

30th October 2009

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

Key Points

- The need is not tighter regulation but for regulators to establish risk ratings for providers, monitor appropriately and intervene early
- The separate sub-sectors are regulated differently, with our higher education focused members approved under the HESA where providers face a rigorous approval process, including an assessment of financial viability, and are subject to annual reporting and five yearly AUQA audit. We are concerned about further regulatory burden and cost being imposed on low risk organizations
- This submission, given the nature of our constituency, primarily reflects the perspective of higher education providers and we recognize that other sectors in international education legitimately require different approaches. Under ESOS, one size cannot fit all sectors in international education
- In regard to TAS where there are different TAS requirements under ESOS and the HESA we recommend that HESA TAS provisions should be extendable to provide coverage for international students
- In higher education initially, and then later for VET, the establishment of the Tertiary Education Quality and Standards Agency (TEQSA) as a single national regulator is a very important development, and changes to ESOS need to take this into account
- In higher education reporting, we suggest that the HEIMS environment in DEEWR, which interfaces widely to student records systems, could be expanded to encompass the PRISMS system so there is a single data management environment

Discussion Questions

Supporting the Interests of Students

- 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

More reliable and detailed information on typical living costs, accommodation options and employment prospects is needed in a central, easily accessible location such as the "Study in Australia" site to which prospective students could be directed. We understand DEEWR is already working on such an information package. The current information is scanty, and not city or region specific. There are recurrent anecdotal reports of students being misled by some agents and providers as to possible part time employment prospects and incomes. Students also report confusion regarding private accommodation rental laws and procedures.

Regulators currently monitor marketing materials of providers; we need only enforcement of current provisions, not further regulation in this regard. There seems an issue with the accuracy of information given offshore by agents, which it is often difficult for providers to supervise. Ethical providers seek to deal only with reputable agents, and would welcome more information, within legal constraints, such as data on document fraud, visa non compliance or patterns of student complaints associated with particular agents. There are currently some rewards to agents for good outcomes, such as access to eVisa processing in certain countries, and such advantages should be extended where possible to agents with good records.

We believe that the majority of providers and students engage ethically in beneficial education and training under appropriate government regulation, which needs some modification to be effective. Reputable and ethical agents are a critical part of the process; many (but not all) provide ongoing support and service to their student clients.

The answer is improved but not more regulation, better co-ordination and rationalisation of roles between various agencies, and targeting by the regulator/s on a risk basis of providers and agents where there may be evidence of less than the expected compliance and ethical standards.

Recommendation/s

1. Include more detailed information on living costs, accommodation options, and realistic employment prospects on the Study in Australia website or elsewhere, and require providers to refer to it, while allowing comment on particular location variations.
2. Supply as much information as possible to providers on agent performance, and provide incentives for agents with good records.
3. Resist the temptation to impose further regulatory burden on reputable providers.

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

Comments

We support the principle of consumer protection on ethical and fairness grounds, as well as promoting confidence in the industry. The appropriate approach will vary between various sub-sectors in international education.

The first line of protection is not to create and maintain an environment that encourages overly specialised providers chasing short term profits rather than long term educational goals. This has been the outcome of recent skilled migration policy, and the excessive emphasis given to recent graduates. We recognise recent changes to application processing priorities and the current review of MODL, which may address some of these issues.

Secondly government regulators have been slow to enforce existing powers; State and Commonwealth authorities have each looked to the other to regulate providers. Some closures have been associated with providers who grossly over-enrolled beyond the capacity of their facilities, as expressed in their CRICOS limit. When sanctions were belatedly imposed, the problem had become much greater, as there were many more students affected, impact on the TAS and/or Assurance Fund was greater, and the standard of any training delivered had been compromised through over-enrolment.

We strongly support the consolidation of quality assurance and regulatory powers for higher education and eventually VET in a single national body as proposed in TESQA; as at present there is inefficient and confusing duplication across Commonwealth and State jurisdictions.

An ESOS compliant Tuition Assurance Scheme is effective in certain circumstances, such as where there are many providers of similar size, who offer equivalent programs, and have the

capacity and willingness to absorb displaced students. Since TASs were introduced a decade ago, aspects of the industry have evolved - larger and more specialised providers in both HE and VET, rapid growth in some fields of study (especially those linked to migration aspirations), aggregation by corporations of several smaller independent colleges, and the entry of overseas corporations establishing or acquiring colleges. Alternatives to TAS membership need to be maintained.

