



**SUBMISSION BY DEAKIN UNIVERSITY TO THE
2009 REVIEW OF THE EDUCATION SERVICES FOR
OVERSEAS STUDENTS (ESOS) ACT 2000**

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

Deakin University provides international students with comprehensive information about living and studying in Australia through means such as websites, course guides, information brochures, personal interviews, international offices and agents. These address the specific needs of both prospective and current students. In relation to its agents, Deakin ensures that they are appropriately qualified before being appointed. Following their appointment, it conducts information sessions for them and monitors their performance and ESOS compliance. Although Deakin has experienced few difficulties in this area it does note the following shortcomings in relation to student information and education agents:

- The current *Study in Australia* website contains useful information. However, it tends to be general in nature and does not identify some of the challenges students face when moving to a new country. This website would add more value to information supplied by providers if it were more than a marketing tool and provided a detailed and authoritative source of information for students and their parents. It would then play a role in helping to brand Australia as a destination for high quality education
- Information coming to the attention of DIAC or DEEWR about agents who have engaged in misconduct is not then shared with institutions. Similarly, although an institution may cancel its arrangement with an agent due to ESOS non-compliance, the agent may still represent other providers as there is no facility through which the former institution can share information with other institutions, or the Government. Because there is no co-ordinated agent monitoring system responding to situations such as these there is a risk that unscrupulous agents may still operate in the system due to their current principals being unaware of their past transgressions.
- Little effective ESOS training is provided by DEEWR; rather, it is left to individual providers to train their staff and to navigate the ESOS explanatory guide. The ISANA online tutorial, however, is a good basic tool but needs updating. The recent compulsory online training for PRISMS is also a welcome addition.

RECOMMENDATIONS

1. DEEWR establishes a national licensing scheme for agents. This scheme should include at least the following elements:
 - a licensing examination to ensure that, before being granted a licence, agents are appropriately skilled and knowledgeable and fully cognisant of their obligations;
 - a requirement that institutions engage only licensed agents;
 - the imposition of penalties for misconduct by agents, including loss of registration;
 - sharing information between providers, DEEWR and DIAC about misconduct by agents or suspect behaviour.

2. DEEWR and DIAC collaborate to establish a regular program of ESOS training for specific interest groups within the industry such as agents, admissions administrators, academics and compliance officers.
3. DEEWR, through AEI, expands the *Study in Australia* website to include accurate, current and detailed information about studying and living in Australia; this should deal with topics such as:
 - employment opportunities while studying and the limits on working;
 - the cost of living;
 - education costs including information about what tuition fees may not cover and likely fee increases;
 - accommodation options and costs;
 - the availability and costs of health and childcare;
 - public transport availability and cost (including availability of concession fares);
 - sources of advice when living in Australia;
 - the rights of international students and the remedies available to them when these are breached;
 - the responsibilities of international students;
 - registered agents;
 - personal safety;
 - common mistakes students make when first arriving in Australia;
 - cultural adjustment and social integration;
 - the advantages of studying at regional campuses.

This site should be authoritative, well researched and regularly updated so that prospective students can familiarise themselves with what to expect upon arrival in Australia. As well as containing generic material, it should also provide specific information about matters important to international students. Examples include information about the additional requirements that a graduate may have to meet to practise certain professions in Australia and about the location in which their education provider is situated. Although this resource could be used by providers, education agents and DIAC, it should not be seen as a marketing tool; rather, it should be established as a safeguard for prospective students by ensuring that they have access to independently prepared information and advice. Prospective students should be required to have accessed and familiarised themselves with this information before being granted a visa to enter Australia.

4. The ESOS Act should be amended to include a requirement that institutions provide appropriate pre-departure advice and information to prospective international students in their home countries before they leave for Australia and that an indicative list of the material to be included be developed and included in the Act.

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

Comment

The Tuition Assurance Scheme is a valuable protection for consumers. However, it is the newer providers entering the sector that are at the highest risk of closure. TAS premiums should reflect this sliding scale of risk.

RECOMMENDATION

5. A sliding scale of risk level should be established so that education providers at high risk of closure are required to pay a correspondingly higher premium.

