

Creating Futures



# ACPET Submission

## Review of the Education Services for Overseas Students (ESOS) Act 2000

November 2009

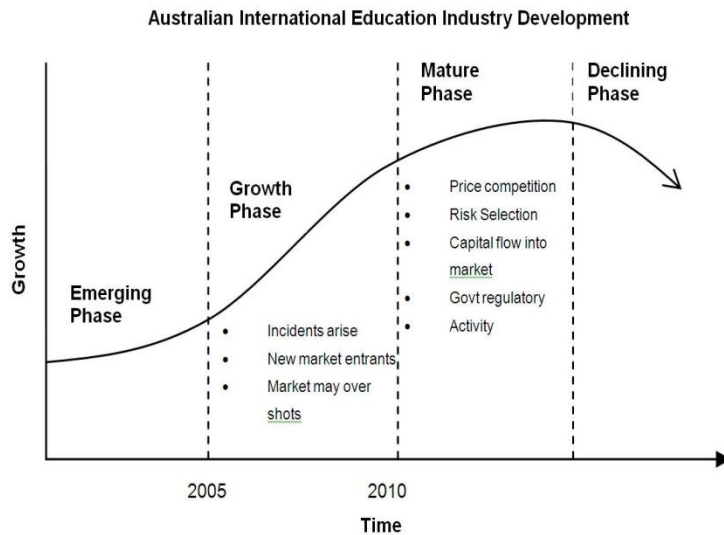
## **ACPET Submission**

### **ESOS Review**

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#### **Context**

The ESOS Act and the regulatory framework with the National Code 2007, DEEWR international promotions through AEI, Austrade's trade development initiatives and support for Australian businesses and the country assessment levels pioneered by DIAC are being emulated around the world by our competitors as best practice models in education export. A complex and rapidly maturing industry has developed in response to these leading initiatives by the Australian Government delivering extraordinary economic, cultural, social and educational benefits to the Australian community as identified in ACPET's ground breaking report with Access Economics released in April 2009. In generating for the first time a comprehensive analysis of the business settings of the Australian international education industry, the ACPET Access Economics Report has revealed an industry entering a soft market phase driven substantially by Government intervention and regulatory practices across a range of Government portfolios. This investigation by ACPET and Access Economics also proposed international education in Australia to be an industry which has passed both the emerging and the growth phases of industry growth predicting a slowing consistent with a maturing industry compared with its previous years of rapid escalation and product diversification which reflected its growth and emerging phase.



The implications of this analysis of the industry's development are significant not merely for those associated with the industry but for the entire Australian community. Intervention by Government through regulatory practices in seeking to assure quality and sustainability in the interests of international students while well intentioned could plunge the industry into decline. For this reason ACPET argues that the current regulatory settings in education are correct, and that

while policy settings in other areas such as population and labour market warrant consideration this ESOS review must focus on the State authorities overseeing the implementation of the ESOS Act and the delivery of courses for overseas students.

Some jurisdictions have simply not been effective as regulators. This combined with a lack of coordination with Federal regulatory authorities has led to market entry by some poorly equipped and established providers, provider closures, and poor practice being undetected. The COAG agreement has led to a national system of regulation that is inconsistently applied. Ignoring the root causes of the problems and attempting to layer on more regulation on providers would be a wasted effort. The overseeing of the provision of the training is the area that needs to be resourced as well as strengthening options for the intervention by the Australian Government in the entry of new providers into the international market.

ACPET's frustration and that of its members with Government is that this issue of poor regulatory practice was identified in the ACPET 2004 submission to the previous review of the ESOS Act.

Much of the commentary on Australia's international education sector is internal and domestic in its view and therefore overlooks the international perception that we are world leaders in regulation and education export and therefore fails to recognise the vast majority of providers who manage excellent institutions for overseas students.

The challenges presented by the sector from a policy perspective are really limited to one major area of South Asia (India, Nepal, and to some extent from Bangladesh and Pakistan). This market has characteristically been a migration market whether it is for higher education or vocational education and training (VET) with students frequently looking for some kind of pathway to settle in Australia after studying. Four years ago when the trade skills areas with Migration Occupation in Demand List (MODL) were opened up and the rules for permanent residence eligibility were set by DIAC and TRA, the market entered a sudden product diversification phase and concomitant strengthening of demand. Students simply applied the rules and took advantage of the sudden diversification of products. The chance to reduce years of study and save up to \$A30,000 in costs by doing a VET trade skills pathway was irresistible with many students opting to move from a higher education pathway to a VET pathway. In itself this is not a bad thing: provided a skills-based link between education and migration is properly monitored and updated regularly, it can be a key asset in meeting the skills demands of our nation and in ACPET's view, and that of well credentialed commentators including Bernard Salt, is to be encouraged. 'De-coupling' the link between education and migration would cripple a maturing industry that with some refinement could instead contribute to meeting critical domestic skills shortages in agriculture, aged care, child care, building and construction, traditional trades and many other industries. ACPET has pursued a responsible agenda and has sought an integrated approach to policy from government in the areas of education, population and labour market since 2008.

The real problems with regulatory practice, market growth and product diversification are in NSW and Victoria. The combination of a new ability for onshore migration application by students together with the MODL extra points for the migration test plus a worldwide increase in the number of mobile students led to an unsustainably high level of student numbers heading to Australia. The state authorities have not adequately resourced the oversight of ESOS in what has become one of the largest export earners for both NSW and Victoria. Some providers have been allowed into the market and should have been closely monitored but without staff the state authorities could only react after the event and then in extreme cases; for its part, the Australian Government was sidelined in a curious anomaly between the AQTF and the ESOS Act, preventing the Australian Government from any intervention once a provider has been allowed to enter the market by the State jurisdictions.

