



Australian Government

Department of Education, Employment and Workplace Relations

Our Ref ED09/06591

Mr John Carter
Committee Secretary
Senate Education, Employment and Workplace Relations Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Mr Carter

**Inquiry into the Education Services for Overseas Students Amendment
(Re-registration of Providers and Other Measures) Bill 2009**

I am pleased to provide a submission from the Department of Education, Employment and Workplace Relations to assist in the inquiry into the *Education Services for Overseas Students Amendment (Re-registration of Providers and Other Measures) Bill 2009*.

This Bill was introduced on 19 August 2009 in response to concerns about the presence of poor quality education and training providers and a number of provider closures affecting students in the international education sector. A copy of the department's submission is at [Attachment 1](#). A copy of the Minister's media release is at [Attachment 2](#).

Please contact me if you require any further assistance.

Yours sincerely

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Group Manager
International Group

September 2009



**Department of Education, Employment and Workplace Relations
Submission to the Inquiry into the Education Services for Overseas Students
Amendment (Re-registration of Providers and Other Measures) Bill 2009**

1. Background

The provision of education and training services to overseas students in Australia is regulated by the Education Services for Overseas Students legislative framework. It comprises:

- *Education Services for Overseas Students Act 2000 (ESOS Act)*
- *Education Services for Overseas Students Regulations 2001 (ESOS Regulations)*
- *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007 (National Code)*
- *Education Services for Overseas Students (Registration Charges) Act 1997*
- *Education Services for Overseas Students (Assurance Fund Contributions) Act 2000*

The ESOS Act and the ESOS Regulations set out the Commonwealth legislative requirements for the registration of providers, obligations on registered providers, the operation of the ESOS Assurance Fund, enforcement of the ESOS legislative framework and the establishment of the National Code. The principal objects of the ESOS Act are:

- a) to protect and enhance Australia's reputation for quality education and training services
- b) to provide financial and tuition assurance to overseas students for courses for which they have paid
- c) to complement Australia's migration laws by ensuring providers collect and report information relevant to the administration of the laws relating to student visas.

Quality

ESOS complements existing quality assurance frameworks with requirements specific to the teaching of courses to international students. These frameworks are enshrined in state and territory legislation governing the registration and quality requirements of providers in each of the education sectors, and the ESOS legislation relies for its full effect on the foundation provided by this state and territory legislation.

To be registered on the Commonwealth Register for Institutions and Courses for Overseas Students (CRICOS), providers must therefore first meet the quality requirements for delivery of education services generally which are generally enshrined in state and territory legislation. This legislation gives effect to a number of national agreements:

- The National Protocols for Higher Education Approval Processes for higher education (HE) courses, underpinned by state and territory legislation establishing universities and their self-accrediting status, monitored by the Australian Universities Quality Agency (AUQA)
- The Australian Quality Training Framework (AQTF) for vocation education and training (VET) courses

- The Australian Qualifications Framework (AQF) which governs the issuing of school, VET and HE qualifications and
- School curricula and targets developed and monitored by state and territory governments in light of national agreements reached by Commonwealth, state and territory Ministers.

Consumer Protection

The ESOS Act outlines the three layers of consumer protection for international students. The purpose of this consumer protection framework is to provide financial and tuition assurance to international students for courses for which they have paid money to the provider.

In a situation of provider default, the provider must pay affected students a full refund of all course monies received from the student in respect of that course. The provider may also choose to offer the student placement in an alternative course at the provider's expense as an alternative to paying the full refund. Provider default is deemed to have occurred where a provider ceases, or fails to commence, providing a course to international students before it is completed.

The Department of Education, Employment and Workplace Relations (DEEWR) activates the applicable tuition assurance scheme arrangements as soon as it becomes apparent that the defaulting provider will not meet its consumer protection responsibilities. The tuition assurance scheme's role is to provide students with a suitable alternative course that does not require the student to pay an additional amount to undertake any part of the alternative course for which the student paid money to the defaulting provider.

The ESOS Assurance Fund may be required to assist students in circumstances where the provider has not met its refund responsibilities, and the student has not been offered a suitable alternative course by either the provider or the applicable tuition assurance scheme. The first responsibility of the Fund Manager is to place overseas students in a suitable alternative course; or failing that pay the student a refund adjusted by the amounts prescribed in the ESOS Regulations which relate to any credit transfer the student may have received when enrolling in an alternative course.

