers are thoroughly briefed regarding their new obligations and the potential penalties. With previous changes to the National Code and other legislation, DEEWR has provided explanatory guides to support the industry. This type of initiative would again be highly valued.

It is also unclear from the legislation whether reporting on student default will continue under current PRISMS reporting mechanisms or whether there will be additional layers of reporting added. Certainly the timelines identified in s47C and s47H seem unrealistic, with the potential to inundate the department with a flood of paperwork that will not necessarily improve outcomes. The potential for a substantial increase to a provider’s administrative burden (and to that of the Department) seems to be indicated by the new requirement for providers to report to both the Department and the TPS for a student default eg. if the student does not commence on the day, withdraws from the course etc.

EA Recommendation 7: That the Committee ensures that provision is made to detail the refund arrangements and associated penalties in plain English for providers to clearly understand their obligations.

EA Recommendation 8: That the Committee ensures that reporting requirements relating to student default are realistic, reasonable and purposeful.

Schedule 3 – Pre-paid Fees

Changes are proposed 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 has serious concerns regarding how this will operate in practice and questions the need for both of these requirements to be introduced whilst one on its own 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 that could be avoided. These issues include the following areas: sponsored students, administrative burden, students' visa status, course continuity, student 'poaching' and agent commissions.

English Australia would make the following recommendation, with the detailed rationale provided below.

EA Recommendation 9: That the Committee considers amending 'Schedule 3 – Pre-paid fees'⁶, to amend the proposed limit on pre-paid fees to 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 when the student commences their course, then this alone would meet the policy intent as long as the provider is only able to draw down the fees at the commencement of each study period.

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.

⁶ Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Bill 2011 p90

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”⁷, 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.

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;*⁸

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

⁷ DEEWR, Education Services for Overseas Students Act 2000, TPS and Other Measures Bill 2011, Questions and Answers p9

⁸ Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Bill 2011 p12

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 are 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.

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."⁹

⁹ Explanatory Memorandum p70

As stated above, English Australia recommends that the proposed limit on pre-paid fees be amended to 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 also notes that a range of matters have yet to be determined and/or legislated:

- ❖ establish the risk factors that reflect the risk of calls being made on the OSTF;
- ❖ establish the level of the TPS Levy for providers in 2013;
- ❖ establish the method for working out the amount of unspent pre paid fees for the purposes of calculating refunds;
- ❖ the criteria to be applied in considering whether a particular course is a suitable alternative course

Consultation with the international education sector will be critical.

EA Recommendation 10: That the Committee establishes to its own satisfaction that an adequate consultation process is planned to ensure that as yet undetermined elements of the new TPS framework will have appropriate input from the education sector.

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