## Executive Summary:

International education is one of Australia's greatest success stories.

From pioneering beginnings, the industry has grown to become our nation's third-largest export industry, behind only coal and iron ore. The industry contributes more than \$15 billion to our national economy each year and is responsible for the employment of more than 120,000 Australians.

The industry has achieved this success with little fanfare and, largely, below the public radar. But this conspicuous growth has been a double-edged sword.

On one hand, the industry has developed rapidly to establish an enviable reputation as a best practice model in an increasingly competitive global marketplace. It is supported by a robust legislative framework in ESOS and an industry-led commitment to taking responsibility for itself through the operation of a consumer protection framework that is unique in the world. On the other hand, quiet diligence has meant that the complexity of our industry is often little understood and easily misrepresented for the sake of political expediency, and our industry's growth has not been matched by the appropriate hallmarks of a sustainably maturing industry, chief among which are:

- a consistent national regulatory system capable of efficiently and effectively policing the ESOS legislation. The ESOS Act already provides a fundamentally sound set of laws governing our industry. Those laws have been undermined by a failure at implementation, not design;
- industry-led, independent governance arrangements such as those that exist in other, more established and mature export industries;
- appropriate strengthening and monitoring of the link between migration and education (which is itself a fundamentally important driver of Australia's prosperity and labour market development) so as not to over-expose our sector to narrow source markets or skills areas, and ensure that our industry fulfils its promises of meeting skills needs in the national interest;
- government commitment to guaranteeing the continuity of the tuition assurance scheme as the industry's primary consumer protection mechanism. Assurance has been proven in our industry to be vastly more effective than insurance, but it requires government investment along with cooperative dialogue between industry and government in order to remain effective.

In spite of its size, international education is an industry that with care by government in its policy intervention could encourage industry investment confidence through durable P/E ratios and extend its maturation phase. The critical link between education and migration, which should be encouraged and cultivated, has not been properly monitored and parts of the industry have become over-exposed to narrow rather than diverse student source markets or course delivery.

Barriers to entry and risk management practices for new institutions have not been adequately enforced, leading to the emergence of training businesses with unsound business models and in need of more support than regulatory authorities are able to provide.

A culture of regulatory negligence has emerged and unscrupulous and unsustainable practices by some institutions have been allowed to go unchecked, to the detriment of the entire industry.

The onset of a global financial crisis, coupled with political, public and media pressure to take long overdue regulatory action against unscrupulous operators has led to a knee-jerk, poorly planned regulatory crackdown that is devastating good quality institutions as well as the unscrupulous operators it targets.

In turn, this has placed pressure on the excellent and world leading consumer protection framework, specifically the tuition assurance scheme, to respond to a volume of student displacement for which it was not designed, putting the educational continuity of students at risk. Despite this, the TAS continues to perform above requirements placing more than 3500 students since January 2008 assuring their continuing education.

We find ourselves at a point where our actions can either strengthen or cripple a maturing industry, and the temptation to layer on new legislation when the legislative framework is fundamentally sound should be resisted.

There is too much at stake in an industry that generates employment for more than 120,000 Australians for us to respond too heavy-handedly to years of regulatory inaction through a 'crackdown' that devastates the vast majority of institutions that do the right thing, in order to weed out the minority that do not.

We must take action, but we must do so in a measured, staged and collaborative way that allows our third biggest export industry to adapt and improve rather than diminish or collapse.

ACPET 's primary recommendations to the ESOS Review, which are expanded upon below, are to:

- Create a single national regulator for the international education industry that is capable of, and accountable for, enforcing the legislative framework that already exists in ESOS. A number of models of effective regulation already exist which could be used as a model of best practice for a national regulatory system.
- Introduce mechanisms to monitor the activity of education agents both onshore and offshore, to ensure that they meet minimum standards and are accountable to regulatory authorities.
- Introduce a skills test for VET students at the point of permanent residency to ensure that once institutions fulfil their training obligations students are obliged to practice and develop their skills
- Resource and strengthen mechanisms that support the industry-run tuition assurance scheme so that it may play an increased role in co-regulating the industry. Additionally, introduce industry led independent governance arrangements for consumer protection.
- Continue a program of regulatory action against unscrupulous operators, but do so in a staggered and collaborative way to ensure continuity of education for students affected by college closures.
- Introduce benchmarking mechanisms that reward institutions that exceed minimum standards and foster a culture of continuous improvement.

## Australia's engagement with the international education markets: our comparative strengths, weaknesses, opportunities and needs.

### Overview

Australia's response to opportunities in the international education market since the Dawkins reforms of the mid-late-1980s was initially noted internationally as aggressive, but is now universally described as having been remarkably successful. We have developed a reputation for unparalleled engagement with the Asian markets and are known for professional strategic planning, long-term commitment and natural relationship building skills. At the public level we have been supported by governments that have taken the economic and cultural benefits of international education very seriously. More than any of our competitors, we have come to understand the importance of the marketing maxim "Presence, Patience and Persistence".

