

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

SUBMISSION OF THE DEPARTMENT OF IMMIGRATION AND CITIZENSHIP

Introduction

The Department of Immigration and Citizenship (DIAC) is responsible for deciding applications for student visas and managing the compliance of the student with visa conditions. In 2008-09, DIAC received 362,193 student visa applications, which represented growth of 20 per cent on the previous year and continued a trend of growth over the past five years. There were more than 433,000 student visa holders in Australia at the start of October 2009. DIAC supports sustainable growth in the international education industry and believes that the aim of sustainable growth is complemented by high levels of integrity in the student visa program.

DIAC has a significant interest in the Education Services for Overseas Students (ESOS) Framework, which complements and interacts with the *Migration Act 1958* (the Migration Act) across a number of areas. ESOS acts as a keystone for student visa assessment as, with limited exceptions, student visas can only be granted to applicants holding an enrolment with an education provider registered under ESOS. The provisions in ESOS that govern how providers recruit and manage students are therefore of critical interest to DIAC.

DIAC also has significant interaction with the hundreds of thousands of international students in Australia through the visa process and the outreach activities of staff in our State and Territory offices. DIAC staff engage with education providers on a daily basis in relation to the management of students. Through this extensive contact, DIAC staff are well positioned to provide alternative perspective on the way in which ESOS functions.

While DIAC is not responsible for the quality of education, interactions between ESOS and the Migration Act mean DIAC works closely with DEEWR and State and Territory education authorities on compliance matters. DIAC has participated in a number of joint agency compliance and investigative efforts and considers further well coordinated activity would be of great benefit to international education in Australia.

DIAC welcomes the opportunity to provide input to the review and has drawn on its knowledge of student visa program issues as well as its significant interactions with students and providers to formulate comment and recommendations.

Summary of recommendations

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?

1. Develop the Study in Australia guide, or a similar one-stop resource, to provide an authoritative central reference point for students.
2. National Code Standard 3 be amended to ensure that before enrolment, providers make available a copy of the publication in an appropriate language, as a minimum.
 - Student visa application forms be amended to include reference to the new Government publication.
3. Regular student and provider information sessions be held around Australia, involving DEEWR, DIAC and other relevant agencies.
4. If offshore information sessions are conducted, consideration be given to appropriate third party arrangements for the delivery of such sessions.
5. Amend ESOS to require that confirmation of enrolments and letters of offer include mandatory references to a central information guide.
6. Consider whether the introduction of an industry monitored Code of Conduct for education agents would be an effective way of providing clarity around agent behaviour and enhancing Australia's reputation.

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

7. Consider options for a new consumer protection arrangement that allow a quicker response to provider collapse.
8. Ensure any new arrangements prioritise the placement of students under the age of 18 years who no longer have adequate welfare arrangements in place as a result of the provider closure.

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

9. Establish an independent complaints mechanism for international students.

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

10. DIAC supports the current approach to managing change of provider and would not support a return to having this process managed through visa conditions.
11. Providers who recruit large proportions of their intake from students already studying at other providers in Australia should be subject to additional scrutiny by regulators and auditors.

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

12. Clarify responsibilities across jurisdictions through a published formal agreement.
13. Measures be taken to ensure courses registered on CRICOS appropriately reflect the fact that the main purpose of international student visa holders being in Australia is to study.

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

14. Amend standard 6 to more fully prescribe provider responsibilities in relation to support services, including a ratio of support personnel to students.
15. Revise standard 5 to remove paragraph 5.3(d) to prevent providers being able to cease welfare responsibility for minors until other arrangements are in place.
16. Amend ESOS registration requirements to set specific requirements for registration as an education provider that can accept students under 18 years of age.
17. Consideration should also be given to establishing a registration or accreditation system for organisations that provide welfare and homestay to students under 18 years of age.

vii. Is ESOS compliance and enforcement adequate?

18. Review protocols for information sharing and joint enforcement activity between responsible agencies.
19. Publish data on audit and investigative activity across the jurisdictions.
20. Increase the capacity of State and Territory regulators to undertake audit and investigative activity.

21. Increase DEEWR's capacity to focus on ESOS compliance activity, noting the effectiveness of having compliance staff located in key states.
22. Consider current sanctions available under ESOS to determine whether other measures would more effectively encourage compliance with ESOS requirements, without impacting on students.
23. Remove the reference to visa conditions from s110 of the ESOS Act and the emphasis be placed on course quality.

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?

