

CHAPTER 1 - INTRODUCTION

Progress and referral of the bill

1.1 The Education Services for Overseas Students (Registration of Providers and Financial Regulation) Amendment Bill 1998 was introduced into the House of Representatives on 24 June 1998. The second reading debate on the bill was adjourned on the same day.

1.2 On 1 July 1998, the Senate referred the provisions of the Education Services for Overseas Students (Registration of Providers and Financial Regulation) Amendment Bill 1998 to the Senate Employment, Education and Training Legislation Committee for inquiry and report by 13 August.

Background to the bill

1.3 The 1980s was a growth period for Australia's international education program with many overseas students choosing Australia as an alternative study destination. Australia's reputation as a reliable provider of quality education services was threatened, however, during the late 1980s and early 1990s after the closure of a number of private educational institutions whose providers were unable to refund prepaid course fees to overseas students who had been refused student visas. Concerns were also expressed during this period about the emergence of unscrupulous private education providers and evidence of unevenness in the quality of education services on offer. The Government sought to address these concerns by introducing, in 1991, the Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act (ESOS Act).¹ The ESOS Act was designed to provide assurance of education quality and financial protection to overseas students studying in Australia.

1.4 The objectives of the ESOS Act are to ensure that overseas students are able to:

- access reliable providers and receive the high quality education for which they have paid; and
- prevent taxpayers' funds from being used to compensate students for course fees that individual education and training providers are unable to repay.

1.5 To meet the first objective, the ESOS Act requires that international education and training providers must be registered in accordance with State or Territory approval and accreditation. Details of accredited institutions are provided to the Department of Employment, Education, Training and Youth Affairs (DEETYA) which administers the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS).

1.6 International students must provide evidence that they have enrolled in a CRICOS course before they will be issued with a student visa. The ESOS Act thus facilitates quality

1 Explanatory memorandum.

assurance for education services. The responsibility rests with States and Territories through their accreditation procedures to ensure that standards are upheld.

1.7 In addition, the Act also imposes certain financial conditions on private education providers. Where providers receive recurrent funding from the Commonwealth or where they are administered by a State or Territory education authority, the providers must abide by the relevant Commonwealth or State audit requirements. These providers are exempt from certain financial requirements under the ESOS Act. Providers that do not fall into these categories—non-exempt providers—are bound by the financial and tuition guarantee requirements of the ESOS Act, which include the maintenance of a Notified Trust Account (NTA), membership of a Tuition Assurance Scheme (TAS) as well as other tuition guarantee arrangements.²

1.8 Non-exempt providers are required to deposit 80 per cent of prepaid course fees from overseas students into a NTA, which is subject to annual auditing requirements. Under the ESOS Act, moneys may be refunded to students where a provider has defaulted.

1.9 Providers, who do not have grounds for exemption, must also belong to a TAS. The TASs, which are operated by peak industry bodies, must

- cover any administrative costs associated with placing students, who are affected by the closure or default of a provider, with an alternative member-provider;
- ensure students are placed in a course which is equivalent to the course they were originally enrolled in;
- ensure that students are not required to pay for any part of a course for which they have already paid.

Provisions and objectives of the bill

1.10 The purpose of the Education Services for Overseas Students (Registration of Providers and Financial Regulation) Amendment Bill 1998 is to extend the operation of the principal Act by a further three years from 1 January 1999 until 1 January 2002.³

1.11 Recent changes in the economic circumstances of several Asian countries, which are source markets for Australia's international education industry, have led to expectations of a significant downturn in the number of overseas students pursuing studies in Australia in the short to medium term. The Government's decision to seek an extension to the sunset clause of the ESOS Act is based on the need for 'continued confidence and maintained stability in Australia's international education industry'⁴ during this period of uncertainty.

1.12 This inquiry is a response to industry concerns following requests from the sector providers that the Government extend the sunset clause.

2 Explanatory memorandum. The requirements for a Notified Trust Account and membership of a Tuition Assurance Scheme for non-exempt providers were included in amendments to the ESOS Act in 1993.