Viewed from the Australian perspective, we concur that while we may have taken a strategic approach to marketing our educational offering internationally, our success has been far from even. On the one hand, our universities are benchmarks for many of their competitors in terms of building student numbers and international divisions that others can only envy. Universities' international divisions/and or commercial arms are professionally structured and funded using business-like funding models that are rare elsewhere. Likewise, the ELICOS sector, for which successful international recruitment is a requirement for survival, has grown almost continuously in the two "post-Tiananmen" decades, the Asian Financial Crisis notwithstanding.

On the other hand, private education and training providers have not done quite so well. Whilst some TAFES have developed relatively high profiles overseas, the private HE and VET sector has been insufficiently resourced to take full advantage of international opportunities. At the same time, as a matter of survival they have had to focus on their core market: domestic students. In short, many have not had the financial capacity, the human resources or the market knowledge required to break into the international markets. Recent dramatic growth, however, in international participation specific segments of the private sector, makes it clear that it is an extremely important sector to the Australian economy. The private sector clearly needs significantly more resourcing with a view to diversifying, sustaining and growing its place in the market. Quality institutions, with strong track records, in particular need support to diversify into the international space.

The indications are that growth in international education mobility is going to expand at unprecedented rates. At that same time, new destinations are competing for market share. European institutions are delivering increasing numbers of programs in English and China, Malaysia and Singapore are well positioned to continue to increase inbound student numbers. Both Japan and Korea have established sophisticated, government-funded strategies to ramp up international student recruitment. If Australia fails to capitalise on these opportunities, especially in this immediate region, we risk allowing our competitors, some with a deeper history of involvement in our region like the United States, to get the edge.

The Australian international education sector sets a global standard in how it engages with offshore markets. Nevertheless, there has been a tendency to be over-critical in our self-assessment. Doing so may drive a culture of continual improvement, which is reflected in significant professional development activity and governmental interest in the sector. However, there appears to be little awareness in Australia about how we compare with our competitors on the ground and how, comparatively, we engage on an interpersonal, strategic and professional level with our partners abroad.

Evidence of competitor activity is fed back to providers from AEI offices, and institutional representatives see our competitors at work at international fairs, exhibitions and conferences. Few Australian international education professionals, though, really have a sense of the interaction that occurs between overseas competitor institutions and their students, agents and institutional partners. What level of care do they really provide? How culturally sensitive are administrative -- including marketing -- and academic staff? How fast do they turn around applications? How quick are they to pay on invoices and refunds? What gap exists between published minimum entry requirements and what they will actually accept? How rigid is the sector in applying solid and reasonable English language requirements? On these key indicators, Australian institutions perform remarkably well. We also ought to recognise that when it comes to student visa systems, legislation to protect the interests of overseas students, and spending on recruitment and support for students, Australia is very solidly placed and is being emulated by our competitors. Saliently, we also set the standard for human-to-human interaction that is so integral to the success of an international education marketing strategy.

## Strengths

- 1. Inter-sector cooperation:** Overall, the international education sector might be stratified, but the level of cooperation within Australian international education exceeds what is possible in any of our key competitor countries. The line between the public and private sectors is evident, but the largely egalitarian nature of Australian society and the trend towards commercialization means that there is little inherent snobbery dividing the private and public sectors and the educational tiers. This opens the way to growth in multi-sector articulation arrangements, collaborative marketing and strategic alliances involving public and private Schools, VET and Higher Education providers that is unparalleled elsewhere.
- 2. Reacting to opportunities:** The Higher Education sector has been able to react quickly to market opportunities, feeding ideas for course modifications and creation directly back in to the university system. This has historically included the establishment of twinning programs, more recently pathway programs, university audit programs, tailor-made offshore short courses, and onshore short courses.
- 3. Innovation:** Australia has led the way in developing sophisticated pre-university pathway programs that are currently being copied by providers in the US and Britain and benefit international students enormously. It was an Australian pathway provider, *Navitas*, that first brought this concept to the United Kingdom, establishing pathway programs on university campuses, at a time when UK universities and pre-university providers were unable to create these alliances themselves.

4. **Flexibility:** We do not traditionally reject students if they do not immediately meet entry requirements – rather, we are committed to assessing students’ options and recommending alternative pathways. Many other countries, especially at the HE level, reject students as unqualified with no consideration for alternative pathways that will give the student a second chance to reach their goal.
5. **Relationship building:** We have excelled at developing strong personal relationships with institutional partners in East Asia. This has perhaps been our key competitive advantage – a cultural openness and a communication style that is conducive to creating friendships. We are not considered to be abrasive, stuffy, cold or arrogant, terms regularly used by education agents to describe some other nationalities. Likewise, Australian institutions don’t display a short-term mentality which is a complaint often directed towards the United States. Our marketing staff visit agents and partners in their offices, not in hotel lobbies, and are adventurous and enthusiastic socially.
6. **Agency relations:** We work remarkably well with our recruitment agents. There is a tendency for British universities and colleges to use agencies owned by British nationals. This is not the case for Australia, perhaps due to an absence of Australian-run offshore agencies, or possibly because Australian providers are more comfortable crossing the cultural divide and working with non-Australian agents.
7. **Partner support:** Australian universities have been known across the sector for excellent partner support, ensuring fast turnaround on communications, payments and applications. They have been enthusiastic participants in benchmarking exercises and professional development programs. This is of course all positive, but more recently the international education industry has grown so quickly that demand for experienced and culturally aware professionals in the sector has outstripped supply, which in turn has eroded service quality. We refer to this again below.
8. **Visa models:** The Australian student visa system has been adopted by the UK as best-practice, although it must be said that the implementation of the new UK system has been problematic, even shambolic. A thorough investigation of their system reveals it to be based on the Australian system, but with key differences in its execution.
9. **Regulatory models:** ESOS legislation is a global benchmark and many overseas providers look at this with envy. In particular, putting the legal onus on providers to police how their agents operate is considered to be particularly sophisticated. The American International Recruitment Council is currently attempting to implement a “due diligence” model for which agents will pay to be assessed and accredited, but this is a problematic departure from the simplicity of the model allowed for under ESOS. UK institutions have no real restraints on their agency engagement practices.
10. **Crisis response:** Australia’s response to crises has been commented on internationally as quick and decisive, with some observing that the bureaucracy in Australia appears unencumbered by moribund political processes. Note however that the Australian response this year has been seen by competitors as positive but by some of our student source countries as evidence of guilt.

