



Government of **Western Australia**
Department of **Education Services**

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

DEPARTMENT OF EDUCATION SERVICES

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INTRODUCTION

Since the introduction of the *Education Services for Overseas Students (ESOS) Act 2000*, the growth in the number of international students enrolled with Australian education providers has been remarkable, jumping from 188,000 in 2000 to 544,000 students in 2008 – an increase of 289%. Enrolments have grown most sharply since 2005, especially in the vocational education and training (VET) sector, with the total number of students during this period increasing by 200,000. This growth is unprecedented in the history of international education in Australia.

International education is a very large and important sector of the Australian education system and the Australian economy. It constitutes a sizeable proportion of the Australian tertiary education. Over one in five undergraduate students in Australian higher education are international students.¹ The representation of international students amongst full time VET/TAFE students is likely to be of a similar magnitude.²

The international education industry generates substantial income for the Australian economy, with education related spending by overseas students on tuition fees and living expenses such as food, accommodation, transport and entertainment. It is estimated that for every four international students one job is created in the Australian economy.³ The sector contributes approximately \$15 billion to the national economy; approximately \$5.6 billion in direct fees to education providers.⁴

International students also have a strategic importance as a source of skills for the Australian labour market. With the ageing of the population there is a demographic imperative which requires a substantial level of migration to maintain the net growth in Australia's labour supply.⁵

The rapid growth in the number of international students in recent years has placed significant stresses on the sector and on the regulatory environment supporting it. Much of this growth has been associated with students' aspirations for permanent residency. For some students and providers this has become a greater driver than gaining a respected Australian qualification and applying that qualification in a relevant profession.

This situation has arisen because of an overwhelming response to the migration policy initiatives introduced by the Commonwealth Government in 2004, which encouraged international students to apply for skilled migration (leading to permanent residency) after having successfully completed their studies in Australia. This nexus between international education and skilled migration developed in ways that were unforeseen, unintended and not desirable.

Throughout 2009, the stress placed on the sector by the rapid growth in students has manifested itself in an increasing number of negative media reports relating to the international education sector, particularly in NSW and Victoria. These reports have highlighted serious issues concerning the collapse of a number of education providers, the existence of sub-standard providers, exploitation of students, housing shortages, lack of transport concessions, lack of social engagement and vulnerability to crime. They have damaged the image of Australian international education.

¹ Education at a Glance 2008. OECD Indicators. Table C3.1 p366. Foreign students are 23% of all tertiary enrolments in Tertiary-Type A programmes.

² Only a small minority of domestic VET students are full time whereas international students are required to be full time.

³ The Australian education sector and the economic contribution of international students. Report by Access Economics Pty Ltd for the Australian Council for Private Education and Training. April 2009.

⁴ Australian Bureau of Statistics Cat. 5368055004 – International Trade in Services by Country, by State and by Detailed Services Category, Calendar Year, 2008. Table 12.1

⁵ See for example the paper provided by the Department of Immigration and Citizenship during the Minister's consultations with States in January 2009: Demographic and Labour Supply Futures for Australia. Australian Demographic and Social Research Institute Australian National University. McDonald, Peter. and Temple, Jeromey. Canberra. December 2008.

Meetings and inquiries involving the highest levels of government, industry groups, education providers and students throughout Australia have considered the problems facing the sector. These include:

- inadequate compliance and enforcement activities
- under-resourcing of regulation
- inadequate protection for students against the risk of provider closure - viability of Tuition Assurance Schemes and the National Assurance Fund
- inadequate student complaints and appeals mechanisms
- misinformation provided by unscrupulous education agents
- existence of sub-standard and disreputable education providers
- dysfunctional nexus between international education and skilled migration
- exploitation of students by providers, employers and the community
- lack of social engagement by international students – cultural enclosure

There is general agreement within the international education sector and government that there are serious deficiencies in the deployment of the existing regulatory framework. Failure to address these deficiencies has the potential to further damage the reputation of the entire sector and encourage prospective students to choose to study in a destination other than Australia.

WA Department of Education Services

The WA Department of Education Services (DES) has regulated international education in Western Australia for many years. Since July 2009 it has been responsible for coordinating the broader State Government program of support for international education.

DES undertakes the regulation of all education sectors in Western Australia: non-self accrediting higher education institutions, VET, ELICOS, non-government schools and international education (this is similar to Victoria but unlike arrangements in other States).

Western Australia has a well regulated market for international education. As a result of close monitoring, WA has experienced no major collapse of providers over the past 10 years. To maintain quality the registration of a number of providers in WA over the past few years has either been denied or cancelled. This is not to suggest that WA is immune from the risks inherent in migration driven growth in international education.

Unlike most other States, Western Australia has its own Act, the *Education Service Providers (Full Fee Overseas Students) Registration Act 1991* (ESPRA), to regulate the sector and protect students and quality providers. The key feature of ESPRA is the provision for monitoring and regulating the financial viability of education providers that extends well beyond the provisions of the ESOS Act.

SUSTAINABILITY OF THE INTERNATIONAL EDUCATION SECTOR

Note: This question has been moved to the beginning of this submission as it outlines information that provides context to the responses given to all of the subsequent ESOS review questions.

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

Introduced into parliament in 2000, the Regulation Impact Statement of the Explanatory Memorandum for the ESOS Bill 2000 summarised the problems facing the international education sector as:

- unreliable protection for overseas students against the risk that their provider collapses.
- presence of dishonest providers.
- CRICOS includes some providers of uncertain quality and State processes for approving providers are not entirely satisfactory.
- limited powers to act against providers colluding with students in visa fraud/breaches.

These problems were identified following a review of the ESOS Act 1991, undertaken in 1999. The ESOS Act 2000 was introduced to strengthen the regulation of international education sector and was characterised by a legally enforceable national code providing nationally consistent standards for the registration and conduct of providers.

PhillipsKPA and Lifelong Learning Associates conducted an independent evaluation of the operation of the ESOS Act in 2004, focussed on an assessment of its effectiveness and efficiency⁶. The evaluation found there was overwhelming support across all stakeholder groups for the ESOS Act. At the same time however, it revealed an equally strong view that the quality assurance, consumer protection provisions and the administration of the ESOS Act were in need of substantial reform. In concluding their report, PhillipsKPA stated:

The evaluation team argues that the next stage of the evolution of the Australian education export industry must maintain the concentration on quality as its distinguishing mark, even if that is at the expense of quantity. This means quality in the educational outcomes a bona fide student can obtain and quality in the student's experience while in our country.

Whilst many of these problems identified in the 1999 review of ESOS are still applicable in 2009, there are a number of new problems that have emerged since the establishment of the ESOS Act in 2000. The problems that presently face the international education sector can be summarise as follows:

- inadequate compliance and enforcement activities;
- under-resourcing of regulation;
- inadequate protection for students against the risk of provider closure - viability of Tuition Assurance Schemes and the National Assurance Fund;
- inadequate student complaints and appeals mechanisms;
- misinformation provided by unscrupulous education agents;
- existence of sub-standard and disreputable education providers;
- dysfunctional nexus between international education and skilled migration;
- exploitation of students by providers, employers and the community; and
- lack of social engagement by international students – cultural enclosure.

⁶Evaluation of the Education Services for Overseas Students Act 2000. PhillipsKPA and Lifelong Learning Associates (2005).

As a point of difference to the problems identified in 1999 review of the ESOS Act, there are three key issues that now face the sector:

1. the creation of a dysfunctional nexus between international education and skilled migration which has resulted in a significant population of students and providers who have a greater focus on permanent residency than a respected Australian qualification;
2. the lack of social engagement between some international students and the Australian community; and
3. the unprecedented growth in the number of international students enrolled with Australian education providers since the introduction of the ESOS Act 2000, particularly the sharp growth in numbers since 2005.

Migration Driver

In 2001 migration policy was changed to allow international students to apply on-shore for permanent residency. From this point a nexus developed between international education and skilled migration which became a powerful driver of the growth in Australian international education.⁷

International students rose to constitute around half of the general skilled migration program in 2006/07 and 2007/08.⁸ In the years of the resources boom the demand for skills and labour prompted policy settings which have driven the nexus between international education and migration in unintended, undesirable and unsustainable directions. While some of these perverse outcomes were known from 2006 the full extent has only become apparent after the economic slump caused by the global financial crisis.⁹

A key and unintended outcome of this policy change was the recruitment of a significant population of international students for whom permanent residency, or at least longer term access to the Australian labour market, was more important than gaining a respected Australian qualification and applying that qualification in a relevant occupation, either in Australia or another country. This has drawn providers into the market who may not have a strong track record in education and are focused on catering to students' migration aspirations.

