

**Submission template**

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The template reflects the terms of reference for the review and the issues identified in the issues paper. Please refer to the issues paper and terms of reference for more information.

A field for general comments has been included below for you to raise additional issues.

*Written submissions are to be received by 30 October 2009 and sent by email to: [esosreview@deewr.gov.au](mailto:esosreview@deewr.gov.au).*

About you: Former Solicitor with many years of legal experience. Now Director and Co-Principal of an ELICOS school.

**Institution / organisation**

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Sector: ELICOS

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**Student / individual**

Name:

Institution / organisation:

Course / role:

Home Country:

Contact details:

## Supporting the interests of students

i. How can the quality and accessibility of reliable information be improved? What role can ESOS have in ensuring providers and their agents are held to account for supplying prospective and current international students with accurate and timely information?

### Comments

The best support which can be given to international students is to be totally honest with them as to:

- what they can be expected to achieve given their entry qualifications and language skills
- what study options are available to them
- what work options are available to them
- what accommodation options are available to them
- what recognition can be obtained for qualifications they may gain in Australia
- what counselling, guidance and mentoring services are available to them
- exactly how much it will cost for them to study effectively in Australia without placing themselves under financial stress

In other words, these students need to be fully informed. This information should not be from individual providers, as the content and intent may vary considerably between providers. It should also not be from agents, as unfortunately quite often they will refer students to those providers which offer the best commissions and/or discounts. In other words, their priority is commercial gain, rather than student welfare. It should be from the Federal Government in the form of a standard template which all intending international students must receive, and which all international students must acknowledge receipt of through written confirmation.

### Recommendation/s

The Federal Government should develop a standardised orientation handbook which all intending international students must receive prior to enrolment, and which all international students must acknowledge receipt of and an understanding of through written confirmation. This handbook will provide full details on visa obligations, study options, qualification recognition, counselling services, actual cost-of-living, and all other matters relevant to studying and living in Australia. As most of these students will not have English as a first language, there should be a summary of all the main points in their own language.

ii. How should the Australian Government and the international education sector protect international students if a provider closes? How should this be resourced?

### Comments

This is an enormously complicated problem, made more difficult by the fact that education has become a for-profit industry. On the one hand we can say, let the students fall where they lie. This is clearly an unacceptable solution, however it is tempting, because in many cases (Brazil is a case in point) the students deliberately

choose a provider which offers huge discounts on tuition fees. The students can hardly complain if the provider collapses due to financial issues such as poor cash flow. The real solution to this problem lies in limiting the chances of it happening in the first place.

There will always be cases where providers will close due to financial difficulties or breach of regulatory provisions. In such cases, Governments will have no choice but to assist those students affected through some form of assurance scheme. This scheme should be Government operated. I do not think that the scheme should be operated by the private sector, as the fee structure does not sit well with a scheme which should be almost pro bono.

I also think that there is over reliance by the Government on industry to collect insurance premiums for tuition assurance. The present legislation requires that a provider become a member of an industry body through which the Tuition Assurance is paid.

This is inappropriate, as it obliges a provider to not only pay the assurance premium, but to also pay an industry body membership fee which costs more than the premium. Many providers may not even wish to be members of an industry body, but are of course quite happy to pay the assurance premium. Unfortunately I believe that some industry bodies are too focused on the political nature of their role, rather than on servicing their members and looking after the interests of students.

#### Recommendation/s

To limit the chances of a provider closing due to financial problems or regulatory breaches:

- carry out spot audits, in much the same way spot audits of legal firms are carried out
- include checks on financial viability as part of the audit regime
- require all providers to maintain trust accounts for tuition fees received from student visa students, with draw downs made on a weekly basis as the student completes their course (our college still operates this way - it ensures a form of cash flow, and protects the students money which is imbued with a trust)

With the Tuition Assurance Scheme, this should either be operated directly by the Government through a not-for-profit Fund managed by non-commercial fund managers.

Providers who do not wish to become members of an industry body should have the option to pay their tuition assurance premium either directly to the Fund manager, or to an industry body without the requirement to become a member of that body and to consequently pay the membership fees.

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

#### Comments

It depends upon the type of complaint. Every provider has or should have its own complaints mechanism, which should be exhausted first before the complaint is referred for arbitration or some other agreed complaint resolution mechanism. This may relate to matters such as disputed assessment. However, the option should still be open to the student to access an independent arbiter, such as a commonwealth

ombudsman. The fact that such a point of appeal is available will reassure international students, and defuse the source of many complaints. This is another important issue which should be included in the initial Federal Government issued orientation handbook which I referred to above

#### Recommendation/s

Appoint a Commonwealth International Education Ombudsman, with sufficiently wide powers to investigate and resolve disputes at all levels of education and with all providers who are CRICOS registered to deliver courses to international students.

iv. Should an international student's ability to change their education provider be limited, if so in what way?

