

Submission to the

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

Government of Victoria

Introduction

The Victorian Government welcomes the opportunity to contribute to the Commonwealth Government's Review of the *Education Service for Overseas Students (ESOS) Act 2000* (the Baird Review).

The Victorian Government acknowledges that the ESOS Act functions adequately in the main, however notes the legislation was developed in a context that has now changed dramatically. It is important to recognise that reviewing the ESOS framework may not necessarily address all issues affecting international students, and that other related areas, such as migration policy and the Australian Quality Training Framework 2007 (AQTF), may need to be reviewed and amended.

Victoria has been enriched by the presence of people from all over the world. The 2006 Census showed that 23.8 per cent of Victoria's population was born overseas and that 43.7 per cent of Victorians were either born overseas or have a parent who was born overseas. Victorians come from more than 200 countries, speak more than 200 languages and dialects and follow more than 120 religious faiths.

Importance of international education

In many ways international education provides the foundation for the way nations will do business. It provides invaluable and often lasting business, research, diplomatic and personal connections that enrich both Victorian students and international students alike. Given the demand for education exceeds supply in many countries, enabling access to Victoria and Australia's world class education providers provides major benefits to home countries.

As outlined in the Victorian Government's *Thinking Global: Victoria's Action Plan for International Education* (the Action Plan), released on 21 September 2009, international education is Victoria's largest single source of export income, valued at \$4.9 billion in 2008 (an increase of around \$2.2 billion in the four years since 2004).

It is estimated that international students currently studying in Victoria generate more than 40,000 full time equivalent jobs across the state. It is also recognised that, in the longer term, post completion of their qualifications, many international students contribute to Victoria's skilled workforce when skills cannot be sourced locally.

Further, international education benefits the Victorian tourism industry. As highlighted in the Action Plan, for every two formal students, one friend or relative visited Australia during the students' stay in Australia.

Therefore, international students are contributing to the social, economic and cultural life of our community and their welfare, inclusion and observance of their human rights is important to the Victorian Government

Victorian Government leadership

The Victorian Government is committed to ensuring international students studying and living in Victoria are supported and enjoy a positive, rewarding and high quality experience. Similarly the Victorian Government supports quality providers of international education, through regulatory regimes, marketing and a range of business assistance and export development programs.

The Victorian Government has been proactive in addressing issues as they emerge in the international education sector. This has included comprehensive action at the state level and advocacy at the national and international level.

The Victorian Government established the Australian-first Overseas Student Experience Taskforce in September 2008. The Taskforce examined ways to improve the experience of international students studying and living in Victoria.

The Taskforce recommended that Victoria's education and training regulator, the Victorian Registration and Qualifications Authority (VRQA), together with the Commonwealth Departments of Education, Employment and Workplace Relations (DEEWR) and Immigration and Citizenship (DIAC) and other relevant bodies conduct a rapid audit of high risk Victorian education providers to ensure that high quality international post secondary education and training is being delivered and maintained. These audits, the first in Australia, are currently underway and have already begun to have an effect.

As stated above, the Victorian Government has recently released *Thinking Global: Victoria's Action Plan for International Education*. The Action Plan is a \$14 million program of initiatives to support and grow Victoria's international education sector and improve the experience, safety and wellbeing of overseas students living and studying in Victoria. The Action Plan seeks to:

- Drive sustainable long-term growth;
- Provide better support and information for international students; and
- Maintain and assure quality.

In addition, at the Walk for Harmony in July 2009, the Hon John Brumby, MP, Premier of Victoria, announced the *International Students Care Service* (the Care Service).

Anticipated to be operational by November 2009, the Care Service will provide a 24 hour contact point to provide international students with crisis intervention, counselling, welfare and coordination of social support services, orientation information and referral. The Care Service will be trialled for 12 months and evaluated within this timeframe.

