

EDUCATION, SCIENCE AND TRAINING

SENATE LEGISLATION COMMITTEE - QUESTIONS ON NOTICE 2004-2005 BUDGET ESTIMATES

Outcome: 3

Output Group: 3.3 – AEI Group

DEST Question No. E164_05

Senator Carr provided in writing.

Question:

(a) Are you aware of adverse publicity surrounding this provider, and the roles of SCEGGS, in the last few years, including the association of the provider with the collapse of a catering company at the time of the Sydney Olympics?

(b) Are you aware that SCEGGS made a loan of over \$1 million at that time to the company Blazer Hospitality International, a company which very soon after went bankrupt owing the Grammar School \$5 million?

(c) Do you know that this company Blazer was involved in controversial business dealings prior to and during the Sydney Olympics – dealings that attracted the attention on the ACCC?

(d) Are you satisfied that the new owners of this College were not adversely implicated in any of the events surrounding:

- The collapse of Blazer International;
- The 1997 purchase of the College by the Grammar School; or
- The sale of the College by the School to the new owners until recently associated intimately with the school?

(e) Are you satisfied that those associated with the Australian College of Physical Education have passed the “fit and proper person’ test?

(f) Is there a provision under ESOS that allows either Commonwealth or State authorities to examine the credentials of persons that purchase existing international providers – as opposed to persons who apply for new CRICOS registration or licence?

Answer:

Australian College of Physical Education

(a) The Department is aware of the claims of association as reported in the *Sydney Morning Herald* (SMH) on 15 May 2004.

(b) and (c) The Department is aware of these claims via information reported in the SMH article on 15 May 2004. The Department confines itself to matters prescribed under the ESOS regulatory framework. If the Department has concerns about a provider registered on the Commonwealth Register of Institutions and Courses for Overseas Students which relate to issues outside the regulatory framework, the matter would be referred to the appropriate authority.

(d) and (e) The *Education Services for Overseas Students (ESOS) Act 2000* (the Act) sets out "fit and proper person" requirements as part of the initial registration of providers. It is the responsibility of the State education authority to determine whether a provider is fit and proper at that point in time. Subsection 9(6) of the ESOS Act sets out the matters that the State authority must have regard to in determining whether it is satisfied that a provider is fit and proper. The fit and proper person test in section 9 of the ESOS Act reflects the administrative arrangements between the States and the Commonwealth, which is that the main responsibility lies with the States, with the Commonwealth having a residual power that, by virtue of subsection 9(4), it is not obliged to exercise.

The Department has received advice from the NSW Department of Education and Training (DET) that they are still receiving and responding to advice about the change in ownership of ACPE Redlands Ltd (01822J). When the full range of information has been obtained, NSW DET has advised they will conduct an evaluation and audit to assess the compliance of the new legal entity with the ESOS Act and the National Code. The assessment will include completion of a new Statutory Declaration. The new entity and the Principal Executive Officer will need to complete the Declaration which addresses a declaration related to associates of the entity. "Associate" is defined in the ESOS Act.

(f) Under the Act provider registration applies to the legal entity carrying on the business of providing an approved course to overseas students. If the legal entity changes the new operating entity must obtain its own CRICOS registration if it wishes to continue to recruit and provide courses for overseas students. CRICOS registration is not transferable.

The administrative arrangements which exist for the regulation of this industry accord with the ESOS Act, sub-section 9(2), which leaves no discretion for the Secretary to refuse registration of a provider that has been approved by a State designated authority, except where the Secretary has evidence to support a belief that the provider will not comply with the Act or the National Code [see subsection 9(2)(d)]. It is the State designated authority which must be satisfied that a provider is "fit and proper" and advise the Secretary of that fact [sub-section 9(ca)]. Sub-section 9(4) reinforces this arrangement and confirms that sub-section 9(2) does not create a "duty for the Secretary to seek any information about the matters mentioned" in that section.