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Creating Futures

ACPET
AUSTRALIAN COUNCIL FOR PRIVATE EDUCATION AND TRAINING

ACPET submission

House of Representatives
Standing Committee on Education and Employment

Inquiry into the ESOS Tuition Protection Service Bills introduced into parliament on 22 September 2011

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ACPET welcomes the opportunity to provide feedback on the three bills introduced into parliament on 22 September 2011 that relate to the proposed Tuition Protection Service, namely the:

- Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Bill 2011
- Education Services for Overseas Students (TPS Levies) Bill 2011
- Education Services for Overseas Students (Registration Charges) Amendment (Tuition Protection Service) Bill 2011.

About ACPET

Established in 1992, the Australian Council for Private Education and Training (ACPET) is the national industry association for private providers of post-compulsory education and training. ACPET has more than 1,100 members nationally delivering a full range of higher education and vocational education and training (VET), including apprenticeships and traineeships, and English language courses across all states and territories.

ACPET's mission is to enhance quality, choice, innovation and diversity in Australian education and training. ACPET works with governments, education and training providers, industries, and community organisations, to ensure vocational and higher education and training services are well-targeted, accessible, and well-delivered with courses of high quality, and providing for choice and diversity. Half of ACPET's members deliver education and training to international students.

ACPET role as the largest TAS provider in Australia

ACPET currently operates the largest Tuition Assurance Scheme (TAS) for overseas students in Australia in accordance with conditions set down by the *Education Services for Overseas Students (ESOS) Act 2000*. Established in August 1994, the scheme is known as the Overseas Student Tuition Assurance Scheme (OSTAS). This key service provides members with a cost-effective means of fulfilling the requirements of the ESOS Act.

The objective of OSTAS is to ensure overseas students displaced from a course (due to an ACPET member's inability to continue the course) are efficiently relocated in a comparable course with another ACPET member who has OSTAS, or another approved provider. The scheme was established to provide members with a low-cost solution to the tuition assurance component of the governing ESOS legislation. This is achieved by enabling ACPET members with OSTAS to access substantially reduced subscription rates for the Government's ESOS Assurance Fund. More detail about the scheme can be found at Attachment A.

In addition to OSTAS, in June 2002 the ACPET Board approved the establishment of a TAS for local students, known as the Australian Student Tuition Assurance Scheme (ASTAS). ASTAS offers members an economical way of complying with the requirements of the *Higher Education Support Act 2003* as they relate to FEE-HELP and more recently VET FEE-HELP approved providers. ACPET also operates an ASTAS scheme for VET providers delivering to domestic students.

Consultation

As the peak body that represents private education in Australia, and the largest and most experienced TAS operator, ACPET remains concerned with the lack of meaningful consultation on the detail of the bills prior to their introduction into parliament, and the relatively short timeframe to consider the bills in their completed form prior to making a submission to this inquiry.

Consultation with ACPET has been by way of a small number of irregular briefings from DEEWR, typically by phone, regarding the high-level aims and components of the bills, prior to their introduction into parliament. ACPET welcomes this approach as an initial consultation strategy, but this approach alone does not constitute meaningful consultation, given the 'devil' is often in the detail of legislation. Consultation on the detail of complex legislation prior to its introduction into parliament assists the government in delivering rigorous, relevant and clear policy from the outset.

The short timeframe to consider and respond to these three complex bills is exacerbated by the concurrent release of the Knight Review. Private international education providers have an unprecedented amount of proposed policy change to consider in a very short timeframe – this is unfair, unreasonable and has the potential to destabilise businesses in Australia's fourth largest export earning industry, in a time of global and local, economic and political uncertainty.

ACPET considers meaningful consultation to include, at a minimum, a reasonable period of time to consider the detail of a draft bill prior to its introduction into parliament.

Timeframes

ACPET acknowledges the importance in implementing the measures proposed in the bills, as long as it is done efficiently and effectively and with minimal impact to the sector. With this in mind it is recommended that the operational timelines proposed in the bill are shifted out by six months to take effect on 1 January 2013. ACPET believes that after the Director is appointed and TPS Advisory Board established, the new structure will need at least six months to establish its operational governance before it will be ready to deal with operational issues. If implementation is rushed and provider closures occur in June–August next year and these are poorly handled by a new and potentially ill-prepared team, there could be further serious damage to the reputation of Australia's already vulnerable international education sector.

