

# Chapter 1

## Majority Report

1.1 On 12 October 2005, the Senate referred the Higher Education Legislation Amendment (2005 Measures No. 4) Bill 2005 and the Education Services for Overseas Students Amendment Bill 2005 to the Employment, Workplace Relations and Education Legislation Committee for report by 7 November 2005. The committee received seven submissions and two supplementary submissions relating to these bills.

### Background and purpose of the bills

1.2 The main purpose of these bills is to amend the *Higher Education Support Act 2003* (the HESA) and the *Education Services for Overseas Students Act 2000* (the ESOS Act) to enable foreign universities which meet stringent accreditation processes to operate in Australia and to provide courses for domestic and international students. Specifically, the amendments contained in these bills will allow the establishment in Australia of a branch of Carnegie Mellon University (CMU), which is based in Pittsburgh, United States.

1.3 The Opposition supported these bills in the House of Representatives. Ms Jenny Macklin MP, Deputy Leader of the Opposition, stated that they marked a significant point for the higher education sector:

Following their passage, Australia's higher education system will, for the first time, be open to overseas based higher education providers to seek accreditation to offer degrees to Australian and overseas students in this country.<sup>1</sup>

1.4 The necessity for these bills emerged from Carnegie Mellon University's application to establish a campus in Adelaide, to commence operations in March 2006. This was the first application to be received under the *National Protocols for Higher Education Approval Processes* (the National Protocols) from a foreign owned and operated university seeking to establish a branch in Australia.<sup>2</sup>

1.5 Protocol 2 of the National Protocols has allowed for applications from foreign higher education institutions since the protocols were approved by the Ministerial Council on Education, Employment, Training and Youth Affairs in 2000. However, the current provisions of the HESA and ESOS Act apply only to locally established and operating universities and other educational institutions. The amendments in these

---

1 *House of Representatives Hansard*, 12 October 2005, p. 29.

2 The *National Protocols for Higher Education Approval Processes* are available from the Department of Education, Science and Training's website:  
[www.dest.gov.au/sectors/higher\\_education/policy\\_issues\\_reviews/key\\_issues/MCEETYAS/](http://www.dest.gov.au/sectors/higher_education/policy_issues_reviews/key_issues/MCEETYAS/)

bills are intended to remove impediments to the operation of accredited foreign universities.

1.6 Carnegie Mellon University has undergone and passed a rigorous assessment process conducted by an expert panel established by the South Australian Government. The panel comprised three former vice chancellors of Australian universities and two senior subject specialists currently employed at Australian universities. The panel assessed CMU's application in accordance with the National Protocols, including its status as a university in the United States, the quality of its courses and the viability of the institution's proposed operations in Australia.<sup>3</sup> On 4 July 2005, the South Australian Minister for Employment, Training and Further Education made a determination under the South Australian Training and Skills Development Act 2003 recognising CMU as a university for the purposes of that act.<sup>4</sup> Carnegie Mellon made the following comment on Australia's assessment system for overseas universities:

As the first foreign university to complete a National Protocol 2 application, I can say with some experience that the Commonwealth's broad criteria and the State's process demonstrate the necessary rigor [sic] to ensure proper protection of Australia's higher education sector. Universities that are approved under this Protocol should be able to enrol overseas students on their Australian campuses.<sup>5</sup>

1.7 Carnegie Mellon University has a very strong international reputation in education and research and has been ranked 38 out of 200 in the *Times Higher Education Supplement* ranking of universities and 54 out of the world's 500 top universities in the Shanghai Jiao Tong University's ranking system. CMU was ranked first by the *US News and World Report* magazine survey of graduate schools in information and technology management.<sup>6</sup> That such a prestigious university should choose to establish a campus in Australia attests to the success of the Commonwealth's higher education policy which encourages openness and diversity in the sector.

1.8 The South Australian Government has committed up to \$20 million to assist the establishment of CMU in Adelaide because it believes the program will bring long-term benefits for the state.<sup>7</sup> For instance, the Australian branch of CMU is expected to attract more students to Adelaide from the Asia-Pacific region and improve the state's trade and industry links with other parts of the world. It will also increase diversity and choice in the higher education sector and make Australia more globally competitive in the higher education marketplace. Carnegie Mellon's Adelaide

---

3 The Hon Mike Rann MP, Premier of South Australia, *Submission 4*, p. 4.

4 *ibid.*, p. 3.