Nationally, Victoria has been a leader in driving quality in the international education sector. On 12 June 2009, at the joint meeting of the Ministerial Council on Education, Employment, Training and Youth Affairs and the Ministerial Council for Vocational and Technical Education, the Minister for Skills and Workforce Participation presented a paper that proposed a national approach to address concerns around delivery of vocational education and training (VET) to international students. Amongst the resolutions of this meeting, it was agreed that the review of ESOS, planned for 2010-11, would be brought forward to 2009-10.

International education in Victoria

Data from Australian Education International (AEI) shows that Australia and Victoria continue to experience good growth in the number of international students. There are no signs in the AEI data of a slowdown in enrolments although this is widely expected to happen in 2010. The AEI data overstates the actual number of students by around 20 per cent as the data double-counts students enrolled in more than one sector. For example, a large number of students combine English Language training (ELICOS) with other forms of training. This means the data should be used to analyse trends in enrolments rather than the level of enrolments.

Nationally, there was a 20 per cent increase in enrolments for the year to July 2009. Commencements are enjoying similar growth. The increases in Victoria are bigger with both enrolments and commencements expanding by nearly a quarter (see Table 1).

Inter students in Australia, YTD July 2009				Inter students in Victoria, YTD July 2009					
	2008	2009	Change	%		2008	2009	Change	%
Enrols	455,000	548,000	93,000	20%	Enrols	136,000	167,000	31,000	23%
Commences	237,000	281,000	44,000	19%	Commence	67,000	83,000	16,000	24%

Table 1. Source: AEI

The growth in 2009 is largely due to continuing strong growth from India (up 11,800) and China which is growing again (up 7,500) after levelling off for several years. Students from these two countries account for over half of all enrolments (53 per cent) in Victoria.

Main Nationalities, Victoria, July 2009

Nationality	No	% total	Change 08-09
India	49,000	29%	11,800
China	40,700	24%	7,500
Viet Nam	8,700	5%	3,300
Malaysia	8,300	5%	700
Sri Lanka	5,800	3%	700
South Korea	5,500	3%	300

Table 2. Source: AEI

There are currently 345 registered providers in Victoria for international students comprising 30 higher education providers, 109 schools, 177 VET providers (including 18 TAFE institutes), 17 ELICOS colleges and 12 providers registered in other categories. International students are enrolled across all education and training sectors. Higher education and VET are still the dominant sectors in the international market, while government schools also continue to attract international students. Victoria is also a popular destination for students wanting to improve their English language skills.

Nearly a third of students are attending private colleges delivering VET courses and this sector has experienced the most growth in the last few years. Enrolments at private VET colleges have increased by a substantial 18,000 international students over the year to July 2009 representing 51 per cent growth. However, there are signs of change. Higher education is experiencing renewed growth after a few flat years with enrolments increasing by 7300 (13 per cent). TAFE institutes also added 1,400 international students, an increase of 12 per cent. Tables 3 and 4 provide further information.

Enrolments in Victoria, July 2009

Sector	No	%
Higher Education	62,300	37%
VET		
TAFE	12,800	8%
Private providers	53,400	32%
Schools	7,600	5%
ELICOS	23,600	14%
Other	7,500	4%
Grand Total	167,200	100%

Table 3. Source: AEI

Enrolments in Victoria, YTD to July 2009

Sector	2008	2009	Change	%
Higher Education	55,000	62,300	7,300	13%
VET				
TAFE	11,500	12,800	1,400	12%
Private providers	35,400	53,400	18,000	51%
Schools	7,900	7,600	-300	-4%
ELICOS	20,100	23,600	3,500	17%
Other	6,500	7,500	1,000	15%
Grand Total	136,300	167,200	31,000	23%

Table 4. Source: AEI

Table 5 outlines signs of emerging change in the private VET sector:

- Commencements in general hospitality courses are levelling off
- Commencements in welfare courses have halved in the last year
- Business Studies is regaining popularity
- More specialised hospitality training such as cookery/baking continue to attract new students
- Hairdressing and Automotive/Vehicle courses continue to grow
- There are some (sudden) emerging fields: Graphic Art and Design and Information Technology both had substantial increases this year. Justice and Law enforcement grew from zero to 162 enrolments this year.