24. Continue work that has commenced to develop a cross-jurisdictional risk methodology to be applied at the time of registration.
25. CRICOS registration be conducted as a separate process to registration as a training organisation, to give a distinct focus on compliance with the ESOS framework.
26. Apart from ELICOS or bridging courses, consider whether providers with no record of delivery of courses to domestic students should be allowed to deliver courses to international students. At the very least, enhance registration and audit requirements to reflect the significant additional risk presented by such providers.
27. Assessment of the financial viability of a provider at the time of ESOS registration be strengthened, to ensure that registration is in the best interests of the international education sector.
28. Implement a section in the ESOS Act which corresponds with the conflict of interest provisions in the Migration Agents Code of Conduct.
 - DIAC, the Office of the MARA and DEEWR implement information sharing arrangements to identify where conflicts of interest occur.
29. Establishment a risk management group consisting of national and State and Territory regulatory bodies to develop and refine a risk management framework, share information and to coordinate audit activity.
30. Increase ESOS information sessions for providers, involving DEEWR, DIAC and State and Territory regulators.
31. Consider introducing a professional development program focused on ESOS compliance for education providers.

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

32. That the balance move towards prescription in respect of ESOS.

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

33. More focus on provider compliance with ESOS requirements at the pre-enrolment stage (National Code standards 1 to 4).

34. DEEWR and DIAC to review the way in which ESOS and the Migration legislation interact in respect of reports made by providers about student visa breaches.

35. Providers be required to keep address details on PRISMS up to date.

36. A mechanism to track course progress be introduced to PRISMS, so that information on whether a student has successfully completed each semester, or has in fact graduated, is readily available.

37. Notices issued by providers that may result in visa cancellation be required to include more detail about the breach, including study period and details of the process followed by the provider in breaching the student.

38. The definition of accepted student be amended to include Commonwealth sponsored students.

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

No recommendations.

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

Quality of information

Information on studying and living in Australia is available at the DEEWR website, www.studyinaustralia.gov.au. DIAC provides information about visa requirements, visa conditions and the obligations and entitlements of visa holders through DIAC's website www.immi.gov.au, as well as through DIAC offices in Australia and overseas.

While both these websites, as well as State and Territory Government websites, provide comprehensive information, DIAC considers that there is scope to better coordinate and improve the way in which Government information is organised. In particular, all relevant Commonwealth, State and Local Government information should direct students to an authoritative publication, which would provide an invaluable resource for students and provide a foundation on which education providers could build their own, tailored information. DIAC supports developing the Study in Australia guide, or a similar one-stop resource, to provide a central reference point for students.

Comprehensive Government information is only a starting point and it is critical that providers and agents provide consistent and accurate information. The National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2008 (the National Code) Standard 3 – Formalisation of Enrolment, requires providers to supply students with relevant information on living in Australia. DIAC supports the principle behind this Standard and suggests this requirement could be amended to ensure that before enrolment, providers make available a copy of the publication in an appropriate language, as a minimum.

Accessibility of information

Governments face a significant challenge in making sure the right information is available to prospective students before enrolment and to students once they are in Australia.

The visa process represents one opportunity to provide information to students. DIAC notes however that there are limitations to the use of the visa process as a means of communicating with students. Distribution of hard copy information through the visa process has limited effect and adds considerably to visa processing time and cost. DIAC considers the most effective use of the visa process is to emphasise and promote information

sources, as an adjunct to Government and industry effort in this area. For example, the visa process could involve a declaration on the student visa application form that directs the student to key information and requires they confirm they have read the information.

This approach is only likely to be effective if the information is reinforced throughout the student life cycle, from initial recruitment, to arrival and orientation in Australia and on an ongoing basis throughout their time in Australia. The concept of a single, authoritative publication would allow a central point of reference at all stages of the life cycle.

DIAC believes consideration should be given to other means by which information is conveyed to students, in addition to the written content on websites and in booklets. In particular, further Government interaction with students and education providers in Australia, through outreach programs that are available to students and providers, should be considered as a further effective means of reinforcing key messages. DIAC conducts visa information sessions on an ad hoc basis which it finds to be an effective means of promoting and reinforcing information. DIAC supports the development of International Student information sessions, with DIAC, DEEWR and other relevant agency staff presenting information to reinforce available written information and to provide students with direct access to unfiltered Government advice. The sessions could be conducted on a regular basis in major centres, with additional one-off sessions scheduled for peak periods or for regional centres. Similar sessions should also be conducted for staff of education providers, as DIAC has found that some staff appear to be unaware of basic National Code requirements and understands that high staff turnover rates at some providers requires constant retraining.

Outside of Australia, resource and security constraints limit the capacity of overseas posts to deliver in-person sessions to the hundreds of thousands of student visa applicants and their agents. Consideration could be given to an arrangement where information prepared by Government is delivered through a third party or through a web-based learning resource.

Role of ESOS in ensuring providers and their agents are held to account

DIAC considers ESOS has a central role in ensuring providers and agents act responsibly when providing information.

DIAC supports the intent of existing National Code Standards 1 to 4, which relate to the pre-enrolment engagement of students and place the onus on education providers to properly inform students about study and life in Australia. As above, DIAC suggests that the code include a requirement that providers supply students with a copy of the Study in Australia guide, or any future publication that is developed as the central resource for student information. DIAC supports amending ESOS to require that confirmation of enrolments and letters of offer include mandatory references to a central information guide.