5 Carnegie Mellon University, *Submission 2*, p. 2.

6 The Hon Mike Rann MP, Premier of South Australia, *Submission 4*, p. 1.

7 *ibid.*

campus will offer United States degrees, and is likely to attract a new market for students who wish to obtain a United States credential, but do not wish to study there. The university may also retain local students wishing to seek a United States qualification who would otherwise have travelled to the United States to study.<sup>8</sup> CMU's Adelaide campus will initially offer a Master of Science in Information Technology and a Master of Science in Public Policy and Management.

1.9 The South Australian Government also outlined a number of general benefits expected to result from the operation of overseas universities in Australia:

Allowing quality overseas providers to operate in Australia in this manner will act to enhance Australia's reputation as a high quality provider of education services in an increasingly competitive global marketplace. A greater range of high quality choices for overseas and Australian students, should promote growth in Australia's share of overseas students globally as well as participation of Australian students in higher education. Both effects will have positive implications for the Australian economy.<sup>9</sup>

1.10 An Advisory Board has been established to support the new university. It will include among its members:

- Mr Rupert Murdoch, Chairman of News Corporation;
- Baroness Greenfield, Director of Britain's Royal Institution;
- H L Kam, Deputy Managing Director, Cheung Kong Holdings;
- Hon. Tim Fischer, former Deputy Prime Minister;
- Rt. Hon. Mike Moore, former NZ Prime Minister and World Trade Organisation Director General; and
- Ms Margaret Jackson, Chairman of Qantas.

1.11 The South Australian Government's submission noted that any delay in the passage of these bills will significantly delay plans for CMU to open its branch campus in time for its first planned student intake in early 2006. The submission further noted that CMU will not be able to market courses to prospective international students, nor advertise the availability of FEE-HELP to eligible Australian students unless the proposed amendments are passed.<sup>10</sup>

### ***Possible ramifications of establishing the first foreign university in Australia***

1.12 A number of organisations have raised concerns in relation to the establishment of a Carnegie Mellon campus in Australia. These concerns are addressed below.

---

8 Carnegie Mellon University, *Submission 2*, p. 1; The Hon Mike Rann MP, Premier of South Australia, *Submission 4*, pp 1, 3-4.

9 The Hon Mike Rann MP, Premier of South Australia, *Submission 4*, p. 3.

10 *ibid.*, p. 2.

1.13 The Council of Australian Postgraduate Associations (CAPA) has raised concerns that allowing the establishment of a foreign university offering overseas qualifications may devalue Australian degrees or dilute the reputation of Australian universities.<sup>11</sup> The committee does not believe this will happen. Rather, it is expected that the availability of qualifications recognised by two jurisdictions will give Australia access to a new market of students without affecting the rigorous quality assurance scheme that protects the reputation of Australia's universities.

1.14 The National Tertiary Education Union expressed concern that overseas universities may be able to use the term 'university' for their Australian branches if the institution has been approved to operate as a registered training organisation or a non-university higher education provider rather than a university:

In listing the name of the body corporate or the title under which an institution has been established in its country of origin under Table C...the legislation fails to sufficiently protect the standards and reputation associated with the use of the title university in Australia.<sup>12</sup>

1.15 However, the committee believes that the Government, following from the Greenwich University experience, will ensure that normal accreditation processes apply, so as to exclude 'degree mills' and 'diploma factories'. To allow such establishments to offer courses would be to debase the reputation of the Australian education market.

1.16 Concerns have also been raised that overseas institutions operating in Australia may lower the standard of higher education in Australia or the level of support services provided to overseas students. The committee believes the protections contained in the HESA and the ESOS Act mitigate this risk, as overseas higher education institutions must satisfy the same requirements as Australian institutions:

The Bill [to amend the HESA] will ensure that any overseas providers approved under the National Protocols will be subject to the same quality and accountability requirements that apply to local providers under the *Higher Education Support Act 2003*.<sup>13</sup>

1.17 A number of submissions expressed opposition to the South Australian Government's commitment of up to \$20 million to assist CMU to establish an Adelaide campus. For example, the Student's Association of the University of Adelaide (SAUA) submitted that the state government's provision of funds 'is short sighted and display[s] a lack of support for the three existing public universities in

---

11 Council of Australian Postgraduate Associations (CAPA), *Submission 5*, pp 5-6.

12 National Tertiary Education Union (NTEU), *Submission 6*, pp 2-3.

13 Department of Education, Science and Training (DEST), *Submission 7*, p. 4.

---

South Australia, and are [sic] not in the spirit of Australian public education'.<sup>14</sup> CAPA raised the following concern:

We are particularly concerned about the South Australian Government spending public funding to help set up a foreign private university, particularly at a time when federal funding to the university sector is substantially shrinking.<sup>15</sup>

1.18 While the committee would not seek to assess the suitability of the South Australian Government's allocation of funds, it notes that the evidence in the South Australian Government's submission shows that it has considered the risks and benefits to the state of providing assistance to help establish a CMU campus in Adelaide.<sup>16</sup>

1.19 The SAUA and CAPA also expressed concerns that CMU will take students from the state's three public universities and that future Australian branches of overseas universities may reduce the number of international students attending other public universities:

The international student market is not infinitely expandable and ultimately Australian public universities may find that they are losing market share to foreign private providers operating in Australia.<sup>17</sup>

1.20 The committee notes the South Australian Government's belief that CMU Adelaide will attract more overseas students to South Australia and draw attention to Adelaide as 'a focal point for higher education in Australia'.<sup>18</sup> The submissions from the South Australian Government and the Department of Education, Science and Training (DEST) also point out that CMU is likely to serve a different student market than the existing three universities, as students at CMU's Adelaide campus will pay a premium for qualifications that will be recognised in the United States as well as Australia.<sup>19</sup> It appears that the other South Australian universities support CMU's establishment and are examining opportunities for collaboration. For instance, Flinders University and CMU are negotiating a memorandum of understanding to facilitate joint teaching, research and facility sharing for the public policy courses offered by the two universities.<sup>20</sup>

---

14 Students' Association of the University of Adelaide (SAUA) *Submission 3*, p. 1.

15 CAPA, *Submission 5*, p. 3.

16 Hon Mike Rann MP, Premier of South Australia, *Submission 4*.

17 CAPA, *Submission 5A*, p. 6.

18 Hon Mike Rann MP, Premier of South Australia, *Submission 4*, p. 6.

19 *ibid.*; DEST, *Submission 7*, p. 5.

20 Hon Mike Rann MP, Premier of South Australia, *Submission 4*, p. 6.

---

## **Higher Education Legislation Amendment (2005 Measures No. 4) Bill 2005**

1.21 The purpose of this bill is to amend the *Higher Education Support Act 2003*, which provides for the regulation and funding of higher education. The amendments will enable foreign universities to operate in Australia, allow Australian students of such universities to access the FEE-HELP system and improve consumer protection mechanisms for students. The amendments to the HESA will allow Australian students more choice regarding the university they attend, and the choice of undertaking a US degree while studying in Australia.<sup>21</sup>

### ***Permitting the operation of foreign higher education institutions***

1.22 At present, the HESA specifies two main categories of higher education providers: Table A providers, which are eligible for the full range of Commonwealth Government grants and Table B providers, which are eligible for research and research training grants and in may in some circumstances access the Commonwealth Grant Scheme.

1.23 The HESA amendments create a new category of Table C higher education providers, which will cover foreign higher education institutions with Australian branches. Like other private universities, Table C providers will not be eligible for the Commonwealth Grants Scheme, any other HESA grants or Commonwealth supported places. Australian students of Table C providers will, however, be eligible for FEE-HELP and OS-HELP. Under the amendments, Carnegie Mellon will be listed as a Table C provider.

### ***Access to FEE-HELP***

1.24 The amendments will make local students attending CMU's Adelaide campus eligible for FEE-HELP. Students without the financial capacity to pay up front fees will have the opportunity to study at a private university and will have the same entitlement as those who obtain a full fee paying place at Australian universities.

1.25 It is expected that approximately 50 domestic students will attend CMU in its first year of operation, with up to 200 domestic students by 2009. The Commonwealth has budgeted expenditure under FEE-HELP for around 12 CMU students in 2006, 23 in 2007, 35 in 2008 and 46 in 2009.

### ***Tuition assurance arrangements***

1.26 The amendments contained in the bill will also strengthen and better reflect the policy intent of the tuition assurance requirement which all non-Table A providers are required to comply with. Tuition assurance provides comprehensive consumer protection for students in the event that units in which they were enrolled cease to be

---

21 The description of the bill and its background is largely drawn from Bills Digest 26 September 2005, no. 49, ISSN 1328-8091, Parliamentary Library, 2005.