The student population focused predominantly on permanent residency is more likely to be 'sailing close to the wind' financially. They are more likely to be recruited by sub-standard providers catering to the migration market and exploited by those providers. Such students are also more likely to be complicit with sub-standard providers in the latter's failure to provide an adequate education because that is not the students' primary objective. This subverts the first line of defence in any consumer protection regime which is the consumer's capacity and willingness to complain and seek redress.

These market forces are prejudicial to the quality and reputation of Australian international education and have created significant stresses for the regulation of international education.

Moreover the growth in Australian international education which is attributable to students who are more interested in permanent residency than a respected Australian qualification is

⁷ A useful analysis of the evolution and outcomes of the nexus is provided by Bob Birrell in the paper B.Birrell and B.Perry, 'Immigration policy change and the international student industry', *People and Place*, Vol 17, no.2, June 2009.

⁸ The number of principal grants in the GSM program in 2007/08 was 40,920 and the number of principal grants for former student applicants (880, 881 and 882 class visas) with Australian qualifications was 17,552 (43%). Advice from AEI is that in addition to these figures, a small proportion of non 880 visa holders also have Australian qualifications, taking the 2007/08 proportion of all GSM applicants with Australian qualifications up to 48%.

⁹ An example of the concerns which were known in 2006 can be found in: Evaluation of the General Skilled Migration Categories. Birrell, Bob., Hawthorne, L., Richardson, S. Department of Immigration and Multicultural and Indigenous Affairs. March 2006.

not sustainable. This is apparent when courses are considered from the perspective of the return on investment for students. The cost of studying and living in Australia represents a substantial financial investment, in the order of at least twenty thousand dollars a year, which needs to be recouped in terms of future earnings and prospects. If the prospect of permanent residency or longer term access to the Australian labour market is removed it is not apparent that many students enrolled in MODL linked VET courses can secure a return on their investment if they return to their own country.

The changes to migration settings implemented by the Australian Government from January 2009 will substantially reduce the prospects of international students gaining permanent residency. This is likely to occasion a 'correction' in the market for Australian international education, particularly in the VET sector.

Social Engagement

Engagement by overseas students with Australians is an essential part of a successful international education. Social isolation, particularly when exacerbated by fears about personal security and exploitation by education providers or employers, will have a corrosive effect on the students' experience of living and studying in Australia. In the Department's experience international students are keenly aware of, and deeply affronted by, being perceived or treated as 'cash cows'. Such experiences may lead to the creation of what a recent article by the Lowy Institute referred to as 'poisoned alumni', conveying critical attitudes in other countries about Australian society and poor impressions about Australia's reputation as an education provider.¹⁰

International education is a market and carries an inherent risk that relationships will be reduced to purely commercial terms. Positive engagement with Australians, both academically and socially, is likely to be one of the key factors which distinguishes a benign experience of the international education market and a malign experience. However several factors associated with the success of Australian international education are working against positive engagement between international students and Australians. These factors increase the prospect that international students will form closed communities with fellow students from the same country or region and will have little interaction with Australians. This effect has been termed 'cultural enclosure'.¹¹ Factors promoting cultural enclosure include -

- the large absolute numbers of international students largely concentrated in and around Sydney and Melbourne;
- the fact that Australia has some of the highest proportions in the world of international students within its total student population in tertiary education;¹²
- the predominance of students from just two countries, India and China;
- the growth of providers and campuses catering largely or exclusively for international students with limited opportunity for interaction with Australian students.

In this environment there is no place for complacency regarding the interaction between international students and Australians. In particular the growth of tertiary education providers and campuses which only enrol international students is an unforeseen and troubling outcome of the recent success of Australian international education. While it has to be accepted as a reality it carries an ongoing risk to the sustainability and reputation of Australian education. There is a role for the ESOS Act in mitigating this serious risk.

¹⁰ Australia's Poisoned Alumni: International Education and the Costs to Australia. Lowy Institute for International Policy.

¹¹ Refer to the Evaluation of the General Skilled Migration Categories. Birrell, B., Hawthorne, L., Richardson, S. March 2006. DIAC p104ff

¹² International students represent 19.7% of all enrolments in Australian Tertiary-Type A programmes. This compares to 15.2% for the UK and 3.1% for the USA. Education at a Glance 2008. OECD Indicators. Table C3.1 p366. The representation of international students amongst full time VET/TAFE students is likely to be of a similar magnitude. Only a small minority of domestic VET students are full time whereas international students are required to be full time.

The 2006 International Student Survey commissioned by Australian Education International revealed that a significant minority of international students have little or no social engagement with Australians.

The ISS asks a range of questions regarding social engagement. These include –

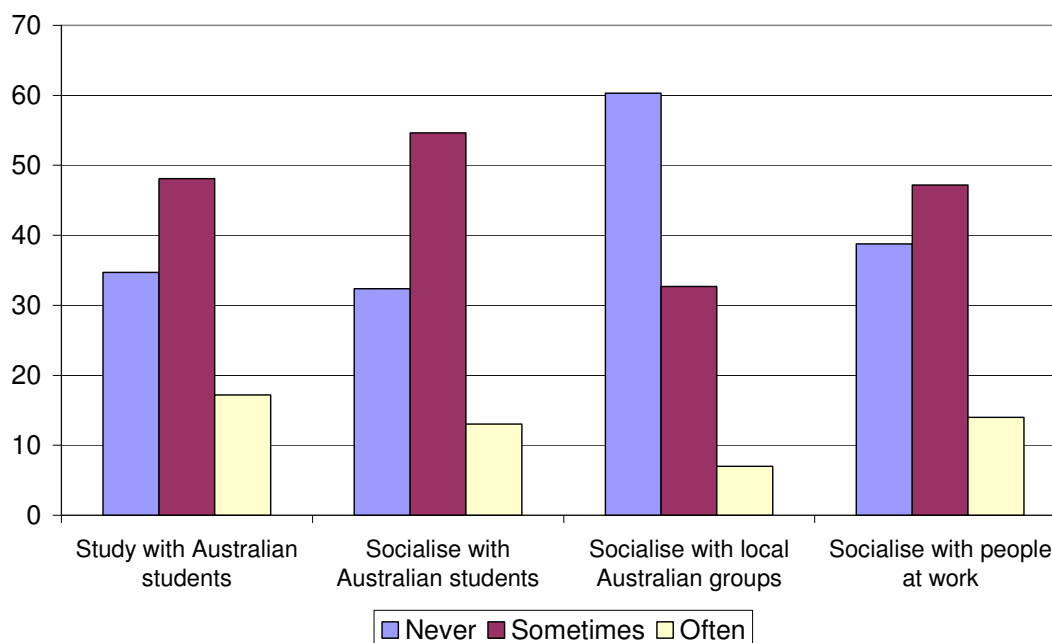
- Students' living arrangements during their studies (i.e. whether they share accommodation with Australians);
- Socialisation with Australian students, Australian community groups and people at work; and
- Frequency of study with Australian students.

The figures cited below are for international higher education students. The figures for the VET sector are broadly similar.

As a starting point the ISS found that less than 40% of international higher education students shared accommodation with Australians.¹³ While this is understandable it is an important context for the significant minority of students who have little or no social contact with Australians outside their homes.

The frequency of social contact with Australians is shown in Figure 1 below.

Figure 1. Social Engagement Dimensions– International Higher Education Students



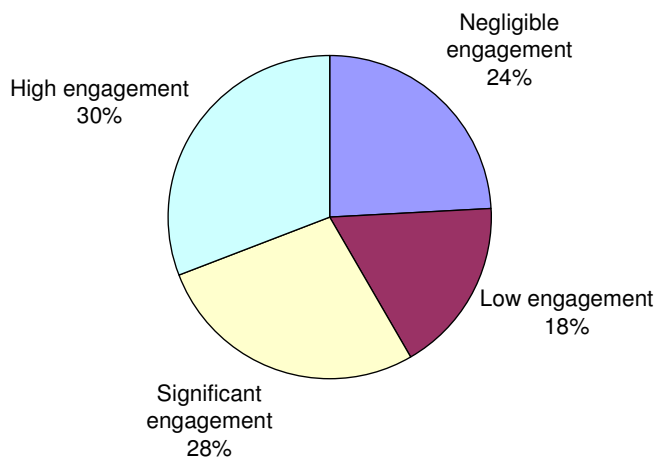
On each of the above dimensions there is a significant minority of students who have no contact with Australians. A key issue is whether these populations overlap or not? To answer this question a weighted score was constructed for each student across the four dimensions above. Using this score students were divided into 4 segments –

¹³ Q25 ISS (International Higher Education). 2006 International Student Survey, Higher Education Summary Report. Australian Education International. September 2007. p29

1. Those with no or negligible social engagement with Australians (answered 'never' across 3 or all of the four dimensions);
2. Those with low social engagement with Australians (answered 'sometimes' across 2 of the four dimensions and 'never' on the other two);
3. Those with significant social engagement with Australians (answered 'sometimes' across 3 of the four dimensions and did not answer 'often' on any dimension); and
4. Those with a high level of social engagement with Australians (answered 'often' on at least one dimension and 'sometimes' on at least one other dimension).

