

# Advisory Report on Bills referred 22 September 2011:

- **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**
- **Higher Education Support Amendment Bill (No. 2) 2011**

House of Representatives  
Standing Committee on Education and Employment

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## Membership of the Committee

**Chair** Ms Amanda Rishworth MP

**Deputy Chair** Mr Rowan Ramsey MP

**Members** Mrs Karen Andrews MP

Mr Mike Symon MP

Mrs Yvette D'Ath MP

Mr Alan Tudge MP

Ms Deborah O'Neill MP

## Committee Secretariat

Secretary                      Dr Glenn Worthington

Inquiry Secretary            Ms Siobhan Leyne

Office Managers              Mr Daniel Miletic

Ms Katrina Gillogly

Administrative Officer      Ms Emily Costelloe



## Terms of reference

The terms of reference are the text of the following bills:

- 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 Bill 2011; and
- Higher Education Support Amendment Bill (No. 2) 2011.



## List of abbreviations

ACT	Australian Capital Territory
DEEWR	Department of Education, Employment and Workplace Relations
ESOS	Education Services for Overseas Students
HESA	Higher Education Support Amendment
NSW	New South Wales
PRISMS	Provider Registration and International Students Management System
TPS	Tuition Protection Service





# List of recommendations

## Recommendation 1

The Committee recommends that Schedule 1, Part 1, Division 2, Subdivision A, Clause 46B of the Education Services for Overseas Students Legislation Amendment (Tuition Protect Service and Other Measures) Bill 2011 be amended to require providers to notify the regulator within 72 hours of a provider default.

## Recommendation 2

The Committee recommends that Schedule 1, Part 1, Division 2, Subdivision B, Clause 47C of the Education Services for Overseas Students Legislation Amendment (Tuition Protect Service and Other Measures) Bill 2011 be amended to require providers to notify the regulator within 72 hours of a student default.

## Recommendation 3

The Committee recommends that the Australian Government ensures broad representation of industry stakeholders on the TPS Advisory Board reflecting high and low risk providers as well as the various sectors of the industry.

## Recommendation 4

The Committee recommends that following the passage of the Education Services for Overseas Students bills, the Australian Government ensures providers of education services to overseas students are provided with comprehensive information on an on-going basis relating to the implementation of the Tuition Protection Service arrangements.

#### **Recommendation 5**

The Committee recommends that the House of Representative pass the following bills:

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

#### **Recommendation 6**

The Committee recommends that the House pass the Higher Education Support Amendment Bill (No. 2) 2011.





## Education services for overseas students bills

### Referral and conduct of the inquiry

- 1.1 The following bills were referred by the House of Representatives Selection Committee on 22 September 2011 and are addressed in this chapter:
  - Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Bill 2011;
  - Education Services for Overseas Students (TPS Levies) Bill 2011; and
  - Education Services for Overseas Students (Registration Charges) Amendment Bill 2011.
- 1.2 The suite of education services for overseas students (ESOS) amendment bills are part of the Government's response to the findings of the review of ESOS services undertaken by the Hon Bruce Baird AM, titled *Stronger, simpler, smarter ESOS: supporting international students* (the Baird Review), and released in March 2010.
- 1.3 The Baird Review was undertaken as a result of significant growth in the number of overseas students and following a series of incidents involving international students that included closures of education institutions resulting in a loss of fees and education and a series of violent attacks on

Indian students. These incidents tarnished the reputation of the international education sector in Australia.<sup>1</sup>

- 1.4 The Baird Review recommended a risk assessment and management approach to regulation, monitoring and registration of those providing education services to international students and a system of tuition protection for international students.
- 1.5 The first phase of the Government's response to the Baird Review was implemented through the *Education Services for Overseas Students Legislation Amendment Act 2010*, which passed Parliament in April 2011. The Bill for that Act was the subject of an inquiry by the Senate Standing Committee on Education, Employment and Workplace Relations.<sup>2</sup>
- 1.6 The bills under current consideration implement the second and final phase of the Government response to the Baird Review.<sup>3</sup>
- 1.7 The inquiry was advertised by media release and in *The Australian* as well as directly inviting submissions from stakeholders.
- 1.8 The Committee received 22 submissions and held 1 public hearing. Details of submissions and the public hearing are listed at Appendix A and Appendix B respectively.

## Outline of the bills

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

- 1.9 The ESOS Amendment (Tuition Protection Service and Other Measures) Bill provides protection of the tuition paid for overseas students in the event an education provider fails to provide services. It does this through:
  - setting provider default obligations;

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1 Australian Government, *Stronger, simpler, smarter ESOS: supporting international students. Review of the Education Services for Overseas Students (ESOS) Act 2000*. February 2010, p. 1.

2 Senate Standing Committee on Education, Employment and Workplace Relations. Report available from <[aph.gov.au/Senate/committee/eet\\_ctte/esos\\_43/report/c01.htm](http://aph.gov.au/Senate/committee/eet_ctte/esos_43/report/c01.htm)> accessed 27 September 2011.