This change could be attributed to Commonwealth changes to migration settings.

Commencements in Private VET, Victoria, YTD July 2009

	2008	2009	Change	%
Hospitality	6,300	6,600	300	5%
Hairdressing	1,500	2,500	1,000	72%
Welfare/Health	2,100	1,100	-1,000	-51%
Cookery	900	2,800	1,900	223%
Automotive	1,200	2,800	1,600	128%
Business studies	2,100	3,900	1,800	85%
Graphic Art and Design	500	1,200	700	143%
Information Technology	200	800	600	338%

Table 5. Source: AEI

A national co-operative approach

The issues paper provides an overview of the ESOS legislative framework, and highlights that responsibility for international education and international students is shared between Commonwealth, State and Territory Governments. It also recognises that matters relating to international education cut across many areas, including migration and the labour market.

Given this, it is important to maintain a co-operative national approach to resolving issues affecting the international education sector. Particularly, there should be no unilateral action by any party involved in, or affected by, international education without an assessment of the broader impact on other areas.

For example, the Commonwealth Government changes expand or contract migration arrangements can impact directly on international education. It is essential that there is appropriate co-ordination and policy alignment with international education policy, particularly with respect to the likely impacts on the training market and its regulation.

There is also a need to support the regulatory and legislative framework to provide a comprehensive national approach to international student issues. This approach should ensure a coordinated effort and sustained models of government action. Regulatory arrangements should be informed by the principle of subsidiarity, as State and Territory regulators are well-placed to play a primary role in a nationally consistent approach.

A commitment by all jurisdictions to a co-operative national approach would also minimise the risk of 'jurisdiction shopping' by providers. Without such an approach, it is possible that unscrupulous providers would seek to operate in states that have comparatively weaker regulatory environments.

While the ESOS framework is closely linked to domestic frameworks such as the AQTF, the ESOS framework needs to recognise the unique characteristics of international education. This is a Commonwealth responsibility.

In addition to getting the regulatory arrangements right, all governments can contribute to the sector through a variety of activities.

The Commonwealth Government could support the ongoing sustainability of the sector by seeking to ensure that the intellectual property interests of the Australian education and training industry are protected through Australia's free trade agreements and other bilateral understandings.

There is also scope to examine the branding and marketing of both Victorian and other Australian education providers in key markets. Consistent branding and messaging will assist in building and sustaining Australia's image and reputation in these markets.

Governments could provide additional support to providers through campaigns aimed at building providers' awareness of the Commonwealth and state/territory offshore business resources.

The Commonwealth Government has recently committed \$20 million to create a national brand. Given the importance of the international education sector, particularly as Victoria's largest export earner, it is important that the sector is represented in the national brand's development. This work could build on the Commonwealth's *Study in Australia 2010* campaign and involve cooperation between Australian Education International, Austrade and state agencies and in-country representatives such as Tourism Victoria's international offices and the Victorian Government Business Office international network. However, this work should also recognise that states and providers could also have their own brand.

There is also a need for more data on international students, especially at the State and Territory level, to be collected and distributed by the Commonwealth to facilitate policy development and inform provider activity. Additionally, this information would help inform all levels of government and industry sectors to assist with timely and appropriate infrastructure planning and allocation.

In conclusion, there must be a national co-operative approach to address issues affecting the international education sector. Such an approach would need to include:

- Better co-ordination between Commonwealth agencies and the states and territories when policy changes are being proposed and made;
- Consistency in application of ESOS standards and codes nationally;

- Better co-ordination on marketing, promotion and offshore support between the Commonwealth, the states and territories and providers;
- Establishing an environment which encourages investment in international education; and
- Collection and dissemination of data to facilitate policy development, inform provider activity, and assist with timely and appropriate infrastructure planning and allocation.