ACPET's members have also conveyed considerable concern over the concurrent implementation timeframes with the recommendations of the Knight Review. While many measures outlined in the recommendations of the Knight Review are important and need to be implemented without delay, this massive shift in the regulatory environment in such a short timeframe is unreasonable and unfair for providers.

Change of business model

There is concern in the sector in relation to the provisions in the bills that limit the ability of providers to collect fees from students prior to commencement of a course. While this may be appropriate in many cases, some providers may be adversely affected due to the type of course they offer – given some disciplines, like aviation, high end manufacturing, construction, hospitality, require large capital outlays prior to commencement of a course.

In addition to this, there is confusion around the provisions that limit the collection of fees until two weeks prior to a course commencing. Questions have been raised in relation to:

- Schedule 3, Part 1, subsection 27(3) of the ESOS Legislation Amendment (TPS and Other Measures) Bill 2011 which prescribes a timeframe around when pre-paid fees may be received once a course begins. Subsection 27(4) states that subsection 27(3) is not applicable where fees are received before the student has begun the course. If subsection 27(3) only applies once the

course has begun then why is there a reference to 'intending overseas student' in that subsection?

- whether there will be any impact on/change to the issuing of Confirmation of Enrolment (CoE) certificates for the purpose of issuing student visas.

Questions like these highlight the confusion that has ensued from the short period in which the industry has had to consider the bills and explanatory memorandum. ACPET would like greater clarity around these provisions and how they will operate, before the industry can consider its response to this aspect of the policy.

National registration

ACPET is a strong supporter of the provisions in the bills that will see CRICOS registration move to a national registration model. ACPET also supports the timeframe, which currently stands at 1 July 2012.

Of concern to ACPET members is the apparent silence in the bills in relation to transitionary arrangements and how registration fees paid beyond 1 July 2012 will be refunded and/or dealt with. A detailed description of how this change will be implemented needs to be provided.

All of sector approach

ACPET supports the provisions of the bills that will see all CRICOS providers subject to the proposed scheme. However ACPET requires clarification as to whether providers with international students will be subject to the proposed fee structure based on total enrolments (domestic and international) or solely based on the number of international student enrolments.

Uncertainty around fee quantum

Risk-based fees will be introduced as a TPS levy from 1 January 2013, replacing the current annual ESOS contribution paid by private education and training providers. This follows the lead set by ACPET in risk assessing providers for TAS purposes. But while a risk-based approach is welcomed, the new fees contain four different components and much appears to be at the discretion of the TPS Director, potentially signalling much higher fees under the new arrangements.

It is also unclear how the new risk framework underpinning the risk component of the TPS levy has been or will be developed. This risk framework should build on the extensive work on risk assessment of international education providers undertaken by ACPET, the former state regulatory bodies and/or the risk framework of the new Australian Skills Quality Authority. It is unclear if it is intended to inform or be informed by the new risk framework the government has announced for the international education sector pending the release of the Knight Review. For the sector to have confidence in the risk framework proposed, it is critical that DEEWR detail the evidence base and expertise either used or planned to be used in its development.

The critical need for greater clarity on the proposed risk framework relates to both the bureaucratic burden to be placed on private education and training providers for multiple and conflicting risk approaches, as well as the fees they will be charged based on their assessed risk level.

Providers need certainty regarding their potential future liabilities. Considerable distress has ensued in the sector around this aspect of the bills, particularly the ‘special levy’ category which appears to have no rigour around how it is calculated and no apparent limit to the amount to be collected as a percentage of a provider's overseas student tuition fees. The fact that levies will also be used to support the running of the new arrangements, and the lack of transparency in the proposed fee regime, runs the risk of the sector incurring higher costs than are borne in the current arrangements.

Regulatory Impact Statement

While it is government policy to conduct a Regulatory Impact Statement (RIS) prior to the implementation of major regulatory change, none has been forthcoming in relation to this legislation and the substantial regulatory changes it introduces. ACPET calls on the government to release any RIS that may have been conducted in the name of transparency. ACPET believes that a comprehensive RIS would support many of the concerns raised in this submission, particularly those around uncertain fee quantum and implementation timeframes.

TPS provider

ACPET strongly supports the provisions of the bills proposing to outsource the service provision of the TPS. This is a clear indication that the government recognises that industry is best placed to run a tuition protection service, particularly where student placements are required in the event of college closures.