The cost of consumer protection needs to be borne by industry - the providers and ultimately the customers, the students. It is not the role of government to underwrite the course assurance. There may be value in an explicit student insurance levy, similar to the OSHC charge, with the quantum based on the cost of the course and the risk profile of the provider.

Any provision needs to recognise the risk posed by the particular provider based on indicators such as their history, financial status, ownership and governance, their scope of courses and student profile. Currently providers who would be deemed low risk on any objective criteria are currently required to put in place the same arrangements and incur the same costs as providers with a high risk profile - and even be subject to additional levies to support the Assurance Fund!

In particular many COPHE members have small but valued international student cohorts, but are required to have the same consumer protection mechanisms as providers with much greater international numbers. Some faith based institutions enrol small numbers of international students as part of their ministry; these are often sponsored and supported by the church. We argue the low risk such students and providers present should be recognised, and some exemption granted from the cost of tuition assurance requirements, or least the lower risk they present be reflected in differential pricing based on an objective risk assessment.

Conflicting regulatory requirements, eg between ESOS and the Corporations Act need to be aligned to facilitate a smooth transition in the event of a closure. As the Issues Paper notes, it is a stressful situation for students, but the time provisions need to extend to a realistic frame to allow the best outcome, and legislation amended to empower a type of "academic administrator" who may be a TAS operator, to pursue the best outcome, such as a buyout or takeover by another party.

The present ESOS requirement (section 29) that a provider in default must refund ALL tuition fees paid is unreasonable, leads to cases of unethical behaviour from some providers and places at risk bona-fide and otherwise viable providers who may encounter a temporary technical difficulty in the continuity of course delivery. It is also inconsistent with the HESA requirement to repay only the unexpended portion of the fee.

Noting that TAS requirements differ under HESA & ESOS in higher education we propose that a single, consistent and transparent framework should apply to all students in an institution, irrespective of whether they are domestic or international.

HE Providers whose students access FEE-HELP already have tuition assurance requirements under HESA; these requirements could be extended to cover international students also, and HE Providers with HESA tuition assurance should not be required to duplicate course assurance through a separate ESOS TAS as under the current legislation.

Recommendation/s

1. Retain the concept of industry TAS schemes as a placement mechanism, but include participation from public sector providers in the placement of displaced students, but not necessarily direct TAS and Assurance Fund membership.
2. Relate TAS membership cost to an objective and transparent risk profile, and require non government providers to supply audited financial accounts and business plans.
3. Enforce existing regulations, including more rigorous auditing of high risk providers, and enforcement of the CRICOS limit through restriction on the number of visas issued.

4. Align different tuition and course assurance requirements under ESOS, HESA and various State requirements; in particular limit the refund in the event of provider default to the unused portion of the course monies.
5. Remove legislative conflicts between ESOS and the Corporations Act that inhibit the functions of a receiver when a provider closes.
6. Consider other alternatives to TAS membership apart from those listed in ESOS Regs 3.11; this may include binding agreements between similar providers, particularly in the same area of specialisation, or insurance arrangements (which we acknowledge may be difficult in the current environment).

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

Comments

The National Code 2007 introduced new appeals handling requirements, some of which have proved problematic in implementation. Appeals processes can take a long while to resolve, and there are anecdotal reports of students apparently exploiting the system to remain in the country. External appeals to State Ombudsman offices or similar appear to have greatly increased their workload. It seems a special appeal body or panel is required to review student appeals, and perhaps also determine the outcomes of students reported for unsatisfactory attendance or progress.

Providers have reported confusion and inconsistent government advice over their obligation to report students for unsatisfactory attendance, especially in the case of compassionate and compelling circumstances, such as documented illness. They are also often unaware of the outcome of cases where students have been reported.

The National Code Standard 13 provides for temporary suspension of a student's enrolment in cases of illness etc so that they will not be in breach of attendance requirements, but in reality providers often cannot react quickly enough, contact the student, assess the situation and determine the enrolment status, particularly in ELICOS courses which may be a precursor to an academic program. There are still accounts of apparently bona fide students who experience some circumstance such as illness being required to be reported against the wishes of an ethical provider, who has no discretion other than to provide a supporting statement via PRISMS. Even if the final outcome is in the student's favour, the process can be traumatic and detrimental to their studies.

This aspect of the National Code which was intended to provide flexibility and fairness to the customer needs review. We propose the appointment of a panel of accredited experts, including experienced and highly regarded practitioners would assist students by expediting the resolution of cases and overall build confidence in the system.