DIAC supports the intent of National Code Standard 4 – Education Agents, which requires that providers take all reasonable measures to use education agents that have an appropriate knowledge and understanding of the Australian international education industry and not use agents who are dishonest or lack integrity. DIAC notes that while breaches of the National Code can result in sanctions against education providers under the ESOS Act, enforcement of this Standard is difficult as it relies on establishing not just that an agent has acted improperly, but also that a provider has a formal relationship with the agent and that the provider was aware of the agent's improper conduct.

DIAC notes that amendments to the ESOS act are currently under consideration by the Parliament which would require that providers list their agents on their websites. DIAC supports consideration of whether the introduction of an industry monitored Code of Conduct for education agents would be an effective way of providing clarity around agent behaviour and enhancing Australia's reputation. Adherence to the Code of Conduct and provider compliance with their monitoring responsibilities would then be assessed during audit processes. DIAC would be willing to consider how this initiative could be supported through the visa process, for example by including the Code of Conduct in the e-visa agent contract.

Recommendations

1. Develop the Study in Australia guide, or a similar one-stop resource, to provide an authoritative central reference point for students.
2. National Code Standard 3 be amended to ensure that before enrolment, providers make available a copy of the publication in an appropriate language, as a minimum.
 - Student visa application forms be amended to include reference to the new Government publication.
3. Regular student and provider information sessions be held around Australia, involving DEEWR, DIAC and other relevant agencies.
4. If offshore information sessions are conducted, consideration be given to appropriate third party arrangements for the delivery of such sessions.
5. Amend ESOS to require that confirmation of enrolments and letters of offer include mandatory references to a central information guide.
6. Consider whether the introduction of an industry monitored Code of Conduct for education agents would be an effective way of providing clarity around agent behaviour and enhancing Australia's reputation.

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

During 2009 there have been a number of sudden high profile closures of education providers. These closures have caused significant anxiety for affected international students and have the potential to damage Australia's reputation as a provider of quality international education.

These closures have highlighted the need for changes to the current consumer protection mechanisms. Despite the best efforts of all concerned, the time taken to find a resolution for students under existing consumer protection mechanisms has extended to three months in some cases.

As a result, DIAC has amended visa policy for students affected by provider closure, including allowing an extended period to find a new enrolment, well beyond the usual 28 day period.

DIAC's experience has been that prompt and decisive leadership is required to effectively reassure students in these situations. The most effective responses have involved a combined effort with staff from DEEWR, DIAC, the State regulator and the relevant Tuition Assurance Scheme (TAS) provider. The current consumer protection mechanisms, with the three tiered framework, can inhibit the type of prompt and decisive response that is required in cases of provider closure.

Options need to be developed to allow for a quicker response to provider collapse. This would not only provide better consumer protection, it would also reduce the risk of visa integrity issues occurring as a result of student visa holders remaining in Australia for long periods without enrolments.

While the closure of their provider is a difficult situation for any student, it is a particularly dire situation for a student under the age of 18 years whose welfare arrangements are dependent on the provider. It is DIAC's view that existing consumer protection arrangements do not adequately address this issue, which represent a risk not only to the minor student themselves but also to Australia's reputation more generally. To date, this situation has been managed on an ad hoc basis. DIAC recommend that any new arrangements formally prioritise the placement of minor students affected by provider closure.

Recommendations

7. Consider options for a new consumer protection arrangement that allow a quicker response to provider collapse.
8. Ensure any new arrangements prioritise the placement of students under the age of 18 years who no longer have adequate welfare arrangements in place as a result of the provider closure.

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

Comments

In DIAC's view, there is a clear need for an independent body to provide a complaints mechanism to support international students. The complaints mechanism should allow students to access an independent body to look into complaints relating to the responsibilities of providers under the ESOS framework. DIAC notes that some States have arrangements (for example, South Australia has a training advocate) that could be used as a model for such a body.

DIAC has an established complaints handling and review mechanism which applies in regard to visa decisions. Where a client has a complaint about their interaction with DIAC, the feedback is channelled to a specialised area which seeks a response from a DIAC officer of an appropriate level and engages with the client in respect of that response. Where a student wishes to seek review of a decision to refuse or cancel a visa in Australia, they can apply for an independent review through the Migration Review Tribunal.

In our extensive dealing with international students, DIAC comes across students with complaints about the way in which they have been treated by their education provider. Under National Code Standard 8 - Complaints and Appeals, providers must have complaints and appeals processes which are independent, accessible and inexpensive. In most cases DIAC finds that providers act responsibly in addressing student complaints.

There is, however, a significant power imbalance between student and provider. Where a provider does not act in line with the ESOS requirements, it can be difficult for students to have their issues heard. It is clear that an independent, external complaints authority would provide assurance to students and help protect the reputation of the majority of providers who do act responsibly in terms of their obligations under the ESOS framework. Such a body would also have the added benefit of being able to feedback information on the complaints process to policy makers, to better inform future policy development.

