

1993

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN
CAPITAL TERRITORY**

**EDUCATION SERVICES FOR OVERSEAS STUDENTS
(REGISTRATION AND REGULATION OF PROVIDERS) BILL 1993**

EXPLANATORY MEMORANDUM

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EDUCATION SERVICES FOR OVERSEAS STUDENTS (REGISTRATION AND REGULATION OF PROVIDERS) BILL 1993

This Bill is for an Act to regulate providers of education services for overseas students. The Bill is complementary to the *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991* of the Commonwealth (the Commonwealth Act) and provides a number of controls on the provision of education services. The main purposes of the Bill are:

- . to ensure that providers of education services for overseas students meet a certain standard in the courses provided before they may be approved and registered;
- . to protect the financial interests of overseas students through providing for the keeping of a separate bank account for students' fees;
- . to ensure that providers of education services are financially viable and are fit and proper persons to provide courses to overseas students;
- . to ensure that information provided to prospective students is fair and accurate, and that proper contractual arrangements are observed; and
- . to ensure that reasonable standards are complied with in the provision of facilities and other matters directly affecting the welfare of students.

Relationship with the Commonwealth Act

Section 4 of the Commonwealth Act provides that it is an offence for a person to provide to, or offer to an overseas student, or invite an intending overseas student to undertake, a course unless the person is a registered provider. A registered provider is a person who is entered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS). A person becomes a registered provider when a State (which includes the Australian Capital Territory and Northern Territory) approves that person to provide a course to overseas students.

The Bill provides the mechanism for approving providers in the ACT. This mechanism includes the setting up of an ACT Register of Institutions Providing Education and Training for Overseas Students (the ACT Register). Where a person is approved as a provider in respect of a particular course they are entered onto the ACT Register and particulars of the approval are also provided to the Commonwealth for entry onto CRICOS. The ACT Register does overlap with CRICOS however this duplication is necessary as the Commonwealth Act has a sunset clause providing for the repeal of the Commonwealth Act on 1 January 1994. While this Bill is complementary to the Commonwealth Act, it is also capable of operating separately from the Commonwealth Act to regulate the provision of education services to overseas students.

Financial arrangements for overseas students

The Bill provides that providers must make arrangements to safeguard student fees through the use of separate bank accounts. Providers are also required to furnish produce regular financial statements regarding those separate bank accounts so that the Territory may monitor the continuing compliance with these requirements.

Arrangements for the general welfare of overseas students

The Bill also has several provisions that are designed to safeguard the interests of overseas students generally. These provisions are concerned with ensuring that adequate teaching facilities are maintained, with ensuring that students receive an adequate level of pastoral care to assist in making adjustments to the Australian way of life, and ensuring that there are adequate procedures in place to allow students who have a grievance with the provider to have that grievance heard and dealt with in an appropriate manner.

Financial implications

The Bill has no financial implications.

Details of the Bill are as follows.

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PART I - PRELIMINARY

This Part deals with the formal clauses of the Bill.

Clause 1 provides for the short title of the Act.

Clause 2 provides for the commencement of the Act. The delayed commencement is to allow sufficient time for the regulations that need to be in place at commencement of the legislation to be made. The commencement of clause 6 is not tied to the general six month default commencement in subclause 2(3). Clause 6 establishes the offences relating to providing education services to overseas students without being approved. It is intended that a period of up to three months be provided, after the commencement of the remaining clauses, to allow time for providers to become approved. This may, depending on when the remaining clauses of the Act commence, take the commencement of clause 6 outside of the six month period.

Clause 3 provides for the interpretation of the Bill. An important definition is the definition of "accredited" - both teachers and courses must be accredited in order for a provider to be approved and registered.

Clause 4 is a formal clause binding the Crown to the Act.

Clause 5 provides for the setting up of the ACT Register of Institutions Providing Education and Training for Overseas Students. The ACT Register is a record of approved providers of courses for overseas students in the Territory. It is a public document that may be inspected by any member of the public.

PART II - APPROVALS

This Part establishes the offences relating to providing courses for overseas students without being registered and also provides the mechanism by which providers may become registered. A person is firstly approved with respect to a particular course

(or courses) and on obtaining that approval they are entered onto the ACT Register and the Commonwealth is advised accordingly for the purposes of entering the institution onto CRICOS. Non-government schools, government schools and public tertiary institutions are treated differently from private providers. The former category of institutions are registered automatically whereas private providers must go through an application and assessment process before obtaining registration. This recognises that non-government schools are already obliged to meet certain requirements in order to obtain registration under the *Education Act 1937*. Government schools and public tertiary institutions are subject to numerous controls through being accountable for public moneys.

Clause 6 establishes the offences of providing a course, offering to provide a course, or inviting an overseas student to undertake a course, or holding out as able or willing to provide a course to an overseas student without being approved in respect of the course. This clause mirrors similar offence provisions in the Commonwealth Act.