The relative size of these populations in higher education is shown in Figure 2 below.

Figure 2. Overall Social Engagement – International Higher Education Students



Nearly one in four international higher education students have negligible social engagement with Australians and a further one in five have a low level of engagement. Only one in three have what could be considered a high level of social engagement. This underlines the present and growing risk of 'cultural enclosure' created by Australia's success in international education.

Rapid Growth

Each year millions of students across the world travel to a country different from their own to study in educational institutions. Internationally Australia has become a key player in the international education industry. Over the last decade the number of overseas students choosing to study in Australia has grown significantly. Today it is the largest provider per head of population, and the third largest English-speaking provider of international education, with 6 per cent of the market, behind the USA (20 per cent) and UK (11 per cent)¹⁴.

Since the introduction of the ESOS Act 2000, there has been an unprecedented growth in the number of international students enrolled with Australian education providers. The number of international students enrolled in 2000 was 188,000. This figure has almost tripled to 544,000 students in 2008, representing an increase of 356,000 students (289%).

¹⁴ Education at a Glance 2008. OECD Indicators – Chart C3.2, p353

Table 1 shows the growth in the number of international students by State and Territory from 2002 to 2008¹⁵. Student enrolments have grown most sharply since 2005 with the total number of students during this period increasing by 200,000.

Table 1: International Student Enrolments by State and Territory - 2002 to 2008

State	2002	2003	2004	2005	2006	2007	2008	Growth since 2005
ACT	5,100	6,063	6,100	6,342	6,480	6,892	7,822	1,480
NSW	109,717	119,088	125,609	134,922	150,209	180,898	215,403	80,481
NT	594	475	408	405	459	559	738	333
QLD	43,573	50,063	53,477	55,696	60,237	67,710	84,514	28,818
SA	11,068	13,634	15,427	17,940	20,419	23,304	27,967	10,027
TAS	2,677	2,955	3,295	3,645	3,945	4,110	4,415	770
VIC	73,858	84,196	88,986	93,985	105,938	132,068	161,625	67,640
WA	27,001	30,187	30,601	31,220	32,325	35,018	41,414	10,194
Total	273,588	306,661	323,903	344,155	380,012	450,559	543,898	199,743

As highlighted in Table 1, NSW and Victoria have had the most rapid growth in student numbers since 2005, increasing by 80,481 and 67,640 students respectively. Together they account for 74 per cent of the increase in student numbers from 2005 to 2008. The annual growth rates for NSW and Victoria in 2008 were 19 per cent and 22 per cent.

These figures demonstrate that there has been a disproportionate influx of international students into some of the eastern States of Australia in recent years. It has been in these States where most of the negative reports concerning the international education sector have arisen, including the collapse of a number of education providers, the existence of sub-standard providers, exploitation of students, housing shortages, lack of transport concessions, lack of social engagement and vulnerability to crime.

The sustainability of the growth in international student numbers, in these States is questionable. Did these States have the capacity (e.g. teachers, classes or accommodation) to provide quality education services based on the growth rates of the past few years? Many commentators believe that these States did not have such a capacity and cannot continue to recruit students at double-digit growth levels without further compromising education standards.

It is the Department's understanding that a number of providers across Australia have been found to have greatly exceeded the number of students specified under the terms of their registration with the Designated Authority. However, in the last two years the capacity has been developed within PRISMS to issue an alert to the provider and Designated Authority whenever a provider surpasses their listed student capacity. Given the events of the last six months, it is the Department's view that greater importance and power be given to the Commonwealth, State and Territory authorities to utilise the functionality within PRISMS to oversee and limit the number of students enrolled with providers, to those specified under the terms of their registration.

The international education industry is a human service industry. The provision of high quality education and training is underpinned by the quality of the human resource driving the student educational experience. The rapid degree of expansion in some States of Australia has been shown to place a significant stress on this important resource. This unsustainable growth carries with it a high level of risk associated with poor quality education that invariably results in many international students having a less than desirable experience of living and studying in Australia. This has damaged the reputation of Australian international education.

¹⁵ AEI Student Statistics Pivot Table: December 2008

RECOMMENDATION/S

The Australian international education sector and the public policy and regulation arms of government need to take stock. The way forward needs to be based on the following foundations.

1. There needs to be a re-affirmation that the sustainable future lies in recruiting students whose primary focus is on gaining a respected Australian qualification and providing those students with both a high quality education and an environment that fosters positive engagement with Australians and the Australian community. A key part of this reaffirmation is re-engineering the nexus between international education and skilled migration to remove the perverse incentive for the recruitment of students who are motivated by factors tangential to education. It is still important to maintain international education as a route for bona fide skilled migration so that it is part of the mix of skill sources that will assure Australia's future labour supply.
2. There needs to be a greater maturity in public policy on international education to give appropriate recognition to the quality and breadth of the student experience rather than the hitherto predominant focus on marketing. Until the recent problems, international education was considered in government largely in terms of export income. The public policy interest in the student experience was largely confined to a passive regulatory role of seeking to preclude abuses by education providers. There was little leadership or positive interest in providing an environment that fostered a positive student experience. The way forward lies in recognising that while international education is an important sector of the economy its 'product', education, has a human dimension. Education cannot be wholly reduced to a tradeable commodity without damaging the reputation of Australia and Australian education and placing the future of Australian international education at risk.

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

INFORMATION

It is critical that students have access to quality information on living and studying in Australia.

Many international students do not have access to clear, accurate and up-to-date information needed to make informed choices about studying in Australia. Misleading, inaccurate, incomplete and out-of-date information can have a significant and negative impact on the quality of the student experience. This is particularly the case for information provided prior to a students' decision to study in Australia.

The key source of information for international students is that provided by education agents and to a lesser extent from education provider and government websites. Students and providers have raised concerns about unethical or unscrupulous behaviour of education agents, particularly off-shore agents in India, in creating unrealistic expectations of cheap living and plentiful jobs. Concerns have also been raised about gaps in information on websites relating to issues such as student visas, living expenses, accommodation, transport and security.

The importance of providing quality information to international students was recently highlighted by the International Student Roundtable, hosted by the Commonwealth government on 14 and 15 September 2009. The Communiqué arising from the Roundtable called for the development of a comprehensive manual to assist in the provision of accessible and quality information for students. The Roundtable emphasised the importance of all students receiving a copy of the manual and setting its receipt as a requirement for obtaining a student visa.

Under the auspice of the Ministerial Council for Tertiary Education and Employment (MCTEE), the Joint Committee on International Education (JCIE) is currently undertaking work to progress the development and maintenance of a comprehensive information manual. It is expected that the manual will primarily be an on-line tool, enabling information to reflect the local settings of each State and Territory.

The Department of Education Services supports the Roundtable call for a comprehensive information manual and the work of the JCIE in developing and maintaining the manual. Given the difficulties that many potential students have with access to the internet and English language proficiency, it is important that the manual be provided in both electronic and hard copy, written in clear, easy-to-follow English.

AGENTS

Education agents form a very significant component of the international education industry in Australia. Education providers in Australia are very dependent on education agents for the supply of students, with approximately 70% of students coming to Australia in association with an education agent. These agents derive a significant part of their income from commissions paid by providers.

The introductory statement on education agents from the 2005 Evaluation of the ESOS Act, states the following:

*The unregulated nature of education agents is a risk to Australia's international education industry and...without action to minimise the risk by regulating education agents, the industry will be exposed to corruption, may experience loss of reputation, and could be seen as having ineffective quality assurance mechanisms.*¹⁶

Relatively little has changed since this evaluation. Putting aside the introduction of quasi accountably measures requiring providers to enter into formal contracts with agents, education agents remain relatively unregulated in the Australian international education sector.

The submission by the Australian Federation of International Students (AFIS) to the Senate Standing Committee on the Welfare of International Students (pp3-4) recently drew attention to this risk of a lack of regulation. AFIS presented evidence of “unscrupulous agents who misled and convinced some students into forming a set of unrealistic expectations about life in Australia.” These agents created expectations that obtaining a job is very easy and living expenses were cheap; promoted a college which offered an agent the highest commission, as being the finest college; showed photographs of colleges with great gardens when in fact they were housed in offices with no public space; and promoted courses which guaranteed students a route to permanent residency.

It is clear that international education in Australia, like any commission based industry, is subject to perverse incentives which may produce behaviour from agents which is not consistent with the interests of students or the public good.