3 Australian Government, *The Government's Response to the Baird Review recommendations*, <[aei.gov.au/About-AEI/Current-Initiatives/ESOS-Review/Pages/default.aspx](http://aei.gov.au/About-AEI/Current-Initiatives/ESOS-Review/Pages/default.aspx)> accessed 27 September 2011.

- establishing a single tuition protection service (TPS), replacing the current tuition assurance and ESOS assurance schemes;
- providing for students to be more active in placement options following provider failure;
- requiring the TPS to be fully sector-funded without need for Government financial assistance; and
- establishing a new TPS governance structure led by a statutory TPS director.

1.10 The Bill also:

- establishes a national registration scheme for education providers;
- limits the collection of fees to one study period in advance and requires that these fees be separately banked and not drawn upon until the commencement of the provision of tuition; and
- strengthens record keeping requirements so that students of defaulting registered providers are able to have these records transferred to a new provider.

1.11 The Bill also deals with a number of consequential amendments.

## Education Services for Overseas Students (TPS Levies) Bill 2011

1.12 The ESOS (TPS Levies) Bill provides a requirement for ESOS providers to pay fees and levies to fund the tuition protection scheme established under the ESOS (TPS and Other Measures) Bill.

1.13 The Bill defines who is required, and at what rate, to pay the following:

- registration fee of \$100 plus \$2 per enrolment;
- base fee of \$200 plus \$5 per enrolment;
- risk rated premium based on provider risk of default; and
- special tuition protection levy to be paid only when the sector is buoyant to protect against future sector shock.

1.14 The Bill allows for indexation of the registration and base fees. The Bill also allows the TPS Director to set components of the risk rated premium and special tuition protection levy by legislative instrument.

## Education Services for Overseas Students (Registration Charges) Amendment Bill 2011

- 1.15 The cost of administering the ESOS Act and the Commonwealth Register of Institutions and Courses for Overseas Students is funded by a compulsory registration fee payable by all registered providers who intend on providing services to international students. The ESOS (Registration Charges) Amendment Bill will amend the way that fees are set by adopting a risk management approach to the fee structure.
- 1.16 The Bill provides the following registration fee structure:
- all registered providers will continue to pay a compulsory annual registration fee based on a flat fee plus a charge for total enrolments and courses provided;
  - if compliance action has been taken against a provider in the previous year, an additional fee is payable;
  - for a course of less than 13 weeks duration, each student is considered 0.25 of an enrolment and for a course between 13 and 26 weeks duration, each student is 0.5 of an enrolment; and
  - new providers will be required to pay a scaled 'entry to market' fee reducing over the course of three years, in recognition of the higher compliance and supervision costs associated with new providers.

### Submitter concerns

- 1.17 Of the 22 submissions received, 20 were from industry stakeholders. Several points of concern emerged across submissions from industry peak bodies and service providers relating to specific proposals in the Bills. The Committee pursued these matters at a public hearing with representatives of the Department of Education, Employment and Workplace Relations (DEEWR). Stakeholder concerns focused on:
- the proposed timeline to commencement of measures;
  - the definition of and requirements associated with provider defaults, particularly:
    - ⇒ the definition of location at which a course is provided, particularly as this relates to multi-campus providers; and
    - ⇒ notification timeframes required for provider defaults;



- the definition of and requirements associated with student defaults, particularly;
  - ⇒ with regard to student commencement dates; and
  - ⇒ notification timeframes required for student defaults;
- 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; and
- record keeping requirements.

## Implementation timeframe

- 1.18 Clause 2 of the ESOS Amendment (Tuition Protection Service and Other Measures) Bill sets out the commencement of the proposed measures, with exceptions and conditions, as the first 1 July after the Act receives Royal Assent.
- 1.19 Stakeholders expressed varying degrees of support for and concern at an implementation timeframe for the proposed measures commencing on 1 July 2012.
- 1.20 TAFE Directors Australia expressed urgent and wholehearted support for implementation in 2012.<sup>4</sup>
- 1.21 English Australia acknowledged:
- The potential damage to Australia’s reputation if the TPS is not ready to operate effectively from 1 July 2012 will be severe ... [However] the sector would need to have confidence that the timeline is appropriate for the Commonwealth to be able to establish the new TPS Director and Board and run the tender to find the service provider to manage the new placement scheme and Fund...<sup>5</sup>
- 1.22 Other stakeholders expressed concern at ‘tight’ implementation timeframes,<sup>6</sup> or that 2012 was ‘too soon’.<sup>7</sup> For instance, the Melbourne College of Divinity found it:

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4 TAFE Directors Australia, *Submission no. 4*.