#### Comments

Many international students decide upon their choice of provider, whether it be a university, vocational college, ELICOS provider or school, on the basis of recommendations made by their agent. Indeed, in many countries the majority of students make their decisions on such a basis. It is only when the students arrive in Australia that they find that the institution recommended by their agent may be totally unsuited to their needs, or is completely different to their expectations. To condemn students to spend months or years of their lives to undertaking study at a place they do not wish to be is not only unfair, it allows such institutions to profit from a misrepresentation.

On the other hand, I have heard of agents who for example enrol a student at Year 10 in a certain high school, receive 10% commission from that school, then take the student out and enrol them for year 11 in another school, receive a further 10% commission, and then repeat the exercise for year 12. This may be an extreme example, but it shows the extent to which some agents will go to achieve a commission. In such cases it is not the student who wishes to leave the provider, but the agent who can see a financial gain to be made by withdrawing the student and enrolling them elsewhere.

#### Recommendation/s

International students should be able to change their provider in certain limited circumstances, such as where they can show misrepresentation as to what course they were to receive, or other substantial representations relating to their enrolment were wrong or fraudulent or substantially misleading, or there has been a major change in their personal circumstances requiring the need to change providers. However, if they wish to change simply because their boyfriend has moved to another provider or to another city and they wish to join him, or for some other reason which does not directly relate to the quality of the tuition they are receiving or to representations made to induce them enrol at that particular provider, then I do not believe that they should be allowed to change their provider without penalty, such as forfeiture of fees.

### **Delivering quality as the cornerstone of Australian education**

v. How can the intersection between ESOS and the underpinning education quality assurance frameworks be improved?

#### Comments

The education quality assurance frameworks sometimes seem to me to operate in some sort of vacuum, which bears little relation to the realities of international education. As I have said elsewhere, there seems to be a victory of form over substance. What possible worth a set of quality framework guidelines will have if they are not enforced and applied in good faith by providers is beyond me. I attended a recent audit workshop in Brisbane, and a senior auditor in the VET sector said she was terribly disappointed that after all their efforts over the past couple of years to ensure an awareness on the part of providers of their obligations under the quality framework, the same critical non-performances were still appearing, and in increasing numbers.

ESOS needs to be able to pass on its knowledge of problems confronting the industry at the coal face, as it were. If problems of non-compliance are ever-present and increasing, there needs to be a genuine attempt to understand why, instead of simply putting it down to "a few shonky operators".

#### Recommendation/s

Establish a forum where experiences and views can be exchanged between ESOS and the AQTF on a continuing basis. Industry should be involved. This must be part of the continuous improvement espoused by the AQTF.

vi. Where do international students' needs differ to other students, such that additional or different regulation is required?

#### Comments

International students may be unaware of their rights and obligations under Australian law. A briefing on the most relevant laws and regulations affecting them could be included in the orientation leaflet I have referred to above, which they should receive at the time of applying for a student visa.

Whilst there should be an awareness and understanding of differing cultural aspects of certain nationalities amongst international students, I think it is unwise to overcompensate. For example, we advise those Islamic students who attend our school the address of a local mosque, but we do not provide a prayer room. All students are advised of their obligations and rights under Australian law. I know that most universities and many providers do offer prayer room facilities. In my honest opinion this is not in many cases for the purpose of showing an appreciation of another culture, but simply to meet the requirements of the referring education agent or Government. In other words, the providers are afraid that if they do not meet these requirements they will lose the enrolments of the full-fee paying students.

#### Recommendation/s

So, overall I do not think that Australia should legislate to draw distinctions between

local and international students. In basic matters such as transport, international students should be entitled to discounts the same as their Australian counterparts. Not to do so would be to discriminate. International students needs are the same as Australian student needs - quality providers delivering registered courses without favour, adequate funding to ensure reasonable accommodation is available, and access to workplace equity.

### **Effective regulation**

vii. Is ESOS compliance and enforcement adequate?

#### Comments

The role of the Federal Government is to preserve and protect the integrity of the Australian education system.