The Department fully supports the recent directions and changes to the ESOS Act to strengthen the accountability of Australian education providers for their arrangements with education agents, particularly the requirement for providers to list the names of education agents who represent them and promote their education services. However the breadth of these changes is not sufficient to effectively minimise the risk of unscrupulous behaviour of education agents.

It is widely acknowledged that the ability to directly regulate education agents based overseas is very restricted because they are outside the reach of Australia's legislative authority. However it is the view of the Department that some form of regulation of agents is desirable.

As a means of quality assurance, the establishment of a *national quality endorsed register* for on-shore education agents under the ESOS Act is proposed. This could be complemented by a comprehensive code of professional conduct that would address matters such as minimum levels of knowledge and skill, standards of professional conduct and ongoing professional development.

The capacity to gather information about education agents as a means of monitoring and providing intelligence about their behaviour could be usefully integrated into PRISMS. The mandatory reporting in PRISMS of the name of the education agent for each student, would provide a systematic approach to tracking agents and the capacity to act swiftly against those who behave in a high risk manner.

Feedback from providers has identified that the inclusion of a standardised contract for use with education agents in Standard 4 of the National Code would be of benefit. This would in effect establish a set of minimum of contractual requirements for a provider when entering into a contract with an education agent.

¹⁶ PhillipsKPA and Lifelong Learning Associates. *Evaluation of the ESOS Act 2000*. p90.

RECOMMENDATION/S

3. To ensure students are informed consumers a comprehensive student information manual be made accessible to all prospective international students before they enter into any commitments with an education agent or education provider. The manual should specify key points the student needs to understand as an informed consumer (including that a student visa carries no link to permanent or longer term residency after graduation).
4. Before obtaining a student visa all international students be required to sign a Declaration Form signifying that they understand key points regarding their position as a consumer. Consideration should be given to providing the Declaration Form in the student's own language.
5. A national quality endorsed register of on-shore education agents be established under the ESOS framework. This will contribute to addressing the significant risks generated by on-shore student transfers between education providers.
6. A comprehensive code of professional conduct for education agents be developed to provide an aspirational standard. The code should address:
 - a. minimum levels of knowledge and skill required for operation as an education agent;
 - b. standards of professional conduct and business integrity in relation to services to provider and student clients;
 - c. continuing professional development.
7. That the risks associated with education agents be monitored using enhancements to PRISMS. Education providers should be required to record on PRISMS the name of the education agent referring the student. DEEWR should use this information to identify agents associated with patterns of risk such as a high level of student transfers, complaints or unsatisfactory progress. This information should be used in the risk assessment of education providers which guides the audit program.
8. In the interest of transparency education providers should be required to list on their website the names of any education agents to whom they have paid a commission for the referral of a student in the previous 12 months (where the education agent has supplied a minimum of 5 students).
9. To promote appropriate relationships between education providers and agents a *standardised contract for education agents* should be included in Standard 4 of the National Code.

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

COMMENTS

Over the last few months a number of education providers have collapsed or been closed in Australia. The Melbourne International College was closed in July, after being stripped of its licence, affecting 300 students. Also in July, the Sydney campus of Sterling College was closed because of its financial position, affecting over 500 students. In September, accreditation to teach international students was removed from St George Institute, Melbourne, affecting 129 international students.

These closures have had a huge impact on the international students involved and placed great demands on governments and providers to place affected students in alternative providers. The inability of students to continue their studies would do serious damage to Australia's, and a State's, reputation. It is essential that governments and providers have the capacity to ensure that the needs of students are adequately met in the event of closures in the future.

The ESOS Act provides three layers of protection, two of which play a key role for international students in the event of a provider closure. They include:

1. placement of a student in an alternative course through a *Tuition Assurance Scheme (TAS)* – a scheme comprising education providers that can offer comparable courses. In the event of a provider collapse, students receive the tuition they have paid for by placing them in a suitable alternative course in a timely manner with minimum disruption to students and no additional fees.
2. the *National Assurance Fund* (the Fund) which organises alternative tuition or a refund to students (viewed as a 'last resort' protection mechanism).

It is likely that the Commonwealth Government's decision to require all registered providers to re-register under new, tighter criteria by the end of 2010 will result in the closure of a number of other colleges across Australia.

Layer 1 - Tuition Assurance Schemes

The protection provided by the TAS's is being placed under ever increasing strain. With the closure of colleges over the past two years TAS's have had difficulty in placing students in a comparable course. The closure of training colleges in the last few months has in particular highlighted a number of weaknesses inherent with a TAS, including

- limitations in the capacity to respond to closures;
- extensive delays and disruptions to students in the placement process;
- restrictions in choice for students in terms of where they end up (course, provider, location);
- uncertainty about the obligations on TAS members to accept students from closed or failed colleges;
- thin membership across multiple geographic areas; and
- relatively insignificant financial resources.

The re-registration process will add additional pressures to TAS's. In the context of multiple provider closures over the next 18 months, many international students may face the prospect of their provider closing and the inability of TAS's to place them in a suitable alternative course.

The TAS was modelled on a scheme well established in Western Australia by small group of members of an ELICOS Association. This scheme has operated effectively over many years, covering a relatively modest and constant number of students. Members provide the same type of courses, are within close proximity, have a clear set of obligations for supporting other members and have demonstrated capacity to respond in the case of provider closure. Given similarities across Australia, a TAS may be more effective in the ELICOS sector than others.

Almost all private providers in Western Australia are members of a TAS. It is understood that a significant minority of private providers in NSW are not. Advice indicates that those providers not members of a TAS in NSW have been granted ministerial exemption. Under the ESOS Regulations “examples of circumstances in which a provider should not be expected to become a member of a tuition assurance scheme” include:

Each tuition assurance scheme that covers the kind of courses provided by the provider has rejected the provider’s application for membership.

Given that membership of a TAS is the primary layer of protection for students, it is essential that all providers are members of TAS, unless exceptional circumstances apply. The circumstance described in the ESOS Regulations raises significant questions and has the potential to undermine effectiveness TAS’s in general.

Layer 2 – National Assurance Fund

The Assurance Fund is less prominent than the TAS. Its purpose and operations are not well understood by both students and providers. Providers have reflected a great deal of frustration with the lack of transparency in the calculation and criteria for the annual subscription charges. This is particularly the case in Western Australia where there has not been any major provider collapses, but providers are still required to contribute to the Fund. This is exacerbated by the perception that their contributions are essentially underpinning the activities of high risk providers in the other States.

With the rapid growth in the numbers of international students over the last three years the Fund has faced a significant increase in the number of applications from students seeking a refund of course fees. It is understood that the net assets of the Fund have now essentially run dry. This scenario seemingly raises the prospect of the Commonwealth government potentially having to underwrite (guarantee) the Fund, thereby undermining its very purpose.

Tuition Insurance

Over the last year the protection offered to students by TAS and the National Assurance Fund, in the case of provider closures, has come into question. To provide an acceptable level of surety to students in such circumstances it is suggested that the current Review of the ESOS Act consider the full range of options to ensure students are protected against the closure of an education provider.

In particular, as a first line of assurance, the option of requiring providers to take out appropriate business insurance to protect student fees and tuition, be given serious consideration. The advantages of this option include:

- ensuring that in the event of provider collapse, students are guaranteed a complete refund of their course fees; and
- negating and/or greatly reducing the need for TAS’s and the National Assurance Fund.

Provisions of Corporations Act

The closure of a number of education providers over the last year has highlighted an issue of concern relating to the provisions of the Corporations Act 2001, specifically those relating to liquidation, voluntary administration and receivership. In some instances the independent authority (e.g. liquidator, voluntary administrator), in seeking to protect and realise the providers assets, has not released the details of the international students enrolled with the provider. This has created problems in terms of applying the first layer of tuition protection for the students – finding a place for them in a suitable alternative course in a timely manner.

The provisions of the Corporations Act are complex and generally not well understood by the international education sector. With the potential increase in the number of college closures, there is an increased importance to clarifying the intersection between the ESOS Act and Corporations Act, specifically clauses relating to how the entity (provider) is wound up and tuition protection for students.