5 English Australia, *Submission no. 3*, p. 6.

6 Group of Eight, *Submission no. 5*, p. 3.

difficult to visualise that the Appointments of TPS Director and TPS Advisory Board, and other necessary elements of the governance structure would be in place and organised sufficiently to commence on 1 July 2012.<sup>8</sup>

1.23 In response DEEWR noted:

the concerns from the sector regarding the implementation time frames, but ... the Baird recommendations were publicly released in March 2010, around 18 months ago. The department believes delay continues the risks associated with the current arrangements, including impacts on students, reputational damage and the exposure of Australian taxpayers associated with future college closures. These concerns are well set out in Mr Baird's review report.<sup>9</sup>

1.24 Furthermore:

the major impact for providers in relation to the commencement of the TPS will be in relation to the proposed TPS levy. This levy will not commence until 2013. It is anticipated that the TPS director would likely make a decision on the TPS levy in October 2012 – next year – and subsequently a legislative instrument would be brought before the parliament shortly thereafter. These time frames are not dissimilar from those that currently apply in relation to the decision making process.<sup>10</sup>

1.25 DEEWR reiterated the importance of the proposed reforms:

all of the issues which Mr Baird raised about the fragility of the current arrangements apply. The system at the moment is really quite fragile in my view, having watched it for quite a long time. It was a system designed for a very small international sector and now we have a very big one, so it was fit for purpose when it was introduced and modified. The longer we go before we put it on a firm footing the more we run the risk which Mr Baird has identified – and that is the existing system will fall over.<sup>11</sup>

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7 Universities Australia, *Submission no. 9*, p. 2; Independent Schools Council of Australia, *Submission no. 13*, p. 18 and Australian Council for Private Education and Training, *Submission no. 19*, p. 4.

8 Melbourne College of Divinity, *Submission no. 7*, p. 2.

9 DEEWR, *Transcript of Evidence*, Canberra, 21 October 2011, p. 3.

10 DEEWR, *Transcript of Evidence*, Canberra, 21 October 2011, p. 4.

11 DEEWR, *Transcript of Evidence*, Canberra, 21 October 2011, p. 7.

- 1.26 The Committee notes the availability of the Baird Review since early in 2010 and the additional time prior to the commencement of the TPS levy in 2013 has provided the industry with adequate timeframes to meet the new proposed requirements. The proposed timeframe for implementation of the Bill as set out at Clause 2 is thus supported.

## Provider defaults

- 1.27 Schedule 1, Part 1, Division 2, Subdivision A, Clause 46A of the ESOS Amendment (Tuition Protection Service and Other Measures) Bill proposes that registered providers are considered to have defaulted if the provider fails to provide the course to the student at an agreed location or the course ceases to be provided at the agreed location after commencement but before it is completed and the student does not withdraw.
- 1.28 DEEWR further explained ‘we have had concerns from students that thought they were enrolling in Sydney and have been told that they have to go to the Central Coast or something like that.’<sup>12</sup>
- 1.29 The peak body representing Australian government schools providing education services for international students, the Australian Government Schools International (AGSI), argued that location should be understood to allow flexibility to providers with multiple campuses when these campuses are within reasonable proximity to one another.<sup>13</sup> This point was supported by the Australian Capital Territory (ACT) Government, Government, Education and Training International Tasmania and the New South Wales (NSW) Department of Education and Communities.<sup>14</sup>
- 1.30 In response to these concerns DEEWR stated:
- if the provider has several possibilities or options for where they might provide the course, they can identify that at the time when they are registering the location ... the policy of this is obviously to avoid situations where the provider suddenly moves the course from somewhere that is well equipped to another location that is completely different ... there will be circumstances where the provider wants to have a bit more flexibility, but I think that can

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12 DEEWR, *Transcript of Evidence*, Canberra, 21 October 2011, p. 10.

13 Australian Government Schools International, *Submission no. 1*, p. 3.

14 ACT Government, *Submission no. 6*, p. 2 and Government, Education and Training International (Tasmania), *Submission no. 11*, p. 1, NSW Department of Education and Communities, *Submission no. 21*, 3.

be handled up front by the provider notifying us of those locations at the time.<sup>15</sup>

1.31 Furthermore:

the provider can also discharge their default obligations by offering the student an alternative place in another location as long as that is accepted by the student in writing ... they discharge their default obligations not by refund but by offering the student an alternative place...<sup>16</sup>

1.32 Students should be entitled to know the possible locations at which a course could be offered as location can affect the resources that may be made available to the student as well as considerations such as ease of access. The Committee agrees with the Department that requiring providers to fully inform students of the possible locations at which a course is offered is a reasonable requirement on providers and protects the interests of students. Requirements set out at Clause 46A are thus supported.

## Student defaults

1.33 Schedule 1, Part 1, Division 2, Subdivision B, Clause 47A of the ESOS Amendment (Tuition Protection Service and Other Measures) Bill proposes that an overseas student defaults if the student does not commence on the day of the commencement of the course.

1.34 AGSI suggested that increased flexibility for student commencement dates would allow for:

Students [who] may not start their school course on the agreed starting day for many reasons including delays in visa processing, flights being overbooked during peak times, significant cultural events in their home country or other personal reasons. In such situations it should not be considered a student default.<sup>17</sup>

1.35 AGSI's concerns were echoed by other stakeholders.<sup>18</sup>

1.36 DEEWR referred to:

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15 DEEWR, *Transcript of Evidence*, Canberra, 21 October 2011, p. 10.