- It should act impartially to ensure that all students receive the best possible education from trained teachers.
- It should fearlessly defend those teachers who speak out against inequities in the system, and who seek to warn against quality breaches and failures.
- It should ensure that all students are treated with honesty and fairness.
- It should enforce the legislative requirements objectively and vigorously

Unfortunately there are areas in which the Federal Government, either through accident or design, is failing in its responsibilities. There will be times when choices will have to be made between the integrity of the system, and the financial benefit of education providers at all levels. The decision should always fall on the side of the integrity of the system. Otherwise, in the long run the quality of the Australian education system will suffer. To achieve this, the Federal Government should have access to advice from all levels of the education delivery, and by this I do not mean just industry bodies or university groupings, which may have entrenched ideologies, and whose interests may lie in protecting their members' interests or the status quo. Thus education agents, schools, and providers from all sectors should be represented at an advisory level.

The Federal Government should have its own people who freely investigate how the system works, what are the motivating factors of students coming to Australia, what rorts are in vogue amongst education agents, what are the emerging trends, where the likely areas of abuse of the system will appear, and so on. This is to ensure that issues do not escalate to a scale such as we are now observing.

The quality of providers is of course paramount. Unfortunately over the past decade or so this requirement has been allowed to slip. Supervision of standards has fallen victim to form over substance. The hard work of checking providers, carrying out spot audits, ensuring financial viability, has not been done. Education has become an industry, an earner of foreign exchange, a fallback for underfunded public institutions, an irresistible attraction for unscrupulous education agents and providers, an opportunity for State Governments to supplement their income, and has ceased to be what it should be.

The situation is not irretrievable. It is not so much the content of courses which is lacking in quality. Rather it is the maintenance of standards which has fallen by the way. For example:

- students are allowed entry to programs (by both public and private providers) without having the necessary levels of English language ability. "Direct entry programs", "pathways" between institutions, and other such marketing methods of recruiting students have been over-used, (and that is what they are, simply student recruitment mechanisms) and have resulted in a systematic over-looking of the English competency standards which should be prerequisites to institute and course entry.

The competition for full fee paying international students amongst our universities is very high. Carrots used to entice these students include "scholarships", which in some cases are in fact discounts offered to education agents to encourage them to refer their students to certain universities. In some cases universities are so keen to receive full fee paying students that they will sacrifice the need to for adequate English skills. I can personally attest to this as the owner of an accredited ELICOS school for over 16 years. We have seen our own student poached by universities who offer 10 week "direct entry" courses, guaranteeing entry to a Degree program after the ten weeks, when we know as the student's teacher that their English is nowhere near adequate to enable them to handle the rigours of university study. The standard of Australian universities is widely discussed amongst education agents, who have their own blacklist of universities to which they will only refer their worst students who would not gain entry to any other institution. In some cases the agent will not even refer their worst student, so bad is the reputation of the university.

It is common knowledge amongst agents in some countries that if a student fails to gain entry into a university in their own country, there is no need to worry as they can always come to Australia, complete a Foundation Year, and gain automatic entry to the second year of a degree program.

University lecturers who identify corrupt practices (and I am aware of at least two who have resigned from universities because they were not prepared to continue passing students who did not warrant passing) should be protected and encouraged to voice their concerns without fear of retribution.

#### Recommendation/s

– introduce objective universal standards of English language competency which all students must meet before being eligible to commence studies at tertiary institutions. These could be in the form of accepted international English language tests.

– do not lower the pass standards for university subjects. If no student meets the minimum standard required to pass a subject, then they should all fail. We are not doing ourselves or the students any favours by introducing a lowest common denominator approach. The attitude of many Asian students is that because they pay so much for a degree, they should therefore automatically pass. This misunderstanding should be cleared up as part of their student visa application process.

- introduce whistle blower regulations to protect higher education lecturers who are aware of shonky practices such as passing students who would otherwise fail, simply because they are full-fee paying students whom the university or college do not wish to offend, or worse still, whose agent they do not wish to offend.

viii. Can risk be better addressed through strengthening registration requirements and/or better targeting of compliance and enforcement action? How else can risk be managed?

#### Comments

Strengthening registration requirements is fine, provided that the regulations are policed and enforced.

Risk arises because there is money to be made by unscrupulous agents and providers. However, the overall greater risk from my point of view is the risk to the quality of Australian education posed by the commercialisation of education. For example, with the IBT framework, whereby students can complete a Foundation Year and gain access to second year university. These are often students who did not qualify for direct entry to year 1 of a university undergraduate degree, and yet they are proceeding to Year 2. IBT is a publicly listed company. Its responsibilities by law lie first with its shareholders, not its clients the international students. This is just wrong.