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

Comments

The DEEWR complaints facility, DIAC and the Offices of the Commonwealth and State Ombudsman provide avenues through which students can pursue concerns or complaints. International students also have access to the normal Legal Aid services available to the wider community in each State and Territory. These services are able to provide advice in a wide range of languages and to assist complainants where this is considered to be appropriate. However, Deakin is aware of the following problems in this area:

- There is confusion, on the part of students, about the role of the Ombudsman; in particular, a belief that the Ombudsman can be used to reverse a decision on the merits of the case, rather than merely when a procedural error has occurred.
- The Australian Competition and Consumer Commission (ACCC) and the various State and Territory departments of Consumer Affairs or Fair Trade do not deal with specific complaints and currently, do not have the power to obtain remedies for individual complainants. The ACCC, for example, does not act directly on behalf of consumers and will only become involved in a matter where this is deemed to be in the interests of the wider community. Thus, although Commonwealth, State and Territory consumer protection legislation provides international students with a comprehensive set of rights and remedies, these need to be enforced privately. The cost and difficulty of doing this tends, in practice, to deter international students from pursuing claims that they may have under this legislation.

RECOMMENDATIONS

6. The respective roles of DEEWR, DIAC and the Commonwealth and State Ombudsman in relation to complaints by international students be clarified and explained in the information provided as part of the *Study in Australia* website.
7. As part of the Australian Consumer Law reform proposals currently under consideration, the ACCC be empowered to obtain remedies on behalf of individual consumers, including international students, when taking proceedings for contravention of the *Trade Practices Act 1974*.

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

Comments

Restricting an international student's ability to change providers, through Standard 7.1 of *The National Code 2007*, is a valuable means of encouraging students and agents to make careful, informed decisions about education providers and courses and of recompensing providers for the cost of recruitment. However, it is important that students are able to transfer between providers in certain situations; for example, should they wish to transfer to a course that is not available at their original provider, or should their personal circumstances change so that they need to move to another part of Australia. International students were given more freedom in this regard as a result of the 2004–2005 ESOS Review which reduced to six months the restriction on the ability of registered providers to enrol students wishing to transfer from another institution.

At Deakin University, the number of students with direct entry applying to transfer providers within the first six months has been insignificant. In the few cases that do arise, the typical reasons given are the student being offered a course at another higher education provider that is not available at Deakin, or a desire to move interstate or to a regional area to join their family.

The issue of restricting an international student's ability to change education providers is a complex one. On the one hand, their ability to transfer is one of the main remedies available to students who are dissatisfied with their current provider and it is important they are also able to do so in the kinds of situations described above. Deakin supports the right to transfer from one institution to another in such cases. On the other hand, it would appear that in many instances the desire to transfer is linked to the Graduate Skilled Migration (GSM) visa program and involves a deliberate strategy of "provider hopping" by a student to find a course that most benefits his or her GSM outcome. Thus, at Deakin, the significant majority of students who apply to transfer have not entered Deakin directly, but have come to Australia on a 573 subclass visa that has been granted for a packaged program such as a VET course followed by one from a higher education provider (in our case, Deakin University). In a typical case, they seek to be released from the higher education course to pursue another VET course linked to GSM outcomes. Generally speaking, this approach is taken by students who have come to Deakin from those countries in respect of which Visa Assessment levels are lower for higher education than they are for VET. In such cases, a package containing a higher education component is an easier method of securing initial entry into Australia than is an application based on a VET course alone.

Students employing this tactic, but who are refused a transfer by the higher education provider, are able to pursue strategies to force the provider to provide a release letter. One strategy is to enter Australia, but fail to enrol in their higher education course by the due date. In relation to such cases, Deakin has been advised by DEEWR that providers are not permitted to refuse a transfer if it means the student has to wait until the next intake to enrol. In addition, the reporting of students for non-commencement does not appear to be strictly monitored by DIAC, so by the time it is picked up the student has enrolled with a VET provider. There is anecdotal evidence that students have become quickly aware of loopholes such as these and use them to obtain release letters. They may also complain to DEEWR that they are unhappy with their provider who has refused to issue a release letter when the real reason for their complaint is that their strategy of leveraging the lower higher education assessment level to gain easier access to initial entry into Australia has had the unforeseen consequence of adding time and cost to their GSM pathway.