Recommendations

9. Establish an independent complaints mechanism for international students.

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

Comments

Prior to 1 July 2007, the movement of students between education providers in the first 12 months of their course was monitored by DIAC, through visa condition 8206, which was imposed on all student visas. Condition 8206 prevented a student from transferring from their education provider of initial enrolment to another provider within the first 12 months of their principal course, except in exceptional circumstances.

As a result of the Evaluation of the ESOS Act in 2005, on 1 July 2007 management of the movement of students between providers moved from the Migration Act to the ESOS framework.

DIAC does not support a role for itself in managing change of provider procedures and continues to believe the change of provider issue is not one that is appropriately dealt with through visa restrictions. As long as the student is studying and making progress at a registered provider, the issue remains an education matter, not a visa matter.

Further, addressing the issue through a visa condition would penalise the student, where the real issue is the practice of providers 'poaching' from one another. Instead of imposing tighter controls on students to address the issue of poaching, tighter audit requirements could be imposed on providers with very low proportions of students recruited overseas.

DIAC notes that an independent complaints mechanism, as discussed under section iii, would assist in resolving conflicts around transfers and releases between students and providers.

Recommendations

10. DIAC supports the current approach to managing change of provider and would not support a return to having this process managed through visa conditions.
11. Providers who recruit large proportions of their intake from students already studying at other providers in Australia should be subject to additional scrutiny by regulators and auditors.

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

DIAC has no role in monitoring or auditing the quality of education delivered by an individual provider. This is a matter for DEEWR, State and Territory regulatory agencies and other quality assurance bodies. DIAC does, however, have a very close interest in these issues, due to the close links between quality in education and integrity in the visa program.

DIAC comments that may relate to this area focus on our experience with audit processes conducted in cooperation with regulatory bodies, whose activities cover both education quality and the ESOS framework. Specific comments are included in sections vi, vii or viii. In general though, it is DIAC's view that an audit process that covers education quality and provider compliance with the ESOS framework is of benefit to students, regulatory bodies and education providers.

The number of bodies involved in quality assurance in the international education sector depends on the sector and the jurisdiction. This intersection is confusing for students and others who may seek to lodge complaints with one body to subsequently have it forwarded on to another for investigation. This lack of clarity can undermine confidence in the sector and lead to the perception that no action is being taken. DIAC would support efforts to clarify responsibilities in this area.

DIAC accepts that decisions about course delivery are best made by education specialists. DIAC is concerned though about the visa integrity impact of full time courses being offered to international students that limit student's course activity to two days over a weekend, or to study late at night. The main purpose of a student visa holder in Australia is to study. Courses that appear to be designed to allow students to meet enrolment requirements, while keeping their week clear for activities other than study, do not appear to support the objectives of the ESOS framework to maintain the integrity of the student visa program. DIAC would support measures to ensure courses registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) appropriately reflect the fact that the main purpose of international student visa holders being in Australia is to study.

Recommendations

12. Clarify responsibilities across jurisdictions through a published formal agreement.
13. Measures be taken to ensure courses registered on CRICOS appropriately reflect the fact that the main purpose of international student visa holders being in Australia is to study.

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

Comments

DIAC recognises that international students needs differ from other students. Their lack of support within Australia, limited cultural familiarity and English language ability mean they are a more vulnerable group and require specific consumer protection. The fact that they are visa holders, and therefore subject to visa conditions, further differentiates them from domestic students. Previously discussed recommendations, such as the provision of quality information to international students and the introduction of an independent complaints mechanism would assist in reducing their vulnerability.

As they generally do not have other local support, international students require support services from their education provider as reflected under National Code Standard 6 – Student Support Services. This Standard needs to be a feature of assessment at registration and subsequent audit activity. DIAC recommends consideration be given to strengthening Standard 6 requirements to prescribe a ratio of support personnel to student numbers.

DIAC supports the intent of National Code Standard 2 – Student Engagement Before Enrolment, which requires that providers assess whether the student's English requirements are appropriate for the course before they enrol the student. The English language proficiency requirement for a student visa is a visa integrity measure. This measure is based on the premise that an applicant claiming an intention to study a course delivered in English is more likely to be a genuine student if they have attained a level of English proficiency. It does not purport to be an assessment of whether a particular student's level of English is appropriate for a particular course.

As mentioned previously, among international students, those under the age of 18 years are particularly vulnerable and represent a higher level of risk in the event of a welfare incident. This risk applies to the student, the provider and the wider reputation of Australia.

DIAC notes that in handling issues related to welfare for minors, most providers take their responsibilities very seriously and go well beyond the requirements of the National Code in ensuring minors enrolled with them are well cared for. Given the merits of the responsible approach taken by most providers, DIAC does not believe the National Code should permit providers to opt out of welfare arrangements for minors they have recruited, until the welfare issue has been resolved by the student departing Australia or by other adequate arrangements being put in place. DIAC recommends a revision of National Code Standard 5 – Younger Students to remove paragraph 5.3(d) to prevent providers being able to cease welfare responsibility for minors until other arrangements are in place.

