



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

Submission by The Independent Schools Council of Australia (ISCA)

About ISCA

The Independent Schools Council of Australia (ISCA) is the peak national body covering the independent schools sector. It comprises the eight State and Territory Associations of Independent Schools. Through these Associations, ISCA represents a sector with 1,100 schools and around 530,000 students, accounting for 15 per cent of Australian school enrolments.

Independent schools are a diverse group of non-government schools serving a range of different communities. Many independent schools provide a religious or values-based education. Others promote a particular educational philosophy or interpretation of mainstream education. Independent schools include:

- *Schools affiliated with larger and smaller Christian denominations for example, Anglican, Catholic, Greek Orthodox, Lutheran, Uniting Church, Seventh Day Adventist, Baptist and Presbyterian schools*
- *Non-denominational Christian schools*
- *Islamic schools*
- *Jewish schools*
- *Montessori schools*
- *Rudolf Steiner schools*
- *Schools constituted under specific Acts of Parliament, such as grammar schools in some states*
- *Community schools*
- *Indigenous community schools*
- *Schools that specialise in meeting the needs of students with disabilities*
- *Schools that cater for students at severe educational risk due to a range of social/ emotional/ behavioural and other risk factors.*

Independent schools are not-for-profit institutions founded by religious or other groups in the community and are registered with the relevant state or territory education authority. Most independent schools are set up and governed independently on an individual school basis. However, some independent schools with common aims and educational philosophies are governed and administered as systems, for example the Lutheran systems. Systemic schools account for 16 per cent of schools in the independent sector.

Independent Catholic schools are a significant part of the sector, accounting for 10 per cent of the independent sector's enrolments. These schools have been included in the figures above.



Introduction

1. ISCA appreciates the opportunity to make this submission. Some of the issues covered have also been raised in ISCA's submissions to the Senate Education, Employment and Workplace Relations Committee's Inquiries into the Welfare of International Students and the Education Services for Overseas Students Amendment (Re-registration of Providers and Other Measures) Bill 2009.
2. The independent schools sector provides high quality, reliable education services for overseas students. To our knowledge, there are no unethical providers in the schools sector. However, ISCA is concerned that the overall reputation of education institutions in Australia has been damaged by unethical providers in other sectors and that this has the potential to damage the reputation of independent schools.
3. It has been with dismay that ISCA has noted the view being put forward that Australia does not have an adequate quality assurance framework or sufficient consumer protection in place for overseas students. It is ISCA's view that any perception of lack of quality is indicative not of the actual quality of service delivery by the majority of providers but rather of monitoring and compliance issues that are the purview of registration authorities and government.
4. ISCA is concerned that the current flurry of activity, with multiple on-going inquiries and reviews, has the potential to result in hasty decisions which will ultimately impact negatively on the sector. There has been little or no recognition of the fact that the vast majority of providers across all sectors deliver quality education to large numbers of students and blanket regulation designed to address issues with a small number of unethical providers could have unintended adverse consequences for the independent school sector in particular, and for all sectors generally.
5. For this reason, the way in which issues such as quality assurance, consumer protection and student safety are addressed is of primary importance to the international education industry's future sustainability. Given the importance of these processes, it is disappointing that the industry has not been significantly involved or consulted to date, particularly in relation to proposed changes to legislation.