The ESOS Act was first introduced in 1991 to provide additional measures of consumer protection for overseas students and to protect student funds held by providers. The most recent review of the legislation was conducted in 2004 -05, resulting in substantial amendments to the ESOS Act and National Code in 2007 to ensure nationally consistent provider registrations and strengthened standards. Since that time, and in particular in recent months, a number of issues have emerged that have required reconsideration of the ESOS Act. As discussed in more detail later in the submission, the Department has consequently commissioned a review by the former Federal Member for Cook, the Hon Bruce Baird. The *Education Services for Overseas Students Amendment (Re-registration of Providers and Other Measures) Bill 2009* (the Bill) is intended to address immediate matters for concern over the provision of education to international students while the longer term issues are considered by Mr Baird's review. This builds on state and territory responses, which include rapid audit activities.

An inquiry was conducted by the Senate Committee for Employment, Workplace Relations, Small Business and Education in November 2000 which contributed to the development of the current ESOS Act.

2. Changes to Australia's International Education Sector

The delivery of international education in Australia has grown rapidly over the past decade, reaching more than 500,000 enrolments in 2008–09. This has been accompanied by some significant changes in the sector's characteristics.

The higher education sector accounted for the majority of enrolments in 2008 (33.6 per cent of total enrolments in that year). However, the number of vocational education and training (VET) enrolments has grown strongly, more than tripling since 2002 and now accounting for the largest proportion of total enrolments (37 per cent for the six-month period to June 2009 as compared to 36 per cent for the higher education sector). English Language Intensive Courses for Overseas Students (ELICOS) enrolments have also grown substantially since 2002, accounting for 18 per cent of total enrolments at June 2009.

Enrolments in the non-government sector grew from about a third of total enrolments in 2004 to half of all enrolments in 2008. This was accompanied by an increase in the number of private VET providers from 363 in 2004 to 464 in 2008.

It is timely to consider the strong growth in enrolments seen in recent years and the capacity of the education system to deal satisfactorily with the much larger number of students now arriving on our shores, including the adequacy of legislation which was designed in times when the international education sector was much smaller. While most international students have reported that studying and living in Australia has been a satisfying experience, the Australian Government has recognised that some students do not share this view. Recent acts of violence against some international students, media reports of unscrupulous agents and providers exploiting student permanent residency aspirations, and several provider closures impacting on students and the consumer protection mechanisms, are some of the emerging concerns relating to student welfare and education quality.

3. Government's Reform Agenda

The Australian Government is leading a substantial program of work with major stakeholders to ensure that the reputation which Australia has built internationally for providing a rewarding education and living experience to international students is maintained. These measures will support the future sustainability of Australian international education and training.

In March 2009 the Government announced the Study in Australia 2010 package of measures to enhance international students' experience, further supporting Australia's international education sector and increasing international awareness of Australia as a provider of quality education and training.

The Government has also announced in response to the Bradley Review of Higher Education, that it will establish a single Tertiary Education Quality and Standards Agency (TEQSA) as an agency of the Australian Government from 2010. TEQSA will accredit providers, evaluate the performance of institutions and programs, encourage best practice, simplify current regulatory arrangements and provide greater national consistency. In addition the Council of Australian Governments agreed on 2 July to a workplan for further reforms to the Vocational Education and Training (VET) system, including developing models for a national regulatory body for VET.

An International Student Taskforce has been established within DEEWR to develop strategies to support the wellbeing of international students. The Deputy Prime Minister, the Hon Julia Gillard, held a roundtable with international students on 14 and 15 September to hear their concerns and to determine ways of better engaging with the international student community. Members of the roundtable will be reporting its conclusions to the meeting of the Ministerial Council on Tertiary Education on 28 September 2009.

A telephone hotline has been established by the Deputy Prime Minister within DEEWR for international students to raise their concerns anonymously. Between June and the end of August 2009, 627 calls had been received of which 111 (17 per cent) were complaints while the majority of the remainder represented requests for interpretation of the National Code.