Clause 7 provides that non-government schools, government schools and public tertiary institutions may apply to the administrative head for approval as a provider of specified courses to overseas students. The application is approved automatically by the administrative head and the relevant registrable particulars are entered into the ACT Register. The "registrable particulars" are those particulars that are specified in clause 30 of the Bill. Subclauses 7(5) and 7(6) provide the mechanisms by which the ACT Register may be altered if there is an alteration in these registrable particulars. In the event that a non-government school ceases to be registered under the *Education Act* then the approval as a provider of specified courses to overseas students is automatically withdrawn.

Clause 8 is the mechanism by which a person or institution, other than an institution of the type referred to in clause 7 of the Bill, may apply for approval as a provider of specified courses to overseas students. The information that is required to accompany an application is to enable the administrative head to make an informed decision having regard to the criteria set out in clause 9. The term "private provider" is used to refer to a provider that is approved through this process.

Clause 9 sets out the criteria that the administrative head is required to have regard to in deciding whether to approve an application. One of the important

considerations is whether or not the provider (in the case of a natural person) or the principal executive officer (in the case of a body corporate) is an Australian citizen or a permanent resident of Australia. This consideration is relevant from the point of view of ensuring accountability of providers. The financial position of the applicant is also considered by the administrative head in order to ascertain whether the applicant has sufficient resources to enable it to comply with the Act. The administrative head may not approve an application unless the courses that the applicant wishes to offer and the teachers employed to teach those courses are accredited. "Accredited" is defined in clause 3 to mean accredited by the administrative head or under the National English Language Intensive Courses for Overseas Students Accreditation Scheme. The accreditation requirements ensure that the courses and the teachers meet certain standards. Where the administrative head approves an application then the relevant particulars are entered onto the ACT Register. Clause 26 requires the administrative head to provide the Commonwealth with these particulars for entry onto CRICOS. If the administrative head makes a decision refusing to approve an application, or approves an application subject to conditions, then the applicant has a right to apply to the Administrative Appeals Tribunal for a review of that decision.

Clause 10 provides the mechanism by which an approval may be varied on application by the private provider. This mechanism may be used to either vary the particulars entered onto the ACT Register (for example a change in the provider's name) or to vary the conditions of the approval.

Clause 11 provides that where a course in respect to which a provider is approved ceases to be accredited then the provider ceases to be approved in respect of that course. If the course is the only course in respect of which the provider is approved then the provider will cease to be an approved provider and the ACT Register is altered accordingly.

PART III - PRIVATE PROVIDERS

This Part deals with obligations that are exclusive to private providers. These obligations are primarily intended to protect the interests of overseas students. There are general duties in Division 1 which are concerned with educational aspects of the provider's relationship with the overseas students. Division 2 is concerned

with protecting the financial interests of overseas students through ensuring that fees paid by the students are placed in separate bank accounts and only used for the defined purposes. The intention is that providers will always be able to meet obligations to make refunds to students should this be necessary. Division 3 provides for regular reviews of the approval of private providers and contains mechanisms for suspension and withdrawal of approval where this is necessary.

Division 1 - Duties

Clause 12 provides that it is an offence to employ a person as a teacher unless the person is accredited. This clause is complementary to subclause 9(3) in that it carries over the requirement to employ only accredited teachers to teachers employed after approval is granted.

Clause 13 places a requirement on private providers to maintain appropriate public liability and fire insurance policies. This requirement is similar to requirements placed on non-government schools under the *Education Act*.

Clause 14 is also a complementary clause to subclause 9(3). *Clause 14* carries over the requirement to provide only accredited courses after the approval is granted.

Clause 15 places an obligation on providers to ensure that teaching facilities are adequate and that the physical safety, health and welfare of students is protected. This would include, for example, maintaining classrooms in a reasonable state of repair and providing adequate heating and cooling.

Clause 16 places an obligation on providers to provide adequate counselling and support services. This clause is intended to ensure that students have adequate information to allow them to live in the Territory (for example, information on how to catch a bus) and adequate assistance with problems that may arise from cultural difference between an overseas student's home country and Australia.

Clause 17 is intended to ensure that where a student has a grievance with a provider then there are procedures in place to allow the student to have that grievance heard and dealt with in an appropriate manner.

Division 2 - Financial arrangements

Clause 18 provides that private providers must open and maintain a separate bank account into which moneys received from students are to be paid. Only those amounts which are non-refundable are exempt from this provision. The regulations will prescribe the amounts which fall within the "non-refundable" category. Subclause 18(4) specifically limits the purposes for which the private provider may apply the moneys in these separate bank accounts so that they are only applied for the purposes for which they are paid. Subclause 18(5) sets out the obligation on the provider to make refunds to overseas students where they withdraw from, or do not commence, the course. Subclause 18(6) sets out the obligation on the provider to make refunds of unused accommodation fees where the student no longer requires the accommodation in respect of which the fees were paid to the provider.