RESPONSE TO SPECIFIC QUESTIONS

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:

It is critical that all governments offer coordinated and consistent information to all students in relation to matters including employment, accommodation, health and community engagement.

Victoria is taking action to improve access to accurate, reliable and up-to-date information for international students. Through the Action Plan, the Victorian Government is providing \$1 million towards the development of a new *Study Melbourne* website that will provide international students with up to date and accurate information about studying in Victoria. The Action Plan also provides \$1.2 million for information kits and a program of activities to welcome and engage with students.

There is also a need for individual providers to supply particular information about their organisation, so that international students can make informed decisions about which provider suits their needs. This information would include such matters as the provider's maximum capacity, mix of domestic and international students and the percentage of students from particular countries.

A comprehensive, sustained and coordinated approach to information would ensure access to culturally appropriate information, support and advocacy, targeted locally through a place based approach, using agencies, networks and modes that international students know and trust.

In common with the rest of the community, international students are not a homogenous group. A range of strategies will be needed. For example, different strategies will be needed to communicate with and build trust with isolated students (potentially most likely in smaller, private settings where the entire cohort is international students).

In addition a gendered analysis of the issues facing international students, especially for younger women is needed. This would translate into specific tools/campaigns and modes for engaging with female international students about their rights, safety, etc and where to seek assistance.

Education providers could further contribute to rights awareness by integrating education about rights and responsibilities in core curriculum. Potentially this could build upon existing workplace law and occupational health and safety teaching which should already form part of many of the courses taught, particularly by vocational education providers.

Through student complaints and auditing activities, there is evidence in Victoria that some providers who are also registered migration agents are providing advice to international students that suggests particular courses have guaranteed migration outcomes.

Recommendation/s:

- The ESOS Act and ESOS National Code should be amended to:
 - Significantly expand the range of information available to prospective international students by embedding in the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) a mandatory 'provider prospectus' template document, in which all CRICOS registered providers must include key information for students (as required by Standard 2.1). The 'provider prospectus' document would also include:
 - i. information about the percentage of international and domestic students enrolled;
 - ii. information about the registered provider's maximum student capacity; and
 - iii. the percentage of students from particular countries.
 - Strengthen student consumer protection through the development of a standard International Student Enrolment Contract (ISEC) template to replace the current 'written agreement' which is legally unclear. The ISEC template would include the information currently required by the National Code (Standard 3) and:
 - i. strengthened provisions on students' consumer rights; and
 - ii. additional provisions clarifying the legal status of the contract.
 - Increase regulatory protection of international students by requiring the registration of all Australian based education agents who offer to arrange enrolment or transfer of international students. Registration, by a body similar to that which currently registers migration agents, would be the responsibility of the Commonwealth Government and subject to a Code of Behaviour and a 'fit and proper person test' equivalent to that which applies in the ESOS Act.
 - Provide an accreditation process for all organisations seeking to operate as education agents, through formalising DEEWR's current on-line training program, the Education Agent Training Course (EATC). This process could form the basis for a strengthened education agent accreditation system operated by the Commonwealth Government.
 - Further clarify the amendment to the ESOS Act currently before the Federal Parliament that the principal purpose of a provider seeking CRICOS registration is to provide education.
- That consideration needs to be given to the level of resources required to ensure the continued growth and quality of the international education sector. Both the Australia-wide vast growth in VET provision and recent concerns in relation to safety and quality demonstrate that this is a national issue.
- The coordination of information at Commonwealth, state and territory level should be improved to ensure consistency and quality of information, and to inform all students of their rights and responsibilities.

This information should be available to international students both prior to departure and on arrival in Australia, and should stress that discrimination and exploitation is unlawful. This information should also clearly outline the responsibilities international students have when studying in Australia, as per visa arrangements.

Information provided should be adapted to suit the range of different strategies needed to engage international students.