Due to the additional risk to Australia involved with this cohort, recruitment of students under 18 years of age should only be allowed where providers have met specific requirements designed to demonstrate they have adequate arrangements in place for this student cohort. Again, DIAC stresses that in our interaction with many education providers who enrol students under the age of 18 years, it has been clear that their own standards of care are far higher than National Code requirements and that they provide excellent pastoral care to young students. In DIAC's view, existing standards should be addressed so that the well deserved reputation of such providers is protected.

Consideration should also be given to establishing a registration or accreditation system for organisations that provide welfare and homestay to students under 18 years of age.

Recommendations

14. Amend standard 6 to more fully prescribe provider responsibilities in relation to support services, including a ratio of support personnel to students.
15. Revise standard 5 to remove paragraph 5.3(d) to prevent providers being able to cease welfare responsibility for minors until other arrangements are in place.
16. Amend ESOS registration requirements to set specific requirements for registration as an education provider that can accept students under 18 years of age.
17. Consideration should also be given to establishing a registration or accreditation system for organisations that provide welfare and homestay to students under 18 years of age.

EFFECTIVE REGULATION

vii. Is ESOS compliance and enforcement adequate?

Comments

DIAC considers that the current ESOS framework articulates provider responsibilities and sets minimum standards, however enforcement and compliance capability needs to be strengthened. DIAC considers that four areas could strengthen capability in this area.

1) Better coordination of activity between regulatory bodies

The coordination of activity and information sharing between DEEWR, DIAC, State and Territory regulators and other regulatory bodies could be improved. A review of protocols between agencies could greatly improve efficiency in this area and reduce duplication of effort and to consider whether a formal agreement is necessary to effectively coordinate actions in relation to compliance.

There is capacity for increased coordination between audit bodies to minimise the disruption to providers of audit processes. Joint operations between State and Territory bodies, DEEWR, other regulatory bodies such as the Tertiary Education Quality and Standards Agency, and DIAC allow for a wide variety of issues to be investigated at the same time (education quality, compliance with ESOS and visa integrity). This approach may not be required for every provider but can be determined through the establishment of a cross-jurisdictional risk management framework, discussed in section viii.

DIAC also believes regular publication of the extent of audit and investigative activity across the jurisdictions would help improve confidence in ESOS and serve as another method for encouraging compliance.

2) Development of additional capacity in DEEWR and State and Territory regulatory bodies to manage compliance

DIAC has assisted State and Territory quality assurance bodies with investigations. This assistance has consisted of providing training on interview techniques and evidence collection, as well as advice on document fraud and data analysis.

The majority of investigations of breaches of the National Code are conducted by State and Territory regulatory authorities in accordance with their obligations under s. 43 of the ESOS Act. Where the circumstances require urgent action, DEEWR can take the lead in the investigation (s43(3)). In DIAC's observation, State regulatory authorities have had to manage with limited resources and have been required to call upon the services of external auditors in order to conduct audits and support investigations. These auditors have different levels of knowledge of the ESOS framework which can lead to inconsistent outcomes. An increase in the capacity of State and Territory

regulators to conduct ESOS compliance activity and to make use of auditors with consistently high levels of ESOS knowledge would improve compliance.

DIAC notes the participation of DEEWR compliance and investigative staff in audits and investigations adds significantly to the process. An increase in DEEWR's capacity to focus resources on this area, and in particular to have compliance staff located in key states, would further improve ESOS compliance. This role could also be involved with an increase in engagement with students and providers, as recommended in section i, which would also serve to highlight potential compliance issues earlier, as would the introduction of an independent complaints body recommended in section iii.

A recent example of effective cooperation in a related field of investigation is the establishment of a national joint-agency operation between DIAC, DEEWR and Trade Recognition Australia (TRA) targeting registered and unregistered migration agents suspected of high levels of fraud in relation to TRA skills assessments and subsequent GSM applications to DIAC. This operation has established a possible model for joint-agency cooperation and communication. In the course of this operation, unscrupulous agents have been successfully targeted in two states, resulting to date in five briefs of evidence submitted to the Commonwealth Director of Public Prosecutions.

3) Consideration of whether further tools should be available to regulators to encourage compliance

DIAC notes that many of the mechanisms available to regulatory bodies in sanctioning providers also have an adverse impact on students. For example, when a provider's registration is cancelled or suspended, students enrolled with that provider may have to find enrolment elsewhere. This puts regulators in the difficult position of having to consider the unintended impacts of sanctions on students, when in fact their focus should be on the question of whether a provider has breached and the seriousness of that breach.