Until education is returned to an even keel, where the rights and interests of the students are put first, then the Federal Government will continually be putting out fires, and reviewing the ESOS Act on an almost annual basis. Corrupt education agents, unscrupulous providers, commercially oriented businesses will always be looking for ways to profit from the market, whether it be through students keen to obtain permanent residency status, or changes to visa regulations, or pathways to higher learning which do not require independent tests etc. Rather than always being on the lookout for the next scam, the Federal Government should set the benchmarks and not resile from them.

Once the line is drawn in the sand, you will find that many non-genuine providers and agents will melt away, and seek some other industry from which to profit.

#### Recommendation/s

- stronger policing and enforcement of regulations is required
- non-negotiable standards and benchmarks for international education should be introduced. This of course goes far beyond the scope of this review, but because of the vital importance to the future credibility of Australian education, I think that out of this review should come a Federal independent bi-partisan committee to look closely at the path Australia has taken in international education. Reputable off-shore education agents should be involved in this process, so that an honest warts-and -all assessment can be obtained.

ix. What should be the balance between a focus on inputs and prescription versus outcomes?

#### Comments

At present, like so many things in the Australian education system, there is a triumph of form over substance. This is very much so in the vocational sector, where excellence in study outcomes is generalised under "competency", and opportunities to rise above the lowest common denominator effect are few.

Whilst this approach is fine to raise the general standards of training in Australia, it makes too little allowance for excellence, whereby Australia can distinguish itself from its competitors.

The outcome should be higher standards of education content and delivery across all sectors, and higher student satisfaction

Thus, inputs and prescriptions should start from this standpoint - every input and prescription should be judged against these benchmarks - will they result in improved outcomes for students, teachers, and the quality of the delivery of education.

If they do not, then they should be discarded as superfluous.

#### Recommendation/s

Thus, inputs and prescriptions should start from this standpoint - every input and prescription should be judged against these benchmarks - will they result in improved outcomes for students, teachers, and the quality of the delivery of education.

x. How can ESOS better support Australia's student visa program?

#### Comments

ESOS should be given greater powers to ensure that the interests of international students, and of the providers who "does the right thing" are protected.

There should be a closer liaison between ESOS and Immigration to ensure that ESOS stays on top of unscrupulous practices of providers and agents. At the same time, Immigration should be held to account for a closer scrutiny of the correct application of visa classes. Comparing notes on a regular basis would be the best way to nip some problems in the bud.

At the end of 2008 the Immigration Department introduced a new visa, the 570 sub class, intended for students who wished to apply for stand-alone ELICOS visas. In other words, for those students who wished only to improve their English skills, and not undertake further studies at secondary or tertiary levels. My belief is that the main market this was intended for was China. The reason for its introduction was to placate private ELICOS colleges such as ours, which did not receive any students at all from China. As our college maintains an independent stand, and has by choice no formal pathways with schools or universities, pursuant to existing Immigration policy we are unable to sponsor Chinese students for stand alone courses. Naturally we were excited by the introduction of the 570 visa. However, it now appears that the Immigration Department had no intention of Chinese students to come to Australia purely to study English, regardless of the quality of the ELICOS college or of the agent involved. The rejection rate is at least 70%. Thus even good agents are reluctant to represent students applying for this visa, as a rejection on their record could affect other applications they make.

To save providers such as ourselves spending money on promoting our courses when in fact the student has little or no hope of getting a visa, the Immigration Department should be required to describe at the outset what their intentions are in

relation to new visa sub-classes. ESOS can play a vital role here.

#### Recommendation/s

- Immigration authorities have allowed a greying of the demarcations between various visa classes. For example, some secondary schools sponsor students on secondary schools visas, but the students do not have adequate English skills and are therefore placed in English language classes at the schools. Thus firstly these students should be on ELICOS visas, and secondly the schools in question may not be accredited to deliver ELICOS courses. ESOS should have a greater input into the development of student visa categories and their implementation
- Work restrictions on student visas are very difficult to police and enforce, and are therefore not strictly applied. One way to overcome this would be to firstly ensure the bona fides of students by a more rigorous screening process during the application procedure. Another would be to more strictly pursue employers to ensure they comply with requirements and more closely identify the bona fides of their workers.

#### **Sustainability of the international education sector**

xi. What role should ESOS have in supporting the ongoing sustainability of the international education sector given the challenges it faces into the future?