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

Comments:

International students, both in Australia and overseas, indicate that a change of course is preferable to a refund of tuition fees. Many international students and their families make substantial sacrifices to come to Australia to undertake study. In the event of a course or institution being unable to deliver an educational outcome for students a refund of tuition fees does not provide a satisfactory outcome in the first instance.

Current arrangements do not require public institutions to participate in Tuition Assurance Scheme (TAS) arrangements. In light of the performance of these providers, and that these providers receive government funding, this should not change.

The existing assurance arrangements do not provide financial drivers to reward regulatory compliance or recognise risk. In the case of the TAS, which is effectively the first step in the assurance process, there is no requirement for financial contributions from providers. Rather, the TAS rests on other providers being willing to receive students whose provider has been deregistered. Therefore, it could be argued that these arrangements provide a perverse incentive for unscrupulous behaviour and allow rogue providers to 'freeload' off the good practices of other providers. As the TAS can be used to address most cases of student dislocation, fees for the ESOS Assurance Fund can be kept artificially low.

Additionally, current arrangements provide little choice of assurance arrangements for providers. An alternative approach may involve a combination of the TAS and ESOS Assurance Fund, with both insurance and assurance organisations encouraged to provide services.

Any new arrangement should be designed so that it is only in the most extraordinary cases that students cannot complete their qualification due to their visa conditions or assurance/funding arrangements.

Recommendation/s:

The current TAS and ESOS Assurance Fund arrangements should be replaced by a new International Education Insurance scheme based on:

- a single layer of student consumer protection;
- a national, universal scheme encompassing all providers who are not currently subject to TAS membership;
- annual premiums based on risk criteria determined by DEEWR and designated authorities;
- rewards for high quality providers who achieve high levels of regulatory compliance through reduced per-student premiums; and
- additional premiums where providers have been found non-compliant with quality assurance standards, or where significant student complaints have been investigated and upheld.

In the first instance, the International Education Insurance scheme would seek to relocate students to alternative providers. Where necessary, the scheme would purchase places from any registered public or private provider to provide the best training option for the student.

If a co-contribution by international students is considered necessary to fully fund the operation of an effective international education insurance scheme, this could be included in the international student visa application charge.

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

Comments:

The ESOS Act and the *Education and Training Reform Act 2006* (ETRA) provide the legal framework governing the provision of education services to overseas students in Victoria. These acts recognise that regulation of the international education sector involves Commonwealth, state and territory laws. The VRQA is Victoria's education and training regulator under the ETRA.

The Shared Responsibility Framework (SRF) sets out the respective roles of the Commonwealth and designated authorities in administering the ESOS legislation arrangements. The SRF was endorsed by the Australian Education Systems Officials Committee (AESOC) on 24 August 2007.

The SRF outlines the compliance, enforcement and complaints investigation roles of all parties. Under the SRF the management of complaints has been assigned to either the designated authorities or DEEWR according to the National Code Standards.

Designated authorities have primary responsibility for investigating complaints regarding marketing; student engagement before enrolment; student support services; complaints and appeals about matters other than those relating to reporting students for unsatisfactory course progress or attendance; course credit; staff capability, educational resources and premises; and changes to registered providers ownership or management.

DEEWR has primary responsibility for investigating complaints regarding formalisation of enrolment; education agents; younger students; transfer between providers; complaints and appeals relating to unsatisfactory course progress or attendance; completion within the expected duration of study; course monitoring; monitoring attendance; and deferrals.

The VRQA has developed a detailed policy and procedures covering all aspects of complaints handling. These can be found on the VRQA website. In 2008-09 the VRQA received a total of 125 complaints relating to the National Code, this represented approximately 30 per cent of all complaints received. The majority of complaints (108) related to VET.

The current approach to complaints management under the SRF has some weaknesses:

- **The division of responsibilities is unnecessarily complex.** The separation of complaint management between DEEWR and designated authorities leads to lack of coordinated action against providers. Moreover, complaints are best managed at a point closest to providers. States are best placed to understand what is really happening within a provider and can more easily personalise a

service to international students. There are also significant pressures on DEEWR in relation to their ability to investigate complaints given the growth in international student numbers and their need to provide a national service.