DIAC supports consideration of whether current sanctions available could be supported with other measures to more effectively encourage compliance with ESOS requirements, without impacting on students. An example may be a system of administrative fines that could be administered by DEEWR or regulatory bodies. This would provide regulators with the tools to send a strong message to providers about their responsibilities, while having little impact on students.

DIAC conducts investigations into allegations of fraud that impact on the temporary entry and/or migration programs. A recent example of this is a DIAC initiated cooperative investigation, which is detailed at Attachment A (not for release). As a result of this investigation, DIAC believes changes to s 110 of the ESOS Act, relating to bogus providers, should be considered. This section allows prosecution under the ESOS Act if a course is not genuine *and* the person providing the course intends to facilitate, or is reckless as to facilitating, a breach of one or more of the student's visa conditions. In order to have a breach of visa conditions however, the provider must first report the

student. By linking this offence to visa conditions, the section has therefore given a provider the power to avoid the risk of prosecution by simply never reporting a student. Under s110(3) a course is defined as not being genuine if it is provided without serious regard to standards of education or training (including standards relating to attendance and participation by students or if it is a sham). This definition relates directly to the quality of the course rather than to students compliance with visa conditions. In its current form the section needs clarification as to its purpose. DIAC recommends that the reference to visa conditions be removed from this section and the emphasis be placed on course quality.

4) Better training of providers to promote an understanding of the ESOS framework and increase voluntary compliance.

Detailed in section viii.

Recommendations

18. Review protocols for information sharing and joint enforcement activity between responsible agencies.
19. Publish data on audit and investigative activity across the jurisdictions.
20. Increase the capacity of State and Territory regulators to undertake audit and investigative activity.
21. Increase DEEWR's capacity to focus on ESOS compliance activity, noting the effectiveness of having compliance staff located in key states.
22. Consider current sanctions available under ESOS to determine whether other measures would more effectively encourage compliance with ESOS requirements, without impacting on students.
23. Remove the reference to visa conditions from s110 of the ESOS Act and the emphasis be placed on course quality.

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

DIAC's view is that effective risk management requires a combination of strengthened registration requirements and targeted compliance and enforcement action.

Strengthening registration requirements

DIAC agrees with the ESOS Review issues paper that the current wording of the legislation (s9(2)(d)) provides little flexibility for DEEWR to refuse a CRICOS registration where the State or Territory body has registered an education provider, unless there is clear evidence that a provider is not complying or will not comply with the National Code. Increased flexibility for DEEWR to refuse registrations on other matters would support the Australian education industry, but DIAC believes attention is better focussed at the State and Territory regulator level to ensure that high risk providers are not registered. DIAC supports work that has commenced to develop a cross-jurisdictional risk methodology to be applied at the time of registration.

Under current arrangements, CRICOS registration can be conducted at the same time as the assessment for registration as a training body. Audits conducted at this stage may be done by auditors with only a basic knowledge of ESOS. DIAC recently participated in rapid audits in Victoria and found significant disparity in the quality of audits conducted at the time of registration, depending on the knowledge of the auditor in respect of the ESOS framework. DIAC supports CRICOS registration being conducted as a separate process to registration as a training organisation, to give a distinct focus on compliance with the ESOS framework. Audit outcomes must also be monitored to determine weaknesses in the registration processes.

DIAC notes that providers can be registered without having any experience providing education to domestic students. There are a number of additional risks associated with this approach, including an increased risk of the social isolation that international students have cited as a major concern. Outside of the English Language Intensive Courses for Overseas Students (ELICOS) and bridging courses, DIAC supports consideration of whether providers with no record of delivery of courses to domestic students should be allowed to deliver courses to international students. At the very least, registration and ongoing audit requirements should reflect the significant additional risk presented by such providers.

Recent college closures due to financial collapse of the providers have impacted on large numbers of international students and on existing providers who have been able to enrol affected students. DIAC recommends that the processes that exist at the time of ESOS registration to assess the financial viability of a provider be reviewed, to ensure providers are financially viable

and that their registration is in the best interests of the international education sector.

DIAC supports more detailed requirements in ESOS to ensure applicants meet the 'fit and proper person' test at the time of registration and at the time of any change in ownership. DIAC believes that owners and management should be subject to detailed checks that consider their history and background in the education industry, in particular their affiliations with organisations that have had ESOS compliance issues in the past.

DIAC has concerns about links between migration agents and certain providers. In some circumstances the owner of the training organisation is also a migration agent. It is of note that in the joint-agency operations described in this submission, unregistered and registered migration agents have been identified and targeted as being key enablers of fraudulent behaviour in the industry.

A registered migration agent who provides immigration assistance to a student attending that agent's education institution may be in breach of the Migration Agent's Code of Conduct and may be liable to sanction by the Office of the Migration Agent Registration Authority (MARA). This is a possible conflict of interest that is not addressed by ESOS legislation.

DIAC supports consideration being given to including corresponding legislation in the ESOS Act to similarly address conflicts of interest. DIAC, the Office of the MARA and DEEWR could implement information sharing arrangements to identify where these instances occur and for the registered migration agents involved to be sanctioned, where appropriate.