16 DEEWR, *Transcript of Evidence*, Canberra, 21 October 2011, pp. 10-11.

17 Australian Government Schools International, *Submission no. 1*, p. 4.

18 See ACT Government, *Submission no. 6*, p. 2; Government, Education and Training International (Tasmania), *Submission no. 11*, p. 1; Queensland Department of Education and Training International, *Submission no. 12*, p. 9; Council of Private Higher Education, *Submission no. 15*, p. 2 and NSW Department of Education and Communities, *Submission no. 21*, p. 4.

a definition of agreed starting date in the consequential amendments to the bill which says it is: “the day on which the course was scheduled to start, or a later day agreed between the registered provider for the course and the student”. In the case where a visa was not processed, if the student and provider agreed a later starting date, the agreed starting date would be adjusted accordingly. So I think that eventuality is covered by the bill.

- 1.37 In a case where a student was unable to amend an agreed start date because of a circumstance arising at short notice:

I think that if on the day or the next day the student contacted the provider there is certainly scope to interpret that agreed starting date as being amended. Obviously, once you have passed 48 or 72 hours it is then an issue of whether or not the provider and the student then agreed. I think a commonsense approach would apply ... The student would then actually be at the course and there is no point in requiring the provider to continue with the default provision. No-one is going to enforce that...

There would be no obligation on the provider to continue with the default process. It would be absurd to continue to do that.<sup>19</sup>

- 1.38 While the concerns of providers in relation to students defaulting as a result of not attending at the date of course commencement are understandable, the Committee accepts the Department’s reassurance that a common-sense and practical interpretation of Clause 47A should and will prevail and thus supports the Clause.

## Reporting default requirements

- 1.39 Schedule 1, Part 1, Division 2, Subdivision A, Clause 46B of the ESOS Amendment (Tuition Protection Service and Other Measures) Bill requires that a provider must notify in writing the Secretary and TPS Director within 24 hours in the event that they default. The 24 hour timeframe required for notification provoked many stakeholders to complain of impracticalities of the reporting requirement.<sup>20</sup>

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19 DEEWR, *Transcript of Evidence*, Canberra, 21 October 2011, p. 9.

20 Australian Government Schools International, *Submission no. 1*, pp. 3-4; Universities Australia, *Submission no. 9, Attachment A*, p. 1; Innovative Research Universities, *Submission no. 10*, p. 2; Government, Education and Training International (Tasmania), *Submission no. 11*, p. 1 and NSW Department of Education and Communities, *Submission no. 21*, p. 3.

- 1.40 A 24 hour timeframe for notification of student default set at Subdivision B, Clause 47C of the Bill was also a subject of criticism from stakeholders.<sup>21</sup>
- 1.41 Stakeholders were typically concerned that:
- communication of such situations goes through a number of channels. Administrative offices and schools are usually closed on weekends and most schools providers would not be able to comply with a 24 hour reporting requirement.<sup>22</sup>
- 1.42 DEEWR responded that:
- To the extent possible these notifications will be simplified and automated through the PRISMS [Provider Registration and International Students Management System] computer system. In the case of provider default, this will enable the support mechanisms for students to be activated as quickly as possible ... the 24-hour ... time frame has been developed to reduce delays should the student be referred to the TPS, especially in situations where student welfare concerns are paramount.<sup>23</sup>
- 1.43 In relation to providers; 'making it a 24-hour reporting requirement does put it right at the forefront of people's minds ... 24 hours is really saying you need to tell us immediately'<sup>24</sup>
- 1.44 The Committee accepts that considerations of student welfare and the reputation of Australian providers of education services to overseas students are well served by requiring prompt notifications of defaults to the regulator. However, the proposed 24 hour requirement would appear unnecessarily burdensome to providers.

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21 See Australian Government Schools International, *Submission no. 1*, p. 4; *Submission no.3*, pp. 11-12; ACT Government, *Submission no. 6*, pp. 2-3; Navitas, *Submission no. 8*, p. 2; Universities Australia, *Submission no. 9, Attachment A*, p. 1; Innovative Research Universities, *Submission no. 10*, p. 2; Queensland Department of Education and Training International, *Submission no. 12*, p. 9 and NSW Department of Education and Communities, *Submission no. 21*, p. 4.

