

EDUCATION (OVERSEAS STUDENTS) BILL 1996

EXPLANATORY NOTES*

GENERAL OUTLINE

Objectives of the Legislation

The object of the Bill is to provide a framework for the orderly conduct of programs of education and training for overseas students by:

- the **registration of education service providers** who provide education and training courses to overseas students; and
- the **registration of education and training courses** that are provided for overseas students.

Reasons for the Bill

This Bill places into a legislative framework a set of principles, conditions and guidelines which were recommended by a Ministerial Advisory Committee with representatives from all the peak bodies involved in programs for international students.

On 27 June 1991, the Commonwealth Government's *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991* commenced. That Act regulates the export of education services and training. The Act has a sunset clause determining 1 January 1997 as the date on which the Act ceases to be in force, with the intention being for all States by then to have passed legislation to regulate the same activities. This Bill allows Queensland to discharge its commitment by putting in place its legislative framework.

* These Explanatory Notes relate to the Bill as introduced into the Legislative Assembly. This Bill was amended in Committee—see Endnotes.

The Bill provides for institutions, which are presently providing programs to overseas students, to be automatically registered on commencement of this Bill.

Currently, overseas students and providers have to adhere to the following procedure to gain entry to Australia. A student must obtain an Acceptance Advice Form from the provider and present this form when applying for a visa. The provider cannot issue an Acceptance Advice Form unless the provider is registered on the Commonwealth Register of Institutions and Courses for Overseas Students. For a state provider to be registered with the Commonwealth, the provider must first advise the Department of Education's Queensland Education Overseas Unit and satisfy the Unit that the courses have been accredited by the appropriate authorities.

Under this Bill, all providers of overseas education will be required to register with the chief executive of the Department of Education. Only one registration procedure will be necessary despite the diversity of providers. The register will be held by the chief executive.

Registration is not concerned with accreditation, however, all accreditation processes must be completed prior to applying for registration for overseas students.

Further protection is provided by limiting the use to which trust account monies can be put while students are completing courses.

Alternatives

Option 1: No legislation

The State has no current legislation which requires institutions to be registered in order to provide courses to overseas students. At present, the inclusion of institutions and courses on the national register of programs of education and training for overseas students is being completed by the Queensland Education Overseas Unit as delegates of the Minister for Education on the basis of a set of Cabinet approved guidelines.

Option 2: Relying on the Commonwealth Government's *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991*

Currently, Commonwealth legislation regulates the export of education

services and training. However, this legislation has a sunset clause determining 1 January 1997 as the date on which the Act ceases to be in force, with the intention being for all States by then to have passed legislation to regulate the same activities.

The above alternative options are considered unsuitable as this Bill allows Queensland to honour its commitment to have legislation in place before 1997.

Estimated Costs for Government Implementation

Establishment and maintenance of a register as proposed would incur annual labour and non-labour costs totalling approximately \$50 000 (at 1995 figures) which would be partially recouped through collection of an annual registration fee.

Consistency with Fundamental Legislative Principles

The Bill is consistent with the fundamental legislative principles set out in the *Legislative Standards Act 1992*.

Consultation

Consultation was conducted with a wide range of interests during the formulation of the Bill. Such interests included members of the Ministerial Advisory Committee on Registration of Institutions and Courses for Overseas Students. This committee had representation from all peak industry bodies and educational bodies. Consultation also included the Departments of Government, Queensland, and the Litigation Reform Commission.

NOTES ON CLAUSES

PART 1—PRELIMINARY

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

Clause 2 provides for the commencement of the proposed Act.

Clause 3 references the dictionary in the Schedule.

Clause 4 sets out the major objective of the proposed Act and lists various principles that are intended to guide the achievement of that object.

Clause 5 describes generally how the object of the proposed Act is to be achieved by registration and through the application of registration criteria.

Clause 6 states the persons to be bound by the proposed Act.

PART 2—REGISTRATION

Division 1—Applications

Clause 7 allows a person to apply for registration either as a provider or if the person is already a provider, to apply to register a course. The provider may also apply for changes or renewals to registration. One provider may apply to transfer the registration of a course to another provider. This clause also describes how an application is to be made and how the chief executive is to decide whether to approve an application.

Clause 8 describes the statutory conditions that attach to a registered provider's registration and to a course's registration. The registered provider must comply with reasonable requests from the chief executive to provide information or records on the financial viability of the registered provider. The holder of registration must comply with reasonable requests from the chief executive to provide information or records on the content or conduct of the registered course.

Clause 9 requires the chief executive to give a registration certificate when approving a registration, a change or renewal of registration or a transfer of registration. The form of the registration certificate is described in this clause.

Division 2—Suspension or cancellation of registration

Clause 10 describes the four grounds for suspending or cancelling a registration.

