

Submission template

Please note that the Department usually publishes and reserves the right to publish any written submission received and the names of persons making written submissions in the course of this consultation process.

If you consider that information in your submission should be treated as confidential, or if you wish to remain anonymous please clearly indicate this in your submission or in a cover note and provide reasons for your request.

The Australian Government reserves the right to accept or refuse a request to treat information as confidential and will use the criteria set out in the Department of Finance and Deregulation's Financial Management Guidance No. 3 on confidentiality in procurement, July 2007, as a guide when determining whether to accept a claim for confidentiality. Information relating to individuals will be protected under the *Privacy Act 1988*. Requests for access to such information will be dealt with under the provisions of the *Freedom of Information Act 1982*.

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.

About you:

Institution / organisation

Name:

The Australian National University

Sector:

Higher Education

Prepared by:

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

Contact details:

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

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 existing standards within The National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007 (The National Code) on ensuring marketing and information practices are apposite and robust.

The concern is that there are providers not following these standards. The ANU believes that the Tertiary Education Quality and Standards Agency (TEQSA) should have a specified role to monitor adherence to these standards more closely as should the State and Territory Registration Authorities - and the necessary teeth to enforce that adherence.

There is always, of course, an issue with the extraterritorial application of Australia-based requirements and standards and the relationship between an institution and its agent and representative can never be continually monitored. An attempt by Australian authorities to enforce Australian requirements overseas can sometimes result in unforeseen and unfortunate consequences: for example, tighter visa controls in Korea in (circa) 1990 and a perception of preferential treatment accorded IDP-sourced students led to a Korean agents boycott, the damage from which took several years to overcome.

Recommendation/s

There could be a publication requirement for information for all Providers. This would be similar to the Higher Education Support Act (HESA) publication requirements for schedules of student contribution amounts and tuition fees. A provider could submit web URLs on an annual basis which demonstrate the information they are providing to students, which could then be monitored by the appropriate body.

Providers who are already providing the information should not have any concerns with this additional requirement.

TEQSA/DEEWR could assist providers by designing best practice templates.

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

Comments

The first and simplest protection is to implement a tighter accreditation process, particularly in the private education sector, to ensure provider stability in the first instance. Appropriate due-diligence measures must be built into the accreditation process and the tuition assurance fund beefed up.

There is a serious issue in that it would appear that many private providers are

operating on the basis of business plans that are too heavily reliant on one or two specialities tightly linked to migration criteria and thus highly vulnerable to demand fluctuations. Transferring students from failed institutions in such categories will be almost impossible as there will be issues with eligibility, language and educational qualifications as well as credit transfer. In the final analysis, the only recourse will be to tuition refunds, living expense compensation and sympathetic repatriation.

This will be expensive - hence the reference to the tuition assurance fund - but established providers will not take kindly to a suggestion that they subsidise the risk posed by ill-regulated private providers by an increase in charges.

It is unlikely - but possibly conceivable - that a publicly-funded institution (or RTO or English language/pathway provider associated with a publicly-funded institution) would close but regular assessments of an institution's financial risk-management should be a specific agenda item for TEQSA.

Recommendation/s

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

Comments

The current Complaints and Appeals mechanisms within the National Code are not working optimally. There are issues with timeliness due to the "20 working days" in which providers have to wait for an appeal to be lodged, and that providers can not progress on any final action until an external appeal is complete. This can take up to 6 months or a year to complete, especially if the student has outstanding results or supplementary/special examinations or an appeal is lodged with the relevant Ombudsman's Office or the AAT on procedural grounds.

The issue with this is that students have often accumulated considerable financial liabilities - particularly if they "lawyer-up" as is increasingly the case even where institutions provide appropriate legal assistance - and additional expenses in living and other expenses.

Domestic and International students should have identical Complaints and Appeals processes particularly as they relate to academic and progression decisions; external appeals mechanisms will generally not consider academic decisions but restrict enquiries to questions of procedure.

