Education Services for Overseas Students Amendment Bill 2013

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Contents

Purpose of the Bill .............................................. 2
Background ...................................................... 2
Committee consideration .................................... 3
Financial implications ......................................... 3
Statement of Compatibility with Human Rights ............ 3
Key issues and provisions ..................................... 3

Date introduced: 4 December 2013
House: House of Representatives
Portfolio: Education

Commencement: The operative provisions of the Bill will commence on a day to be fixed by Royal Proclamation, or six months after Royal Assent, whichever is sooner.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/
Purpose of the Bill

The purpose of the Education Services for Overseas Students Amendment Bill 2013 (the Bill) is to amend the Education Services for Overseas Students Act 2000 (the ESOS Act) to clarify provisions relating to the refund of pre-paid fees and to amend the title of the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007.1

Background

The ESOS Act and associated legislation is the legal framework governing the responsibility of education providers towards overseas students in Australia. The ESOS legislative framework consists of the ESOS Act, Education Services for Overseas Students Regulations 2001, the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students (the National Code) and the Education Services for Overseas Students (Registration Charges) Act 1997.2 The legislation provides a nationally consistent approach to registering education providers and sets out clear roles and responsibilities for providers wanting to teach overseas students.

The principal objectives of the ESOS framework are:

- to provide financial and tuition assurance to overseas students for courses for which they have paid
- to protect and enhance Australia’s reputation for quality education and training services and
- to complement Australia’s migration laws by ensuring providers collect and report information relevant to the administration of the law relating to student visas.3

In 2009, in the context of widespread concern over unethical practices on the part of education service providers and closures of private colleges, the Rudd Government initiated a review of the Act, chaired by former Member of Parliament Bruce Baird. The Baird Review of the ESOS Act reported in February 2010. It made 19 recommendations aimed at strengthening regulatory approaches to protect Australia’s reputation for quality education.4

The Baird Review included recommendations concerning refunds of tuition fees in the case of providers not being able to meet their obligations, which were implemented through amendments to the ESOS Act in 2012.5 These amendments included the insertion of the following definition of ‘pre-paid fees’ into section 5 of the ESOS Act:

...tuition fees received by a registered provider in respect of an overseas student or intending overseas student, in relation to a study period for a course to be provided by the provider, before the student begins the study period.6

Various provisions in Division 2 of Part 5 of the ESOS Act (which sets out the obligations on registered education providers in the event of a default) then incorporated the term ‘pre-paid fees’ in a way which limits refunds required to be paid by education providers in the event of default to only those fees which had been paid prior to the commencement of study—excluding fees that had been paid following the commencement of a study period but which were unspent at the time of default.

The 2012 amendments also inserted a new part to the ESOS Act establishing a Tuition Protection Service (TPS), as had been recommended by the Baird Review.7 In relation to students who default on their study due to not

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2. Education Services for Overseas Students Regulations 2001; Education Services for Overseas Students (Registration Charges) Act 1997, accessed 28 January 2014.
3. For more information on the development of the ESOS framework see C Dow, Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Bill 2011 (and) Education Services for Overseas Students (TPS Levies) Bill 2011 (and) Education Services for Overseas Students (Registration Charges) Amendment (Tuition Protection Service) Bill 2011, Bills digest, 95, 2011–12, Parliamentary Library, Canberra, 2012, accessed 9 December 2013.
5. C Dow, op. cit.
6. Explanatory Memorandum, Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Bill 2011 (and) Education Services for Overseas Students (TPS Levies) Bill 2011 (and) Education Services for Overseas Students (Registration Charges) Amendment (Tuition Protection Service) Bill 2011, p. 89, accessed 9 December 2013.
being granted a student visa, the 2012 amendments provided that they must be refunded any unspent pre-paid tuition fees. Non-tuition fees which students may also have pre-paid, such as for accommodation and textbooks, were excluded from the types of fees which could be refunded.

**Committee consideration**

At the time of writing the Bill had not been referred to any Committee for inquiry.

The Senate Standing Committee for the Scrutiny of Bills had no comment on the Bill.8

**Financial implications**

The Explanatory Memorandum states that there are no financial implications to the Bill.9

**Statement of Compatibility with Human Rights**

The Statement of Compatibility with Human Rights can be found at page 2 of the Explanatory Memorandum to the Bill. As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible. The Parliamentary Joint Committee on Human Rights ‘considers that the Bill does not appear to give rise to human rights concerns’.10

**Key issues and provisions**

**Items 2 and 12 of Schedule 1** propose to amend the definition and title of the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students to omit ‘Registration Authorities’. This reflects the fact that requirements previously imposed on registration authorities by the National Code have been enacted and are now contained in the ESOS Act. The reference to registration authorities in the title of the National Code is therefore redundant.

**Item 3 of Schedule 1** proposes to repeal the definition of pre-paid fees contained in section 5 of the ESOS Act. This, together with amendments at **items 4 to 11 and 14 to 19**, will remove the limitation on the type of fees which may be refunded to students, which the Explanatory Memorandum to the Bill states was an ‘unintended consequence’ of the 2012 amendments.11

**Items 18 and 19 of Schedule 1** propose to repeal and substitute subsections 47E(2) and 47E(4) to amend the requirement relating to a refund in the event of a student defaulting on their study due to not being granted a student visa. Currently, if a student is refused a visa, the provider must pay a refund of any unspent pre-paid tuition fees, worked out in accordance with a legislative instrument made under subsection 47E(4).12 Proposed subsections 47E(2) and 47E(4) remove the current references to ‘unspent pre-paid fees’. Providers will still be required to refund the student an amount calculated in accordance with a legislative instrument made under proposed subsection 47E(4), however the refund amount will no longer be limited to pre-paid tuition fees but may also include non-tuition fees, such as for accommodation and textbooks.

The remaining items are consequential amendments and application provisions, which are explained in the Explanatory Memorandum to the Bill.

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7. C Dow, op. cit.
11. Explanatory Memorandum, op. cit.
12. The **Education Services for Overseas Students (Calculation of unspent pre-paid fees – other cases) Determination 2012 (No. 1)** specifies the method for working out the amount of unspent pre-paid fees for the purposes of subsection 47E(2) of the ESOS Act.