The release letter procedure consumes significant resources to administer and requiring students with a cancelled eCOE to also seek a release letter is cumbersome and redundant. A more effective way of administering the approval of all release requests would be through PRISMS reports on eCOEs.

RECOMMENDATIONS

8. The restriction in Standard 7.1 should remain in relation to students wishing to transfer to a course within a lower subclass than that on their student visa. However, there should be no restriction in relation to students wishing to transfer within 6 months to a course that is in line with their student visa subclass.
9. A transfer between providers should no longer require “a written letter of release” from the original provider. Instead, approval should be built in to the functions provided by PRISMS so that a course variation report once activated automatically lifts the restriction on a new provider issuing a new eCOE.

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 establishment of TEQSA as a central body to accredit, monitor and enforce compliance of higher education providers is welcome and will do much to eliminate the current confusion between Federal and State agencies regarding compliance as well as reduce unnecessary duplicate audits and compliance activities across the sector. However, as noted in relation to questions vii and xi below, amendments to the ESOS Act would enhance its ability to contribute to improving the quality of the educational services provided to international students by Australian institutions.

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

Comments

Although there are exceptions, taken as a whole, international students are a vulnerable group because of factors such as their unfamiliarity with local practices and customs, language barriers, study and work pressures and the lack of local support networks. Factors such as these can lead to individuals being exploited and undesirable levels of personal anxiety and stress created. Although in many cases private remedies are available to the individual victims of such conduct, the cost and difficulty of pursuing them is beyond the means of most international students. For this reason, State enforcement is required. Furthermore, because of the diversity of the areas that require attention, a whole-of-government approach is required.

With this in mind, Deakin suggests that there are five key areas in which reform is required to provide support to international students; they are:

- student housing and accommodation;

- student safety;
- social inclusion;
- student support;
- workplace and career matters.

Accommodation:

Adequate, affordable and appropriately located accommodation is necessary for international students to enjoy a positive student experience in Australia. Conversely, lack of such accommodation can adversely affect their ability to study properly and their safety and general welfare. In turn, this can damage the continued ability of education providers to increase their international enrolments in line with demand. As a result, the availability of accommodation in close proximity to where they study is one of the most pressing issues facing international students studying in Australia. There is currently a well-documented shortage of rental accommodation and, with rising house prices, the private rental market of affordable accommodation for students is very tight and expected to remain so. Although they can and do contribute to the provision of student accommodation, individual institutions cannot by themselves build and operate sufficient student accommodation to meet current and anticipated demand.

For various reasons, overseas students are disadvantaged and vulnerable to unscrupulous landlords and private rental providers. Many are not able to protect themselves because of language difficulties, cultural differences, submissiveness or their sheer desperation to find accommodation. For example, it has become increasingly common for international students to find accommodation by leasing a room in a so-called *rooming house*. According to one example brought to our attention, a student lived in a rooming house where eight students had shared four bedrooms and where the landlord had converted all common areas into bedrooms to increase the occupancy of the house. Other instances have been reported of international students living in these houses in substandard conditions, including the practice known as “hot bedding”, without the protection of a written lease and being unaware of their rights and possibly too frightened to challenge unscrupulous landlords because of their urgent need for accommodation. The lack of regulation, or the inability of the relevant authorities to enforce existing laws and regulations govern rooming houses, is a major concern.