---

offered. Opposition members expressed their support in the House of Representatives for this amendment and the stronger student protections it will bring.<sup>22</sup>

1.27 The amendments will improve the current protections which allow students to either choose a course assurance option of switching to replacement units in a similar course with another provider, or the option to receive a refund for uncompleted units. Where students choose the option of student contribution or tuition fee repayment, their Higher Education Loan Program (HELP) will be remitted and their student learning entitlement and FEE-HELP balances will be re-credited. Where students choose the course assurance option, they will not incur any additional cost for the replacement units.

1.28 The changes will also protect students forced to withdraw from replacement units because of special circumstances and the institutions which provide replacement units without any fee. Eligible students will be able to obtain a refund without any impost on the second provider.

### **Education Services for Overseas Students Amendment Bill 2005**

1.29 The ESOS Act regulates education services provided to overseas students. It ensures that overseas students studying in Australia on student visas receive the education and training for which they have paid and thereby protects the reputation and integrity of Australia's international education and training export industry. The ESOS Act requires approved higher education institutions for each state to be registered on the Commonwealth Register of Institutions and Courses for Overseas Students (the CRICOS). It also provides for the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students (the National Code).

1.30 This bill further strengthens the rigorous quality assurance and consumer protection framework for overseas students studying in Australia. It safeguards the reputation of this significant export industry and allows for its expansion. The amendments contained in the bill demonstrate the government's commitment to giving students greater choice in where they study by allowing high-quality overseas education institutions to establish branches in Australia and offer education and training services to students from overseas.

1.31 Carnegie Mellon University's submission outlines the benefits of international students being able to receive a United States qualification while studying in Australia:

Passage of the ESOS amendment will ensure that Australia has access to this large market of students and we anticipate that the opening of Carnegie Mellon University will increase the number of students studying in South Australia. Both the State of South Australia and the Australian Government

---

22 Ms Jenny Macklin MP, *House of Representatives Hansard*, 12 October 2005, p. 32.

have a strategic goal of branding Australia as "an education destination" and we believe that Carnegie Mellon can help achieve this goal.<sup>23</sup>

1.32 The main purpose of this bill is to amend the ESOS Act to enable high-quality overseas education providers to establish institutions in Australia and offer education and training services to students from overseas.<sup>24</sup> Specifically, as a consequence of amendments to the HESA, a foreign owned university—in this case Carnegie Mellon University—will be able to operate as a registered provider of education services to overseas students in Australia. The bill also reinforces the ability of higher education institutions registered under the ESOS Act to continue to charge overseas students tuition fees that include an amount for any action the institution is required to undertake by the ESOS Act or the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students.

1.33 In its submission, the NLC stated its support for and confidence in the quality assurance processes under the ESOS Act:

...NLC is confident that the strict measures that any institution must undergo to be registered with CRICOS would be applied to all overseas owned institutions wanting to set up campuses in Australia and that audit and quality processes would be undertaken following registration as outlined in the Esos [sic] Act.<sup>25</sup>

1.34 The other amendment proposed by the bill reinforces the capacity of registered education institutions to charge overseas students tuition fees that cover costs incurred by the institution in meeting its obligations under the ESOS Act or the National Code.

### ***The registration of non-resident higher education institutions***

1.35 Currently, only Australian universities and other institutions are able to offer education and training services to overseas students in Australia. At present, foreign universities face the expense and complexity of establishing Australian-owned subsidiaries if they wish to offer courses in Australia to international students.

1.36 As outlined above, the HESA amendments create a new category of Table C higher education providers, which comprises overseas higher education institutions with Australian branches. If the amendments are passed, and providing they comply with the requirements of the ESOS Act, Table C providers may offer courses to overseas students in Australia.

---

23 Carnegie Mellon University, *Submission 2*, p. 1.

24 The description of the bill and its background is largely drawn from Bills Digest 26 September 2005, no. 48, ISSN 1328-8091, Parliamentary Library, 2005.

25 National Liaison Committee for International Students in Australia (NLC), *Submission 1*, p. 3.



1.37 The amendments in this bill would also bring the ESOS Act into accordance with the United States-Australia Free Trade Agreement, which permits American universities that meet appropriate standards to operate in Australia.<sup>26</sup>

Article 10.5: Local Presence

Neither Party may require a service provider of the other Party to establish or maintain a representative office or any form of enterprise, to be resident, in its territory as a condition for the cross-border supply of a service.<sup>27</sup>

***Tuition fees and support services for overseas students***

1.38 The bill adds a new subsection 18-2 to the ESOS Act designed to clarify and reinforce the policy intention of the Act that registered institutions must comply with the National Code, and can recoup the amounts spent on providing the services required by the code. The new subsection states that a registered provider does not breach its obligations under this or any other education-related Act if it charges overseas students tuition fees which include amounts for actions that the institution is required to undertake by the ESOS Act or the National Code.