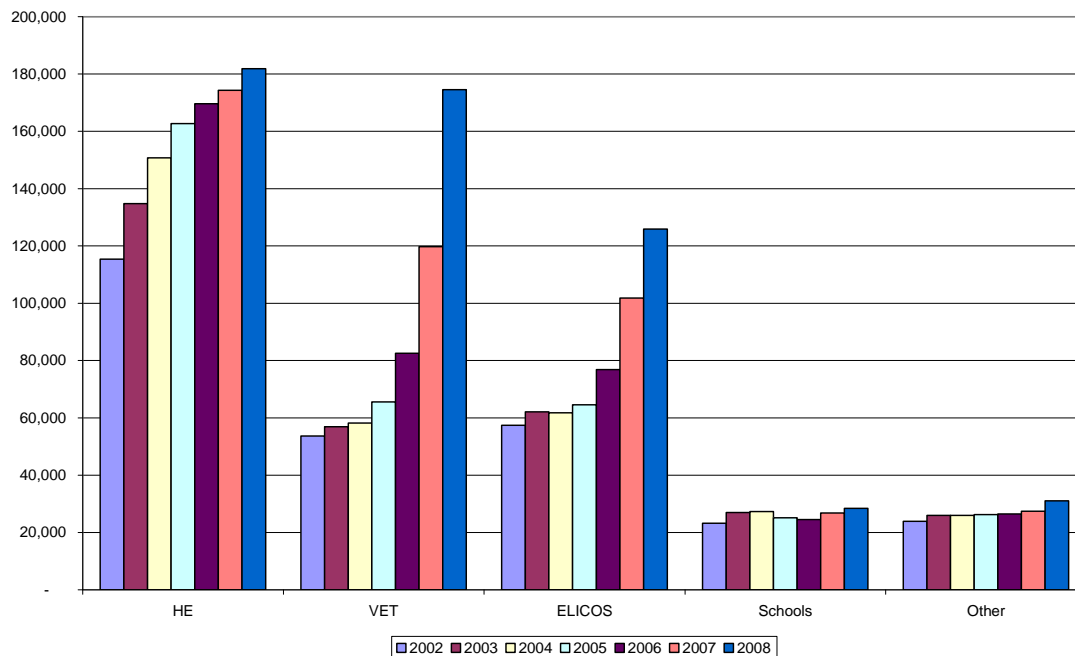
Independent Schools and International Education

6. Overseas students are an important part of the independent sector's diversity with approximately 11,000 overseas students enrolled at nearly 400 independent schools¹. This represents almost half the total number of schools in the sector and enrolments in schools vary from 1 overseas student to over 400 overseas students. The median number of students at an independent school is 11 students.
7. This profile differs quite substantially from other sectors. For the vast majority of independent schools, overseas students do not determine the school's sustainability. Overseas students provide a much valued international element and diversity to school populations.
8. The schools sector differs from the other sectors because of **the unique requirements of dealing almost exclusively with children under the age of 18**. In addition, there are multiple registration processes and legislation relating to schools at both state and federal levels for both domestic and overseas enrolments.

¹ Based on DEEWR Non-government School Census 2008 data

9. Chart 1 below shows that overseas student enrolments in the schools sector have remained relatively steady for some years. While there was overall growth of 22% from 2002 to 2008, the schools sector share of total overseas student enrolments fell from 8% to 5%.

Chart 1: Overseas Student Enrolments by Sector 2002 – 2008²



10. The schools sector is the smallest sector engaged in international education in terms of overall student numbers but the total number of schools engaged in international education is quite large. The most recent changes to the ESOS Act and the National Code put a sizeable administrative burden on all providers of international education and ISCA is concerned that the imposition of further restrictive regulation will drive schools out of the provision of education to overseas students. This would result in less diversity, less internationalisation and a diminished educational experience for those schools and their students and, ultimately, the loss of these students to Australian post-school pathways.

The ESOS Act 2000

11. It is the view of ISCA that many of the issues noted in the *Review of the ESOS Act 2000 Issues Paper* regarding student welfare issues and unethical providers can already be addressed under the current legislative framework.
12. In our recent submission to the Senate Inquiry into the Welfare of International Students, ISCA noted that:

“The current legislation puts the onus on the providers to do what many providers would regard as the compliance work of DEEWR and DIAC. However, in return providers do not see many benefits and certainly it does not seem that this shift in responsibility has enabled DEEWR to have greater capacity to engage in targeted compliance actions.”

² AEI PRISMS Data

13. This sentiment is not new. In a 2004 submission to the then Evaluation of the ESOS Act 2000, ISCA noted that:

“To date, the introduction of the ESOS Act 2000 does not seem to have resulted in greatly improved outcomes in terms of the Australian Government being able to act quickly and decisively against non-compliant providers. Nor does it seem to have resulted in more actions reaching a successful conclusion.”

14. While some aspects of the current provisions of the ESOS Act 2000, and particularly the standards in the National Code 2007, would benefit from review and refinement, it should be acknowledged that all providers have just spent several years becoming fully compliant with an extremely complicated and exhaustive set of requirements. Wholesale change so soon after the introduction of the new requirements resulting from the previous evaluation could easily result in a negative response from parts of the industry.