Questions of academic progress - which form the majority of appeals from international students in the higher education sector - should be resolved quickly if the student is to maintain effective enrolment. For example, the current 20-working day notice provisions of Standard 13 can severely disadvantage international students particularly in end-of-semester or end-of-year examinations and it is simply not feasible - and certainly inequitable - to run separate academic progress boards for international and domestic students. The notice time could usefully be halved without any disadvantage to students.

Recommendation/s

That the "20 working days" requirement in Standard 13 of The National Code be amended to "10 working days".

There should be a provision within PRISMS for providers to indicate that there is an external appeal in progress so that DIAC can accommodate for this within their Visa monitoring processes.

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

Comments

The ANU does not believe there is any benefit in keeping a student who wishes to be elsewhere. All students who have applied to transfer to another provider before completing six months at ANU have had valid reasons for wishing to leave and the University does not wish to stand in their way. We suggest that a similar stance would be taken by most, if not all, of the Higher Education sector.

Students are considerably better informed and more discriminatory in their selection of institutions and the original concerns over "poaching" are probably no longer valid.

Provided that the student has a valid eCoE from the intended new institution, there is no value in retaining this restriction.

Recommendation/s

Remove restrictions on transfer subject to appropriate admission and a valid eCoE from the new provider.

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

Any provisions for underpinning education quality assurance frameworks should apply to all students, not just international students. The quality of the provision of education to domestic students must remain the gold-standard; it is, of course, that quality that attracts international students and its outcomes are those to which they aspire. The majority of these provisions should be and are encompassed under HESA and existing mechanisms such as AUQA and will be under TEQSA rather than under ESOS. The ESOS framework needs to be focussed on the individual student to ensure the ability of students to make informed choices and receive optimal standards of services and protections.

In the final analysis a student's academic choices are driven by a variety of considerations centered around their own social and academic needs; this is not the business of ESOS.

The ESOS framework actually stifles innovative opportunities for international students to engage in flexible teaching practices (including block and intensive mode teaching and on-line delivery). The framework also does not address the needs/reality of higher degree by research students.

The ESOS framework needs education to be the primary focus, not migration, and its great weakness is that it does not acknowledge the reality of a diverse education sector - both in terms of quality and mission - in its fixation on a one-size-fits-all approach to regulation.

Recommendation/s

ESOS should not be concerned with Academic Quality considerations.

ESOS should acknowledge differentiation in the international education industry.

The prescription of 25% distance/online learning is restrictive and research should be undertaken on how these methods may actually enhance student experience.

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

Comments

The question actually should be: where are international students' needs the same as other students. The National Code has gone too far in trying to differentiate international students, in some instances, to their detriment.

Areas where regulation should align more closely with the reality for domestic students include, for example: completion within the expected duration of study (Standard 9. The National Code). A student must complete their study within the stated duration of their eCoE unless in compassionate and compelling circumstances, that is, effectively full time.

The reality of this is that if they want to maintain a 75% load - which is still accepted as a full-time load for domestic students - the provider must assess them to see if they have compassionate and compelling circumstances. This not only imposes a large compliance burden on providers but it is also questionable what outcome is expected to be achieved by the restriction.

A considerable concern expressed by international students - and, indeed, supported by DEEWR research - is that they want to share more holistically in the student experience and integrate with the domestic students: studying at 100% load can, however, militate against this. If an international student is studying at 100% load and working their allowed 20 hours a week (which is the reality for most international students who need the extra money), this leaves very little time for student experience and/or integration. Similarly, the ability to drop from a full-time load allows a student to concentrate on a particular discipline to enhance their marks and open avenues to employment and further study.

While nobody wants students just "hanging around" on a student visa for the sake of it (and it is highly unlikely that international students could afford so to do anyway), the current legislation is too prescriptive and does not achieve optimal outcomes

There are, however, areas in which differentiation does need to occur: for example, Standard 5 - Younger Students. The ANU agrees that there are welfare and social responsibility aspects in providing education to students under the age of 18 and that the current legislation is adequate although there have been many "interesting" variations in interpretation from different ADMs. Two areas which should be investigated further are the regulation of the burgeoning homestay industry, and an institution's liability to provide suitable living arrangements for a student during an appeal process (which in some instances can take up to a year).