On 12 June 2009, the Deputy Prime Minister announced her decision to bring forward the review of the ESOS Act and associated regulatory and legislative frameworks, including the National Code to be led by the Hon Bruce Baird. The review had been foreshadowed in the findings of the Bradley Review in early 2009. The review will examine the adequacy of the current ESOS legal framework to identify and address any areas for improvement to ensure Australia continues to offer a world-class, quality international education. The terms of reference of the review are focussed on:

1. Supporting the interests of students;
2. Delivering quality as the cornerstone of Australian education;
3. Effective regulation; and
4. Sustainability of the international education sector.

An interim report will be provided to COAG in December 2009 with a final report, expected in early 2010.

In addition to these initiatives, the Council of Australian Governments (COAG) has committed to improve the quality of education for international students and their well-being, through the development of a comprehensive National International Student Strategy to be put in place during the 2010 academic year.

In introducing the Bill, the Government is taking decisive, immediate action to protect the reputation of the industry and stakeholders' interests. The Bill is aimed at improving the operation of the ESOS Act through the re-registration of international education providers against more exacting criteria by the end of 2010, and requiring registered providers to publicly list the education agents they use. This will send a clear message of the Government's commitment to lift the bar in terms of quality and compliance with regulations and to help restore consumer confidence. It will ensure that Australia will have a clean slate of reputable providers in whom international students and their parents can have full confidence.

The ESOS Amendment Bill is a transitional measure to ensure the more effective regulation of the international education industry pending the Government's response to the recommendations of the ESOS Review.

4. Summary of Amendments

The ESOS Amendment Bill was introduced on 19 August 2009 to clarify operation of the Act in several areas and to respond to emerging concerns about the presence of poor quality education and training providers in the international education sector.

The amendments can be summarised as follows:

- To provide for the re-registration of all institutions currently registered on CRICOS by 31 December 2010.
- Introduction of 2 new registration requirements for education providers:
 - the principal purpose of the provider is to provide education; and
 - the provider has a demonstrated capacity to provide education of a satisfactory standard.
- To require providers to list the names of education agents who represent them and promote their education services and also to require providers to comply with any matters prescribed in the ESOS Regulations concerning their agents.
- To provide the discretion to remove the prohibition on education providers collecting fees from studying students when a course has been suspended.
- To allow the Commonwealth to recognise conditions imposed by states and territories on education providers.
- To allow discretion for exemptions from punitive provider default refund requirements for providers changing their legal entity.
- To allow for the clarification of the definition of "suitable alternative course" through the ESOS Regulations.

5. Rationale for the Amendments

The purpose of the Bill is to make adjustments to the operation of the ESOS Act to clarify the application of various provisions and to introduce processes that will increase the accountability of international education and training service providers under the National Code.

Re-Registration

The Bill will require re-registration of all institutions that are currently registered on CRICOS to deliver courses of education and training to international students by 31 December 2010. Registration of providers not re-registered by that date will be cancelled. The purpose of this measure is to build confidence in the quality of education services provided across the entire international education sector, and to strengthen the registration process by allowing only providers who can satisfy the higher entry standards that will be applied in the re-registration process to be re-registered. It will establish a clean slate register of education providers for overseas students.

As part of this re-registration measure, the Bill introduces provisions for two new registration criteria which aim to raise quality by ensuring only those institutions that have both a principal purpose of providing education and a demonstrated capacity to provide quality education are able to be registered. Implementation can be designed in a streamlined way using a risk management approach and using reference to other regulatory regimes where relevant to avoid as far as possible any unnecessary burden on providers.

The main purpose of these two criteria is to ensure that in future Australia has confidence that providers of international education have the provision of education as their main purpose, and that providers have the demonstrated capacity to deliver on promises to meet quality standards. Capacity to deliver quality education can be demonstrated through a track record of successful provision in Australia or in another jurisdiction, or by ensuring that a new provider has in place all the elements needed to give confidence in its ability to meet the required standards.

If a provider does not meet both of these criteria, as a minimum, its registration will not be renewed. Providers will have to satisfy the designated authority in its state or territory in the first instance as their recommendation is required in order for the Commonwealth to register a provider on CRICOS in order to enrol international students. The Australian Government's delegate will also be able to refuse registration or re-registration if they have any reason to believe the two criteria have not been met.