## Weaknesses

- 1. Lack of resources for private providers:** Some private providers that have recently entered the international space have coherent market entry strategies but insufficient human resources with the requisite international marketing and business development skills to support the strategy.
- 2. Chain schools:** The move towards chain schools in the ELICOS sector has on the one hand contributed to professionalising the sector, but on the other hand this has brought with it a “numbers” culture to the industry, which can include payment of very high commissions to agents in return for delivery of large numbers of students. This has created a tension with the older, owner-run schools that had rightfully earned a reputation for personal care of students and agents rather than for high commissions.
- 3. Marketing industry mobility:** The shift of marketing and management professionals from other industries to international education has brought with it more mainstream professional marketing skills to the industry, but with a more hard-nosed sales focus, sometimes at the price of personal relationship and long-term commitments at a time when we need to be growing not just student numbers but good will and sustainable networks as well.
- 4. Agency selection:** A small percentage of providers are not concerned who represents them offshore, so long as they get the students. Bigger name institutions with a history in the international markets tend to be conscious of the need to thoroughly vet agents before engaging them, whilst providers newer to the markets may be less knowledgeable about the need and processes for doing background checks on agents. Negative in-country press about an agent involved in unethical practices can be very damaging to an institution for a considerable period of time.
- 5. Diversity:** The lessons of the post-Tiananmen period, when the Chinese market collapsed, along with a number of ELICOS centres, have either been forgotten, or never learnt, by many school operators today. An over-reliance on one nationality is very dangerous. Diversity has to be encouraged and supported.
- 6. New course development:** Until recently, the private VET sector has not been nearly as adventurous as the HE sector and has been slower to create networks internationally that would drive new course development and feed opportunities for delivery of diverse long and short-term training. The sector therefore needs to be guided and nudged towards effectively pursuing these opportunities.
- 7. Representative offices:** Many British universities now have China offices, staffed and funded by the universities themselves, and have for many years had Southeast Asia regional offices, usually in Kuala Lumpur. Australian institutions have largely ignored this strategy for market development, where running costs can be quite low as a percentage of potential returns if they make a medium-to-long-term commitment to such a venture. This is certainly a weakness that needs to be addressed.

## Opportunities: the Private Sector and Transnational Education (TNE)

ACPET's view is that the industry is entering a phase of its development which will be characterized by greater offshore engagement or transnational education (TNE) and indeed potentially may create a new industry development curve.

The TAFE sector has been active in offshore training for some years. TAFE West Australia has been engaged in Vietnam since the mid-1990s, as have individual Victorian TAFE institutes like Box Hill and Holmesglen. Those TAFEs with centralized control of international activities, like NSW, have been less successful.

The private sector has only relatively recently escalated its activities to take advantage of offshore training opportunities. While the universities continue to set the pace in Asia, the private VET sector has not been keeping up. One reason for this is perhaps the lower status accorded the VET sector in Asia compared to Higher Education, thus partially locking it out of this space, but the fact is that transnational opportunities are increasing at a rapid rate as the countries to our near north continue to develop and need specialized VET training. The private sector is responding quickly to these opportunities, however in developing these markets do so on the basis of being able to generate financial and reputation capital from its existing onshore based international education market.

Those that do exploit offshore training business opportunities in the region face many potential pitfalls. Some institutions go into TNE projects with a solid business plan. Some go into TNE with no solid plan, no real market knowledge, unrealistic expectations and at the mercy of their local partner. The most savvy industry players domestically can very quickly come unstuck abroad. The industry needs support to ensure that these providers do not set themselves up to fail. Unfortunately, there are too few experienced practitioners in the industry to meet demand, but peak bodies like ACPET, with sufficient state involvement, can support the professional development and training of providers to seize the opportunities and avoid the pitfalls, by going into projects properly prepared and with eyes wide open.

Successful TNE projects are very beneficial for future economic and cultural ties, for promoting onshore study and satisfying future labour needs. We need to support and guide providers to take advantage of those opportunities rather than over-regulating their ability to recruit students into onshore programs. The benefits of TNE to onshore recruitment are substantial. Some institutions see TNE purely in these terms: as either a loss leader or break-even generator of onshore recruitment rather than as purely profit-making ventures. Providers need frameworks that assist them to capitalise on TNE opportunities, including training, consultants registers, planning, business plan development, feasibility assessments, and guidance on the pitfalls.

## Needs

1. The existing regulatory framework needs to be policed and adequate resources made available for doing so.

2. We are currently competing with a weak UK Pound and US Dollar. Over-regulating the sector will only increase the barriers and further undermine the value of this huge industry.
3. We still suffer from an image of being a less innovative and creative country. For example: “why would a Japanese person want to study in the creative industries in Australia? They should go to London.” Significant work still needs to be done to overcome this perception for some disciplines and is a challenge for marketing brand Australia.
4. We need to be driving outbound mobility and giving Australian students international experiences with the support of expanded government funds to do this. Doing so will enhance Australia’s image in our immediate region and add significant value to the career prospects of our students. Furthermore, outbound mobility strengthens relationships with our offshore partners.