The Review of the ESOS Act 2000 – Issues Paper

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

15. It is very difficult to ensure that students access and read all the relevant information they need to inform themselves of before they come to Australia to live and study. Standards 1 through 3 of the National Code 2007 are designed to ensure that providers do all they can to ensure that prospective and enrolling students have accurate and up-to-date information regarding the course, the institution and living in Australia.
16. However it is clear that greater efforts do need to be made in this area. The recent international student roundtable recommended the establishment of International Student Information Centres as one-stop shops for international students to access services vital to their education and welfare while in Australia. This indicates that the students feel that more could be done to inform them of what to expect in Australia.
17. The Ministerial Council of Tertiary Education and Employment (MCTEE) also recently announced that it agreed to improve the quality of international student experience in Australia “providing accurate up-to-date information for international students about studying and living in Australia through the provision of an on-line manual for international students to be available by mid-2010”.
18. ISCA is concerned however that any efforts should be coordinated so as to avoid having multiple and competing sources of information for students. Significant effort has gone in to growing the *Study in Australia* brand and developing the website and it would be unfortunate if this was sidelined or put in competition with other resources.

Recommendations

19. Possible strategies include:

- AEI modifies the current *Study in Australia* website to align more closely with student needs
- Australian Education Centres (AECs) include more generic and accessible information for overseas students as per the International Student Information Centre concept, and conduct pre-departure information sessions for overseas students in large source countries
- Students confirm prescribed information has been accessed as part of the visa application process.

20. All materials/resources to be co-ordinated to avoid unnecessary overlap of information sources for students prior to and after arrival.

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

Comments

21. To some degree, it could be argued that this issue has only arisen because the ESOS Act 2000 has not been adequately implemented or enforced and it is likely that in the near future a number of providers will be de-registered from the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) putting strain on the tuition assurance mechanisms currently in place. This kind of 'corrective action' would theoretically be a one-off event and, should the regulatory enforcement regime be tightened appropriately, should not be repeated.

22. As most independent schools are exempt from the financial provisions of the Act we feel that other sectors are better placed to comment on the current operation of the Tuition Assurance Schemes & Assurance Fund arrangements.

Recommendations

23. Providers in receipt of Commonwealth general recurrent funding are exempt from the financial requirements of the ESOS Act 2000. This category includes most schools and universities and all TAFE institutions. Exemption categories under the ESOS Act 2000 Part 3 Division 1 s24 (2) and subsequent regulations should remain.

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

Comments

24. ISCA would agree that there does need to be a clear mechanism for addressing student complaints and appeals that are not resolved internally in institutions. While domestic consumer protection avenues are open to all students, domestic and overseas, the complexity of these arrangements could be overwhelming to an overseas student.

25. It does appear that while DEEWR currently does not see itself as having this role, it may be the best place for such a mechanism given its compliance and enforcement role in relation to

the ESOS Act 2000. The introduction by DEEWR of the International Students Hotline earlier this year is a step in the right direction.

26. For any complaints handling mechanism, there should be a process to ensure the prompt follow through of complaints and performance standards in relation to these, similar to those in place in other Australian Government agencies. For example, there should be reasonable timeframes in place for responding to complaints.
27. The creation of an ombudsman for overseas student matters is another possibility that does have some support however we believe that if this were to occur it should be funded out of monies currently collected from providers, such as CRICOS registration fees and the Overseas Students Charge. The creation of an ombudsman at national or state level would be a significant change to the regulatory environment and one which would require further discussion and consultation. However, this could be a solution which ensures consistency and expertise is used in determining student appeals arising from National Code 2007 Standards 7, 10, 11 and 13 in particular.

Recommendations

28. DEEWR provides continuing and additional resources for an International Students Hotline to respond to immediate concerns and refer students to other agencies where necessary.
29. Consultation with industry be undertaken regarding establishing an office of an ombudsman for overseas students at national or state level, particularly with regard to determining student appeals arising from National Code 2007 Standards 7, 10, 11 and 13, along with the contribution of CRICOS registration fees and student visa fees toward the running costs of this position.

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

Comments

30. There is a need to balance the interests of the provider with the needs of the students. ISCA would continue to support the current standard 6 month limitation with the student being able to apply for a letter of release. Providers invest significant amounts on marketing and recruitment and having no limitation on students' ability to change providers could adversely impact on some schools.
31. It is important to note that the ESOS Act currently requires providers to have a policy detailing the grounds on which a letter of release will be provided and ISCA fully supports the release of students on suitable grounds. More guidance for providers regarding what are suitable grounds for release of a student may go some way to addressing this issue. This may include limits on agent involvement in student transfer.
32. At present the transfer processes for students under 18 years for whom a provider has undertaken welfare responsibilities are quite complex. This is because there can be no gap in welfare dates between providers. Schools with initial carriage of welfare responsibilities find it difficult to confirm under current PRISMS arrangements the actual date that a transferring student has actually commenced with a new provider.