Recommendation/s

That eCoEs be granted with an additional percentage of their course duration added. For example, if 33% is added to a 3 year Bachelor degree student, this would provide flexibility and a better experience. It is highly likely that the majority of students would complete in almost minimum time but it would enable providers to spend their time monitoring the students who really are at risk and to provide them with more support.

Effective regulation

vii. Is ESOS compliance and enforcement adequate?

Comments

The question here is, who is actually enforcing ESOS compliance?

There is, for example, no evidence that the Higher Education sector is a cause for concern. Generally speaking the self-accrediting institutions regulate themselves and have mechanisms in place - and AUQA - to ensure best practice is followed. The roles of the individual CRICOS accrediting bodies and TEQSA will need to be mapped out to enable providers to have a clear understanding of their responsibilities.

The ESOS framework is too rigid for such a dynamic industry, and requires acknowledgement of the differences between the sectors. A secondary school student, for example, requires very different regulatory regime to a higher education research student.

Recommendation/s

That the ESOS framework address the issue of differentiating requirements across the education sectors.

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

The ANU agrees that registration requirements should be strengthened and that there should be targeting of compliance and enforcement action.

Although perhaps controversial, a differential system which focuses on high risk areas being monitored more closely would be a better use of resources. One of the main difficulties in complying with The National Code is that one size does not fit all. Many provisions within the Code are irrelevant and cumbersome to high quality self-accrediting providers.

Recommendation/s

That providers who can prove themselves to be gold standard are then given more flexibility to focus on best practice and improvement of educational experience for their students. Auditing of this standard may occur every five years, or within a providers' Compact with the Australian Government (for higher education providers).

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

Comments

At present, the balance weighs heavily in favour of inputs and prescription. More thought needs to be given to how educational outcomes for international (and indeed all) students are really being achieved.

Compliance on the basis of a "list of check boxes" does not seem to be achieving this goal and, indeed, only results in letter-of-the-law outcomes rather than true quality improvement. CRICOS registration on whatever periodic time-line is agreed should also include a requirement for self-assessment against set minimum requirements and quality improvement targets subject to audit in the next accreditation round.

Recommendation/s

That through differentiation within the ESOS framework, providers who require more of a prescriptive approach will still be required to achieve very clear goals. Those providers who prove themselves to be gold standard would be able to comply with a more outcomes based approach with the proviso that these too are subject to periodic audit.

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

Comments

The different agendas of DIAC and DEEWR cause complications for providers. The ESOS framework should be focussed on education, not on facilitating a student visa program.

More flexibility within the ESOS framework should actually assist the student visa program in that efficiencies should occur from structured deregulation.

Recommendation/s

That there be more joint DIAC and DEEWR consultation with peak bodies, sectoral bodies (eg ATN and Go8 in the Higher Education sector) AND individual providers on ESOS compliance, National Code directions and international education trends and priorities to allow for flexibility and differentiation.

As a matter of principle, ESOS and the National Code supports education, not immigration.

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 needs to ensure that quality of education is the imperative. The role of TEQSA will be vital in monitoring this quality.

The higher education sector has not been well served by the homogenization of international marketing between sectors. Students need to be given a realistic understanding of each sector and the strengths and differences between the sectors.

Recommendation/s

More research should be undertaken on what are "the long term benefits" of the international education sector, and define what a quality education in Australia actually means. This would assist in determining whether restrictive provisions such as study load and flexible learning methods are required, or whether this is just a preconceived notion of what a student experience should entail.

General Comments

To summarise, the key messages of the ANU submission are:

*One size does not fit all - the ESOS framework needs to recognise the differences of each sector and to focus upon high risk.

*That focus also needs to be given to where international and domestic student education aligns, rather than only looking at where it is different.

*That innovative solutions should set the policy framework, rather than prescribing a policy framework and hoping the sectors will all fit within it.

* That quality education must be the focus of the ESOS framework.

Thank you.