## Answers to the sections requested by the Baird Issues Paper

Regulatory practice has been a fundamental issue throughout this dialogue, with the inconsistency and inefficiency of regulatory application being a common cause of concern among training organisations in the private international education sector. Relationships between institutions and regulatory authorities vary between states, but have in each case been recognised as a critical success factor.

Frequent and sudden policy change impacting upon the private sector has made commercial operations at times very difficult prompting a crisis of confidence by investors with considerable consequences. Policy settings which have led to a 50% to 90% reduction in student intake numbers continues, depending on the country base developed by different RTOs with the first cost reduction being the retrenchment of staff, and an obvious broader economic impact as identified by the ACPET Access Economics Report.

The steps being taken by the Government to rectify long pending regulation/regulatory shortfalls are acknowledged. However there is no risk mitigation strategy or safety net offered to the private sector which underpins this industry, accounting for 54% of student commencements as at September 2009, an increase for the same period in 2008. Alternative markets cannot be developed in a short time and change in Government policy to have a better mix of nationalities among the international students requires an implementation and communication / marketing plan over a reasonable time frame. The irony is the stern action by Government or the so called perfect storm will threaten genuine private providers and potentially harbour poor practice providers given their lower overheads.

### 5a Supporting student interests

Student experience is held by the private sector as our best defence against criticism of poor practice. ACPET's initiative to map student experience across 60 private colleges active in international education will offer evidence based analysis of actual experience. In our view this should be reinforced as a requirement of granting of a student visa that students complete at least two analyses of their experience as an international student – one at the six month point and the other at least 12 months from commencement.

International students are discerning people who make choices as adults: we need to safeguard choice, quality and diversity of offerings to international students and assist them to make well informed choices through the provision of reliable, accurate information. The role of some unscrupulous agents and colleges must be held to account for unreliable or inconsistent information that they disseminate and the role they play in creating student uncertainty or churn. Well intentioned Government regulation such as the 6 month change of provider option has actually created student churn and rewarded poor practice. The evidence is compelling: before this change of regulation, student turnover was well under 5%, whereas today quality providers routinely report to ACPET turnover rates of 30%. Finally, with respect to agents, ACPET recognises the management of distance contractual relationships is difficult but not impossible and the industry has looked to other service models. ACPET has developed a strategy and directory of educational agents to assist the industry better establish its relationship with educational agents and to better ensure quality advice and information to students on behalf of Australian education providers. This leading role in providing reliable information about agents with appropriate resourcing, ACPET could continue and provide a greater role in self regulation.

The Australian international education market has been heavily facilitated by educational agents with the motivation for providers using agents being to ensure growth of market share, prompting price pressures for agent services. International law already stipulates that hidden commissions are illegal but is not enforced and perhaps a way to deal with this is to ensure that commission payments are noted

### ***Recommendations:***

1. The authorities both state and federal should monitor provider activity using agents. They are the front line in many of our markets and could provide valuable market intelligence on market conditions as well as providers that may be at risk.
2. ACPET should be resourced to take on a stronger role in developing reliable information resources for international students across the sector and in self regulatory measures.

### **How best to support students when colleges close**

The TAS and the ESOS Assurance Fund need to follow similar rules. Currently the ability of the ESOS Fund to refund fees makes the support of TAS problematic.

ACPET propositions three mitigation strategies:

1. In the past implementation of a Trust Fund was part of the regulation. This was administered at the institutional level. This proved hopelessly inadequate because the institutions heading for financial ruin called on their own monies before accessing the services of an administrator to manage the Fund and the closure. The Singaporean model has the government taking responsibility for the export monies and institutions draw down on the monies in management lots. FEE-HELP has the government controlling the draw-down of local student fees in the private Higher Education sector – could this be applied to the export market?
2. Give more control to the regulators to manage out failing institutions. In all recent cases of failure the regulators knew what was happening but had little power to intervene.
3. Currently information is only released for placing students at other institutions under the TAS scheme if the Administrator agrees. Government needs to work with the process of Administration to ensure that the information required to place students is speedily to hand.

The issue of closures could be mitigated were a revised and risk management system rigorously implemented. Risk factors such as the type of courses delivered (eg, if more than 25% MODL-based, this is high risk) and/or over-reliance on limited markets in the export marketing plan, then registration should be conditional upon financial guarantees.

The private sector has taken care of its own when a provider closes. With very few exceptions the private sector Tuition Assurance Scheme (TAS) has placed students with alternative providers at no financial disadvantage to the student to complete his or her course. The only exceptions to this are where the provider had taken in many more students than stated in their TAS declared CRICOS number of overseas students permitted by DEEWR. The blame must be partly laid at the feet of the state authorities that have seemed to be unaware of the operations of some providers. There have been cases where the private provider was not in a TAS and still the other providers rallied and took in the students.

The risk management and communication of the regulator is needed by the industry to make sure that any provider at risk or in major non-compliance is notified with the TAS responsible. This will lead to a more effective response to the college closing and ensuring the least stress to students being placed. Currently ACPET is being seen as the front person apologising for a regulator that has failed in spotting a non-compliant provider.