Western Australia has introduced a strategy to mitigate the risks associated with provider closures in the VET sector and the possible loss of student records. The Client Qualifications Register (CQR) is an online repository which establishes a permanent system for the recording of Australian Qualifications Framework (AQF) student achievements from Registered Training Organisations (RTOs). In the event that an RTO ceases to trade, students will have access to records of their achievement (e.g. qualifications and statements of attainment), and employers will have an avenue to verify qualifications. RTOs are required to provide data of achievement at the unit of competency and the qualification level as well as minimal student information for identification purposes

RECOMMENDATION/S

10. As a first line of assurance the option of requiring education providers to take out appropriate insurance to protect student fees and tuition, be given serious consideration.
11. To the extent that there is a continuing role for tuition assurance schemes the criteria for the granting of a ministerial exemption be defined and tightened to restrict the use of this provision. This will require amendment to ESOS regulations.
12. To the extent that there is a continuing role for tuition assurance schemes the criteria for what constitutes a 'suitable alternative placement' for a student affected by a provider closure be specified and tightened. The definition should require a similar field of study and geographic location.
13. To ensure students affected by provider closures have timely access to alternative options to finish their education there is a need to review the relationship between the ESOS Act and the Corporations Act. Information essential to allow timely alternative options for students should not be withheld from students and regulators by receivers and liquidators.
14. A client qualifications register be established for international education providers in each state and territory in order to mitigate the risks associated with the loss of records relating to student achievement, in the event of a provider closure.

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

COMMENTS

Throughout 2009 there have been a number of reports in the media concerning a range of issues involving international students, including allegations of exploitation within the industry, education quality, safety and security, employer exploitation and accommodation deficiencies. An important aspect of the student experience of living and studying in Australia is access to objective and timely complaints and appeals mechanisms. The reporting of student grievances in the media this year suggests that existing mechanisms have not functioned effectively and this has allowed difficulties to grow and compound.

Much of the feedback this agency has received on this issue has focussed on the 'independence' of the complaints processes. The Department's International Education Conciliator has indicated that some international students do not perceive the independent complaints process nominated by the provider as being 'independent'. Many students have reported a lack of procedural justice in these processes, that there is a lack of fairness and the transparency in the independent complaints mechanism appointed by the provider.

The Council for International Students of Western Australia (CISWA) recently compiled a report that provides a broad overview of the arrangements for handling international student complaints in each Australian State and Territory and in New Zealand. In assessing the strengths and weaknesses of each system, this report demonstrates that the provision of such services can be fragmented, limited in availability and poorly understood by both students and providers. They conclude that:

- a. Whilst Standard 8 of the National Code clearly specifies the obligations of providers in relation to *internal complaints* processes, it is not definitive about whom an *independent/external* body should be, the authority of the body nor its required procedures, when a student is not satisfied with the internal process.
- b. Feedback from various jurisdictions suggested that many student problems can be resolved without recourse to formal processes. In many cases mediation, or even simple advice to students encouraging them to work within their own providers processes is sufficient to solve the problem.

There is a need for the multiplicity of external complaints processes across Australia to be replaced by a single recognised authority in each state and territory, which can be seen to be independent, ensure consistent handling of complaints and be aware of systemic risks.

It is also valuable for students to have access to a conciliator to whom students may go for advice about complaints or the complaints process. This function is provided in WA by the Department of Education Services under the State *Education Service Providers (Full Fee Overseas Students) Registration Act 1991* (ESPRA).

Although the Western Australian conciliator is independent of education providers, this does not mean that there is a hands-off relationship between the provider and the conciliator. Under the State ESPRA Act, the provider must advise a complainant of the availability of the conciliator. It is not unusual for the provider to seek advice from the conciliator on how to deal with a student complaint internally.

The Department supports a review of Standard 8 of the National Code with a view to establishing a single external complaints mechanism in each State and Territory.

As a general principle, dispute resolution should be proportionate. This means that disputes are resolved at the lowest appropriate level and that there is proactive avoidance of unnecessary escalation of conflict.

In the Western Australian experience, most disputes between providers and students can be resolved 'at the coalface', sometimes with the assistance of people with expertise in mediation and conciliation. In this regard, the Department has a small conciliation service specifically for international students to assist the resolution of internal disputes.

However, in those instances where internal appeal processes have been exhausted, there is a need for a body that is suitably independent from the provider.

RECOMMENDATION/S

15. That within each State and Territory, an independent body be established within government with responsibility for dealing with international student complaints and appeals.
16. The independent body should have the following primary functions:
 - a. In the first instance, the body should investigate student complaints and advise students on appropriate courses of action including appropriate dispute resolution mechanisms.
 - b. When the student has exhausted normal institutional processes and is still not satisfied, and the body judges that the student's complaint is a legitimate one, then the body should act as a mediator/conciliator between the student and the provider, to see if a mutually agreeable solution is possible.
 - c. Where mediation is not successful, the body should have suitable powers to arbitrate. Such arbitration may include requiring a provider to implement a particular solution.
17. Given the current arrangements whereby ESOS is administered by State and Territory governments, the independent body should be located in the relevant state or territory government regulatory authority. National protocols on the treatment of complaints should be developed to ensure consistency across Australia.

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

COMMENTS

In the Western Australian experience, there are an increasing number of requests for early transfer being granted by the Department of Immigration and Citizenship (DIAC) if a student produces an offer of a place from another provider – this may be a 'softer/easier' option for the student. In some cases, students are changing courses prior to commencement of the initial course. This may include students transferring from a higher education course to a VET course before commencement. This practice casts doubt on the seriousness of students involved to complete an appropriate qualification of an adequate standard.

Similar to the student enquiries to the International Students Hotline referred to in the ESOS Issues paper, by far the most common complaint dealt with by the Department's International Education Conciliator relates to whether or not a provider will issue a letter of release (42.5% of complaints) – essentially students wanting to change providers.

This desire to change providers has been strongly linked to:

- the practice of 'shopping around' for cheaper, less onerous and migration linked courses, by students for whom permanent residency or access to the Australian labour market are more important than gaining a qualification; and
- the potential predatory behaviour of some providers in poaching students (e.g. offering the same course at a more competitive cost) from other providers.

The quality and reputation of the international education industry is clearly not well served by this behaviour.

Under Standard 7 of the ESOS National Code, a student is required to complete six months in the principal course in which he/she has enrolled before transferring to another course. It is understood that variations from this are allowed if there are exceptional circumstances – where there is a detrimental impact on the student and an earlier transfer is determined to be in the interests of the student. However this is not clearly specified in the National Code. In line with this requirement, a "new" provider should not issue a confirmation of enrolment to a prospective student who is already enrolled at another provider, unless the "new" provider has sighted a letter of release or the student has completed six months of the principal course.

We endorse the existing limitation on a student's ability to change their education provider, as outlined under Standard 7. However, from our experience, the effectiveness of the provisions of Standard 7 in limiting a student's capacity to transfer until after six months of the *principal* course of study is flawed. In instances where a student is enrolled in a packaged course, the 6 month provision is applied to the highest course of study. It may take a period of well over 6 months for a student to begin this highest course. It is our view that this provision is too restrictive in terms of student choice.

RECOMMENDATION/S

18. A student must remain with an education provider for six (6) months from the commencement of their studies unless (a) they can demonstrate "detrimental impact" to DIAC or (b) they have a complaint regarding the provider upheld by the independent complaints body. In 'packaged courses' the commencement date will be taken from the date of enrolment in the initial course. The period of six months strikes an appropriate balance between restrictions required to protect the integrity of Australia's migration and education systems and the student's rights as a consumer. (This provision is covered by Standard 7.1 of the National Code.)

19. The definition of “detrimental impact” for a student seeking to transfer from a provider within the initial 6 months of enrolment be tightened to provide greater clarity to students and providers. (“Detrimental impact” is currently embedded in the National Code Explanatory Guide).
20. The requirement for a student seeking to transfer from their initial education provider within the proscribed period to obtain a ‘letter of release’ from that provider should be removed. It appears to have proved unworkable and to have been commonly disregarded.

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

With the recent increase in international student numbers and the proliferation of providers seeking registration in the VET sector solely to capitalise on the international student market, the effectiveness of the regulatory frameworks that underpin registration, compliance and enforcement has become critical.

The National Code and AQTF underwent significant review with new iterations of both implemented on 1 July 2007. Although the work undertaken was driven by the Commonwealth, the two reviews were done separately. Hindsight suggests that given these two regulatory frameworks impact providers within the VET sector, greater alignment and integrated implementation would have been beneficial. It is believed that DEEWR has recently undertaken a mapping exercise to identify the similarities and gaps between the requirements of the ESOS framework and other domestic frameworks including the AQTF. States and Territories provided input to this work but the findings are yet to be released.

Given that the AQTF is the primary regulatory framework for the VET sector, it would seem timely that consideration be given to a review of both ESOS and AQTF frameworks to identify the areas of good practice that could be applied to the AQTF to strengthen its compliance and enforcement requirements, (e.g. financial viability and fees paid in advance). The regulatory frameworks are not substantively different in regards to the underlying principles of quality assurance, standards setting and consumer protection. The ESOS framework provides prescription over and above the AQTF which is necessary for the protection and support of international students. There may be elements of the ESOS Act or indeed elements from State and Territory complementary legislation that can be imported into the AQTF to bolster its enforcement capacity.