We would support the availability of more information regarding patterns of student complaints, and actions taken against providers with a history of recurring valid complaints. While we caution against taking all student complaints at face value, and realise the potential for orchestrated campaigns from unethical competitors, we believe that an industry watchdog can validly use complaints data to identify high risk providers and initiate audits, for instance.

Recommendation/s

1. Review the National Code Standards 8, 10, 11 and 13 dealing with the reporting of students for unsatisfactory progress and attendance, and student appeals.
2. Establish a special external appeals panel or international student "ombudsman" whose decision is final, perhaps with representatives from DEEWR, DIAC and industry.
3. Include complaints data amongst a set of indicators to identify high risk providers and trigger audits and other monitoring processes.

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

Comments

This was a topic of robust debate in the development of the present National Code. We support the current Standard 7, with the proviso that an ethical provider should not be expected to grant a release within the first 6 months of the principal course unless they believe, or the student can reasonably demonstrate that a release is in the student's best interest.

While DEEWR evidence is that the rate of transfer of provider is relatively small, there are still reports of organised poaching of students lured to cheaper, lower quality providers who pay incentives to agents or other students. There needs to be reasonable protection against poaching in the interests of:

- students who are vulnerable and often naive while adapting to life and study in a new country
- ethical providers who have incurred expense in recruiting and scheduling classes for the students
- ethical agents who have assisted in the student recruitment.

As well as poaching, there is also the risk that students will deliberately enrol in a program with one provider, with the intention of immediately transferring to another, perhaps in a different sector with a higher Assessment Level rating.

Ethical providers will be able to demonstrate policies allowing for a release, for example where it is clear a student is unable to cope with the level of difficulty of a course. Such instances however should be rare, if appropriate language and academic entry requirements are enforced.

There will be cases where students find themselves with an unsatisfactory course or provider, who refuses to release them. In such cases there needs to be a mechanism for external appeal and speedy resolution. Again patterns of complaint can be used as an indicator to identify high risk providers.

Recommendation/s

1. Retain the current requirement for a student to remain for 6 months with the provider of their principal course, unless released.
2. Provide student access to a quick external appeals or complaints body to resolve cases where they seek a release.
3. Monitor patterns of complaint to identify high risk providers.

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

ESOS should build on, and not unnecessarily duplicate existing QA frameworks. We support moves to consolidate, under TEQSA, the regulatory and QA functions across higher education and establish a national VET regulatory body. At present there is unnecessary duplication between Commonwealth and State jurisdictions, inconsistency between States, and some lack of co-ordination between DEEWR and DIAC.

As an illustration, when an institution seeks registration as a Higher Education Provider, listing on CRICOS and access to FEE-HELP, it must complete three different audit processes and sets of documentation - one to the State registration and course accreditation authority, a second to the State Designated Authority for the CRICOS registration (often the same department), and a third to DEEWR. This is surely at least one step too many.

We urge that CRICOS should be administered directly by the Commonwealth, rather than State Designated Authorities, especially when the national tertiary education regulatory body is in place.

We have already referred to the past inaction of regulators when certain providers grossly exceeded their CRICOS limits. While recognising processes have since been tightened, this was only implemented after damaging closures, the scale of which could have been avoided; the incident illustrates the danger of multiple jurisdictions.

Another area of contention is referred to in the previous section, viz the transfer of provider. DIAC seem to regard ESOS compliance as solely a DEEWR responsibility, and have no mechanism to sanction a student who changes provider within the same sector without the necessary release. There needs to be a transparent whole of government approach to ESOS compliance.

Recommendation/s

1. ESOS should build on existing QA frameworks, and not unnecessarily increase the present substantial compliance load on providers.
2. Existing provisions need to be enforced, and any future regulatory bodies required to enforce compliance in the interests of student welfare, the quality of education provision and the integrity of the visa system.
3. As much as possible, regulatory and QA functions should be consolidated in national bodies within a whole of government approach.
4. The Commonwealth should consider direct administration of CRICOS, rather than delegate to State Designated Authorities.

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

Comments

International student needs vary enormously with age, language fluency, cultural needs and expectations, and access to support mechanisms. There are some existing special provisions, such as those for under 18 students.

We believe there is a need for the following functions, some of which we have already noted:

- a strong and respected national body able to represent the interests of all international students
- an external, government established special external appeals and complaints panel, or international student "ombudsman" with the power to make binding determinations
- more accurate information on accommodation options, employment prospects and support structures.