### ***Recommendations:***

Inform the TAS of risk assessed providers as soon as the information becomes available – this will be kept confidential and the provider can be approached with the view to either ‘soft land’ i.e. find alternative providers to place students with while the provider closes or even possible buy out of the provider. The current system of learning at the last possible minute does nothing for the students or the sector. As the TAS does the clean up, they should be kept informed.

Are the different mechanisms needed to support international students to resolve complaints effectively? Are additional complaint mechanisms needed?

The addition of an ombudsman office for the international student makes sense as a mechanism for student complaints. Generally student complaints are addressed by the provider or advocated by the education agent/parent and the National code stipulates that there should be a complaint process in place. This should remain as the first line as it is best to address complaints at the source but with an additional independent mechanism to allow students to lodge genuine grievances when they are not satisfactorily resolved by the provider.

### **Managing student complaints**

The HESA Act has a very strong complaint resolution process which could be extended to the ESOS.

The area of complaints is a culturally-laden one, with many source nationalities averse to making complaints. Further, whilst Australia has a very robust consumer protection system, students are naturally vulnerable (language, alone, culturally isolated?) and may bring with them a fear that they will be judged harshly / punished should they complain.

The National Code should specify detailed guidelines relating to the provider’s complaints and appeal policy and procedure. The National Code should expressly state what can and cannot be considered in internal review and external review.

The external review process should not be limited to reviewing policies and procedures, especially if the policies and procedures are unfair. It should include reviewing the merits of the student's complaint. If the review process is expanded, then the Government should allow for costs of a mediation or hearing.

Different complaints handling processes for different types of complaints, such as refund of fees, transfer/release letter issues, attendance/course progress. The National Code should specify the processes for handling different types of complaints.

### ***Recommendations:***

It is important to have transparency in the resolution of complaints procedures, the National Code should set it out clearly to avoid doubt.

There should be uniformity in accessing internal review and external review, such as the number of days allowed to access both review processes, currently it is unclear how many days students have to access external review, i.e. does the 20 working days apply to both internal and external review.

## Changing education providers

At the last ESOS review, the change of provider rule was changed from 12 months to 6 months. Whilst in theory this supports the right of students to choose a course most suited to them, it has opened up a raft of behaviours that may not necessarily support successful study. Below is a brief summary of these:

- Students are the most vulnerable in the first 3-6 months. Changing institutions may only extend the settling in period
- Students are the most vulnerable to external advice. Since the change in ruling from 12 to 6 months the number of local agents assisting students to change institution has increased. This has led to 'churn' and a ripe business in second commissions.

Prior to making any decision about the change of provider rules, the government needs to conduct an analysis on the motivating factors / contributing factors for changing providers. Analysis is necessary to inform policy/regulation changes.

The movement of students in genuine cases is not limited – DIAC will allow students to move without release letters when it is deemed in the best interest of the student. The 6-month rule is in place to limit the student’s ability to change from a high cost/level provider to a lower cost provider on arrival from overseas.

The situation is generally the higher level providers will spend time and budget promoting Australia and their institution overseas and the lower cost providers are reliant on locally recruited international students. This leaves the higher level providers vulnerable to education agents and providers re-recruiting existing students with kickbacks of commissions and lower fees.

One option is for the 12-month rule to be reinstated, with students able to change on an exception basis.

Release requests should be eliminated with student to be required to go back to home country to reapply for a new student visa. A lot of the time, the release process is being used by people smugglers with low priced courses to avoid stringent financial capacity requirements

### ***Recommendations:***

The solution is to return to the twelve-month rule and let the ombudsman or state regulatory authority decide if the student has been misled by the provider/agent. It is the experience of most in the industry is that students know exactly what they are getting and paying for but will use the excuse of ‘bad agent advice ‘or misleading by the provider in order to change to lower cost institutions.

## **5b Quality as the cornerstone**

Accreditation processes attempt to create homogenous training packages with standardised qualifications, yet it was suggested that not all colleges can or do deliver a training package to the same standard.

Our industry has no mechanism for grading or benchmarking education quality that is recognised externally.

To achieve that consistency and establish ways of benchmarking, we would need to first reach a collective agreement on what we regard as high quality education, and then be collaborative in sharing our assessment procedures to validate the delivery of any provider.

Institutions which are narrow in their source market for students are causing not only educational problems, but are undermining the social and cultural integration practices that we champion as a key strength of our industry.

ACPET supports the principle that institutions teaching international students need to have a fundamental base in education and is also focused on strengthening the social support mechanisms for students and providers.

A good quality private institution will offer a certain level of pastoral care and social support for students – this should become part of the way we measure and understand quality.

Quality should be a holistic measurement, and while all providers will champion their own performance, we need to first agree on what constitutes quality, and then performance against that needs to be judged independently. At present, nobody is doing that.

At the same time as acknowledging the need for social support and pastoral care services, we need to also acknowledge that in our industry, we deal with a very diverse, mobile and motivated group of adults, who make informed decisions of their own account. A one-size-fits-all approach has not and will not work.

Improving intersection of ESOS and education quality assurance (AQTF):

The current multi-layered and duplicative system needs streamlining. Agree with the establishment of a TEQSA body for both private and public Higher Education. Consideration needs to be given of the place AUQA has in relation to TEQSA.