- **Approaches vary across different jurisdictions.** There are some differences between the models of complaints management adopted in states and territories, potentially leading to confusion among providers and students, and variable effectiveness. These approaches could be standardised through discussions at the Joint Council on International Education (JCIE).
- **Current written agreements are confusing, inconsistent and lack legal integrity.** This makes it difficult for providers and students to understand their rights and responsibilities and for DEEWR and designated agencies to handle complaints.

It should also be recognised that improving access to reliable information would likely decrease the number of complaints made by international students.

Recommendations:

The ESOS framework should move to a more streamlined complaints handling process, involving:

- State and territory regulators having primary responsibility for complaints management, consistent with the principle of subsidiarity;
- Development of nationally consistent mechanisms and procedures; and
- International students should be required to sign a legally enforceable education and training contract.

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 National Code applied restrictions to international students seeking to change providers before completing twelve months with their original provider. This restricted period was subsequently reduced to six months. Feedback from stakeholders in Victoria has identified that this change has prompted predatory behaviour, with many international students becoming the victim of deceptive on-shore recruitment activities by agents and providers.

The further removal of all transfer restrictions could encourage a further shift to on-shore recruitment of students at a time when they are most vulnerable. Students aged under 18 years are particularly at risk as the original enrolment decision is usually made by parents or guardians overseas.

Government policy should recognise the efforts of providers to attract new students, and not support exploitative behaviour from a small minority of providers.

At the same time, policy should enable students to legitimately exercise choice, particularly in situations where the original choice of provider has been made with limited or inadequate information. The National Code currently supports this by allowing students to transfer within the restricted period with the approval of the original provider. However there is evidence that in practice, some providers are reluctant to allow their students to transfer to another provider.

Any action should be targeted at stopping predatory behaviour whilst enabling reasonable international student choice.

Recommendation/s:

That the restricted transfer period for international students be extended to twelve months, subject to consideration of appropriate avenues for legitimate student transfers within the restricted period.

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:***Current intersection between ESOS and sector-specific frameworks*

The National Code substantially defers to sector-specific frameworks in relation to education quality. For example, Standard 14 refers to “resources...as required by the quality framework applying to the course”. This relationship is appropriate, given the role of ESOS in spanning across different sectors with different characteristics and the need to accommodate each of these. The National Code is also incorporated into state and territory legislative frameworks.

In relation to compliance monitoring, the intersection is more convoluted, with both the States and Commonwealth having responsibilities for registration, audit and penalties as articulated both in the ESOS Act and the SRF.

Issues with current arrangements

Some sector frameworks, notably the AQTF, may not be well-equipped for regulating providers in the international market. A key feature of school and higher education registration processes is that these providers must be able to demonstrate at registration the following:

- financial management;
- governance – including primary purpose education;
- education and training programs – detailed curriculum, delivery and assessment strategies;
- educational resources and infrastructure – qualified and professionally registered teaching staff, facilities including all teaching spaces, library, information technology, assessment and student amenities; and
- student welfare and consumer protection.

While the AQTF has standards covering the same categories, the most recent iteration has a strong focus on achieving outputs rather than tight input control. It could be argued that entry to the VET market is relatively easy compared to the arrangements in place for schools or higher education providers. Experience suggests that compliance can be difficult to enforce. Victoria has commenced a review of the ETRA to ensure that both market entry and compliance encourage diversity of provision but minimise the risk of poor quality provision.

Given the links between sector frameworks and the National Code, this limits the effectiveness of regulation under ESOS. VRQA data indicated that increasingly new applicants for registered training organisation (RTO) registration have little or no educational experience, governance and infrastructure is poor and little investment is made into the RTO as an educational institution.

