

1990

THE PARLIAMENT OF THE
COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

OVERSEAS STUDENTS (REFUNDS) BILL 1990

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Minister for Employment, Education and Training,
the Hon J S Dawkins, MP)

Overseas Students (Refunds) Bill 1990

OUTLINE

The purpose of this Bill is to facilitate the refunding of payments made by overseas students unable to undertake or complete courses of study in Australia.

FINANCIAL IMPACT

The Bill has no direct financial implications. However, Appropriation Bills No.1 and No.2, 1990 include an allocation of \$50m to enable refunds to be made direct to eligible students or provide loans to institutions.

BACKGROUND

Prospective overseas students paid monies to Australian institutions in advance of receiving a visa to study in Australia. As a result of the Government's decision of August 1989 to introduce tighter entry and stay provisions, significant numbers of potential students were not able to proceed with their plans to study in Australia and sought refunds of monies paid in advance. A number of institutions have been unable to meet their refund commitments and the Government has decided to ensure that all outstanding refunds owed at 30 June 1990 be discharged by either negotiating loans to institutions equivalent to the amount of outstanding refunds owed by institutions or by direct payment to unsuccessful applicants in return for an assignment to the Commonwealth of their debt against the institution. In the latter case, the Commonwealth will take recovery action against institutions.

The process to be adopted in respect of refunds owed by institutions will be that which best ensures expeditious repayment and provides maximum protection of the Commonwealth's interests. Refunds, whether financed by way of a loan to an institution or otherwise, will be paid direct to eligible claimants by the Commonwealth.

With respect to institutions in financial difficulties, but which are assessed as being capable of trading out of their difficulties, short term financial assistance may be approved. In cases where institutions close as a result of the tighter entry and stay criteria, the Commonwealth will refund outstanding living allowance payments to eligible overseas students already in Australia and provide limited financial assistance to institutions who offer places to displaced students. The Commonwealth's liability in these circumstances is limited to those students who had enrolled and paid fees on or before 24 August 1990.

NOTES ON CLAUSES OF THE BILL

PART 1 - PRELIMINARY

- Clause 1 : Short title
- Clause 2 : Commencement: The Act commences on the day on which it receives the Royal Assent.
- Clause 3 : Interpretation: Defines words and terms used in the Bill.
- Clause 4 : Educational Institution: Enables the Minister to determine that an institution is an educational institution and requires that such a determination must be given in writing and be notified to the institution.
- Clause 5 : Power to obtain information and documents: This clause enables the Department to require institutions to provide information and documentation relating to the enrolment of overseas students or intending overseas students. Important is the contract entered into between the student and the institution, details of which are essential for the Commonwealth to establish the amount of refund to which a student may be entitled. This provision ensures access to the required information, provides penalties for non-compliance and ensures that should an institution go into liquidation or receivership the Commonwealth is still able to seek relevant documents or records.
- Clause 6 : Procedure for establishing identity of assignors: The majority of deeds of assignment will be executed offshore. This provision enables procedures to be put in place by regulations to establish the identity of assignors consistent with accepted means of identification in the country where the assignment deed is executed thereby assisting in overcoming potential evidentiary complexities in undertaking recovery action against institutions which default on their refund obligations.

- Clause 7 : Evidence of identity: The majority of assignors are resident overseas. This provision ensures that where the identity of the assignor was established in accordance with regulations made under Clause 7 then a certificate signed by an appropriate person attesting that the procedures specified by regulation were followed is conclusive evidence of that fact. The Minister is empowered to determine in writing a class of persons who may provide the above certification.
- Clause 8 : Admission of statutory declarations in evidence: This clause deems that declarations which comply with the requirements of the Statutory Declarations Act 1959 are deemed to be in accordance with evidentiary requirements in all Australian States and Territories. It is required to ensure that declarations by overseas students in connection with the completion of a claim for refund meet requirements for admission as evidence in all States and Territories.
- Clause 9 : Conduct by directors, servants and agents: This clause specifies where responsibility within variously constituted institutions is to be attributed for offences under this Act.
- Clause 10 : Delegation of powers: This clause enables the Minister to delegate powers under the legislation to senior officers of the Department of Employment, Education and Training where the Minister considers this appropriate.
- Clause 11 : Regulations: This clause provides that regulations may be made proscribing matters necessary or convenient to carrying out or giving effect to this Act, provided such regulations are not inconsistent with the Act.