We do not support regulation requiring providers to supply student accommodation, as this would be unworkable for many providers. We believe issues with the quality of accommodation and alleged exploitation are better addressed through improved information and enforcement of existing regulations, such as building codes.

We strongly support national alignment of student travel concessions, at present granted in some States, but not others. Travel costs can be a significant expense for students, exacerbating their need for part-time work and even exposure to personal risk. Granting of uniform concessions would be a significant gesture of welcome to new students, and would encourage travel and cultural engagement. There is also an economic argument that concessions may well be cost neutral to transport providers, through increased patronage.

There has been much debate around the level of English of international students. One view is that current levels are too low, and place at risk students' success, present and future employability, and the quality of the courses.

We do not have a uniform view on whether minimum English standards need to be further regulated, other than to observe that any regulation would need to apply uniformly to all providers in the same sector irrespective of status or jurisdiction, eg whether self accrediting or not in the HE sector.

Compulsory health insurance is an important student welfare and duty of care issue. At present international students are required to take out Overseas Student Health Cover (OSHC) through one of a number of approved providers, but there is no requirement for them to maintain it beyond the first year. There are cases of students experiencing illness or accident with catastrophic financial impacts if they are not covered.

We urge that the legislation or regulations be amended to require continued OSHC coverage. We recognise that requiring upfront payment for the whole duration of the COE would deter students, and not cover cases where students extend their visa. We urge DEEWR to consult with peak bodies on alternative mechanisms, eg requiring providers to check a student's OSHC when they re-enrol or pay the next tuition fee instalment. We understand many providers already undertake this, viewing it as part of their duty of care.

Recommendation/s

1. Existing protection for under 18 students should be maintained, as per National Code Standard 5.
2. Provision of accommodation should not be further regulated, but student welfare should be supported through improved information and enforcement of existing codes.
3. Uniform national student travel concessions should be mandated.
4. If English language standards are further regulated, such regulation should be appropriate to the sector and the level, and apply uniformly across all providers.
5. The OSHC regulations should be amended to require continued coverage, and DEEWR consult with peak bodies as to how this can be enforced.

Effective regulation

vii. Is ESOS compliance and enforcement adequate?

Comments

There are considerable, and in some views, onerous compliance and reporting requirements already. While these can be improved, they should create a further burden. Enforcement has increased recently in response to some well publicised failures and abuses, but in the past many of the existing ESOS compliance requirements have not been enforced as rigorously as they should. Compliance and enforcement require a whole of government approach between the Commonwealth and States, and different Commonwealth departments.

Recommendation/s

1. Apply and if necessary strengthen existing regulations, without increasing the compliance burden on providers.

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

It should be noted that Higher Education Providers approved under HESA, following a rigorous approval process, already report annually to state and Commonwealth agencies and this includes demonstration of financial viability.

Registration requirements are already quite rigorous; some such as the NEAS ELICOS standards are regarded as world leading, and underpin the reputation of Australian education.

Much of the present controversy has arisen from the specialisation of some providers, many with no evidence of experience or commitment to quality education, in markets catering to migration aspirants. Many of these students are less interested in the quality of their course than in using it as a path to residency, and are willing to pay for the desired outcome. The removal of these distortions, and targeting of high risk providers will go a long way to restoring the integrity and reputation of the industry.

It should be recognised that many quality providers deliver programs that enable migration outcomes, consistent with the intent of government policy; there is no intended criticism of them or their students. It seems self-evident that students with good English who have studied in Australia should make the best migrants. Rather we should target providers of dubious quality who are exposed to shifts in the market or government policy, and place at risk their students' welfare and the reputation of the industry. We do not believe it should be difficult to distinguish between the two groups.

We support a thorough risk management approach to compliance enforcement, and as earlier argue that this should extend to the consumer protection costs borne by providers and ultimately students. This rewards low risk providers with an established good record, and sound financial basis and business plan. It is similar to car insurance - a novice driver, with a high powered sports car, a record of traffic offences and living in a suburb with a high crime rate will pay more.

We support increased monitoring and any effective regulation of agents in a way that rewards compliant agents and providers, rather than introduces draconian penalties for those who may have acted in good faith. In particular we do not support the recent legislation requiring that providers publicly list all agents; this has the potential to damage confidential business relationships between providers and agents.