22 Australian Government Schools International, *Submission no. 1*, p. 3.

23 DEEWR, *Transcript of Evidence*, Canberra, 21 October 2011, p. 4.

24 DEEWR, *Transcript of Evidence*, Canberra, 21 October 2011, pp. 8-9.

### Recommendation 1

**The Committee recommends that Schedule 1, Part 1, Division 2, Subdivision A, Clause 46B of the Education Services for Overseas Students Legislation Amendment (Tuition Protect Service and Other Measures) Bill 2011 be amended to require providers to notify the regulator within 72 hours of a provider default.**

### Recommendation 2

**The Committee recommends that Schedule 1, Part 1, Division 2, Subdivision B, Clause 47C of the Education Services for Overseas Students Legislation Amendment (Tuition Protect Service and Other Measures) Bill 2011 be amended to require providers to notify the regulator within 72 hours of a student default.**

## Tuition Protection Service Advisory Board

- 1.45 Schedule 1, Division 4, Subdivision A of the ESOS Amendment (Tuition Protection Service and Other Measures) Bill provides for the establishment of a TPS Advisory Board to provide advice and make recommendations to the TPS Director in relation to the making of a legislative instrument each year to discharge the Director's obligations under Clause 9, Subclause 3 and Clause 10, Subclause 2 of the *ESOS (TPS Levies) Act 2011*.
- 1.46 The determinations relate to risk rated premium and special tuition protection components of the TPS levy.
- 1.47 Clause 55C provides for membership of the Advisory Board from five designated agencies and Subclause 1, Paragraph b provides for 'up to 7 other members.'
- 1.48 English Australia called for this proposal to specify 'provision for the seven non-government members of the Board to include representation from across the different sectors of international education.'<sup>25</sup>
- 1.49 TAFE Directors Australia sought assurances that a TAFE representative be specifically included on the Advisory Board.<sup>26</sup>

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<sup>25</sup> English Australia, *Submission no. 3*, p. 8.

- 1.50 DEEWR outlined the intention of membership composition of the Advisory Board:

The legislation does impose an obligation on the minister to be satisfied that the board member has the qualifications and experience that the minister considers relevant to the performance of the board...

if the minister is considering 'relevant to the performance of the board' function, then in appointing the members the minister would have a view to full composition of the board and how they fulfil the functions. I do not think it is a person by person assessment. I think it is assessment of those seven members and how they would address the composition of the board and fulfil the functions.<sup>27</sup>

- 1.51 The Committee supports the provision of industry membership to the TPS Advisory Board and urges the Government to ensure a broad representation reflecting high and low risk providers as well as the various sectors of the industry on the Board.

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### **Recommendation 3**

**The Committee recommends that the Australian Government ensures broad representation of industry stakeholders on the TPS Advisory Board reflecting high and low risk providers as well as the various sectors of the industry.**

### **Study periods**

- 1.52 Schedule 3, Part 1, Division 1, Clause 22 of the ESOS Amendment (Tuition Protection Service and Other Measures) Bill proposes that a written agreement between provider and student set the length of each study period and requires that the length of a study period not exceed 24 weeks.<sup>28</sup>

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26 TAFE Directors Australia, *Submission no. 4*, p. 1.

27 DEEWR, *Transcript of Evidence*, Canberra, 21 October 2011, p. 13.

28 Subclause 3.



- 1.53 Many industry stakeholders observed that the proposed maximum length of a study period was not appropriate and would be particularly difficult to accommodate for primary and secondary school providers.<sup>29</sup>
- 1.54 Universities Australia also expressed concern that the 24 week maximum imposed on a study period would remove flexibility from the provision of university courses.<sup>30</sup>
- 1.55 DEEWR explained:
- the limit on study periods up to 24 weeks was chosen because it is an average semester: approximately six months. Anything longer than this would significantly dilute the effectiveness of the proposed measure. I note that the closure of a large, multijurisdictional ELICOS – English language – provider due to the business decision of a foreign owner in 2010 affected over 2,000 students, most of whom had paid full upfront fees amounting to a total refund liability of \$11 million. If these controls had been in place, this would have significantly reduced the potential refund liability on that occasion. Following consultation with the peak body, English Australia, the proposed study period was increased from 20 weeks to 24 weeks to better accommodate short courses. As drafted, it allows the provider to collect prepaid fees for more than one short course in a study period as long as together they still fall within a 24-week period.<sup>31</sup>
- 1.56 DEEWR noted that some government schools had raised concerns that they had very limited numbers of international students and would find the proposed regime burdensome. DEEWR noted:
- schools are around about 40 per cent of the total number of registrations. There are a lot of them and a lot of them have a small number of international students. Some have none this year and one the next, so they have them in little pockets. The team spends a disproportionate amount of time providing advice and support to those schools because they are not used to the rules. I do not think it really argues in favour of relaxing the rules, because they

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29 Australian Government Schools International, *Submission no. 1*, p. 5; ACT Government, *Submission no. 6*, p. 3; Government, Education and Training International (Tasmania), *Submission no. 11*, p. 2; Queensland Department of Education and Training International, *Submission no. 12*, p. 5; Independent Schools Council of Australia, *Submission no. 13*, p. 16; Council of Private Higher Education, *Submission no. 15*, p. 2 and NSW Department of Education and Communities, *Submission no. 21*, pp. 4-5.