It should also be noted that the *2007-08 Review of Statutory Regulation of the Migration Advice Profession* recommended that the migration agent's Code of Conduct be reviewed, with consideration to be given to including clear conflict of interest guidelines regarding conflicts that may arise from a migration agent's connection with a recruitment or training organisation. The Office of the MARA will work closely with key stakeholders in undertaking this review and welcomes DEEWR's comments.

Better/targeted risk management in undertaking ESOS compliance

Development of an overall risk framework would result in better targeted audit operations. DIAC notes the work being undertaken by the International Quality Implementation Group (IQIG) in relation to risk management and audit methodology. The risk framework should include industry risk assessments to enable a targeted annual 'rapid audit' or 'out-of-cycle' audit plan, in addition to regulatory bodies responding to ad hoc allegations of breaches of the National Code. The development of this framework and development of investigation bodies in all stakeholder organisations would allow for improvements in communication and coordination of tasks.

DIAC recommends the establishment of an ongoing risk management group consisting of national and State and Territory regulatory bodies to develop and refine a risk management framework, to share information and to coordinate audit activity. DIAC notes IQIG has commenced some of this work and suggests this role be formalised either through IQIG or some other body.

Finally, risk management can also be improved by ensuring providers are well trained and supported in understanding and discharging their responsibilities under the ESOS framework. DIAC recommends that increased ESOS provider information sessions be introduced, involving DEEWR, DIAC and State and Territory regulators. DIAC further recommends that consideration be given to the introduction of a professional development program for providers to assist with compliance with the ESOS framework. Requiring new and high-risk providers to undertake a program adds a further level of quality assurance in the first years of business operation.

Recommendations

24. Continue work that has commenced to develop a cross-jurisdictional risk methodology to be applied at the time of registration.
25. CRICOS registration be conducted as a separate process to registration as a training organisation, to give a distinct focus on compliance with the ESOS framework.
26. Apart from ELICOS or bridging courses, consider whether providers with no record of delivery of courses to domestic students should be allowed to deliver courses to international students. At the very least, enhance registration and audit requirements to reflect the significant additional risk presented by such providers.
27. Assessment of the financial viability of a provider at the time of ESOS registration be strengthened, to ensure that registration is in the best interests of the international education sector.
28. Implement a section in the ESOS Act which corresponds with the conflict of interest provisions in the Migration Agents Code of Conduct.
 - DIAC, the Office of the MARA and DEEWR implement information sharing arrangements to identify where conflicts of interest occur.
29. Establishment a risk management group consisting of national and State and Territory regulatory bodies to develop and refine a risk management framework, share information and to coordinate audit activity.
30. Increase ESOS information sessions for providers, involving DEEWR, DIAC and State and Territory regulators.
31. Consider introducing a professional development program focused on ESOS compliance for education providers.

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

Comments

DIAC supports the current approach taken with ESOS and encourages a prescriptive focus, particularly in regard to high risk providers. The benefits of a prescriptive approach include clarity of responsibilities for providers and rights for students. Prescription and simplification are not mutually exclusive. A prescriptive code also allows for better enforcement of providers' responsibilities under ESOS. An outcomes based framework with generalised statements is difficult to monitor and enforce.

Given the acknowledged difficulties with compliance and enforcement action under existing arrangements, moving to a less prescriptive approach may serve to exacerbate these problems. The particular vulnerabilities of international students also requires a more prescriptive approach in order to guarantee adequate consumer protection.

DIAC notes that a move to a less prescriptive code may require more prescription in the student visa regime. For example, under Standard 2, before enrolment providers must make an assessment on the student's suitability for a course, thereby addressing whether a student is genuine. If these requirements were removed then that assessment would transfer to the visa process, impacting on processing times and cost, as well as outcomes for students.

Recommendations

32. That the balance move towards prescription in respect of ESOS.

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

Comments

ESOS recognises the importance of maintaining integrity in the student visa program and the critical role of education providers in achieving this goal. Recommendations made in this submission that relate to information, registration and audit processes are all relevant to student visa program integrity, as all serve to support the objective of granting student visas to only genuine students.

The ESOS requirements for providers to recruit in a responsible manner and to manage and report on their students remain fundamental elements of student visa integrity. Without these elements, far more exhaustive visa processing would have to be conducted to maintain student visa integrity. DIAC's further comments under this item go to four main areas:

1) The way in which students are recruited

The process by which students are recruited and enrolments issued, outlined in National Code standards 1 to 4, are critical elements in maintaining the integrity of the student visa program. Previous recommendations address this issue. DIAC believes provider compliance in this area is vital for ESOS and suggests more activity be undertaken to ensure provider compliance.