In relation to compliance monitoring, the regulatory responsibilities of states and territories for sector-specific frameworks mean that in practice, the roles of states,

territories and the Commonwealth in ESOS regulation vary from those articulated in the Act and the SRF. This creates uncertainty about responsibility and accountability.

Recommendation/s:

The current relationship between the National Code and underpinning education quality assurance framework should be maintained, subject to review of the AQTF to ensure suitability for new providers entering the market.

The roles and responsibilities of governments in relation to ESOS compliance monitoring should be redefined and clarified, taking into account broader regulatory roles in relation to sector-specific frameworks.

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

Comments:

Currently, international students (and their parents/guardians) have far less opportunity to obtain information about education providers prior to enrolment. They are also likely to lack support networks and an understanding of Australian society and norms, increasing their vulnerability as member of the community. As a result, the vast majority of international students have significantly greater need for advice, support and assistance in areas such as accommodation, orientation, employment and health. Student accommodation in particular is an area in which post secondary international students are vulnerable to exploitation and which remains relatively unregulated.

Additionally, the majority of school sector international students are under 18 years of age and their needs differ greatly to those of local school students. These students are particularly vulnerable because they are living away from their parents, with welfare being exercised by a provider or commercial welfare provider. Requirements to which welfare providers are held must be of a very high level in order to minimise the risks these students face.

Recommendation/s:

The provision of information to all international students should be improved, as outlined in part i.

The ESOS National Code should be strengthened through additional provisions in Standard 5 to protect under-18 international students:

- Where Standard 5.1 applies the registered provider must maintain current contact details for the student's parent or legal guardian responsible for the student's enrolment, and must provide that person with a report on the student's academic progress and general welfare at least every six months.
- A registered provider must not assume, under Standard 5.1, responsibility for approving the accommodation, support or general welfare of any student under the age of 13 years at time of commencement of studies, (unless the student is to be accommodated in a registered boarding school approved by the relevant state or territory education department).

Effective regulation

vii. Is ESOS compliance and enforcement adequate?

Comments:

The recent exposure of a number of providers operating below quality standards suggests that ESOS compliance and enforcement could be improved. One important step towards this will be to clarify the roles and responsibilities of governments. These should be determined in the context of broader governance reforms in the higher education and VET sectors.

Given their frontline roles in relation to sector-specific regulation, states and territories are best placed to take primary responsibility for the application of the ESOS standards.

Nationally consistent standards are already articulated through ESOS and the various sector quality assurance frameworks. The next step is for ESOS to move towards national consistency in compliance and application. The current collaborative arrangements under the Ministerial Council for Tertiary Education and Employment may provide an appropriate mechanism for pursuing this.

In addition, the VRQA's experience with the Rapid Audit Program indicates that coordinated cross jurisdictional approach is required to target high risk providers and to effectively manage consequential sanctions. This is likely to remain the case under any future approach to compliance and enforcement. National consistency would support better coordination and communication across all jurisdictions.

Recommendation/s:

That consideration needs to be given to the level of resources required to ensure the continued growth and quality of the international education sector.

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:

Strengthening registration requirements or better targeting of compliance and enforcement actions can have adverse economic impacts. These impacts include an increased regulatory compliance burden or making the sector less competitive by increasing the barriers to entry of new providers. These adverse impacts need to be taken into account when designing registration, compliance and enforcement regimes to ensure Australia's international education sector remains competitive, efficient and has a reputation for quality, safety and integrity.

The high levels of CRICOS regulatory compliance in the higher education and schools sector reflect specific aspects of the domestic regulatory framework for these sectors. As discussed at part v, there is a case for testing whether the AQTF and its application within state legislation is significantly robust to minimise the risk of poor quality and/or fraudulent provision. As a first step, Victoria is reviewing its own legislation, the ETRA.

Reforms to the ESOS Act, which are currently before the Federal Parliament, will increase the registration requirements for VET sector CRICOS providers.

