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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

EDUCATION SERVICES FOR OVERSEAS STUDENTS AMENDMENT BILL 2005

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Education, Science and Training the Hon Dr Brendan Nelson MP)

EDUCATION SERVICES FOR OVERSEAS STUDENTS AMENDMENT BILL 2005

OUTLINE

The provision of education and training to overseas students in Australia is regulated by the *Education Services for Overseas Students Act 2000* (ESOS Act). The ESOS Act aims to protect the reputation and integrity of Australia's education and training export industry by ensuring that overseas students coming to study in Australia on student visas receive the education and training for which they have paid. Only providers who meet Australian residency requirements and are registered on the Commonwealth Register of Institutions and Courses for Overseas Students are able to offer education and training services to overseas students.

The Australian Government is seeking to enable high quality foreign owned and operated higher education providers to offer education and training services to overseas students in Australia. It is also seeking to clarify that the providers of education and training services to overseas students may charge a fee for any action the provider is required to undertake because of the ESOS Act and the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students (national code). Both measures are consistent with the ESOS Act's underpinning principles of quality assurance and consumer protection.

The Bill will amend the ESOS Act to:

- Enable foreign owned higher education providers who are listed as "Table C" higher education providers under proposed amendments to the *Higher Education Support Act 2003*, to also become registered providers within the meaning of the ESOS Act (paragraph 9(2)(a) and section 16).
- Clarify that a Table C provider does not breach its obligations under the national code merely because the provider is not a resident of Australia.
- Clarify that a registered provider does not breach its obligations under the ESOS Act or any other Act relating to education by charging overseas students (or intending overseas students) an amount as part of the student's tuition fee if the amount is for any action the provider is required to undertake because of the ESOS Act or the national code.
- Make technical amendments in relation to legislative instruments.

FINANCIAL IMPACT

The Bill will be Budget neutral and will not increase costs to the Commonwealth or the education export industry.

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NOTES ON CLAUSES

Clause 1 - Short title

Provides for the Act to be cited as the *Education Services for Overseas Students Amendment Act 2005*.

Clause 2 - Commencement

Subclause 2(1) inserts a three column table setting out commencement information for various provisions in the Act. Each provision of the Act specified in column 1 of the table commences (or is taken to have commenced) in accordance with column 2 of the table and any other statement in column 2 has effect according to its terms.

The table has the effect of providing for sections 1 to 3 of the Act to commence on Royal Assent, Schedule 2 to the Act to commence on the day after the Act receives Royal Assent and for Schedule 1 to commence at the same time as Schedule 1 to the *Higher Education Legislation Amendment (2005 Measures No. 4) Act 2005* commences.

Subclause 2(2) provides that column 3 of the table is for additional information which may be added to or edited in any published version of the Act but that information in this column is not part of the Act.

Clause 3 - Schedule(s)

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

Schedule 1 – Main amendments

Education Services for Overseas Students Act 2000

Item 1

Amends the definition of *provider* in section 5 to redefine the term to mean “an institution or other body or person that provides or seeks to provide courses to overseas students”.

Item 2

Repeals paragraph 9(2)(a) and substitutes a new paragraph which has the effect of enabling a provider who is either a resident of Australia or a Table C provider (within the meaning of the *Higher Education Support Act 2003*) to be registered by the Secretary as an approved provider.

Item 3

Repeals section 16 (which was an Australian residency requirement) and substitutes a new section which has the effect of requiring a registered provider to be either a resident of Australia or a Table C provider (within the meaning of the *Higher Education Support Act 2003*). The Minister may take action under Division 1 of Part 6 against a registered provider that has breached this section.

Item 4

An application provision which has the effect of clarifying that a Table C provider (within the meaning of the *Higher Education Support Act 2003*) does not breach its obligations under the national code established under Part 4 of the *Education Services for Overseas Students Act 2000* merely because the provider is not a resident of Australia.

Items 5 and 6

Amend section 18 to insert a new subsection 18(2) which has the effect of clarifying that a registered provider does not breach its obligations under this Act or any other Act relating to education by charging overseas students (or intending overseas students) an amount as part of the student’s tuition fee, if the amount is for any action the provider is required to undertake because of this Act or the national code.

Schedule 2—Technical amendments relating to legislative instruments

Education Services for Overseas Students Act 2000

Items 1 and 2

Amend subsection 33(1) and repeal subsection 33(3) to reflect the commencement of the *Legislative Instruments Act 2003* on 1 January 2005.