Agents

Additionally, the Bill will introduce provisions requiring the publication by providers of the names of education agents who represent them and promote their education services. The Bill will also provide for regulations to be made dealing with providers' agents.

Regulations will be developed in consultation with international education providers with a view to providing further protections for overseas students. Matters which may be considered are training requirements for providers, recognition of overseas schemes of registration for providers and the provision by providers of media through which students may record their experiences of agents.

Technical changes

The Bill will also strengthen the effectiveness of suspensions imposed on a provider's CRICOS registration and reduce the risk of unreasonable financial detriment to a provider arising from suspension. It will provide flexibility by giving discretion to enable a provider to solicit or accept money for a course from overseas students who are continuing to receive education for part or all of the period of a suspension. Currently, while suspended, providers are permitted to continue teaching students who had commenced their study prior to the date of imposition of the suspension. Depending on the circumstances, it may be unreasonable to deny a provider the right to collect fees from students that it continues to teach. If the provider is continuing to provide a service, and is incurring costs to do so, it is reasonable for the provider to collect fees from existing students if the suspension is for minor offences. This will assist the provider to continue providing education to enrolled students, which will help to avert potential insolvency and disruption to students' education.

This change will also ensure consistency with state and territory legislation concerning suspension of registration. It will reduce the risk of providers being placed under unreasonable financial distress while undertaking the necessary improvements to their operations and rectification of breaches that are usually required by a regulator before the suspension is lifted.

In addition, the Bill will facilitate the national alignment of the regulatory actions taken by the Commonwealth, state and territory education authorities relating to the delivery of courses to overseas students. The Bill will permit conditions imposed on a provider's registration by a state or territory designated authority under state legislation to be recognised and adopted or modified by the Commonwealth, either at the time of the provider's initial registration on CRICOS or at any time after registration. For example, it will enable the Commonwealth to enforce restrictions on the number of enrolments which are currently imposed and enforceable only through state and territory legislation.

This will also avoid unnecessary duplication of regulatory actions by Commonwealth, state and territory authorities by allowing the Commonwealth to take immediate action to impose a state/territory registration condition on a provider's CRICOS registration. At present the Commonwealth must undertake its own investigation and enforcement action in order to impose a condition on a provider's CRICOS registration, even where the state or territory authority has already carried out this work under its own regulatory regime. This amendment will remove this duplication of regulatory effort and allow the Commonwealth, where appropriate, to support the state/territory action by adopting the condition for the purpose of CRICOS registration.

The Bill will lessen the financial and regulatory burden on providers changing their legal entity in circumstances where the delivery of courses and outcomes for international students will not be affected. In the past, a number of providers have been found to be in default when no negative consequences have been imposed on either their students or the organisation's education outcomes as a result of a change to the legal entity, for example a normal business takeover or merger. Providers would continue to need to observe existing rules on change of entity, for example the requirement for owners to be Australia residents.

The Bill will also enable the ESOS Regulations to prescribe the criteria to be applied in considering whether a place in a particular course is a suitable alternative course. Where a provider can no longer offer a particular course it is obliged to offer the student a refund or a place in a suitable alternative course. Where the provider is not in a position to make this offer the tuition assurance scheme must seek to place the student in a suitable alternative course. The absence of clear criteria to apply when determining whether a particular course is a suitable alternative has presented difficulties for providers, tuition assurance schemes and the ESOS Fund Manager. The amendment will allow clear criteria to be developed which will help alleviate disagreements when placing students.

6. Consultation

The amendments related to re-registration and education agents were developed in a short time-frame in response to public concerns about the impact unsatisfactory providers and agents could be having on overseas students and the reputation of Australia's international education industry. Consultation on these two amendments involved states and territories through the Joint Committee on International Education (JCIE) and, particularly in relation to the re-registration proposal, by teleconference with selected industry stakeholders including the Australian Council for Private Education and Training, English Australia, TAFE Directors Australia and Universities Australia. In her second reading speech, the Deputy Prime Minister noted the need for further consultation with stakeholders in implementing these amendments.