3 Explanatory memorandum.

4 Explanatory memorandum, p. 8.

Previous Committee inquiries

1.13 The Committee has had a continuing interest in the education export industry having examined matters relating to the regulation of education services on five previous occasions.

1.14 The Committee has tabled the following reports on these matters:

- **Education Services (Export Regulation) Bill 1990** (tabled 7 May 1991)

The main recommendations were:

that the term ‘trust account’ be replaced with ‘special account’ to better reflect the nature of the account to be established;

to substitute bonding arrangements for insurance;

to vary the conditions applying to the withdrawal of funds from special accounts; and

that the operation of the bill, if passed as an Act, be referred back to the Committee within 12 months.

- **Operation of the Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991 (ESOS Act)** (tabled 1 December 1992)

The main recommendations were:

that the sunset clause be extended by one year so that the Act would cease on 1 January 1995;

that the Commonwealth Education department undertake consultations to determine the most appropriate form of regulation for the industry;

that financial reporting continue on a yearly basis; and

the provision of a 28 day time limit on the repayment of fees to students

- **The Efficacy of the Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991 in the light of the collapse of the Australian Business College in Perth in January 1993** (tabled 19 August 1993)

The main recommendations were:

that the sunset clause be extended to 1 January 1997;

that proposals to amend the Act be referred to the Committee as soon as they were tabled in the House of Representatives;

that the ‘draw down’ limit from trust accounts be limited to 45 per cent of tuition fees;

that relevant providers of education services must belong to a Tuition Assurance Scheme and the principles of such a scheme be outlined in the Act; and

that providers be allowed to nominate the date for the provision of annual returns.

- **Overseas Students Tuition Assurance Levy Bill 1993 and Education Services for Overseas Students (Registration of Providers and Financial Regulation) Amendment Bill 1993** (tabled 9 December 1993)

The main conclusions were:

that the Act provides the necessary protection for overseas students' pre-paid fees through measures including the trust accounts and draw down limits; and

that, despite early difficulties in devising a suitable regulatory framework, Tuition Assurance Schemes were an essential part of these protections.

- **The Nature, Implementation and Effects of the Statutory Rules 1994 Nos 146 and 154 – Being Regulations Pertaining to the Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991** (tabled 28 June 1994)

The main conclusions were:

that regulations should be comprehensive enough to cover all overseas students and all non-exempt providers;

that in establishing regulations aimed at securing the required comprehensive level of protection, sufficient flexibility, cost-minimisation and exemptions be made available; and

that providers only be required to deposit 80 per cent of pre-paid fees into trust accounts to avoid 'topping up procedures'.

The Committee's current inquiry

1.15 The Committee advertised its current inquiry on Saturday, 11 July 1998. The Committee received six submissions and held one public hearing in Canberra on Thursday, 16 July. Details of submissions received and witnesses who appeared at the hearing are listed at Appendix 1.

1.16 The international education and training industry is Australia's fifth largest export industry⁵ with an annual return of over \$3 billion dollars. In addition to its economic return, the industry has many other benefits including

- fostering an understanding of Australian culture, law, institutions and business practices overseas;
- benefits from the exchange of international perspectives; and
- diversification of fields of study in response to international demand.⁶

5 Submission No. 3 (ACPET), p. 15.

6 Explanatory memorandum.

1.17 The Committee, in undertaking this brief inquiry, recognises the importance of this industry to Australia's economic and social well being. It is hoped that this inquiry will serve as a catalyst for further consultations on the most effective way to manage this industry.

1.18 The Committee notes that the Government has proposed seven alternative regulatory and non-regulatory measures for achieving the stated objectives of the ESOS Act. A table summarising these options, which was included in the bill's Explanatory Memorandum, is attached at Appendix 2 for information.

1.19 While these proposals are not within the scope of the current inquiry, the Committee foreshadows that these options will be considered in any future reference undertaken by this Committee in relation to the operation of the ESOS Act.

Acknowledgment

1.20 The Committee would like to record its appreciation for those organisations and individuals who were, at short notice, able to provide submissions or appear at the public hearing.