The VRQA is developing VET CRICOS Registration Guidelines to complement ESOS Act amendments and to give practical effect to new ESOS Act registration requirements for CRICOS that providers have a “demonstrated capacity to provide education of a satisfactory standard”.

The draft VRQA Guidelines for VET CRICOS providers focus on six key areas critical to strengthening the delivery of VET courses to international students:

- financial management;
- academic & educational governance;
- quality assurance and continuous improvement;
- consumer protection;
- student welfare; and
- educational resources and facilities.

VRQA audits and reviews of VET CRICOS providers have indicated high levels of non-compliance by new CRICOS providers struggling to meet regulatory standards during their establishment phase. Many providers found to be non-compliant with regulatory standards had made multiple changes to their scope of registration, location and training sites, and had increased their maximum enrolment capacity, in some cases within weeks of registration.

Recommendation/s:

Regulators require a broader range of compliance tools to drive quality in ESOS providers. Provisions should be inserted into the ESOS Act to provide state regulators with enforcement powers, such as the ability to randomly inspect providers, with the power to issue infringement notices including spot fines for certain breaches of the ESOS Act or the Code.

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

Comments:

An appropriate regulatory framework needs to balance flexibility to drive innovation, with sufficient control to ensure minimum standards. The ESOS framework effectively includes not only the National Code, the Act and Regulations, but also the education sector quality assurance frameworks, as discussed under part v. ESOS thus functions as a ‘secondary’ layer of regulation on top of the ‘primary’ layer of sector-specific regulation. In practice, ESOS is designed to specify the additional minimum standards a provider must meet in order to enter the international market, rather than a stand alone system.

While a broadly outcomes-based approach focused on continuous improvement is desirable across the entire regulatory environment, the specific elements covered by ESOS – for example visa compliance, consumer protection and student support - may be more suited to a more prescriptive approach, as is currently the case. In the context of the broader regulatory environment, the current ESOS framework strikes the right balance.

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

Comments:

While ESOS plays an important role in supporting the integrity of Australia's student visa program through monitoring student compliance, most of the key levers for additional improvements to the student visa system are in the area of migration policy, including the specification of visa requirements.

For example, currently international students aged under 18 can often be granted a tourist visa when they complete their school studies with no checks on the welfare arrangements for the duration of their tourist visa.

Recommendation/s:

- DIAC should perform checks on the welfare arrangements of international students under the age of 18 years who have completed their studies when considering a tourist visa application from that student.
- The commencement date for student visas for international students under the age of 18 years should reflect the commencement date of the accommodation and welfare arrangements as noted on the Confirmation of Appropriate Accommodation and Welfare (CAAW), unless the student will be accompanied in Australia by a parent or guardian prior to their CAAW arrangements.
- DIAC should work closely with EATC trained agents, such as they do in China with International English Language Testing System waiver agents, to discourage students from seeking the services of potentially unscrupulous agents.
- The student visa program should provide interim arrangements when it is clear that it may take some time to relocate international students to other providers due to the closure of their original provider, particularly in provider close-down periods. These interim arrangements would serve to remove any potential that the student could be in breach of their original visa conditions.

Sustainability of the international education sector

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

Comments:

The ESOS Act provides a strong framework to support the international education industry, positioning Australia as a world leader and providing a competitive edge in attracting international students. It provides a consistent legislative base for both regulation and behaviour in the international education sector, while appropriately utilising State and Territory agencies where they are best placed to act. This approach should be maintained and strengthened.

Further strengths of the framework include nationally consistent regulation, defined Commonwealth and State roles, share responsibility and strong consumer protection arrangements.

The explosive growth of private VET providers has placed some strain on the system. While the majority of providers are operating at a high standard, a small number have damaged the reputation of Australian education. It is essential that in a rapidly changing industry, the ESOS framework is adequately resourced and continually monitored to ensure its effectiveness.

As previously stated, matters relating to international education cut across many areas, including migration and the labour market. Therefore, it is important to recognise that other related areas, such as migration policy and the AQTF, may need to be reviewed and amended.