Quality assurance frameworks need to have cross-sectoral consistency which is absent at the moment (input vs outcome models)

The ESOS act is a unique piece of legislation and one of the 'best practice' models worldwide in taking care of international students. The 2005 review and update of the National Code is a model for other countries and is being copied. The breakdown has occurred in the implementation and enforcing of this code by the state authorities that have jurisdiction over international education. A case of gross under funding by state authorities has led to a majority of time and resources being spent on initial accreditation and reaccreditation processes and virtually no work on policing of the industry until either it was too late or until the media put on pressure in recent times.

### ***Recommendations:***

The improvement can be done as an industry approach rather than a further layer of regulation (that did not work in the past). We would suggest as a model:

1. Initial accreditation/reaccreditation by the authority along the current lines of the National Code 2007.
2. An annual self assessment by the RTO submitted to the Tuition Assurance Scheme (TAS)
3. An annual assessment by the Tuition Assurance Scheme (TAS) or in the case of TAS exempted institutions, an annual inspection by the accreditation authority at a cost recovery price.
4. Report to the accreditation authority about any concerns.
5. Follow up by the state/federal authority.

There should be an ability to celebrate best practice by recognition (Excellence Model) by RTO's public and private that exceed the code

### **Difference between the needs of international and domestic students**

Ideally there should be no difference between other 'transitional' groups of students. However, because of the size and importance of the export education industry and the potential for reputational damage to such an industry, consumer protection is required.

The Government focus should be on the areas where less than desired levels of satisfaction are identified. International students have different characteristics: level of cultural knowledge, language proficiency and independent living ... and at a relatively young age. Any regulation needs to support those three areas.

The international students' needs are catered for by the National Code 2007 – again it is in the spirit and application of the code that needs to be taken up by the RTO. Compassion cannot be regulated to students needs but it can be celebrated through awards and rating of RTO's that show excellence.

Overseas students generally have positive experiences in Australia. Occasionally there will be a need of access to counselling and help at different times as they do not have the family and friend support networks. I suggest some centres in the major student areas that have access to health and counselling for overseas students. Many small providers can not afford stand alone facilities but would benefit from shared facilities funded by the state government.

### ***Recommendations***

No further regulation can really be implemented effectively on the different needs of international and domestic students other than perhaps an additional levy to be collected by the OSHC (Overseas Student Health Cover) providers for funding a counselling/health information/legal aid office for international students in each of the capital cities and promoted by providers and government.

## **5c Regulation**

Inconsistencies in regulatory implementation, and the ways in which Government is applying its own rules, is the critical issue in this debate and the cause célèbre that has brought us to this point. As an industry, confidence in the Government's ability to enforce its own regulatory regime has been eroded.

In order to regain that confidence, some options might include:

1. Adopting a national system of regulation;
2. Strengthening our self-regulatory practices; and/or,

3. Introducing a means of 'regulating the regulators' and holding them accountable for enforcing their own rules.

## Adequacy of compliance and enforcement

The ESOS Act and the supporting Code of Practice are robust documents describing comprehensive consumer protection systems. The system falls down not in its intent; rather in its enforcement through the multi-layered registration and regulation system.

The ESOS compliance as espoused through the National Code 2007 is adequate and already a massive burden on industry. While it is a positive thing to set these systems up it has led to a new industry of compliance consultants, software solutions, and new position of 'compliance manager' and human resource costs involved in ensuring that the RTO remains compliant. In some states the process is slow and extensive delays have exacerbated the problems of RTO's. Business can be sent broke and staff sacked while waiting for accreditation authorities to come for inspections and audits.

Compliance is already adequate, the problem is the enforcement. The current system of 5 years between checks has led to some of the current problems. Once the RTO has finished a successful accreditation they are generally left alone unless they ask for a change of scope or there is a complaint.

### ***Recommendations***

An industry/government compact to oversee the industry would be the best solution. The majority of providers do the right thing and often exceed the public sector in delivery. Element of such a compact would include:

1. Initial accreditation/reaccreditation by the authority along the current National Code 2007.
2. An annual self assessment by the RTO submitted to the Tuition Assurance Scheme (TAS)
3. An annual inspection by the Tuition Assurance Scheme (TAS) or in the case of TAS exempted institutions, an annual inspection by the accreditation authority at a cost recovery price.

4. Report to the accreditation authority about any concerns. Follow up by the state/federal authority.
5. Ability to celebrate best practice by recognition of RTOs that exceed the code through an excellence model

Addressing risk better through strengthening registration requirements and better targeting of compliance and enforcement.

Registration is the key to a quality system. State/Territory registration authorities need to work with industry associations (TDA, ACPET) to ensure that the membership of such associations/organisations reflects a strong risk management approach. Membership of ACPET, for example, is necessary to gain a registered status. If the risk criteria between registering authorities and associations is harmonious the likelihood of registering and accrediting sub-standard organisations is mitigated. Risk management at the registration stage is vital for a quality assured sector.

There is no need to strengthen the already burdensome registration requirements. It is all in the follow up and on-going checking of the RTO operations.

### ***Recommendations:***

This can be broken down further by using risk assessment:

1. History of RTO – years of operation
2. Change of ownership
3. Owners – mainly education or mix of business.
4. Course mix (targeted to migration outcomes)
5. Student nationality mix (concentration of single nationality, good mix of nationalities – both able to checked via PRISMS,)
6. Previous non-compliances

### **Balance between inputs and prescription vs outcomes**

Australia has a multi-layered and mixed system of quality assurance, largely based on legacy issues. Suggest the review of standards supporting the ELICOS sector be used as a model for any review of input versus outcome. The ELICOS sector uses input almost exclusively at

the registration phase and outputs to measure institutions against standards at the accreditation phase.

