
THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

EDUCATION SERVICES FOR OVERSEAS STUDENTS (ASSURANCE FUND CONTRIBUTIONS) BILL 2000

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Education, Training and Youth Affairs the Hon Dr David Kemp MP)
The purpose of this Bill is to impose the requirement to pay annual contributions and special levies to the ESOS Assurance Fund.

The provision of education and training services to overseas students is regulated by Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991 (old ESOS Act). That Act aims to provide financial and tuition assurance for overseas students. The old ESOS Act will be repealed by the Education Services for Overseas Students (Consequential and Transitional) Act 2000 and replaced by the Education Services for Overseas Students Act 2000 (the new ESOS Act). This Bill requires providers registered under the new ESOS Act to pay an annual contribution to the ESOS Assurance Fund, which will be established under that Act.

Following the review of the old ESOS Act, the new ESOS Act will strengthen the regulatory framework for the industry, bringing about enhanced quality assurance and probity measures, including the following:

- Overseas students will be provided with stronger protection for pre-paid fees and continuing tuition if their provider goes out of business;
- A national code will be established providing nationally consistent standards for the registration and conduct of providers as a legally enforceable code;
- The Department of Education, Training and Youth Affairs (DETYA) will have powers to initiate investigation of possible breaches of the provisions of the new ESOS Act or the national code;
- DETYA will have power to impose suspension and cancellation action and other conditions on providers that breach the provisions of the new ESOS Act or the national code; and
- The new Act will establish offences designed to ensure that providers adhere to the provisions of the Act and national code and that non bona-fide operators are removed from the industry.

The ESOS Assurance Fund will provide greater security for overseas students’ pre-paid course fees. It will replace the old ESOS Act requirement on providers to deposit pre-paid fees into a Notified Trust Account (NTA), withdrawals from which are subject to Regulations under that Act. The review of the old ESOS Act found that NTAs were open to abuse by unscrupulous providers and had failed to achieve the objective of the Act to protect student fees.

FINANCIAL IMPACT

This Bill will have no identifiable financial impact.
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NOTES ON INDIVIDUAL CLAUSES

Clause 1  Short Title

This clause identifies the legislation as the Education Services for Overseas Students (Assurance Fund Contributions) Act 2000.

Clause 2  Commencement

This clause provides for the Act to commence on a date to be fixed by Proclamation.

Subclause (2) specifies that if the Act does not commence within a 6 month period from the date of Royal Assent, it shall commence on the first day after the end of that period.

Clause 3  Interpretation

This clause provides that expressions used in both this Act and the Education Services for Overseas Students Act 2000 have the meaning used in that Act.

Clause 4  Imposition of requirement to pay annual Fund contributions

This clause imposes on providers a requirement to pay annual contributions to the Fund as required under the Education Services for Overseas Students Act 2000.

Clause 5  Imposition of requirement to pay special levies

This clause imposes on providers a requirement to pay special levies as required under the Education Services for Overseas Students Act 2000.

Clause 6  Amount of contributions and levy

This clause provides for the Fund Manager to set the level of annual Fund contribution payable by a provider and the level of any special levy payable by that provider.

Subclause (1) specifies that the amount of annual Fund contribution payable by a registered provider is determined by the Fund Manager under Division 4 of Part 5 of the new ESOS Act.

Subclause (2) specifies that the amount of special levy payable by a provider is determined by the Fund Manager under section 73 of the new ESOS Act.
Clause 7  Section 114 of the Constitution

This clause addresses the operation of section 114 of the Constitution.

Subclause (1) specifies that, in the event that any provision would purport to operate in a way that would be invalid, by virtue of section 114 of the Constitution, the Act will not have that operation.

Subclause (2) includes the Australian Capital Territory and the Northern Territory in the definition of State in section 114 of the Constitution for the purposes of this clause.

The effect of this is to extend to the Territories the protection given to the States under section 114 of the Constitution.