

1996

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**EDUCATION SERVICES FOR OVERSEAS STUDENTS (REGISTRATION OF
PROVIDERS AND FINANCIAL REGULATION) AMENDMENT BILL (NO. 2) 1996**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Employment, Education, Training and Youth
Affairs, Senator the Hon Amanda Vanstone)



EDUCATION SERVICES FOR OVERSEAS STUDENTS (REGISTRATION OF PROVIDERS AND FINANCIAL REGULATION) AMENDMENT BILL (NO. 2) 1996

OUTLINE

The *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991* requires all providers of education and training services to overseas students to be registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS). The maintenance of CRICOS is currently undertaken by the Commonwealth Government at no cost to the approximately 1000 listed providers.

The *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Amendment Bill (No. 2) 1996* amends the *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991*. The Bill is complementary to and facilitates the administration of the *Education Services for Overseas Students (Registration Charges) Bill 1996*.

The Bill establishes the arrangements for management of the Provider Registration Charge scheme within the existing requirements of the *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991*, including provision for a charge to reinstate the registration of suspended providers on the CRICOS and for a late payment penalty. It also imposes an obligation on providers to maintain records and to produce these records to the Secretary if the Secretary requests the information in writing.

The Bill provides for indexation of charges against the All Groups Consumer Price Index.

FINANCIAL IMPACT

The *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Amendment Bill (No. 2) 1996* and the *Education Services for Overseas Students (Registration Charges) Bill 1996* will give effect to the Provider Registration Charge scheme.

The estimated net revenue under the Provider Registration Charge scheme is approximately \$500,000 in the 1996-97 financial year and \$1,000,000 per annum in succeeding financial years.

Estimated direct costs associated with fee collection are \$33,500 in the 1996-97 financial year and \$18,500 per annum thereafter.

The estimated net savings to the Department of Employment, Education, Training and Youth Affairs (DEETYA), after direct costs, are \$466,500 in the 1996-97 financial year and \$981,500 per annum thereafter.

NOTES ON CLAUSES

Clause 1 - Short Title

Clause 1 sets out the short title of the proposed Act.

Clause 2 - Commencement

Clause 2 provides for the commencement of the proposed Act 28 days after it receives the Royal Assent.

Clause 3 - Schedule(s)

Clause 3 provides that each Act specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

SCHEDULE 1 - AMENDMENT OF THE *EDUCATION SERVICES FOR OVERSEAS STUDENTS (REGISTRATION OF PROVIDERS AND FINANCIAL REGULATION) ACT 1991*

Item 1 - After Section 2

Item 1 inserts a section 2A into the Principal Act to provide that the Principal Act binds the Crown in each of its capacities - meaning the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory.

Item 2 - Section 3

Item 2 inserts a new definition - "annual registration charge" and provides for it to mean - the annual registration charge that is imposed under the *Education Services for Overseas Students (Registration Charges) Act 1996*.

Item 3 - Section 3

Item 3 inserts a new definition - "initial registration charge" and provides for it to mean - the initial registration charge that is imposed under the *Education Services for Overseas Students (Registration Charges) Act 1996*.

Item 4 - After Subsection 5(3)

Item 4 inserts a new subsection, subsection 5(3A), to provide that subsection 5(2) does not apply in relation to a provider who is liable to pay an annual registration charge, re-instatement fee or late payment penalty and one or more of those amounts remains unpaid after the time when it became due for payment, unless the Minister is satisfied that, in all the circumstances, it is appropriate to register that provider. Subsection 5(2) relates to the Secretary being compelled to enter a provider on the Register.

Item 5 - After Section 5

Item 5 inserts three new sections, sections 5A, 5B and 5C, relating to the initial registration charge and the annual registration charge. **Section 5A** will provide that a provider who is liable to pay an annual registration charge must pay by the last day of February of the year. Failure to pay may lead to suspension under section 10 of the Principal Act. **Section 5B** will provide that a provider who is liable to pay an initial registration charge must pay by the day specified in a notice given to the provider by the Secretary. The day specified in the notice must be a day that is after 28 days of the notice being given. **Section 5C** will provide for information and returns. A provider will be liable to give or produce to the Secretary any information or document relating to enrolments in the provider's courses on request. Information must not be given by a provider that the provider knows, or reasonably suspects, is false or misleading and if a provider does give such information, the provider must give to the Secretary a statement specifying the aspects of the information that are false or misleading. A provider is also obliged to keep proper records of enrolments in the provider's courses.

Item 6 - After Section 11

Item 6 inserts a new section, section 11A, to provide that if the Minister removes the suspension of the registration of a provider or the registration of the provider is restored under subsection 11(2) (subsection 11(2) relates to registration being restored where the suspension of a provider's approval under State law is removed), the provider is liable to pay a re-instatement fee of \$100. The fee must be paid by the day specified in a notice given to the provider by the Secretary and the day specified in the notice must be a day that is after 28 days of the notice being given. Failure to pay may lead to suspension under section 10 of the Principal Act. The clause further provides that the amount of the re-instatement fee is \$100 for 1997 and for a later year the amount worked out by multiplying the re-instatement fee for the year before the current year by the indexation factor that applies to the current year. The indexation factor that applies to the current year is worked out using the formula index number for the recent September quarter (where that means the September quarter in the year before the current year) divided by the index number for the previous September quarter (where that means the September quarter before the recent September quarter). Index number, for a quarter, means the All Groups Consumer Price Index number that is the weighted average of the 8 capital cities and is published by the Australian Statistician for that quarter. The clause further provides for rounding up and down in relation to numbers arrived at under subclause 11A(4) and changes in the reference base for the Consumer Price Index.

Item 7 - At the end of Section 13

Item 7 inserts a new subsection, subsection 13(4), to provide that if any initial registration charge payable by a provider remains unpaid after the time when it became due for payment, then the registration of the provider is cancelled by force of this subsection.

Item 8 - After Section 17

Item 8 inserts four new sections, sections 17A, 17B, 17C and 17D. **Section 17A** will provide that if any annual registration charge or re-instatement fee payable by a provider remains unpaid after the time when it became due, then the provider is also liable to pay a late payment penalty calculated from the time the payment became due at the rate of 20% per year on the amount unpaid. Failure to pay may lead to suspension under section 10 of the Principal Act. **Section 17B** will provide that the annual registration charge and any re-instatement fee or late payment penalty payable under this Act are recoverable as debts due to the Commonwealth. **Section 17C** will provide that if a provider that is an unincorporated body is liable to pay an amount under this Act or the *Education Services for Overseas Students (Registration Charges) Act 1996*, then the principal executive officer of the provider at the time the liability arose is taken to be liable to pay the amount and, if there was a governing body of the provider at that time, each of the persons who were members of that governing body at that time is also taken to be liable to pay the amount. Persons liable to pay are taken to be jointly and severally liable to pay the amount.

Item 9 - Transitional Arrangements for 1997

Item 9 provides that if this Schedule does not commence before 1 January 1997, then section 5A of the *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991* (as amended by this Schedule) applies for 1997 as if the reference to “by the last day February of the year” were a reference to “by the end of 2 months after this section commenced”.

