

## Bills to amend the Education Services for Overseas Students Act and related measures

The House of Representatives has referred to the Standing Committee on Education and Employment four Bills for consideration:

- *Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Bill 2011*;
- *Education Services for Overseas Students (Registration Charges) Amendment (Tuition Protection Service) Bill 2011*;
- *Education Services for Overseas Students (TPS Levies) Bill 2011*; and
- *Higher Education Support Amendment Bill (No. 2) 2011*

In this submission the IRU:

- highlights the potential risks to university operations from some elements of bills relating to the *Education Services for Overseas Students Act* and related measures; and
- supports the *Higher Education Support Amendment Bill (No. 2) 2011*.

## Bills relating to Education Services for Overseas Students (ESOS)

### **Context**

The three ESOS Bills referred to the Committee are the latest stage of the Government's implementation of the recommendations of the *Review of the Education Services for Overseas Students (ESOS) Act 2000*, commonly called the Baird report, of February 2010.

The IRU supports the thrust of the Baird report with its recommended actions to strengthen the effectiveness of the regulation of education to international students.

In doing so, the IRU emphasises that universities have largely acted well for their international students and have not failed to provide refunds and alternative courses to their enrolled students where required. In addition, universities have been the prime recipient of higher education students whose original provider became unable to provide their course. This means that the tightened regulatory arrangements need to be suitable not just for the array of private providers of international education, much of it in the VET sector, some of whose actions have caused major problems but also to the major providers of international education, most of which have done well by their students.

The issues identified by the IRU concern requirements that will have a negative impact on the capacity of universities to continue to work well with the large number of international students they enrol, no matter how useful they might be to deal with higher risk providers.

### **Tuition protection scheme**

Schedule 1 of the *Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Bill 2011* creates a Tuition Protection Service (TPS) to replace previous tuition assurance arrangements.

The provisions of the proposed new Part 5 for ESOS are framed against default by the provider (eg withdrawal of a course) and default by the student (eg non attendance). Providers may be required

e [conor.king@iru.edu.au](mailto:conor.king@iru.edu.au) t 0434 601 691 w [iru.edu.au](http://iru.edu.au)

to refund student fees or offer alternative courses. Where a provider is unable or unwilling to comply the Tuition Protection Scheme then provides a source of relief for the student.

The IRU is concerned that the timelines set down in the Bill for notifying the proposed TPS Director of defaults:

- are not feasible; and
- drown the TPS Director in multiple automatic notices preventing, rather than assisting, he or she focus on cases of serious risk to student refunds and of student visa infractions.

The Bill proposes that where there is a default by either provider or student that the provider notify the TPS Director of this within 24 hours of the point of the default. This is a very short period in which to have a legislatively driven requirement to act. This is particularly the case as the provider has 14 days or four weeks in which to act to fulfil its obligations to the student in the cases respectively of provider default and student default. This means that the notice to the TPS Director may require, and in most cases involving universities would require, no action by the TPS Director.

There is rationale for a notification, with a sense of urgency, where the provider is the cause of the default through not providing a course intended for a student at the period agreed with the student. Such an action could involve risk of the provider not fulfilling its obligations to students and to involve a significant number of students. Where the withdrawal of the course is well planned it is also within the provider's capacity to include a notification among the actions it takes.

24 hours is still too short. Words to the effect of "as soon as practicable [used elsewhere in the Bill for expectations of the TPS Director, eg new 50B (1)] and no longer than a week" would be more feasible for providers while giving the TPS Director reasonable notice to prepare for action where risk factors indicate significant risk of the provider not fulfilling requirements to students.

Cases of student default such as the student not attending class, are close to impossible to report in a 24 hour period. Understanding that the student is not participating in the course as agreed needs to be observed initially at the point of teaching or otherwise, action then taken to check on the welfare of the student, and a clear understanding that there is a default then determined. From that point the provider would be in a position to notify the TPS Director. It is extremely unlikely that all that could occur with 24 hours of the first indication of the student default and risks encouraging excessive reporting of cases.