30 Universities Australia, *Submission no. 9, Attachment A*, p. 3.

31 DEEWR, *Transcript of Evidence*, Canberra, 21 October 2011, p. 5.

still need to treat the international students properly even if they do not have very many.<sup>32</sup>

- 1.57 The Committee endorses the cultural and social benefits of primary and secondary schools providing education services to overseas students. The presence of overseas students can enhance the education experiences of entire student bodies.
- 1.58 School terms or semesters run under a 24 week period. Understanding a school year as consisting of two study periods may slightly increase administrative burdens on providers and may also slightly increase inconvenience for those who pay for the education services. The measure would require two payments and invoicing instead of a single payment to cover an academic year.
- 1.59 While Government schools do not collect fees from domestic students, the requirement to pay school fees for each school terms imposed on the vast majority of Australian students attending private schools does not appear to have deterred parents choosing this option.
- 1.60 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.

## Pre-paid fees

- 1.61 Schedule 3, Part 1, Division 2, Clause 27 of the ESOS Amendment (Tuition Protection Service and Other Measures) Bill proposes that a provider will not be able to collect more than 50 per cent of a student's tuition fee before course commencement unless the course has only one study period not exceeding 24 weeks.<sup>33</sup>
- 1.62 Industry stakeholders expressed concern that the requirement that a provider not collect in excess of 50 percent of a student's tuition fee before course commencement proposed in Clause 27 would inconvenience customers.<sup>34</sup> For example, AGSI stated:

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32 DEEWR, *Transcript of Evidence*, Canberra, 21 October 2011, p. 7.

33 Subclauses 1 and 2.

34 Australian Government Schools International, *Submission no. 1*, p. 5; Government, Education and Training International (Tasmania), *Submission no. 11*, p. 2; Queensland Department of Education and Training International, *Submission no. 12*, pp. 6-7; Independent Schools Council of Australia, *Submission no. 13*, pp. 15-16 and NSW Department of Education and Communities, *Submission no. 21*, p. 5.

The practice across all school providers is to collect the total tuition fees upfront to save parents making further money transfers during the program.<sup>35</sup>

1.63 The Council of Private Higher Education raised a particular circumstance:

when fees for a full year are pre-paid ... under any form of scholarship or sponsorship on behalf of the student. The number of students affected may not be large but the implications are serious.<sup>36</sup>

1.64 Universities Australia identified the provision of English Language Intensive Courses for Overseas Students as the only area which may be affected by the limitation on collection of tuition fees and argued that:

universities have not failed to provide refunds to students or needed to call on external sources of funds to do so. Hence the justification of applying this restriction to universities is not clear.<sup>37</sup>

1.65 Some submitters also raised concerns that the limitation on prepaid fees to two weeks prior to course commencements would prove problematic in their capacity for future planning and capacity to secure teaching staff:

Planning and staffing will be compromised severely as providers will not have certainty over student levels until 2 weeks before classes commence. This is an unreasonable situation to place organisations in who have long time lines to manage in securing staff, planning timetables, facilities etc. The overwhelming performance of educational institutions in the past does not support this major constraint on operations.<sup>38</sup>

1.66 The current system has no restrictions on the acceptance of pre-paid fees, as DEEWR noted:

Currently, providers are able to collect full or part course fees from students on enrolment before their visa is approved. This can involve considerable sums of money and may have to be refunded if the provider is unable to deliver the course or the student is not approved for a student visa. This can undermine quality as once all fees are paid the incentive for providers to continue to ensure students are satisfied with the service is obviously reduced. It also encourages poor business practices,

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35 Australian Government Schools International, *Submission no. 1*, p. 5.

36 Council of Private Higher Education, *Submission no. 15*, p. 2.

37 Universities Australia, *Submission no. 9, Attachment A*, p. 1.

38 Navitas, *Submission no. 8*, p. 3.

with some providers starting up with little capital to fall back on should there be a downturn in enrolments or an increase in visa refusals.<sup>39</sup>

1.67 The proposed system would allow for:

- the collection of up to 100 percent of fees on enrolment where the course is 24 weeks or shorter;
- the collection of up to 50 percent of fees on enrolment when the course is longer than 24 weeks with remaining fees not being able to be collected until two weeks prior to the course being delivered.

1.68 As DEEWR explained:

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 semesters.<sup>40</sup>

1.69 In practical terms, enrolment occurs many months prior to the course commencing, as students need to apply for visas and financial commitment to the course is part of visa requirements. Providers should therefore have ample opportunity to plan for incoming enrolments. As the two week limitation on fee payment only applies to ongoing students, the Committee believes the risk to forward planning is minimal.

1.70 The Committee also notes that staggered payment for provision of service is a good business practice and it is reasonable for consumers to pay as they are satisfied with the quality of services providers. The proposed pre-paid fee system will not only reduce the liability of the TPS in the case of provider default, but serve as an incentive for the provision of high-quality education services, improving the reputation of the sector as a whole.

1.71 The Committee was reassured that restrictions on the amount of fees a provider is able to require from a student prior to their commencement of a course will not operate as any additional incentive for students to 'shop around' for alternative providers thus increasing the difficulty of forward planning.

1.72 The Committee notes concerns that some parents and scholarship providers pay fees to take advantage of exchange rates or administrative arrangements and may feel disadvantaged when having to make multiple

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39 DEEWR, *Transcript of Evidence*, Canberra, 21 October 2011, p. 4.