An output model, such as AUQA or the proposed role of TEQSA, and the risk rating of institutions from 'light touch' to 'black letter' application of the criteria for accreditation and re-accreditation is preferred one as it has a focus on continual improvement.

The current National Code 2007 is supposed to be an evidence based outcomes assessed system. Experience with the accreditation process over 10 years attests that nothing has changed despite the reforms. The process is based on checking the contents of the filing cabinet and that it is in order according to the code.

### ***Recommendations:***

ESOS to better articulate support to Australia's student visa program

As the main vehicle for consumer protection, ESOS needs a higher prominence. The proposition is to develop a communication strategy to promote ESOS, which is well-regarded as the most advanced consumer protection Act in the world.

The ESOS Act was the basis of the education export market. ESOS gives direction to providers public and private and the National code gives direction on how to take care of international students and on the systems needed in running an institution. The increase in resources of the state sectors overseeing the running of institutions taking international students will better support the visa program as institutions will be more careful in their selection of students and education agents.

Australia has embraced the international education market better than any other country in the world and there is no better country able to absorb a multi-cultural group represented by international students. Australia is already described as a 'land of migrants' and the students are able to settle in Australia finding their country's foods, community newspapers and usually support networks in the major cities.

The student visa system in Australia is excellent and should remain the transparent and straightforward system that it is now. The country assessment levels are being copied by competitors such as the UK and are good levers to assure-genuine students, provided that implementation does not place the burden of evidence and proof upon the student unfairly but uses good practices including clear statements of responsibility and about pathways.

***Recommendations:***

A closer dialogue with between DEEWR/TRA and DIAC on the influences of migration on the student visa system.

Acknowledge the link between education and migration has always been so and that with certain markets it will be a stronger influence.

Track providers (via PRISMS both public and private) that have large numbers of students doing migration related courses

Ensure that Student visa approval processes are efficient, suitable to purpose, match the client group characteristics and share the burden of proof between the student and the international post.

## 5d Sustainability

There is value in establishing appropriate barriers to entry for new providers to ensure that new providers are held to the standard the community and regulators expect from the outset.

Lack of front-end compliance from the VRQA has allowed problems to develop from the outset: colleges being started with no capital, narrow scope, and inappropriate compliance mechanisms etc.

Schedule 5 visa criteria based on 'genuine-ness' is being applied with bias towards 'education' genuine-ness, while the Act still states in law that it is legal to study for migration purposes – the suggestion is that DIAC officials are responding to rhetoric rather than legal change.

Government has been outspoken in acknowledging the significance of education as a key export industry for Australia, but their actions on visa rejections and population rhetoric do not reflect this and are sending confused messages to the market , students and institutions.

Agents are increasingly viewing Australia as ‘too difficult’ and we are losing business in an increasingly competitive international marketplace.

ACPET continues to advocate self-regulation to demonstrate that we as an industry are responding to the regulatory challenge and will go some of the way towards ‘cleaning up’ our own industry.

We need to have a strong and unified story about the social and workplace contribution of international students, to counter the arguments of those who undervalue our contribution.

Industry sustainability is also reliant on diversity and nimbleness. We need to be able to react to changes in the market and satisfy new and changing demand.

### 5d(i) ESOS better support for sustainability

As a general principle, avoidance of ‘black letter’ application of ESOS rules which have a domino effect on the student’s visa status, is preferred. Examples given in the issues paper on academic progress and attendance are excellent. In the last iteration of the ESOS Act the removal of mandatory reporting of attendance is a positive. There is an immediate and critical risk in the increasing and seemingly arbitrary rejection of student visas, which is damaging many high quality institutions.

Core to the application of the ESOS Act is the ability of the institutions to make academic decisions in the best interest of the student without, thereby, removing the right to educate from the institution. Education decision-making is the ‘stock-in-trade’ of the institution. The potential for a rigid application of ESOS to the detriment of the student (eg, a student who is suffering psychological distress not allowed to take a lower load) is the danger posed by a ‘black letter’ application of ESOS.

Links between the student visa program and the migration program: Training students for Australia's sustainable workforce development makes perfect sense. Perhaps the MODL needs reviewing, but certainly not the principles that support it.

Contemporary evidence suggests the future of education export still looks good, despite a worldwide trend of a 20% reduction in international movement and a collapse of the market from the sub continent. The demand for education and the supply is still imbalanced in places like India and China. While there is a huge capacity increase in these countries there are other drivers for students to go abroad and learn new cultures and gather networks of peers and alumni for future business and research.

We should not entertain suggestions to de-couple the link between migration and education altogether, because in doing so we would cripple a maturing industry that with some changes could help our country to meet critical domestic skills shortages in agriculture, aged care, child care, building & construction, traditional trades and many other industries.

### ***Recommendations:***

ESOS having just recently been through a review in 2005 is still a relevant document for today's international education market. The sustainability of the market is to encourage excellence rather than layer on regulation and stifle the agility of Australian providers which could include:

- National training awards for international education excellence – Queensland has already started this.
- An Excellence Model or other system for providers that go beyond the minimums of the national code, e.g. voluntary submission to a standards association.
- Specialist higher education and VET training for administrators involved in education export
- Specialist training for trainers involved in delivery to international students for all sectors – e.g. extra modules on the current Training and Assessment (TAA) courses

- Acknowledgement of the importance of international students – e.g. welcome days and special events sponsored by the states
- Assistance in delivery of courses overseas by Australian providers