Recommendations

33. There is no change to the current provisions of National Code 2007 Standard 7.
34. Guidelines for suitable grounds for student transfer are enhanced. This may include limitations on agent involvement in student transfers.
35. For welfare reasons, PRISMS should be enhanced so current providers can see the actual start date of a transferring student with a new provider where a student is under 18 years of age.

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

36. When the Evaluation of the ESOS Act 2000 was underway from 2004 to 2006, ISCA argued strongly against a “one-size fits all” approach to regulation for providers. In our 2004 submission ISCA noted that

“In practice the National Code sets a benchmark for a minimum level of quality across all sectors. However ISCA questions whether one set of practices should or can be applied to all sectors. Certainly, despite increasing crossover between sectors, it is hard to see how, for example, schools and universities should be subject to the same requirements when administration, welfare requirements and other arrangements differ greatly.

ISCA supports the objective of nationally consistent registration of education and training providers in Australia, but points out that there is no recognition of the already rigorous accreditation processes undertaken by non-government schools. Nor is there recognition of the policies and procedures already in place in schools to protect the interests of students under the age of 18 years by virtue of the accreditation process.”

Recommendations

37. Where nationally recognised quality assurance frameworks exist they should be recognised and taken into account when making a risk assessment of those providers.

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

Comments

38. The ESOS Act 2000 was designed to address the areas where overseas students’ needs are different or greater than that of domestic students by virtue of the fact that their language skills may be less, they are away from their families and other support structures, and they are unfamiliar with the avenues of consumer protection and legal redress that are available to them in Australia.

39. For this reason it is reasonable that the ESOS Act 2000 covers areas such as marketing and recruitment, enrolment, refunds, complaints and appeals and student support services. For schools we also acknowledge that the sector is mostly dealing with students who are under the age of 18 and who are living away from their families.
40. The independent schools sector takes the duty of care schools have towards their students very seriously given the age of the children enrolled with them. Unlike domestic students for whom schools would normally have responsibility during school hours and/or while on school grounds, where a school has approved the welfare and accommodation requirements for an under 18 year old overseas student, this responsibility may extend further as required. For example students in boarding schools will have much closer supervision and students in homestay will have their arrangements monitored by the school.
41. One concern we do have is where ESOS creates distinctions between overseas and domestic students that aren't necessary. For many years it was left to schools to assess acceptable attendance and acceptable course progress. These were regarded as decisions best left to the educational institutions to judge. The schools sector would argue that this is still the case and there is no need for separate processes for domestic and overseas students in this regard, as overseas students are able to access further study pathways in the same manner as Australian students
- 42. ISCA strongly opposes any suggestion that there be controls or limits on the number of students from particular backgrounds that schools are able to enrol at any particular point in time. We see this as a restriction on a school's autonomy to make decisions regarding their legitimate business. In addition, any suggestion that schools could be required to refuse a student on the basis of race or ethnicity is highly questionable and would not enhance Australia's reputation overseas.**
43. Such a restriction could also easily have unforeseen consequences. For example a school which accepts students on the basis of a relationship formed with a particular school in another country, such as a sister-school relationship, may only have a few overseas students from that one country. Any argument that this constitutes a 'ghetto' would be absurd.

Recommendations

44. Existing duty of care commitments and requirements in the schools sector are duly recognised.
45. ESOS requirements for schools sector students do not prevent overseas students from accessing the same opportunities for further studies as are available to Australian school students.
- 46. There is no control or limit on the number of students from any background that are able to enrol in a school at any point in time.**

EFFECTIVE REGULATION

vii. Is ESOS compliance and enforcement adequate?