40 DEEWR, *Transcript of Evidence*, Canberra, 21 October 2011, p. 5.

fee payments. Nonetheless, the Committee is of the opinion that the proposed pre-paid fee structure is an essential component of a robust regulatory system and the reputation of the Australian education sector outweighs these concerns.

## Record keeping

1.73 Schedule 6 of the ESOS Amendment (Tuition Protection Service and Other Measures) Bill proposes new record keeping requirements for providers.

1.74 Some industry stakeholders urged the Government to ensure that the new proposed requirements would not duplicate existing records keeping practices. The Independent Schools Council of Australia argued:

Schools are already required under domestic registration and accountability processes to keep extensive and detailed records of student contact information and academic progress. Changes to record keeping requirements should not in any way duplicate existing school practices.<sup>41</sup>

1.75 DEEWR explained:

There have been a number of provider closures over the last two or three years ... when closures have happened in the past one of the biggest problems we have had in trying to place students has been accessibility to the student records. Unless you know what the student studied, what the course consisted of, it can be difficult for another college to offer them a place. It will be difficult for the TPS director to actually identify another course...

In some cases colleges have closed and all the students have found is a sign on the door saying, 'It is now in the hands of the administrator.' In one case the administrator tried to charge us for the student records and that held up being able to place those students for a number of days while that issue was sorted out. So the measures that we have taken here are an attempt to make sure in the students' interest that we can get hold of the records as much as possible. If there is an element of duplication, personally, I would not be sorry because I would rather see the records in more than one more place so that we can get them if the college folds.<sup>42</sup>

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41 Independent Schools Council of Australia, *Submission no. 13*, p. 17. See also Queensland Department of Education and Training International, *Submission no. 12*, pp. 4-5.

42 DEEWR, *Transcript of Evidence*, Canberra, 21 October 2011, p. 11.

- 1.76 The Committee agrees that maintenance of up to date records that are accessible to the regulator is vitally important to securing full acknowledgement of student achievement in the event of a provider default and thus supports the measures proposed in Schedule 6.

## General comment

- 1.77 A significant proportion of submissions supported the recommendations of the Baird Review and the overall direction of the Government's response to these recommendations in the ESOS amendment bills under review by this inquiry.<sup>43</sup> However, this inquiry uncovered a few details that, were they to pass into legislation, would appear to place an unnecessary burden on service providers while delivering little additional security to students and the Committee has recommended that these areas be addressed.
- 1.78 The dilemma facing the Government was succinctly put by the Queensland Department of Education and Training International:
- One of the key aims of Baird report is to take a simplified risk approach to managing the international education industry ... but the proposed 'one size fits all' approach to the minimisation of risk may have the inadvertent effect of raising the level of risk for compliant (low risk) providers through ... onerous compliance elements...<sup>44</sup>
- 1.79 The Committee believes that the recommended amendments to the ESOS Amendment (Tuition Protection Service and Other Measures) Bill will remove more onerous compliance aspects of the measure while maintaining the advantages of a simpler regulatory regime and the guarantee of security for overseas students.
- 1.80 The Committee acknowledges a level of nervousness at the detail of the operation of TPS arrangements from some industry stakeholders<sup>45</sup> and is

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43 English Australia, *Submission no. 3*; TAFE Directors Australia, *Submission no. 4*; Group of Eight, *Submission no. 5*; Navitas, *Submission no. 8*; Innovative Research Universities, *Submission no. 10*; Council of Private Higher Education, *Submission no. 15* and Sydney College of Divinity, *Submission no. 18*.

44 Queensland Department of Education and Training International, *Submission no. 12*, p. 2.

45 For instance, English Australia, *Submission no. 3*, pp. 6-7; Group of Eight, *Submission no. 5*, pp. 1-2; Melbourne College of Divinity, *Submission no. 7*, p. 1; Independent Schools Council of Australia, *Submission no. 13*, pp. 12-13; Council of Private Higher Education, *Submission no. 15*, p. 1 and Australian Council for Private Education and Training, *Submission no. 19*, p. 5.

aware that the proposed measures constitute a significant change to the regulatory environment in which the industry operates and thus providers should be ensured of full and comprehensive information on their new obligations.

#### **Recommendation 4**

**The Committee recommends that following the passage of the Education Services for Overseas Students bills, the Australian Government ensures providers of education services to overseas students are provided with comprehensive information on an on-going basis relating to the implementation of the Tuition Protection Service arrangements.**

#### **Recommendation 5**

**The Committee recommends that the House of Representative pass the following bills:**

- **Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Bill 2011 with recommended amendments;**
- **Education Services for Overseas Students (TPS Levies) Bill 2011; and**
- **Education Services for Overseas Students (Registration Charges) Amendment Bill 2011**