The other four amendments have been developed over time, largely to address specific technical issues that have arisen in the application of the legislation requiring clarification. They seek to harmonise the application of the Act with the education quality assurance and regulatory frameworks as well as provide greater flexibility to reduce unnecessary red-tape. These more technical amendments have been the subject of consultations on a case-by-case basis, and in the course of regular dialogue with industry stakeholders and with states and territories through such fora as the JCIE.

7. Costs and the impact on Students

There will be financial consequences associated with the amendments related to the re-registration of CRICOS institutions. This includes the re-registration process itself, where the financial impact may be ameliorated by state and territory registration authorities taking a risk management approach and by possible changes in prioritisation of current activities. It should be noted that the two states with the largest number of providers and enrolments of international students, already have "rapid audit" processes for high risk providers in place, and that the NSW Minister for Education and Training, the Hon Verity Firth, has already instructed the NSW Vocational Education and Training Accreditation Board to conduct an audit of all providers registered on CRICOS within 12 months.

The regulation of international education providers under the ESOS Framework is an activity jointly undertaken by the states and territories and the Commonwealth Departments of Education Employment and Workplace Relations and Immigration and Citizenship. These Commonwealth departments will fund their own contributions to the re registration process through re prioritisation and management of existing resources devoted to ESOS work.

Current compliance activity conducted by the states and territories including the rapid audit processes under way in Victoria and other states will create pressures on the ESOS Assurance Fund. The re-registration process may assist in managing these demands by signalling a date by which all providers will need to become compliant with the legislation or face deregistration. It is however not possible to forecast accurately the possible impact of either the rapid audit processes or the re-registration process on the Fund at this stage.

By setting a date by which all providers will need to be fully compliant, the future revenue base and sustainability of the fund will be protected. Future arrangements for the tuition assurance provisions for international students, including the fund, will be a matter for consideration by Mr Baird's review.

The possible impact on students is contingent upon the number and profile of providers who may not secure (or seek) re-registration. The fact that a clear date is being set for compliance with the legislation should enable students to plan their future studies with greater certainty.

The Australian Government is also working with the states and territories, industry groups and the ESOS Assurance Fund to ensure that students:

- are empowered with timely information to inform their decisions, and
- where necessary, can be placed in alternative courses as quickly as possible.

8. Implementation

The Australian Government is working with the state and territory designated authorities and education stakeholders to finalise a consistent approach to implementing the measures in the Bill, particularly the re-registration process.

JCIE is due to consider recommendations from a joint Commonwealth/state and territory working party on the regulation and re-registration process later in September 2009.

Providers will receive formal notification of the implementation process once the Bill receives Royal Assent.

All providers must be re-registered by 31 December 2010. If providers are not re-registered by this time, its registration will be cancelled.



**THE HON JULIA GILLARD MP
DEPUTY PRIME MINISTER**

Minister for Education; Minister for Employment and Workplace Relations;
Minister for Social Inclusion.

MEDIA RELEASE

19 August 2009

(BD/JK)

**Measures to safeguard education for overseas students
studying in Australia**

The Minister for Education, Julia Gillard, today warned education providers that they risk being shut down if they don't comply with rules relating to international students.

Ms Gillard was speaking in Parliament at the introduction of an Amendment Bill to the *Education Services for Overseas Students (ESOS) Act 2000*.

Under the new rules being considered by the Parliament, all institutions currently registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) will be required to re-register under new, tighter criteria by 31 December 2010.

The Bill adds two new criteria for registration: the provider must have the principal purpose of providing education; and the provider must have demonstrated a capacity to provide education of a satisfactory standard.

The process will allow the Government to review the registration of education providers to ensure they are providing quality education services to international students visiting Australia.

Most providers are doing the right thing, but this change will help weed out the shonky operators.

The state governments have already started rapid audits of providers, and these will be extended so that all providers working with international students will need to show they have the best interests of the students at heart and not simply a profit motive.

The Bill will also introduce new processes to ensure greater transparency and accountability of international education providers, including their use of education agents.

The amendments are the first in a series of measures the Australian Government is taking to ensure Australia continues to offer quality international education.

The Government has also announced a full review of the ESOS Act to be headed by Bruce Baird with an interim report due in November. International students will be able to have their say at the upcoming International Student Roundtable in September.

More information is available on the [AEI website](#).

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