2) The requirements for providers to report students

ESOS assists in maintaining student visa program integrity by requiring providers to report student visa holders who fail to meet visa conditions related to attendance and academic progress. DIAC supports the principle that providers are responsible for monitoring and reporting on course progress and attendance. DIAC also supports the requirement that providers communicate about the status of their students through the Provider Registration and International Students Management System (PRISMS).

The current application of the reporting requirements under s19 and 20 of the ESOS Act, however, does create some problems, particularly where they deal with the reporting of a breach of a visa condition. Under current arrangements, once a provider reports a student under these provisions, DIAC officers have very limited discretion to intervene to avoid visa cancellation.

Among other issues with this approach, there is a concern that some providers could unfairly and inappropriately use their power to report a student and so cause the student's visa to be cancelled. There are also concerns some providers do not report students when they are not studying, undermining the purpose of the student visa program. Further concerns exist that providers are reluctant to make decisions based on academic merit, out of concern that the decision may result in a visa cancellation.

DIAC reports instances of provider non-compliance with this requirement to DEEWR, but does not have jurisdiction to undertake investigations of possible provider misconduct in this area. The question of whether providers are complying with these requirements can be difficult to monitor outside of an audit process.

This problem can be alleviated to some degree by ensuring students are aware of their rights in this area and establishing an independent complaints mechanism to safeguard students' rights.

In order to effectively address these issues however, the regulation underpinning the current arrangements requires re-assessment. DIAC has already undertaken to review the current student visa cancellation regime, which includes automatic and mandatory cancellation provisions. DIAC considers it is appropriate for DEEWR and DIAC to review the way in which ESOS and the Migration legislation interact in respect of reports made by providers about student visa breaches.

3) Enhancements to the PRISMS system to provide for more efficient student visa program integrity measures

DIAC wishes to emphasise the importance of PRISMS as a tool to facilitate efficiency and integrity in the student visa program. PRISMS has eliminated the issue of fraudulent enrolments being presented by students and allows for efficient information exchange between DIAC, DEEWR and education providers.

DIAC would support the following further enhancements to PRISMS, along with supporting amendments to ESOS:

- Providers be required to maintain up to date student address details in PRISMS. Students are required to report their current address to their provider, however not all providers enter this information into PRISMS. Critical communications, such as notices that refer to visa cancellation, rely on an up to date address in PRISMS. It is of particular concern in regard to students under 18 years of age.
- A mechanism to track course progress be introduced to PRISMS, so that information on whether a student has successfully completed each semester, or has in fact graduated, is readily available.
- Notices issued under s20 of the ESOS Act provide more detail on PRISMS, including the study period the notice relates to and detail about the process the provider followed in breaching the student. As these notices can result in visa cancellation, DIAC supports as much information relating to the notice as possible being available on PRISMS.

DIAC believes these recommendations would make for a more efficient and fairer system for students, providers and DIAC.

4) Correction of other anomalies that relate to visas

DIAC notes the review provides an opportunity to deal with some anomalies in the way in which ESOS and the Migration Act interact. One such anomaly exists around the definition of 'accepted student' for ESOS purposes. Commonwealth sponsored students are not covered by the protections of ESOS legislation. It is incongruous that students sponsored by the Commonwealth are not covered by the protections offered to other international students under Commonwealth legislation. This has the added implication of making such students not subject to visa conditions relating to study. DIAC recommends that the relevant regulation be amended so that Commonwealth sponsored students are included as accepted students.

Recommendations

33. More focus on provider compliance with ESOS requirements at the pre-enrolment stage (National Code standards 1 to 4).
34. DEEWR and DIAC to review the way in which ESOS and the Migration legislation interact in respect of reports made by providers about student visa breaches.
35. Providers be required to keep address details on PRISMS up to date.
36. A mechanism to track course progress be introduced to PRISMS, so that information on whether a student has successfully completed each semester, or has in fact graduated, is readily available.
37. Notices issued by providers that may result in visa cancellation be required to include more detail about the breach, including study period and details of the process followed by the provider in breaching the student.
38. The definition of accepted student be amended to include Commonwealth sponsored students.

SUSTAINABILITY OF THE INTERNATIONAL EDUCATION SECTOR

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

Comments

ESOS has an important role in supporting the sustainability of the international education sector. Regulation and enforcement provides confidence in the industry and is essential for Australia's reputation as a provider of quality education. The experience of other countries in the past 10 years has shown that a failure to adequately regulate can lead to unsustainable growth in international student numbers, followed by dramatic declines.

The key is to ensure that the education market is properly managed and protected through robust and sustainable regulation, quality control, quality assurance and ongoing monitoring.

A well-structured ESOS framework can enhance the experience of international students through supporting a mix of domestic and international students within providers, ensuring high-level support services and appropriate complaint and review mechanisms for students.

The ESOS framework plays a critical role in supporting the integrity of Australia's student visa program. Without integrity, there is a risk that the public loses confidence in the student visa program and support for international education. Without the ESOS mechanisms functioning effectively, student visa application processing would demand more time and resources in order to maintain integrity in the program.