Clause 11 describes the procedure to be followed for suspension or cancellation of registration. A proposed action will result if the chief executive believes a ground for suspension or cancellation exists. The holder of the registration has 28 days to show why the proposed action should not be taken. If, after this time, and having considered all representations, the chief executive still considers a ground exists, the chief executive may follow the procedure outlined in this clause. The date at which the suspension or cancellation takes effect is described.

Division 3—Immediate suspension

Clause 12 describes when the chief executive has power to immediately suspend the registration to protect the interests of overseas students, intending overseas students or persons who might become overseas students, until the formal suspension or cancellation procedure is completed. The procedure to be followed and the length of the initial immediate suspension is described.

Clause 13 provides the chief executive with power to immediately suspend the registration if the holder of a registration is charged with an offence against the proposed Act. The procedures to be followed and when suspension takes effect is explained.

Division 4—Form of suspensions

Clause 14 describes the types of suspensions.

Clause 15 describes the status of a provider whose registration is the subject of a suspension. This holder is not taken to be a registered provider. However, the provider does not commit an offence if the registered course is still being provided to overseas students where the suspension is a limited suspension and there was an agreement to provide the registered course before the suspension started.

Clause 16 describes the status of a course which is the subject of a suspension. The course is not taken to be a registered course. However, it is not unlawful for the person to provide the course where the suspension is a limited suspension, and before the suspension took effect, the holder

entered into an agreement to provide the course.

Division 5—Major offences

Clause 17 prohibits a person providing, arranging, or promoting a course to an overseas student if the person is not a registered provider or the course is not a registered course. This prohibition will also apply if the registered provider or the holder of the course is in breach of a condition of the registration. The provision also describes when a person is taken to be an “arranger” or a “promoter” of a course.

PART 3—APPEALS

Clause 18 defines the meaning of “decision” as it applies in part 3.

Clause 19 stipulates that a person whose interests are affected by a decision under the proposed Act may appeal to a Magistrates Court.

Clause 20 describes how and where a person starts an appeal.

Clause 21 states the time for making appeals. A Magistrates Court may extend the period for filing a notice of appeal.

Clause 22 describes when a stay of the operation of a decision may be granted.

Clause 23 states the powers of a Magistrates Court on appeal.

Clause 24 allows the decision of a Magistrates Court on appeal to be taken to be that of the chief executive.

Clause 25 limits an appeal to a District Court on questions of law only.

PART 4—MISCELLANEOUS

Division 1—Matters supporting registration

Clause 26 requires a register to be kept by the chief executive. This register must contain information as prescribed under a regulation.

Clause 27 allows the chief executive, by written notice, to require the return of the registration certificate if the registration is cancelled or suspended. The clause also states when a holder may not comply with this request. Circumstances for issuing amended or new registration certificates are also described.

Clause 28 allows the holder of a registration to surrender such registration, and describes when the surrender of registration takes effect.

Clause 29 prohibits anyone other than the chief executive from changing a registration certificate.

Division 2—Monitoring compliance with Act

Clause 30 allows the chief executive to gain information or records (or copy of records) in the provider's possession or under the provider's control to gain information on the student's identity or the content and conduct of the course. The grounds for gaining such information are described. Self incrimination is a reasonable excuse for not complying.

Clause 31 provides for the release of information to a corresponding chief executive of another State or of the Commonwealth.

Division 3—Amounts in trust accounts

Clause 32 provides protection for overseas students by limiting the use to which trust account amounts can be put. Definitions of key terms are provided.

Division 4—Delegations

Clause 33 allows the chief executive to delegate the chief executive's powers under the proposed Act to an officer or employee of the department.

Division 5—Regulations

Clause 34 describes the regulations the Governor in Council may make under the proposed Act. The regulations may include imposing a fee; or creating offences and prescribing penalties. The regulations may require providers to put in place or participate in arrangements which protect overseas students financially from default of registered providers.

PART 5—TRANSITIONAL

Clause 35 is a transitional provision that expires 1 year after commencement. It allows providers or courses registered under the Commonwealth Act to be registered under the proposed Act. Registration is taken to be approved once registration certificates are given by the chief executive.

PART 6—AMENDMENT OF EDUCATION (GENERAL PROVISIONS) ACT 1989

Clause 36 states that this part amends the *Education (General Provisions) Act 1989*.

Clause 37 states that section 76 of the *Education (General Provisions) Act 1989* is omitted. Section 76 describes the restriction on overseas persons receiving instruction. These restrictions are now incorporated in the proposed Act.

Amendments agreed to in Committee**1. Clause 9—**

At page 10, after line 18—

insert—

‘(5) A period of registration mentioned in subsection (4)(a)(iv) or (b)(iv)(B) must not be longer than 5 years.’.

2. Clause 11—

At page 11, line 5 ‘may’—

omit, insert—

‘must’