For example, Western Australia has its own Act, the *Education Service Providers (Full Fee Overseas Students) Registration Act 1991* (ESPRA), to regulate the sector and protect students and quality providers. The distinguishing feature of ESPRA is the provision for monitoring and regulating the financial viability of providers, that extends well beyond the provisions of the ESOS Act and other education quality assurance frameworks.

The AQTF and other frameworks could be strengthened, particularly for the entry of new providers into the system whose sole intention is to deliver to the international student market. As a new provider has no track record of performance, judgements are made based on intent and it is not until 12 months later that deployment is assessed through a full audit process. This audit is crucial to determining the provider's ongoing capacity to provide quality education services. As discussed later in this paper (question viii) some consideration could be given to introducing a system of provisional registration until a track record can be established. This may include the initial approval of a limited scope and a capping of student numbers.

To support the regulatory frameworks it is important that a comprehensive risk management methodology is in place to ensure that regulatory responses are adequately resourced. In this way regulatory resources can be targeted to those providers who pose the greatest risk to the sector. This provides assurance that effective protection is in place for all stakeholders and also for the reputation of Australia's international education industry.

There is a growing need for a strong integrated regulatory environment for the international sector. Such an approach has been implemented in Western Australia whereby the regulation of VET (excepting apprenticeship contracts), higher education and international education, as well as non-government schools is undertaken by one Department, the Department of Education Services. This allows for consistent and coordinated registration and monitoring of international education providers.

RECOMMENDATION/S

21. The application of ESOS and the underpinning education quality assurance frameworks needs to be integrated in the interest of more effectively assuring the quality of Australian education and reducing the regulatory burden on providers. This integration should be based on a progressive shift in regulatory practice to accord with the following precepts -
 - a. An integrated and common risk matrix will be used to determine audit programs across all non-school international and domestic education sectors.
 - b. Any audit of a non-school provider will simultaneously assess their compliance against all education quality assurance frameworks under which they are registered.
 - c. Any evidence of non-compliance arising from an audit will simultaneously generate an appropriate regulatory response against all the applicable education quality assurance frameworks.

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

COMMENTS

There are two broad areas which distinguish international students from domestic students and which require a different approach to regulation. These are –

1. The desire to gain permanent residency or at least longer term access to the Australian labour market is a strong and pervasive driver of demand for international students to enrol on-shore with Australian tertiary education institutions. This driver carries significant risks for the integrity of Australian education and the Australian migration program. These risks need to be offset by appropriate regulation. This is a factor which is obviously not common to domestic students.
2. Most domestic Australian students do not relocate to study at a tertiary education institution. Thus mainstream campus accommodation and non-academic student support services are configured on the basis that students will continue to have access to their existing familial and social networks. This is obviously not the case for most international students. Lack of access to adequate support creates two risks for international students. Firstly that the prospects of academic success will be prejudiced. Secondly that students will be isolated from Australians and form relatively closed communities with fellow students from the same country or region. The recent pattern of growth in Australian international education means that the risk of 'cultural enclosure' is real and present.¹⁷

Excesses associated with the migration driver, where the student has a relatively nominal interest in acquiring a respected Australian qualification, require the imposition of some constraint on the student's freedom of choice as a consumer. This is to prevent the student using that freedom to set up a 'flight to the bottom of the market' where some education providers will outbid each other to provide the cheapest and least demanding route to permanent residency at the cost of the integrity of Australian education and Australian qualifications. This is an example of 'market failure' which requires regulatory action – refer to the section on *Migration Driver* in Question xi for more information.

Conversely international students' need for support which is generally not needed for domestic students, requires the specification of minimum service standards. High quality education providers offer a high level of non-academic student support services and presumably cost these into the price of their product.¹⁸ Without an enforceable minimum standard for non-academic support services some education providers are free to participate in a 'flight to the bottom of the market' and undercut quality competitors at the cost of a sustainable future for Australian international education. Again, this is an example of 'market failure' which requires regulation – refer to the section on *Social Engagement* in Question xi for more information.

¹⁷ For a discussion of cultural enclosure see Evaluation of the General Skilled Migration Categories. Birrell, B., Hawthorne, L., Richardson, S. March 2006. DIAC p104ff

¹⁸ For a discussion of good practice in programs to support social engagement refer to Examples of good practice in assisting international students to integrate with Australian students and the wider community. Department of Education, Employment and Workplace Relations.

RECOMMENDATION/S

22. In light of the risks associated with the strong and pervasive importance of the migration driver in Australian international education, some constraint on the freedom of choice of international students is necessary. These constraints should be designed to prevent a 'flight to the bottom of the market' by students with an only nominal interest in gaining a respected Australian qualification.
23. Effective pastoral care and positive engagement with Australians is a hallmark of a sustainable international education sector. International students have support needs in these areas which are different from and beyond the needs of domestic students. There is a need to ensure education providers have effective programs for these purposes particularly in light of the growth in providers who principally or exclusively enrol international students. A new enforceable code for non-academic and engagement programs needs to be developed to strengthen Standard 6 of the ESOS National Code.

EFFECTIVE REGULATION

vii. Is ESOS compliance and enforcement adequate?

COMMENTS

The ESOS Act and accompanying National Code provides a sound basis on which to regulate providers of education services to international students. However, there are some inadequacies with the regulatory framework which would benefit from improvement or strengthening. Where there is complementary state and territory legislation that provides the Designated Authority with additional powers, identified elements of good practice should be included in the ESOS Act to:

- strengthen compliance and enforcement; and
- ensure consistent regulatory treatment of all providers.

For example, WA has not experienced the issues associated with college closures that have occurred in the eastern states. WA has been able to ensure that its high risk providers, in particular, are monitored for quality assurance and financial viability with no major collapses having occurred in the last 10 years. Specifically, the Department administers state based legislation known as the *Education Service Providers (Full Fee Overseas Students) Registration Act 1991 (ESPRA Act)*. The ESPRA requires all registered providers to provide quality education and training services to overseas students and that the standards of delivery are monitored for compliance. It provides WA with additional levels of protection by ensuring providers are financially viable on an ongoing basis and have systems in place to safeguard students' pre-paid fees.

Providers are assessed by the Department against the State and Commonwealth regulatory requirements and where they meet these requirements are registered for a period of up to five years. For those providers that are assessed as high risk, or for initial registrations where there is no track record, these institutions are registered for a shorter period, (i.e. one to two years) and are monitored closely to ensure compliance and financial viability. Part of this monitoring includes the power to impose conditions on registration to ensure the provider is meeting and maintaining requirements for registration.

The following provides a number of examples where the ESOS Act requires strengthening:

Financial viability (also refer to related comments in response to Question viii)

To ensure underpinning financial viability and commensurate levels of quality assurance, providers need to demonstrate sufficient financial and other resources available to comply with the Act. Currently, there is a broad "fit and proper" criteria to be met for "a person" under Section 9 (6 a-g), however there is no common regulatory approach where Designated Authorities seek evidence that the provider has financial resources sufficient to the scale and scope of operation, most particularly where the provider is high risk and/or a new institution.

WA private providers are required to demonstrate they have sufficient financial and other resources to comply with ESPRA, both at the time of initial registration and throughout the period of registration. As a condition of registration, most providers are required to have their financial accounts audited annually. Conditions may be imposed which require a WA provider to submit additional financial information, such as unaudited managements accounts and financial projections on a periodic basis.

Fee Refunds

In instances where an existing provider is purchased by a new legal entity, Section 29 (1) of the ESOS Act deems the new entity as a “provider default”, therefore students must be offered a full refund. Such action is seen as a too harsh a penalty and an unintended impost on the new entity. While legislative amendments on the “unintended provider default” are currently before the Commonwealth Parliament, the default provisions should only apply to a new legal entity where the unearned portion of student fees is refunded.

Additionally, with the increasing number of student complaints, it has been identified by the Department that the obligations for providers to include reference to requirements in the student contract to “...provide information in relation to refunds of course money” needs to be strengthened. Evidence obtained by the Department’s Independent Conciliators suggests that students are becoming increasingly unaware of the rights and obligations in terms of course refunds. In response, Standard 3 of the National Code needs to be strengthened to ensure that students are offered greater clarity and understanding of their consumer protection rights.

Course Duration

With the emergence of the “push factors” impacting international students seeking permanent residency and part-time work, there is an increasing demand (particularly in Victoria) by providers wishing to offer a course over a shorter period (i.e. two days) - the minimum 20 hours a week. For providers wishing to offer intensive courses over a short number of days, the compact nature of delivery may have a detrimental impact on quality of the teaching and learning and may be used as a driver to enable students to undertake employment over and above the minimum specified period. In order to mitigate against these outcomes, Part C, Section 7 of the National Code needs to be amended to include a provision that “the course must be offered over at least three days per week”.

