

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**EDUCATION SERVICES FOR OVERSEAS STUDENTS (REGISTRATION OF
PROVIDERS AND FINANCIAL REGULATION) AMENDMENT BILL 1994**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Employment, Education and Training,
the Honourable Simon Crean MP)

EDUCATION SERVICES FOR OVERSEAS STUDENTS (REGISTRATION OF PROVIDERS AND FINANCIAL REGULATION) AMENDMENT BILL 1994

OUTLINE

The Bill amends the requirements in the Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991 (the ESOS Act) in relation to the operation of notified trust accounts under section 6A. The Bill amends subsection 6A(5) of the ESOS Act to allow regulations to be made which exempt providers, either in whole or in part, from the requirements concerning notified trust accounts under section 6A of the ESOS Act.

PURPOSE OF THE BILL

Section 6A of the ESOS Act currently requires providers who are not exempt from the financial regulations of the ESOS Act, to pay into notified trust accounts all pre-paid course money received directly or indirectly from overseas students. The ESOS Act also specifies that withdrawals or payments from notified trust accounts may not be made except in accordance with the regulations under the ESOS Act. Subsection 6A(5) of the ESOS Act only allows regulations to be made that exempt providers completely from the requirements to operate a notified trust account. Currently, there is no provision to make regulations for partial exemption of providers from the requirements to operate a notified trust account. The aim of the Bill is to amend the regulation making power in section 6A so that regulations can be made that will exempt providers either in whole or in part from the operation of section 6A.

The Education Services for Overseas Students (Registration of Providers and Financial Regulation) Regulations (ESOS Regulations) (Statutory Rule No 146 of 1994), specifying the amounts and timings of withdrawals from notified trust accounts, were tabled in the Senate and became subject to a notice of motion of disallowance. The regulations were then referred to the Senate Standing Committee on Employment, Education and Training for inquiry. Following the Senate Committee hearing, the Minister for Employment, Education and Training proposed a package of amendments to the ESOS legislation which included amending the trust account regulations to meet industry's concerns about agents' commissions and enrolment fees.

Advice from Attorney-General's Department indicated that, in order to amend the trust account regulations, subsection 6A(5) of the ESOS Act would first have to be amended. This Bill seeks to amend the Act to provide for a more flexible exemption power to give effect to the Minister's proposals.

With the amendment to the ESOS Act, the ESOS Regulations may make provision for or in relation to exempting providers, either wholly or partly, from the requirements to deposit 100 per cent of the pre-paid course money they receive from overseas students. This amendment will enable amendments to the ESOS regulations which will exempt providers from depositing 20 per cent of the pre-paid tuition fees to take into account common industry practices where off-shore agents deduct their commission before forwarding the balance of the students' course fees to the provider in Australia. Providers will also be exempt from depositing an enrolment fee of no more than \$250.

FINANCIAL IMPACT

The Bill will not have an impact on Government funds.

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 - Short Title etc.

Clause 1 names the Act as the Education Services for Overseas Students (Registration of Providers and Financial Regulation) Amendment Act 1994.

In this Act, the words "Principal Act" refer to the Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991.

Clause 2 - Commencement

Clause 2 provides for the Act to commence on the date of Royal Assent.

Clause 3 - Provider must operate trust account

Clause 3 amends subsection 6A(5) of the Principal Act to state that regulations made under the Principal Act may exempt providers either wholly or in part from the requirements of section 6A of the Principal Act. Currently, section 6A requires providers to pay into a notified trust account all pre-paid course money received either directly or indirectly from overseas students.



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