Clause 19 provides that the private provider must maintain such arrangements as will ensure that the provider can meet the obligation to provide any refunds under subclauses 18(5) and 18(6). This may be in the form of insurance or some other arrangement that will guarantee the availability of funds.

Clause 20 requires private providers to provide the administrative head with returns for each account that is required to be kept under clause 18. This information is needed to ensure that the provider is complying with the requirements of the Act.

Division 3 - Reviews and inspection

Clause 21 provides for the regular review of the approval of private providers. These reviews must be conducted at least once every 5 years. If however, the administrative head believes on reasonable grounds that a provider has contravened the Act, then the review may be undertaken at any time. The administrative head is required to consider a number of matters in conducting the review, including whether the provider, if applying for approval at the time of the review, would be granted that approval. At the conclusion of the review the administrative head may confirm the approval, confirm the approval subject to conditions or suspend the approval and give the provider an opportunity to show cause why the approval should not be cancelled. The period of suspension before cancellation is intended to give the provider time to rectify the matters which have led the administrative head to decide that the approval should be suspended. The effect of the suspension of

approval is provided for in clause 25. Subclause 21(4) also provides that where the approval of a provider has been suspended then the provider must notify any overseas student or intending overseas student of the suspension. Decisions of the administrative head to impose conditions on, or withdraw, the approval of a provider are able to be reviewed by the Administrative Appeals Tribunal.

Clause 22 provides for the appointment of inspectors for the purposes of the Act and the issue of identity cards to those inspectors.

Clause 23 is a standard provision providing for a penalty for failure to return an identity on ceasing to be an inspector.

Clause 24 sets out the powers of inspectors to enter buildings and conduct an inspection for the purposes of conducting a review under clause 21. These are standard powers of entry and inspection.

Clause 25 specifies the effect of the suspension of approval under clause 21. This clause basically prevents the provider from entering into any new arrangements with potential students and prevents the provider from permitting any enrolled student from commencing a course while the suspension is in force. Should the suspension be revoked the provider would be able to resume these activities. Should the approval of the provider be withdrawn after the show cause period then this clause limits the number of students that will be effected by the withdrawal of the approval.

PART IV - RELATIONSHIP TO COMMONWEALTH ACT

This Part sets out the interrelationship between this Bill and the Commonwealth Act.

Clause 26 provides that the administrative head must provide the Secretary of the relevant Commonwealth Department administering the Commonwealth Act with the relevant particulars of any approved provider for entry into CRICOS. Similarly, where there is any change in the status of the provider or in any of the particulars provided, the administrative head must also provide details of this as well.

Clause 27 provides that where the Commonwealth cancels or suspends the approval of a provider under the Commonwealth Act then the approval of the provider under the Territory Act is similarly affected.

PART V - MISCELLANEOUS

This Part deals with several matters. The Part specifies certain requirements in respect of information and other material which is provided to prospective students. The Part also provides for appeals from decisions of the administrative head and for evidentiary matters.

Clause 28 provides that the information that an approved provider supplies to prospective students in its prospectus and in its enrolment forms must meet a certain standard. Because of the nature of the enrolment forms and prospectus in forming the basis of the contract between the prospective student and the provider, these documents must clearly itemise, amongst other things, fees and charges (this would require for example, clearly identifying accommodation and tuition fees where these are provided as a package), the qualification that will be awarded, and the relevance of the qualification to further study (for example, whether it is recognised as a pre-requisite for another course). The standard required is to ensure that students have sufficient information to make an informed decision about the courses provided by the provider.

Clause 29 is complementary to clause 28 in that it provides that any other advertising material of the approved provider must be consistent with the information in the prospectus.

Clause 30 specifies the registrable particulars that are required to be entered on to the ACT Register and provided to the Commonwealth for entry onto CRICOS.

Clause 31 provides for notification of decisions of the administrative head to the person affected by the decision. The clause also sets out the right of the person affected by a decision of the administrative head to apply for a statement of reasons for the decision and to apply for a review of the decision.

Clause 32 contains the actual right of review by the Administrative Appeals Tribunal of the decision of the administrative head.

Clause 33 sets out the power of the Minister to determine fees for the purposes of the Act. Fees are determined in relation to applications for approval and applications for variation of approval.

Clause 34 specified that the maximum penalty that a Court may impose on a body corporate that is convicted of an offence is five times the maximum pecuniary penalty provided throughout the Act.

Clauses 35 and 36 are provisions establishing evidentiary matters. These provisions are necessary to establish the fact of whether or not a provider is not approved with respect to a specified course. *Clause 36* is necessary to establish the state of mind of a body corporate for the purposes of the Act.

Clause 37 provides that regulations may be made prescribing matters that are required or permitted to be prescribed or necessary or convenient to be prescribed for the purposes of the Act.