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**From:** BOPF, Michael  
**Sent:** Wednesday, 12 October 2011 6:03 PM  
**To:** Committee, EE (REPS)  
**Subject:** FW: Call for submissions: ESOS Bills and Higher Education Support Bill

Dear Siobhan

Thank you again for the opportunity to provide comments related to the ESOS and Higher Education Support Bills.

I am generally supportive of the proposals to strengthen the regulatory framework that applies to the provision of education and training to overseas students. In particular, the proposed change to a single national registration for providers has the potential to significantly strengthen the regulation of providers while simultaneously reducing the regulatory burden on those providers that operate in multiple jurisdictions.

Similarly, the proposed Tuition Protection Scheme (TPS) simplifies the current model of protecting student fees (ie via a combination of membership in a Tuition Assurance Scheme and contribution to the ESOS Assurance Fund), providing a clearer framework that has the potential to reduce the compliance requirements on providers while providing greater flexibility in managing displaced students.

I do, however, have concerns regarding two of the proposals, as noted below.

#### **Changes to Annual registration charge**

The proposed changes result in the charges remaining substantially unchanged for small or very small providers, but seem to represent significantly reduced charges for medium to large providers. For example, a provider registered to deliver five courses that enrolls 100 students annually will face an unchanged registration charge, while a provider registered to deliver 20 courses that enrolls 5,000 students annually will see its annual charges reduced substantially.

No explanation has been provided to support this change, or a justification for a large expected reduction in the annual revenue generated through levying these fees. This reduction is somewhat anomalous, particularly in an environment where regulators are generally expected to operate on a cost-recovery basis. Further, no explanation is provided regarding how this shortfall is to be made up. There is a risk that this significant reduction in revenue could lead to reductions in the resources available to regulate the international education sector, which contradicts the current agenda of increasing the regulatory focus on this area, particularly for providers identified as presenting a higher level of risk.

There is some inference in this proposal that smaller providers, by definition, present a heightened risk to the sector. In considering the risk a provider poses, the consequences of a provider defaulting must be considered. Clearly, a large provider defaulting would have significantly more impact on the industry than a smaller provider, even if the likelihood of a large provider defaulting may be less (due to a greater ability to absorb fluctuations in the market). A number of factors must be considered when developing a risk profile of a provider and no evidence has been provided to support the inference that smaller providers present a higher risk simply due to lower enrolment numbers.

#### **Requiring initial fees to be placed in a separate account**

While this proposal appears to be sound, considering it in a historical context indicates that the proposal has weaknesses. In the past, providers registered on CRICOS were required to hold pre-paid tuition fees in a trust account and could only draw on these fees in a manner similar to the current proposal. However, where a provider closed unexpectedly, it was often discovered that there were little or no funds in the trust account. Indeed, there is a logical alignment between organisations where inadequate management leads to default and organisations where this inadequate management extends to the operation of a separate account intended to protect fees.

While a provision is included that allows regulatory agencies to examine the operation of this account, there is no provision for any regular reporting on, or examination of, the operation of this account. This proposal potentially increases the burden of compliance on providers without any corresponding strengthening of the regulatory regime, potentially imposing an impost on good providers while not adequately responding to those providers who choose not to do so. While there are strong penalties for non-compliance with this requirement, it is likely that any non-compliance will only be discovered following a provider defaulting, invalidating the very protection that

this measure seeks to provide. The proposal to reduce the revenue from the annual registration charges increases the risk that the regulatory agency will not have sufficient resources to pay adequate attention to monitoring the operation of the proposed account.

The proposal to limit the amount of fees that can be collected in advance and the introduction of stronger protection of fees in the case of provider default together provide a strong framework that significantly reduces the exposure to the industry in the case of provider default. The proposal to dictate how fees paid in advance must be held increases the regulatory burden on providers without a corresponding increase in the level of protection afforded to students.

### **Additional comments**

I also wish to provide some information that has come to my attention related to a specific cohort of providers, Queensland independent schools. Specifically:

Whilst the schools sector is smaller than the tertiary and training sectors in the provision of international education, its importance should not be dismissed.

The impact of the proposed changes, in addition to other regulatory changes over a period often plus years, has resulted in an overall regulation and compliance environment for CRICOS registered non-government schools which is excessively and needlessly complex.

There are compelling reasons why non-state schools require special recognition in the regulatory environment as opposed to being swept up into systems that are designed for institutions (universities and training providers) which enrol thousands of international students. *Non-state schools are not-for-profit; have education as their primary purpose; are institutions in receipt of government funding and therefore are already highly regulated and accountable to governments; demonstrate financial viability as an accreditation attribute under existing regulatory arrangements; and generally enrol a small percentage of international students compared with their overall student cohort.*

Non-state schools are highly stable and low risk in terms of international students.

Further, schools differ significantly from the tertiary and training sector providers in that the international students enrolled are generally under the age of 18. Schools therefore have a duty of care and must focus of the welfare of international students.

### ***Key issues***

Given stable and low risk circumstances of non-state schools, regulatory systems must recognise the unique characteristics of schools. In this context, it is requested that:

- TPS contributions that reflect the low risk nature of the sector, with exemptions where possible.
- Schools in receipt of Australian Government General Recurrent Funding should be exempt from the proposed Entry to Market Charge.
- Recognition that the proposed amendments to limit the amount of pre-paid fees that can be collected to a study period of not more than 24 weeks, and not more than two weeks before the next study period after a course has started, are just not suitable for schools and should be reviewed accordingly.
- Close scrutiny of specific recommendations of the Knight review that have the potential to impact negatively on the school sector, for example, interpretation "at post" of the criterion for the new GTF requirement.

The proposed regulatory changes take a risk profiling approach. Whilst this is understandable, it is important and appropriate that a sector rather than individual institution approach is taken in respect of schools (given the circumstances outlined above). There are some 450 non-state schools throughout Australia with CRICOS registration.

The issue of risk profiling raises the issue of equity in the schooling sector, if non-state schools are not recognised as low risk in the same manner as government schools with regard to the application of CRICOS registration requirements and ARC and Entry to Market Charge, this will be a significant competition policy issue.

The proposed Entry To Market charge will have a significant impact on the potential for non-state schools to seek CRICOS registration and enrol international students.

There will be a large number of non-state schools that will be worse off under new ARC charges despite the DEEWR claim that the many providers will pay less. Generally, the schools that will be worse off are the schools with smaller numbers of overseas students enrolled.

Unfortunately, for many non-state schools the regulatory and compliance requirements in relation to international students are just too complex and expensive. The proposed regulatory changes unfortunately appear to only add to the complexity and the cost.

For an export industry that rates as the third highest in Australia, governments should be legislating to encourage low risk providers like non-state schools to contribute to growing the industry and the export of education services. Unfortunately, there is high probability that the latest round of regulatory changes for international education will see many non-state schools drop out of the international market to the detriment of schooling overall and to the Australian and Queensland economies.

Best Regards

Michael Bopf

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