1.39 The code includes a requirement for registered higher education institutions to provide appropriate support services to overseas students, including independent dispute resolution, counselling services and information about orientation, academic progress, further study and accommodation. The registered provider must also appoint a suitably qualified person as student contact officer. That officer is responsible for provision of support services, which will:

48.1 Promote the successful adjustment by overseas students to life and study at an Australian institution.

48.2 Assist students to resolve problems which could impede successful completion of their study programs.<sup>28</sup>

1.40 A number of submitters raised concerns in relation to this clause. However, the concerns appear to be based on a misapprehension that this provision is related to the Higher Education Support Amendment (Abolition of Compulsory Up-Front Student Fees) Bill 2005 currently before Parliament.

1.41 For instance, the National Liaison Committee for International Students in Australia (the NLC) stated that:

---

26 DEST, *Submission 7*, p. 3.

27 The Australia-United States Free Trade Agreement is available from the Department of Foreign Affairs and Trade's website: <http://www.dfat.gov.au/trade/negotiations/us.html>

28 The *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students* is available from the DEST website: [http://www.dest.gov.au/sectors/international\\_education/publications\\_resources/other\\_publications\\_resources/esos\\_national\\_code/default.htm](http://www.dest.gov.au/sectors/international_education/publications_resources/other_publications_resources/esos_national_code/default.htm)

There is a clear link between this amendment and the VSU legislation which prevents universities from charging a compulsory fee to students for non academic related services. This amendment is only necessary should the VSU legislation be implemented, to allow universities to require international students to pay for non academic services while not allowing universities to charge domestic students for any non academic services.<sup>29</sup>

1.42 Rather, this subsection reinforces the ESOS Act's underpinning principles of quality assurance and consumer protection. It also recognises that overseas students have different needs and less ability than Australian students to negotiate their own access to support services.

1.43 The NLC suggested an amendment to the bill to require that the:

...amount charged to international students for the provision of services required under the Esos [sic] Act be included in the definition of course monies within the Esos [sic] Act 2000 and not be included in the tuition (by definition) fee but rather a separate itemised fee.<sup>30</sup>

1.44 NLC supports its calls for the services component to be separate from the tuition fee by a table that demonstrates the difference between annual fees for domestic full fee paying places and international full fee paying places at twelve Australian universities. The average percentage difference at each university ranges from 7 per cent to 53 per cent higher fees for international students.<sup>31</sup>

The NLC would like to assume that the extra charge is actually added on without itemisation to fund some of the services that are required under the Esos [sic] Act obligations. The NLC would not like to assume that the extra money is used to fund shortfalls in commonwealth funding from university revenue. However, the introduction of the above amendment is a very strong indication that this may become the case in many institutions, as there is no requirement for description, itemisation or indeed capping of amounts.

1.45 CAPA also raised concerns that this amendment may increase the potential for the financial exploitation of international students because universities are not required to quantify or itemise the amount charged.<sup>32</sup> The committee notes that this amendment merely reinforces universities' existing power to recoup expenses incurred in complying with the ESOS Act or the National Code. CAPA's concerns are misplaced in the competitive environment of higher education. The committee notes the warnings that have come from within the sector about the need to safeguard the market through quality control and high value for fees charged.

---

29 NLC, *Submission 1*, p. 4.

30 *ibid.*, p. 1.

31 *ibid.*, p. 10.

32 CAPA, *Submission 5A*, p. 9.

## **Conclusion**

1.46 The passage of the Higher Education Legislation Amendment (2005 Measures No. 4) Bill 2005 and the Education Services for Overseas Students Amendment Bill 2005 will allow the establishment of the first foreign university in Australia and enable overseas higher education institutions of an acceptable standard to establish branches in the future. These significant bills will support diversity and choice in the higher education sector, make it more internationally competitive, and capable of generating income for the sector and the country.

## **Recommendation**

**The committee commends the bills to the Senate and recommends their passage without amendment.**

**Senator Judith Troeth  
Chair**