Recommendation/s

1. Address the distortions that have arisen in education delivery through the link to skilled migration, and remove de facto incentives for providers, students and agents to deliver low quality courses simply to achieve a migration outcome.
2. Do not increase further the registration requirements, which can be already rigorous, but rather improve and streamline existing processes.
3. Develop an effective and transparent set of risk measures for providers to inform compliance monitoring and consumer protection mechanisms.
4. Conduct a comprehensive review of the role of education agents, giving providers access to the names of those of concern, and promoting exemplars of good practice.

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

Comments

As noted the prescriptive attendance and academic progress reporting requirements under the National Code can lead to some unfair and unnecessary reporting of students, and a move to more outcomes based measures should be considered. We support the principle of setting minimum attendance and progress requirements appropriate for the sector, but argue that responsible providers should have more discretion in reporting.

At the same time providers need to be able to demonstrate appropriate policy application and monitoring of student performance. Within the set of indicators advocated earlier, measures such as cohort completion rate and attendance, or proportion of students below the minimum requirement could be used to distinguish responsible from high risk providers. It would be reasonable to allow a provider with an overall student attendance record of say 90% to apply a documented intervention strategy and rehabilitate an individual student who has lost his way, if

this is in their professional opinion likely to lead to a better outcome, rather than be required to report them. Of course the threat of reporting can be a useful motivational tool!

There is a danger in assuming that every student who falls below the minimum attendance or progress requirement is rorting the visa system, and should be reported. Many are young people, away from home for the first time and often in a far less structured environment, who simply take time to adjust to their responsibilities. Responsible providers should be expected to support them with appropriate firmness, with reporting only a last resort, or in the case of non bona fide students.

We support other provisions of the National Code, such as restrictions on mode of delivery, but recognise these need to be monitored as pedagogic practice and technology evolves.

Recommendation/s

1. Retain for now clear expectations for satisfactory progress and attendance, where these apply
2. Develop indicators to distinguish between responsible, reputable providers and those who pose a compliance risk
3. Reward the former and provide more considerate outcomes for their students, by allowing more provider discretion in reporting unsatisfactory progress or attendance, where these apply.

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

Comments

There is need for closer co-ordination between DEEWR and DIAC in managing international students. Examples already cited include:

- Limiting the number of student visas issued to a provider, consistent with their CRICOS limit, to prevent gross over enrolment
- Establishment of a joint panel or international student “ombudsman” to resolve student appeals and grievances, when these cannot be resolved internally by the provider
- Review of skilled migration policy and its links to international education.

While we recognise steps have already been taken in some of these regards, government departments need to continue to work closely together, and hold regular roundtable forums with education peak bodies and other stakeholders.

Recommendation/s

1. DEEWR and DIAC should continue to hold regular general roundtable forums with education peak bodies on international education issues.

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

We support the Bradley Review recommendations 11 and 12 that:

- The regulatory and other functions of Australian Education International be separated, with the regulatory functions becoming the responsibility of an independent national regulatory body, and
- The industry development responsibilities of Australian Education International be revised and be undertaken by an independent agency which is accountable to Commonwealth and state and territory governments and education providers.

All legislation and regulation, including ESOS needs to support the quality of education and the total student experience, including cultural engagement, without creating excessive compliance and reporting costs for responsible providers. We support the application of adequate registration and compliance controls on providers, students and agents to ensure that the students receive a quality education and positive experience, and the development of a policy framework where some current distortions are removed.

Recommendation/s

Implement recommendations 11 and 12 of the Bradley Review.

General Comments

HESA 2003 and ESOS 2000 are different Acts with different compliance and reporting requirements, and different student recording systems. Domestic higher education students are recorded and reported under HEIMS called HEPCAT, while international students are recorded on PRISMS. The new HEIMS system has been a major DEEWR project and is working well. Almost all student record systems interface to it.

DEEWR should investigate whether a single student recording and reporting system based on the HEIMS infrastructure could be devised for all higher education students, thereby reducing the compliance load on institutions and the risk of error in multiple data entry.

ESOS 2000 was an important step in regulating a burgeoning activity, not merely the export industry as often portrayed, but an important process in individuals' fulfilment, economic advancement in all countries, and cultural engagement and understanding. ESOS and the consumer confidence it generated did much to establish the reputation of Australian international education in the ensuing decade. It is now time to review these past achievements, to address present anomalies and provide the improved support that students and the community expect, that other countries now also provide.

COPHE appreciates the opportunity to participate in this review, and would welcome any opportunity to discuss the issues further.

COPHE contact details:

Mr Adrian McComb
Executive Officer
Council of Private Higher Education Inc.

██████████
████████████████████
████████████████████
████████████████████
████████████████████