Student Safety:

The issue of the safety and security of international students in Melbourne has recently received a great deal of media attention, especially in India. Whilst the commission of any crime against international students is reprehensible, the actual data paints a better picture than media reports would suggest. Thus, most official records and statistics show that on most measures, incidents causing harm to, or the injury or death of, international students occur with significantly lower frequency than they do for the corresponding domestic cohorts.¹

Nevertheless, because international students are unfamiliar with many aspects of Australian life that domestic students take for granted, they are particularly at risk in certain areas including:

- motor vehicle accidents (through lack of familiarity with Australian road rules and road conditions);
- beachside accidents (through lack of familiarity with the extremes of Australian beach and surf

¹ *Campus Review*, Vol 19, No. 13, 7 July 2009

conditions);

- areas of cities and towns in respect of which special care should be exhibited either generally, or during certain times during the day; and
- mental health issues (arising from or exacerbated by loneliness, home sickness or intercultural or academic stress).

The safety and security of students divides naturally into two distinct categories: the safety of students whilst they are on campus, and their safety whilst off campus including travelling to and from campus. Universities such as Deakin have very comprehensive practices and procedures on each of their campuses to ensure that these are as safe and secure as they can reasonably be expected to be. Although education providers cannot be held to be directly responsible for the safety and security of their students – domestic or international – when these students are away from campus, Deakin does ensure that the material and support services it makes available to international students includes information and advice on safety more generally. This includes advice on safe and unsafe areas, safety on public transport, emergency contact details for relevant authorities and the rights of overseas students. As noted earlier, information such as this should be included on the pre-departure website. It should also be repeated in the orientation material provided to all new students, ideally by representatives of the Police and other authorities to help to reinforce the importance of the message and to establish cooperative links with those authorities.

A useful initiative commenced by Victorian universities in 2008 was the conduct of Forums on International Student Welfare attended by all universities and officials from the Consuls-General of India, Malaysia, China and Indonesia and a Deputy Secretary from the Victorian Department of Innovation, Industry and Regional Development (DIIRD). These were used to inform relevant consular representatives of the processes and actions undertaken by the universities to ensure the welfare and safety of international students undertaking studies in Victoria, and to provide an interactive forum for consular representatives and representatives of Victorian universities to share information and to express views or concerns on issues relating to the safety and welfare for international students in Victoria.

Social Inclusion:

The social inclusion of international students has two dimensions: integration into the broader student and academic community on campus, and integration into the wider off-campus community and economy.

An important element of a positive student experience for international students in Australia is the opportunity to interact with their colleagues in the university community, both students and staff. For this reason, Deakin shares the concern, expressed in the *Issues Paper*, that where there is a very heavy concentration of international students from only one country, the opportunity for those students to enjoy an educational experience enriched by cultural and social diversity is significantly diminished, as is the development of English language skills which is often touted as one of the benefits of studying in Australia.

Much of the social inclusion activity at all universities is provided by the institution's student organisation. Clubs and societies, sporting facilities and organised activities on campuses offer opportunities outside formal classes for international students to mix with other international students and with domestic students having shared interests. Unfortunately, the significant loss of revenue caused by the introduction of voluntary student unionism (VSU) has made it much harder for student associations and universities such as Deakin to deliver social inclusion programs of this nature. This has reduced significantly their ability to ensure that overseas students are

able to engage with domestic and other international students and with the local community. For this reason, the University favoured the passage of the *Higher Education Legislation Amendment (Student Services and Amenities, and Other Measures) Bill 2009* and regrets that it has not been enacted.

Most States offer overseas students the same concessional fares on public transport as are available to domestic students. The continued absence of these transport concessions in Victoria and New South Wales is a source of great dissatisfaction for international students. Both of these States argue that the provision of such concessions would be too costly and that the lack of transport concessions is consistent with a variety of other government services (for example, Medicare) that are not available to international students. On the other hand, it is noted that international students contribute a great deal to the local economy through paying tuition fees, living expenses and taxation, and confer considerable non-economic benefits as well by enriching and diversifying our communities. The absence of transport concessions not only imposes a financial cost on overseas students – many of whom are already struggling to make ends meet – but also creates a perception amongst these students that, despite the government rhetoric, they are not really welcome. Addressing this situation by granting international students transport concessions in Victoria and New South Wales would send a powerful message to current and prospective overseas students that they are valued and not seen simply as revenue providers.