## Higher Education Support Amendment Bill (No. 2) 2011

- 2.1 The Higher Education Support Amendment Bill (No. 2) 2011 (HESA Bill) was referred by the House of Representatives Selection Committee on 22 September 2011 and is addressed in this Chapter.
- 2.2 The Committee has assessed the integrity of the amendments in achieving the policy aims set out by the Government and in the Explanatory Memoranda and finds that they are an adequate mechanism for meeting these aims.
- 2.3 The HESA Bill is the second in a suite of reforms to allow demand-driven Commonwealth-funded tertiary education. The first bill lifting the restrictions on Commonwealth-funded university places was passed by the Parliament in September 2011.<sup>1</sup>

### Outline of the bill

- 2.4 The HESA Bill amends the *Higher Education Support Act 2003* to:
  - increase the maximum payments for the Commonwealth Grant Scheme in 2011 and increase maximum payments for other grants and Commonwealth scholarships for 2012-14 to account for indexation and include the 2015 calendar year;

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<sup>1</sup> Australian Government *Fact sheet: demand driven funding for undergraduate student places*. <[deewr.gov.au/HigherEducation/Resources/Pages/FundingUndergradStudent.aspx#students](http://deewr.gov.au/HigherEducation/Resources/Pages/FundingUndergradStudent.aspx#students)> accessed 29 September 2011

- reduce the HECS-HELP up-front discount from 20 percent to 10 percent;
  - reduces the HELP voluntary repayment bonus from 10 percent to 5 percent; and
  - clarifies that Australian citizens are not entitled to Commonwealth support, HECS-HELP, FEE-HELP and VET FEE-HELP when undertaking a course of study primarily at an overseas campus.
- 2.5 Of the 19 submissions received to the inquiry into bills referred on 22 September 2011 from education providers or their peak bodies, only two mentioned the HESA Bill.
- 2.6 Innovative Research Universities supported the Bill.<sup>2</sup>
- 2.7 Universities Australia noted:
- a possible inconsistency between the proposed changes and the broad objective of encouraging Australian students to gain overseas study experience.<sup>3</sup>
- 2.8 The Department of Education, Employment and Workplace Relations clarified that:
- We are dealing only with people who are primarily undertaking their course at an overseas campus. People have asked us about the definition of 'primarily'. It is simply the Macquarie Dictionary definition meaning the majority of their course overseas.<sup>4</sup>
- 2.9 In addition:
- We are aware of some people who are basically completely studying overseas who are in Commonwealth supported places. There are some who are accessing HELP loans. The bill contains provisions to make sure that those Australian citizens are not disadvantaged because they have been advised that they are eligible, so they are able to complete their courses but we are trying to make it very clear that those situations are not to arise in future...
- One of the things that motivated us to act is that up until the end of 2011 we were operating in a capped environment where there were only a limited number of Commonwealth supported places.
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2 Innovative Research Universities, *Submission no. 10*, p. 1.

3 Universities Australia, *Submission no. 9*, p. 1.

4 DEEWR, *Transcript of Evidence*, Canberra, 21 October 2011, p. 1.

That minimised the Commonwealth's exposure. Now that we are going to a demand driven system, there is a much greater potential for the Commonwealth to be exposed to financial risk, and we believed it was appropriate to clarify the matter.<sup>5</sup>

- 2.10 The Committee concludes that the Higher Education Support Amendment Bill (No. 2) 2011 is an appropriate proposal to implement the proposed policy changes to Commonwealth funding of university places.

### **Recommendation 6**

**The Committee recommends that the House pass the Higher Education Support Amendment Bill (No. 2) 2011.**

**Amanda Rishworth MP**  
**Chair**

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5 DEEWR, *Transcript of Evidence*, Canberra, 21 October 2011, p. 2.





## Appendix A – List of Submissions

- 1 Australian Government Schools International
- 2 Department of Education, Employment and Workplace Relations
- 3 English Australia
- 4 TAFE Directors Australia
- 5 Group of Eight
- 6 ACT Government
- 7 Melbourne College of Divinity
- 8 Navitas Limited
- 9 Universities Australia
- 10 Innovative Research Universities
- 11 Government Education and Training International - Tasmanian Office
- 12 Queensland Department of Education and Training International
- 13 Independent Schools Council of Australia
- 14 National Union of Students
- 15 Council of Private Higher Education Inc.
- 16 National Centre for Vocational Education Research (NCVER)
- 17 Commonwealth Ombudsman
- 18 Sydney College of Divinity
- 19 Australian Council for Private Education and Training (ACPET)
- 20 Department of Education and Training - Queensland Government

21 NSW Department of Education and Communities

22 The Hon Dr Elizabeth Constable MLA



## Appendix B – List of Public Hearings

Friday 21 October 2011 - Canberra

### **Department of Education, Employment and Workplace Relations**

Mr Peter Bartholomew, Principal Government Lawyer, International and Tertiary, Education and People Legal Branch

Ms Kim Cleary, Director, Policy Coordination Unit, International Quality Branch

Mr Craig Johnson, Director, Strategic Support Unit, International Quality Branch

Ms Saloni Varma, Acting Branch Manager, International Quality Branch

Mr Colin Walters, Group Manager, International Quality Branch

Mr Mark Warburton, Branch Manager, Funding and Student Support Branch