#### Comments

ESOS at the moment applies only to providers who sponsor students coming to Australia on student visas. There is absolutely no regulation, whether by NEAS or under the ESOS regulations, of persons or companies who only offer short term courses which can be undertaken on a tourist visa, apart perhaps from local Council zoning laws.

Thus, a disreputable agent can bring in 20 or 30 students on tourist visas, house them altogether in a house or large apartment, deliver unregistered courses through unqualified teachers, have no insurance, pay no registration fees, and thereby bring the Australian education system into disrepute.

Education "agents" reign unchecked across the world of learning. They answer to no-one, can bring down a provider by the simple click of their fingers, charge unconscionable commissions (up to 50% of tuition fees and more in some cases), and disappear if there is a problem. There is no doubt that education agents must be regulated.

It is not sufficient to require education agents to be noted on providers websites. This achieves very little. If an agent contacts a provider and offers to enrol a student, very few providers would reject that student, even though the agent is not enrolled as one of their agents. In effect, education agents do not represent just one institution. They may have many hundreds of institutions on their website. How can they possibly represent the interests of any one provider over another. Most of them only represent their own interests, and the provider who pays the highest commission and offers the lowest discount will often get most of their business. I have actually recently asked an agent to remove our college from their website, because even though they send us students, they do not list us as amongst their preferred providers on that website. When I asked why, it was because we did not pay high enough commissions. The agent was primarily motivated by commercial return, not

by students' interests.

Agents' commissions are very important in the overall scheme of the international education sector. For example, we do not have any students from South America at our college. This is because for example the Brazil market is controlled by a few very strong agents, who decide what student goes to what institutions, how much commission is paid, and what discount is offered. I am aware of one university which maintains that they do not discount or pay high commissions, but which pays 20% commission and then offer a 25% "scholarship" to the Brazilian student, which is in effect a discount.

Although this is a difficult area to police, I think that if a floor was set under commissions and discounts, then international students would have a more level playing field from which to select their preferred provider. Perhaps requiring the agent to declare how much commission they receive would be a start. After all, in Australia secret commissions are illegal.

To put education agents on some form of retainer instead of paying them commissions would be unworkable. Just visit the website of any university and see how long the list of their advertised agents is!

The international education sector can only be sustained in the long term in Australia through credibility in the student placement process. ESOS has a vital role to play, and that role should be extended into the areas where most of the issues arise. One such area is that concerning education agents.

Recommendation/s

- The scope of the ESOS Act should be expanded to include all providers of education, whether students are on tourist or student visas.
- Education agents (ie. those who refer students to providers) should be registered.
- Education agents should be made to declare to the student how much commission they are receiving from the provider.

## **General Comments**

Good luck with the review. I am probably old-fashioned in my thinking, but when I see universities offering certificate qualifications, and TAFE colleges providing degrees, and ELICOS colleges becoming university campuses, and high schools delivering vocational courses, and universities offering foundation programs on campus for high school students etc. etc. and all this without going into the issues raised by distance education, I can see the potential for enormous confusion and watering down of quality education. Once standards become blurred, the end-user does not know the quality of the provider delivering the course, and international students seeking the best quality of education will go elsewhere. Australia is already becoming known in some circles as a learning destination of last resort, and we must turn this perception around.

A review of source countries for international students will reveal some alarming trends over the past 10 years or so. Australia providers now rely for almost 50% of international student enrolments from just 2 countries - India and China. I suspect

that the Indian market will slow as the permanent residency carrot is withdrawn, and so too the China market, especially so as its own tertiary institutions expand. The strong traditional markets of Japan, Korea, Singapore, Hong Kong etc., have been trending down for years. The new markets of Brazil on which many pin their hopes, are discount markets. Non-native English speaking markets such as Germany and China will erode our dominance of the market as they are offering university courses in English. This is a dangerous scenario. Only a strict regimen of adherence to quality at all stages of the education cycle will provide longevity for Australian education. This will mean a reduction in the number of tertiary providers, the establishment of centres of excellence within universities, the removal of duplication of certain courses and faculties, a strict adherence to excellence in teaching and research which will mean setting standards which will not be compromised under any circumstances, and so on.

I have been in overseas Australian Government offices and have seen 4 representatives from 4 different faculties of the same university marketing their courses. None of the representatives knew that the others was there that day. The waste of resources is mind boggling. The whole issue of the international marketing of Australian education should be policed more stringently. Public providers should be more accountable for their spending of tax payers' money.

Thank you.