Student Support:

It is clear that from time to time, international students studying in Australia will require support and advocacy assistance from their education providers and from the various levels of government. This support must extend across a wide range of areas including: academic matters; accommodation; financial concerns; personal issues; social inclusion; visas; permanent residency; employment; future careers; safety; transport; rights and responsibilities, and so on. Universities, including Deakin, have traditionally offered all students a variety of support and advocacy services to assist them in areas such as these. However, VSU is inhibiting their ability to optimally provide the resources needed to do this.

Workplace and Career Matters:

Many international students need to do some paid work to assist with their living expenses whilst studying in Australia. This work can also be a valuable component of their student experience, and can directly assist their social inclusion by providing opportunities to improve their English language proficiency and interact with the wider community. Longer term, this work experience can assist overseas students to obtain references for subsequent employment and prepare those who wish for permanent residency.

Current student visas allow overseas students to work no more than twenty hours per week during the teaching trimester. Whilst there are reasons for this limit – principally to ensure students have adequate study time – it is known that, in practice, many international students work well in excess of twenty hours to meet their living expenses. Being unable to do so legally, many students will take on extra work on a cash basis, often doing menial tasks and being susceptible to workplace exploitation. International students endure such situations either through a lack of knowledge of their rights or through fear of adverse consequences – such as losing their student visa – should they lodge a complaint with the relevant authority. This situation needs to be addressed by allowing international students to work for more than twenty hours per week in certain cases and by making readily available to them information about their rights as employees.

Deakin works closely with employers in relevant industries and the professions to identify opportunities for work placements, internships, and so on for its students. However, more could be done to build community and

employer awareness of the value of employing international students and graduates to meet identified skills shortages.

RECOMMENDATIONS

10. Steps should be taken by the most appropriate level of Government to properly regulate and police the private accommodation sector to eliminate exploitive and unconscionable practices
11. A quality accreditation process should be established, open to private rental providers, to be used by educational institutions to recommend rental providers to international and domestic students seeking accommodation and by students themselves.
12. A whole-of-government strategy should be developed to plan for and provide the infrastructure, including accommodation, needed to cater for the projected growth in the number of international students studying in Australia.
13. Information about all aspects of safety and security in Australia should be included on the pre-departure *Study in Australia* website that students are required to access and familiarise themselves with before being issued a visa to enter Australia.
14. *The National Code 2007* Standard 6 orientation program requirement should be amended to specifically require institutions to include information about all aspects of safety and security in Australia.
15. Universities should be permitted to charge domestic students a services and amenities fee, the revenue from which would be used to support the provision of services and amenities for all students.
16. In all States and Territories, international students should be given access to travel concessions on the same terms and at the same price as domestic students.
17. The limit on the number of hours international students may spend in paid employment should be relaxed so that they may work for more than twenty hours per week where they can establish that they are making satisfactory progress through their course.
18. Federal, state and local levels of government should identify and implement appropriate initiatives to increase the awareness of employer groups and professional associations of the benefits of hiring international students and graduates.

Effective regulation

vii. Is ESOS compliance and enforcement adequate?

Comments

The Review of the ESOS Legislative Framework in 2004–2005 was thorough and involved significant industry engagement and consultation. The changes it introduced were well thought out and, although an increased regulatory burden was created by *The National Code 2007*, they were generally accepted by the sector. However, although the framework is robust, the approach to ESOS compliance and enforcement is ad hoc, reactive and incomplete. The following problems appear to exist:

- Inadequate due diligence in relation to registering providers.
- Confusion about the respective roles of Commonwealth, State and Territories authorities regarding ESOS enforcement and compliance.
- Insufficient resources invested by all Government levels towards systematic compliance and enforcement activities.
- Private remedies not being available for breach of the ESOS Act including the all important Section 15 of the ESOS Act which prohibits misleading or deceptive conduct by registered providers.

RECOMMENDATIONS

19. ESOS monitoring activities should be clarified, streamlined and strengthened and regular compliance and enforcement activities increased.
20. Private remedies should be available under the ESOS Act to students who are adversely affected by a provider contravening its provisions.