Student placement services

ACPET members have raised concerns with the following statement found on page 2 of the Explanatory Memorandum to the ESOS Amendment Legislation (TPS and other measures) Bill 2011 regarding student placement services in the event of a provider closure:

> 'Students will be given a more active role in selecting from suitable placement options through an online information service. Where a student does not access a placement through the placement facility provided by the TPS Director...'

While there may be value in an online information service as part of student placement, such a portal should not be a substitute for the full suite of student placement services that are required when there is a provider closure.

As the operator of the largest TAS in Australia, ACPET has considerable experience in dealing with student placements. When a provider closes, it often has a detrimental impact on a student and their families. Given the distress students are often under in this period of uncertainty, combined with being a long way from home and family support and typically not having English as their first language, a website is unlikely to be the most effective means of supporting students. ACPET relies heavily on direct student contact through the TAS activation and placement process to ensure the best outcome for all parties involved.

ACPET remains available to provide advice to the government through the development of operational policy for this function under the new office of the TPS Director.

Fund viability risks

As an experienced TAS operator, ACPET has serious concerns around the transition to the new arrangements for existing students and the sector. Of particular concern are the provisions that will allow students to either choose a refund or accept a new place.

Proposed subsections 49(2) and 49(3) of the ESOS Amendment Legislation (TPS and other measures) Bill 2011 read:

> 'Suitable alternative courses
>
> (2) If any suitable alternative courses are available, the TPS Director must provide, in writing, the student with one or more options for such alternative courses.
>
> Accepting an alternative course
>
> (3) If a registered provider of an alternative course referred to in subsection (2) offers the student a place in the course, the student **may** accept the offer.'

The use of the term 'may' in subsection 49(3) is a clear change from current practices and in the transition period will see much more paid out in refunds. This will be exacerbated by section 50A of the same bill, with a call on the Overseas Student Tuition Fund even when the student accepts a place with another provider.

ACPET calls on DEEWR to provide modelling under the new scheme on the likely number of closures in the first 12 months or more following implementation, the likely number of students affected and likely payouts if all or most want a refund.

ACPET is concerned that because the limits to prepaid fees will only be implemented for new students from 1 July 2012, existing students affected by a closure in the first one to two years of the new scheme will likely have paid substantial fees in advance. This could make them eligible for substantial refunds under the new arrangements.

ACPET has undertaken financial modelling to identify the number and pattern of provider closures in the past 20 months. This modelling identified that approximately $10.3 million would have been paid to students in that period for tuition that had been paid in advance but was undelivered. Clearly this is an untenable situation and the Overseas Student Tuition Fund would quickly be depleted.

ACPET is extremely concerned about this highly likely scenario as all institutions would then be called on by the TPS Director to pay substantial additional fees and levies to replenish the fund. It would be grossly unfair to penalise providers in this fashion if a high number of claims are made on the fund in the first year or two of its operation, simply as a result of flawed legislation and poorly thought through implementation. ACPET believes it is critical that a provision be inserted in the bill to prevent such a scenario.

Penalties

ACPET welcomes the introduction of the new accountabilities to ensure academic records are kept up to date. However, it stresses the need for a comprehensive, plain English education campaign run by DEEWR explaining these new responsibilities prior to the commencement of this legislation.

Further to the proposed penalty provisions, ACPET believes the international education sector would be strengthened by the introduction of specific penalty provisions prohibiting unethical recruitment practices by providers when they are failing or closure is imminent. This would be similar to insolvent trading provisions and the related offences under Australian corporations law.

Recommendations

ACPET recommends that:

1. the provisions relating to national registration of CRICOS institutions be implemented as outlined
2. the government indicate how registration fees will be dealt with in the transitionary period, i.e. whether on a pro-rata or other basis
3. the government commit to meaningful consultation in the development of future policy, including industry consideration of draft legislation prior to its introduction into parliament
4. the operational timelines proposed in the bill be shifted out by six month to take effect on 1 January 2013 to allow DEEWR time to ensure proper consultation with the sector to allow for the effective implementation of the new arrangements and the development of a robust and credible risk framework
5. there be greater clarity around fees, particularly the risk-based fees and special tuition protection component. Further, greater clarity is needed as to whether the TPS levy components that are determined on a per student basis, apply to total number of enrolments at a CRICOS institution, or just enrolments of international students