Levels of English Proficiency

Improvements are required to the system of the English testing to ensure levels of proficiency are bona fide prior to course commencement with an overall objective of achieving better student outcomes.

To achieve such outcomes, mandatory testing of all international students from high risk Assessment Level 4 countries (other than the ELICOS sector) should be undertaken to determine whether the level of English proficiency upon arrival in Australia matches the pre-departure assessment of their home country be introduced.

Standards 1 and 2 of the National Code, DIAC and DEEWR websites, and visa conditions should be amended to ensure that if, on arrival in Australia, the student does not meet the required IELTS level for course commencement, additional ELICOS support be provided to ensure English proficiency levels are improved. If the minimum level of English proficiency for appropriate course commencement is unable to be obtained, the student must return to their home country.

Such changes will seriously reduce the level of IELTS fraud that is often associated with high risk countries. It will also provide an additional level of quality assurance for providers and regulators as the student is not “set up to fail” by having a level of English proficiency that is inappropriate in meeting course outcomes.

Conditions on Registration on PRISMS

With the increasing numbers of multi-jurisdictional providers across Australia, the concept of mutual recognition can only be considered by Designated Authorities for domestic purposes in the VET and Higher Education sectors. There is a lack of information for Designated Authorities on the conditions placed on multi-jurisdictional providers (i.e. operating across more than one jurisdiction) by the Commonwealth and/or other jurisdictions.

In order to provide an enhanced level of compliance assessment and monitoring, a capacity to record any conditions on PRISMS is required by Designated Authorities. This PRISMS enhancement would only allow the Designated Authorities, and the provider concerned, to have “read-only” access to the conditions placed on registration by Designated Authorities, to facilitate improved decision making.

Annual Reporting for High Risk Providers

There is inconsistency in the level and format of annual reporting. For example the private higher education sector has requirements for annual reporting, whilst VET sector providers only need to report periodically against quality indicators.

To provide improved levels of risk assessment, particularly those relating to high risk providers, it is suggested that high risk providers be required to report annually to the Designated Authority on critical performance criteria, such as:

- student capacity;
- advertising and promotional materials;
- arrangements/partnering with other providers;
- levels of staffing and professional development, and
- monitoring student records for attendance and academic performance.

Resourcing of Regulation

With the increasing number of reports relating to the collapse of education providers, the existence of disreputable / sub-standard education providers and the exploitation of students throughout 2009, it has become clear that in some jurisdictions the resourcing of regulatory activities has not kept pace with the growth of the sector.

To support the resourcing of regulation in Australia, costs are recovered by the Commonwealth, State and Territory governments in the following manner:

- Commonwealth registration charge for each provider – it is our understanding that this is based on the number of student enrolments and length and sector of course; and
- State and Territory registration charges. The level of these fees varies substantially between jurisdictions.

The inconsistency in the deployment of regulation activities across Australia can be attributed to substantial variation in the level of cost recovery and differences in registration fees throughout the jurisdictions. In addition it is understood that the allocation of resources to the States and Territories has not been linked to the level of risk assigned to education providers. In some jurisdictions this has resulted in a level of resourcing for regulation that undermines the provision of effective student protection and quality assurance measures.

It is the view of the Department that the costs associated with the regulation of the international education sector in Australia should be borne by providers at full cost recovery. Further in order to streamline the multiplicity of charges, particularly for those providers operating in a number of jurisdictions, these costs should be recovered through establishment of a single registration fee for all providers across Australia.

To support the effective implementation of the single registration fee, resource sharing agreements would need to be established to underpin the distribution of required funding between Commonwealth, State and Territory governments.

With this in mind the Department proposes that a review be undertaken of the regulatory costs incurred by the Commonwealth, States and Territories in relation to the ESOS framework. This review should strongly consider the possibility of establishing a single, cross jurisdiction registration fee that enables the appropriate deployment of resources to designated authorities commensurate to the pattern of student enrolment and risk associated with education providers.

This is consistent with the recommendations of the 2005 Evaluation of the ESOS Act in relation to the financial and regulatory costs of the ESOS framework¹⁹.

RECOMMENDATION/S

24. To address the key risk to the integrity of Australian international education posed by inadequate English language proficiency, all students from Assessment Level 4 countries enrolling in non-school or ELICOS courses should be re-tested for English proficiency upon arrival in Australia. Any student with English skills below the minimum necessary for study should be required to successfully complete ELICOS courses prior to enrolment in other courses.
25. Include powers for Designated Authorities to assess the financial viability of education providers, both at the point of application for registration and over the term of registration.
26. To assist timely monitoring of risk, a Designated Authority should have the power to require a high risk provider to provide annual reports on their financial and non-financial risk factors.
27. To ensure risks are identified and addressed, PRISMS should be enhanced so that any Designated Authority can identify conditions placed on the approval of an education provider by any other Designated Authority. (This will require 'read only' provision only for the DAs not agents or other providers.)
28. To strengthen quality assurance and national consistency, State and Territory complementary legislation should be reviewed to identify best practice provisions which can be incorporated in a revised ESOS Act. These types of provisions include financial viability requirements, complaints management, and annual reporting for high risk providers.
29. To ensure that the integrity of student visas is not compromised by paid work, include a provision that "the minimum 20 hours duration of course delivery per week must be offered over at least three days per week". (This is covered in Part C Section 7 of the National Code).

¹⁹ PhillipsKPA and Lifelong Learning Associates. *Evaluation of the ESOS Act 2000*. p202.

30. In the interest of effective consumer information and protection, stipulate that the student's contract with the education provider must offer a statement/s that clearly and concisely advises the student of the existence of a refund policy and the process for application. (This refers to Standard 3.1 c of the National Code.)
31. Amend the current requirements to stipulate that where an education provider is purchased by a new legal entity the student is only entitled to a refund for the component of their course which has not yet been delivered (at present the requirement is that the student be offered a refund of all their fees including that component relating to studies already undertaken).
32. Effective regulation requires resourcing proportionate to the size and risk profile of the sector being regulated. A review should be undertaken of the costs incurred by the Commonwealth, State and Territory Governments in discharging their regulatory responsibilities under the ESOS framework, with the review exploring:
 - a. the opportunities to streamline registration costs by having only one registration fee for providers across Australia;
 - b. the methodology for determining the single registration charge, including number of student enrolments, patterns of enrolment, sector of delivery and level of risk associated with each provider; and
 - c. the establishment of resource agreements to distribute required funding from the single fee between the various levels of government.

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 Department of Education Services regulates education and training providers using a risk management approach, where decisions are based on provider performance and an assessment of the risk level attributed to their operations.

Those providers that deliver high quality education and training services and outcomes will receive less intensive monitoring. On the other hand, those providers assessed as presenting greater risk to the achievement of quality outcomes for students, clients and the education and training system in general, will receive closer monitoring and audit attention.

New providers are considered high risk as they have no track record of performance, compliance or demonstrated capacity to deliver quality education services. For an initial registration of an applicant, given that the provider has not commenced operations, compliance is judged by intent and evidence of capacity to deploy its policy, strategies for learning and assessment, processes and management systems. At this stage of the registration cycle, there are no outcomes on which to judge compliance with the Standards and the applicant is required to demonstrate capacity to deliver and assess for their given scope; in other words readiness to deliver.

Specifically, under the requirements of the AQTF, a registered training provider is required to undergo a full site audit within 12 months of operation (post initial audit). From an ELICOS perspective, providers must also pass through a post-accreditation visit with the accreditation authority (i.e. National English Language Testing Accreditation Scheme, NEAS). The purpose of such audits is to establish compliance based on actual deployment. The outcomes from an audit can be quite different, pre and post registration. The post initial audit is crucial to determining the provider's ongoing capacity and commitment to providing quality training and assessment, education and client services.

Given that registration is based on intent, there is merit in strengthening the entry requirements for providers. Such considerations could include:

- the notion of 'probationary or provisional' registration until track record can be established;
- limitations on the scope (number of qualifications) and student capacity;
- assessment of current financial viability and demonstration of ongoing financial viability;
- monitoring providers more closely in their initial registration period. The follow up audit post initial audit should be conducted within a six to nine month period.

Strengthening the entry requirements will assist in ensuring that only providers with a genuine intent to provide quality education services for the long term will apply.

As outlined in Question v of our response, Western Australia, unlike most other States, has complementary legislative powers (the ESPRA), to regulate the sector and protect students and quality providers. The distinguishing feature of the ESPRA is the provision for monitoring and regulating the financial viability of providers well beyond the provisions of the ESOS Act.