Hence cases of student default should also be subject to a provision to the effect of "as soon as practicable and no longer than a week" from the point at which the provider is clear that the student has defaulted.

The second issue is important. The recent Knight Review of the Student Visa Program highlighted the problem of automatic notifications and actions for minor changes in student arrangements and minor breaches of formal requirements. Mr Knight argues that these prevent the Department of Immigration and Citizenship from targeting serious cases of student breach of visa conditions. It is important that we do not recreate this problem for the TPS Director. Provisions that permit provider acting to meet obligations to students, reporting to the TPS Director that it has done so, should be considered.

### ***The TPS levy***

The Government states that the majority of providers will pay less under the new Levy than under current arrangements. Universities are exempt from the current provisions because they are very low risk of being unable to meet requirements to refund students when required. The Levy plus the reworked registration charge mean that some universities estimate that the charge they pay for participation in the international student regime will be higher than currently the case.

The problem is that the levy combines a per head base with a risk based top up. Universities have large numbers of international students such that the base contributions will cost them significantly in order to offset risks from other providers. Universities do gain from having an effective TPS in place and are accepting of the need to contribute something to that but the current charges appear too weighted to student number rather than the risk, and potential amount, of failure to make appropriate refunds or other required support for students.

## **Higher Education Support Amendment Bill (No. 2) 2011**

The IRU supports the *Higher Education Support Amendment Bill (No. 2) 2011*. The Bill has three elements:

- increasing the maximum amount that can be made for the Other Grants and for Scholarships in line with indexation and Government decisions;
- reducing the reduction in the student contribution for upfront payments and early repayments;
- excluding Australians enrolling in an offshore program with an Australian university from accessing Government support.

### ***Increasing the maximum amounts payable***

These are non controversial amendments to permit payment of the full amount intended from the Other Grant programs, which include the Government's direct support of university research capability, and for scholarships to undergraduate and postgraduate students.

### ***Reducing the reduction in the student contribution for upfront payments and early repayments***

The 2011 Australian Government budget confirmed the Government's commitment to significant increases in higher education funding. There were some decisions to reduce Government outlays as part of the overall Government policy to constrain expenditure.

The IRU does not oppose the halving of the discount for up-front payments by students from twenty per cent to ten per cent and for early repayments from ten per cent to five per cent. The decisions reduce the value of an option available to students who have access to the funds to pay upfront or earlier than required. All students retain the right to defer payment and repay based on subsequent income.

There has been some debate about the impact on incentives and the relative standing of students who take different options. The analysis is best done using the base case students who defer payment of student contributions, taking a HECS-HELP loan and repaying subsequently as their income requires or permits. They are the clear majority. It is the repayment of that debt that Government policy assumes is the basic charge for a Government supported higher education place.

Where the student's contribution is paid up front with the discount the student:

- will be financially advantaged to the extent that they earn significant income over the repayment threshold on graduation. The discount is greater than the lower value of the student contribution amount in the years immediately after graduation;
- will be financially disadvantaged to the extent that they do not earn at, or significantly above, the threshold for repayment in the first years post graduation. In those cases the discount is outweighed by the reduction in the real value of the debt over time.

The reduction to the discount will reduce the incidence of the first group and increase the second. Similar considerations apply to those who repay earlier than required.

The IRU considers that most people likely to pay upfront, or early, will continue to do so providing the Government a saving it otherwise might have taken from direct funding for teaching and learning or research. This is based on the limited evidence about those using these options that avoiding the debt, whether for themselves or for dependents, is the primary motivation. The discount is an additional bonus but not a significant driver.

***Excluding Australians enrolling overseas from accessing Government support***

The final provisions exclude Australians who enrol at an offshore campus of a university from receiving Government support. It is clear that Australians living offshore cannot be required to repay any HELP support they receive. It is also arguable that if based offshore no direct Government support is justified either. Australian students based in Australia can still study part of their program offshore as long as the prime location for study is in Australia.

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