6. DEEWR conducts a full Regulatory Impact Statement or if one has been conducted that it be released for industry consideration. The RIS should provide modelling under the new scheme on the likely number of closures in the first one to two years following implementation, likely number of students affected and likely payouts from the fund
7. the bill be re-drafted to prevent students from claiming a full refund if they have been offered a place in an equivalent course
8. greater certainty be provided around how the TPS levies will be determined, particularly the risk and special levy components. This should also include a way of limiting the levies to ensure this funding mechanism is not abused
9. during the development of operational policy supporting student placements in the event of a college closure, DEEWR draw on the extensive experience of ACPET
10. a comprehensive, plain English education campaign is run by DEEWR explaining the new responsibilities for the international education sector prior to the commencement of this legislation
11. a specific penalty be introduced into the bills prohibiting unethical recruitment practices by providers when they are failing or closure is imminent, similar to insolvent trading offences under Australian corporations law.

ATTACHMENT A

The ACPET Overseas Student Tuition Assurance Scheme

ACPET operates the largest Tuition Assurance Scheme for overseas students in Australia in accordance with conditions set down by the ESOS Act 2000. Established in August 1994, the scheme is known as the Overseas Student Tuition Assurance Scheme (OSTAS). This key service provides members with a cost-effective means of fulfilling the requirements of the Commonwealth's Education Services for Overseas Students (ESOS) Act 2000.

In June 2002, the ACPET Board approved the establishment of a second Tuition Assurance Scheme for local students, known as the Australian Student Tuition Assurance Scheme (ASTAS). The ASTAS offers members an economical way of complying with the conditions of registration of the Australian Qualification Training Framework (AQTF).

The objective of the OSTAS is to ensure that overseas students displaced from any course conducted by a member of ACPET's OSTAS due to the member's inability to continue the course are efficiently relocated in a comparable course with another member of ACPET's OSTAS or other approved provider. The scheme was been established to provide members with a low-cost solution to the tuition assurance component of the governing ESOS legislation that regulates providers who accept overseas students. This is achieved by enabling members of ACPET's OSTAS to access substantially reduced subscription rates for the Government's ESOS Assurance Fund.

What the scheme provides

ACPET makes arrangements for any overseas student who has not withdrawn from a member provider and requires placement due to:

- the course not commencing on the agreed starting date
- the course ceasing to be provided after it has started
- the full course not being delivered because a sanction has been imposed on the provider

to be offered enrolment in a suitable comparable course with minimum disruption to studies.

The member receiving the overseas student will make no additional tuition charge for the portion of the previous course for which full payment has been received by the member provider who is no longer able to continue that course. ACPET do not transfer any fees to member colleges to accept students. The new provider is entitled to charge the normal tuition fee for any portion of a course not previously paid for by the overseas student.

If no member of the Scheme offers a suitable comparable course, the ACPET OSTAS will make the necessary financial and administrative arrangements to commission or obtain access to an appropriate course for the specific purpose of offering these students placement.

OSTAS membership fees & the application process

The annual fee payable for OSTAS is determined by three variables: Category, Type and Risk Level. The OSTAS Category is established from the student capacity of the provider, as approved by the relevant State/Territory Department and detailed on the provider's CRICOS Individual Provider Report. The OSTAS Category Type is established from the nature of the courses to be covered under the OSTAS. The two Types are described as follows:

- Type A: providers delivering courses which are suitably comparable to those offered by five or more ACPET OSTAS members who are located within the same State or Territory

- Type B: providers delivering courses which are not suitably comparable to those offered by a sufficient number of other ACPET OSTAS members who are located within the same state or territory.

The OSTAS Risk Level is based on a TAS Criteria assessment completed of the general business, financial and education information requested at application. The category, type and risk level outlined on the fee schedule are used as a guide only.

All applications are individually assessed by the Membership Team, reviewed by National Membership Manager and the CEO and are subject to the ultimate recommendation to the ACPET National Board, who make the final approval. A higher OSTAS category and type, and/or the need for additional financial requirements, such as a bank guarantee, may be applied to applicants whose industry, delivery methods, delivery locations, student capacity and/or fees in advance policy cause them to be deemed as posing a higher risk to the TAS.

Providers, for whom some or all of the courses offered fall into Type B, are charged a premium on the Type A fees. This premium is charged in order to account for additional costs that may be incurred by ACPET in providing financial support under the scheme.