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

A noticeable feature of the ESOS Act and *The National Code 2007* is that they give comparatively little attention to requiring providers to have the resources needed to deliver appropriate programs. The Act itself does not set out quality and resources standards as prerequisites for registration and Standard 14 of the *Code*, which imposes obligations on providers relating to these matters, is expressed in only very general terms. Deakin, therefore, agrees with the *Issues Paper* that “there is very limited scope for excluding poor quality providers from entering international education once they have passed through State or Territory processes” and notes that this may explain why numerous private providers have been found to have grossly inadequate facilities and resources. This should be addressed.

RECOMMENDATIONS

21. The provider registration requirements in the ESOS Act should be strengthened to prescribe in detail the resources and facilities that providers must have to obtain and retain registration. Provision should also be

made for the provision of these resources and facilities to be reviewed periodically and for the ongoing financial viability of providers to be monitored regularly.

22. A scale of risk should be established that subjects providers who are higher on the risk scale to higher TAS premiums and more frequent and stringent monitoring. Providers who are found to be having non-compliance issues should also be given a higher risk rating. New providers, other than Table C providers under the *Higher Education Support Act 2003*, should automatically be subject to a higher risk rating.

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

Comments

Deakin does not share the concern, expressed in the *Issues Paper*, that “a focus on inputs and prescriptive standards can introduce unnecessary complexity, reduce flexibility and longevity and result in less optimal outcomes for students...” It agrees that a move to an outcomes focus may make it more difficult to establish non-compliance and to take corrective action.

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

Comments

While it is understood that certain providers may have reservations about the connection between the currency of a student’s enrolment and the continuation of their visa, it is suggested that it appropriate for there to be such a connection. This is because enrolment is the only justification for the visa holder’s stay in Australia. Furthermore, provision exists for the duration of a student’s study to be extended where this is a result of an intervention strategy for students at risk of not making satisfactory course progress. It is also noted that significant resources are invested by many education providers to ensure that changes to a student’s enrolment and breaches of a student’s visa conditions are reported in a timely and compliant manner through student course variations (SVC) and Section 20 notices.

There are also other reporting requirements that place an administrative burden on universities with little apparent benefit for anyone. Thus, experience suggests that SCVs are not monitored closely by DIAC and student visas outcomes as a result of the SCV’s are unclear and inconsistent applied.

RECOMMENDATIONS

23. DIAC should establish and publish clear guidelines and timelines relating to the outcomes of SCV on student visas.
24. To ensure that education providers are consistently and accurately providing reports about their students their compliance with reporting requirements should be included in ESOS monitoring and the audit activities of regulatory agencies.

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

The ESOS regulatory framework is a global benchmark in the quality assurance of international education and has contributed to establishing Australia's good reputation in this field. However, to remain effective it must be regularly reviewed and where necessary, improved. Therefore, the current review is welcome.

The connection between immigration and education has undoubtedly contributed to the growth of international enrolments in Australia. On the other hand, it has also been the source of problems. These problems could be avoided by strengthening the registration and regulatory aspects of the ESOS Act and *The National Code 2007* and by a more vigilant enforcement of their provisions.

ESOS is primarily a framework for education providers and Government regulatory bodies with its primary objectives being to protect overseas students and Australia's reputation for providing quality education. Realisation of these objectives, however, requires a whole-of-government approach that extends well beyond the ESOS framework.

It is noticeable that there is no 'one stop' shop at either Commonwealth or State level where international students can obtain the advice or support. At the Commonwealth level, for example, the Department of Education, Employment and Workplace Relations (DEEWR) is responsible for matters associated with education whilst the Department of Immigration and Citizenship (DIAC) handles student visas and immigration issues. Given the current importance of overseas students to Australian social life and to our economy, and its potential to contribute even more in these areas in the future, a strong case can be made for international education being formally represented within the Federal Government by, for example, its own Parliamentary Secretary. This would help to ensure that it receives the 'whole of government' attention its importance warrants.

RECOMMENDATIONS

25. ESOS should continue to play a key role in ensuring the quality of Australia's international education sector and should be strengthened to better enable it to do so.
26. A Parliamentary Secretary for International Education should be appointed to ensure a 'whole of government' perspective.