Non-statutory institutions (i.e. typically private providers) must demonstrate that they have sufficient financial and other resources available to ensure the “decision maker” (the CEO of DES) is “satisfied” the requirements of the ESPRA are being met. Providers must submit a three year business plan incorporating the following requirements:

- business objectives;
- corporate structure of the provider;
- marketing strategy and plan;
- education services to be provided;
- risk analysis and cash flows;
- supporting independent reports (e.g. marketing forecasts), and
- budgets (including profit sheet and loss and balance sheet)

In addition, providers need to include a statement of solvency incorporating a list of assets, liabilities and contingencies and commitments (e.g. all lease and rental commitments, legal claims against companies and capital items), and the provision of audited financial statements and unaudited management accounts (no more than two months old). Further, a statement that the business is not held in trust for other persons, corporations or trust is required.

As a condition of registration, and in line with the Department’s monitoring obligations, private providers are generally required to have financial accounts audited annually. In some cases, based on a risk management approach, the Department may impose more stringent conditions which require the provider to submit additional financial information (i.e. unaudited accounts, and projections).

Much work has already commenced on managing risk through strengthening registration requirements and more effectively targeting regulatory responses to areas of greatest need: in particular, the work of the Joint Committee on International Education (JCIE) and its subordinate committee, the International Quality Implementation Group (IQIG) which has the collaborative support of States and Territories and the Commonwealth. It is recommended that work be continued to establish clear intent and a nationally consistent approach to risk identification and management, compliance and enforcement, including the following:

1. Establish and implement nationally agreed quality assurance measures and risk criteria for codifying providers (including using data), achieved through a collaborative approach between states, DEEWR and DIAC, including protocols for interaction regarding monitoring as well as information sharing.
2. Develop a nationally agreed streamlined and proportionate approach to monitoring and audit of providers, which identifies and effectively targets the higher risk aspects of international education, based on an agreed, graded classification system for segregating providers into risk categories.
3. Develop nationally consistent audit and other aspects of implementation of the National Code methodology (for high, medium and low risk providers).
4. Develop specifically targeted audit and other enforcement activities for identified high risk providers.

5. Strengthen range of incentives and disincentives (rewards for quality providers and penalties for problem providers), for example:
 - by enhanced national recognition of quality providers, allowing them to extend into other states with minimum intervention (checking only on local resourcing and comparable delivery arrangements)
 - “suspension of benefits” for problem providers (short term, protracted and total) approach may be useful (for example, use of enrolment lock as a sanctioning tool extended to states and territories).
6. Consider mechanisms to manage risk of new providers without track record entering the international education market.
7. Progress work on integration of CRICOS and domestic quality audits (particularly AQTF) with a focus on improving quality outcomes through a comprehensive examination of the organisation, but reducing the regulatory burden on the provider through duplication.

RECOMMENDATION/S

33. Strengthen the entry requirements for providers giving consideration to:
 - The notion of ‘probationary or provisional’ registration until track record can be established.
 - Limit the scope (number of qualifications) and student capacity.
 - Assessment of current financial viability and demonstration of ongoing financial viability.
 - Monitor providers more closely in their initial registration period. A full follow up audit post initial registration should be conducted within a six to nine month period.
34. Develop a nationally agreed approach and framework for ESOS compliance auditing of providers. (Based on the work of the Joint Committee on International Education (JCIE) and its subordinate committee, the International Quality Implementation Group (IQIG).
35. Establish and implement a nationally agreed risk management approach to monitor and audit providers. (Based on the work of the Joint Committee on International Education (JCIE) and its subordinate committee, the International Quality Implementation Group (IQIG).
36. To ensure effective coordination between agencies nationally agreed protocols should be developed for information sharing between designated authorities, DEEWR and DIAC regarding high risk education providers and education agents.
37. PRISMS offers an under-utilised capacity to monitor risks based on complete capture of the entire applicant, student and provider population in real time. (This data capture should be extended to include education agents as per the recommendation above.) DEEWR and State regulators need to develop a suite of PRISMS management reports to monitor risk. These reports should be based on research analysing of patterns of student and provider behaviour recorded in PRISMS.

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

COMMENTS

An effective regulatory framework provides for a minimum set of standards to ensure the provision of quality education services to clients, a high level of consumer protection and assurance of the reputation and standard of the sector in general. In recent times, regulation has changed in order to keep pace with economic and societal changes. In general, government and society demand high standards of education and training; and business and industry expect greater regulatory efficiency including reduced levels of burden and less red tape. The challenge for regulators is to find the balance.

The view of key stakeholders in the VET sector in 2006 was to move towards a proportionate risk based response to drive improvements in quality, reward good performance, but still provide assurance that strong action will be taken when providers fail to meet the minimum level of standards.

Whether the regulatory framework focuses more on outcomes than on inputs and prescription, the bottom line is that:

- a. there is a minimum set of clear standards; and
- b. compliance is non negotiable.

A focus on outcomes is about assessing the deployment of inputs and processes. It is an effective measure of compliance given that it requires evidence to demonstrate deployment rather than requiring prescription of inputs only.

The AQTF is not totally focussed on outcomes; there is a balance between both outcomes and prescription. For example, a key driver of compliance is meeting the prescription of requirements of the training packages/accredited courses. In particular, the AQTF focuses on the quality of services and outcomes being achieved by students rather than the inputs used to get there. This approach allows providers flexibility in demonstrating how their individual methods provide quality training outcomes for their clients.

However, the question arises, given the problems currently being experienced in the international VET sector:

- Is the balance between input and outcomes appropriate or have the problems arisen because of inadequate enforcement in some jurisdictions?

In general there does not seem to be significant differences in the treatment of education issues under the ESOS Act and the AQTF. The AQTF provides the regulatory basis on which to overlay the additional prescription required to support the unique needs of international students.

The underpinning principles of the frameworks are the same which requires demonstrated evidence of compliance, irrespective of whether it is delivering to the domestic and/or international market. Over and above these mandatory requirements, a potential international provider must demonstrate a more prescribed level of compliance for certain matters: that is, accurate and ethical information provision to students prior and during enrolment; student support to meet individual needs; engagement with interested other parties; complaints and appeals; changes of ownership; requirements for qualified staff, facilities, equipment, resources; quality provision of training and assessment; management systems to support the business model of the provider.

Given the lack of substantive differences between regulatory frameworks it is proposed that an integrated approach to regulation be adopted, that reflects a:

- balance between both inputs/prescription and outcomes; and
- greater alignment between the requirements of the AQTF and the ESOS Act.

Such an approach, as outlined in Question v of this submission, is being implemented in Western Australia whereby the regulation of VET (excepting apprenticeship contracts), higher education and international education, as well as non-government schools is undertaken by one Department, the Department of Education Services.

RECOMMENDATION/S

38. Community expectations require that the cornerstone of effective regulation of education should be minimum standards for the quality and quantity of inputs (instructional staff, physical and information technology facilities, assessment practices, learning materials etc). The standards should extend to the deployment of these resources and to the fair and accurate representations of courses and their outcomes to prospective students. Any focus on outcomes should not be to the exclusion of this essential requirement.

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

COMMENTS

Under the Migration Regulations, students whose visas have been cancelled for not meeting course requirements are subject to a three-year exclusion period. The Department has received feedback from providers expressing concern about this exclusion policy.

Under Standards 10 and 11 of the National Code, providers are required to report students who have breached course progress and attendance requirements to the Department of Immigration and Citizenship (DIAC) through PRISMS.

The consequences of an education provider reporting a student can have a profound impact on that student's life. Providers and regulators are of the view that the three year exclusion period is too harsh, particularly in instances where all attempts have been made to assist the student, but the desired educational outcomes have not been achieved.

The consequences of the ESOS National Code and Migration Regulations, as they relate to student visa cancellation and exclusion, were a point of focus of the 2005 Evaluation of the ESOS Act²⁰. The view expressed in the evaluation stated that:

...the regulations...are so strict that some genuine students whose visas are cancelled on academic grounds are denied the opportunity for further study within Australia. A student who has failed to meet academic requirements in one course is often a student enrolled in an unsuitable course for a variety of personal and family reasons.

In the case of a deliberate breach of visa conditions the enforcement of the three-year exclusion, as prescribed by the Migration Regulations, is supported. It is unreasonable however to apply such a determination to students who have legitimate reason for not meeting the requirements of the National Code.

In order to better support those students who have a genuine reason for not meeting course requirements, it is recommended that provisions within the National Code and Migration Regulations are introduced that allow for more flexibility in the application of the three-year rule. These provisions could include:

- conditions under which the three year exclusion period is waived; and
- the introduction of tiered approach to exclusion periods based on level of breach and risk.

RECOMMENDATION/S

39. The National Code and Migration Regulations are amended to include provisions that establish conditions for waiving and/or applying a shorter duration to exclusion periods against international students where appropriate.

²⁰ PhillipsKPA and Lifelong Learning Associates. Evaluation of the ESOS Act 2000. p181.