Comments

47. ISCA believes, that in the independent schools sector at least, there is definitely adequate compliance with the ESOS Act 2000. Significant efforts have been made since the previous evaluation to inform and educate schools as to their responsibilities under the ESOS Act 2000 and the National Code.
48. However we do not have the same view regarding enforcement. As has been noted above, it has been felt for some years that there has not been adequate compliance and enforcement action by either DEEWR or the state designated authorities. This has resulted in the current situation where there are numbers of ‘dodgy’ providers in operation and now extreme options have been put forward to correct the situation, such as re-registration of every single provider on CRICOS.
49. Furthermore, the successful CRICOS registration of these unsuitable providers is also of grave concern to the industry as a whole.

Recommendations

50. Government time and resources are devoted to enhancing monitoring and enforcement of existing legislation, particularly in sectors or parts of sectors where high risk attributes are identified, and not to creating more legislation.

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

51. ISCA strongly supports the use of targeted risk assessment in determining compliance and enforcement action. We understand that the Victorian designated authority, VRQA, has recently embarked on a targeted, risk-management based series of rapid audits to assess suspected unethical providers and this seems to be a good model for a more risk-management based approach to audits across jurisdictions.
52. The most effective way to do this, using the VRQA experience as a template, is to involve industry, providers, designated authorities and other experts to identify the relevant benchmarks to properly assess risk for use by designated authorities and DEEWR.
53. ISCA believes that this is a far better approach than just concentrating on criteria such as a provider’s financial viability. The use of a matrix of risk factors covering a range of factors including items such as enrolments and capacity, is a far more holistic and appropriate approach to risk-management.

Recommendations

54. Targeted risk assessment criteria are used as a basis for determining compliance and enforcement action.

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

Comments

55. In our 2004 submission to the Evaluation of the ESOS Act, ISCA recommended that “rather than increasing the burden on providers by increasing regulation, that more emphasis be put on enforcing what is already in existence and finding ways to ‘reward’ or distinguish good providers from non-compliant providers. One possible example would be to allow these providers to have discretion around the areas of attendance reporting and gauging satisfactory academic performance by assessing student outcomes on a provider basis.”
56. As noted in paragraph 41, schools used to assess acceptable attendance and acceptable course progress. The introduction of a one-size fits all regime has meant a huge increase in the administrative burden for schools to no great benefit. Schools may still report a student for unsatisfactory course progress only to have the assessment ignored by the DIAC and the student is allowed to go on and study elsewhere.

Recommendations

57. It is important that ESOS requirements for schools sector students do not prevent overseas students from accessing the same opportunities for further studies as are available to Australian school students. This includes discretion around the areas of attendance reporting and gauging satisfactory academic performance by assessing student outcomes on a provider basis.

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

Comments

58. Perhaps the question could better be phrased “How can DIAC better support providers who under the ESOS Act 2000 are responsible for implementing and monitoring large parts of the regulatory framework applying to overseas students on DIAC’s behalf?”
59. As noted in paragraph 39, providers are required to monitor and report students in a range of areas and implement convoluted and difficult processes in order to do so. And at the end of the day, they can still see their assessments overturned or ignored by DIAC.
60. However, recent events would indicate that the nexus between the student visa program and the migration program has resulted in large numbers of non-bona fide students seeking to study in Australia in order to obtain permanent residency. Clearly in order to maintain the integrity of both these programs, this nexus needs to be re-considered.

Recommendations

61. DIAC consults with international education peak bodies prior to determining visa related requirements to ensure implementation at an operational level is both possible and not onerous and that the integrity of the student visa program is maintained.

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

62. Looking forward, there are a number of issues which present themselves in relation to this question. ISCA believes that the sustainability of the industry is dependent on its continued assurance of quality education services, and so the question becomes one about the role of the ESOS Act 2000 in supporting the quality of international education services in Australia.

Recommendations

63. As we have noted above, ISCA recommends that the ESOS Act 2000 should:
- Take into account existing quality assurance frameworks and be able to adjust risk assessment criteria accordingly
 - Be more supportive of both students and providers
 - Should be less one-size-fits all
 - Provide an avenue for student complaints
 - Be better enforced

Other Issues

64. There are a number of other aspects of the ESOS Act 2000 which are not mentioned in the Issues Paper which have proven problematic for providers

Complaints and appeals processes

65. The complaints and appeals processes as they currently are prescribed in the National Code 2007 have proven to be significantly problematic for all providers, not just schools. We would urge DEEWR to look at ways to simplify and clarify the requirements of this standard.

Conclusion

66. To conclude, ISCA would like to reiterate the points made in our submission to the Senate Employment, Education and Training Legislation Committee regarding the ESOS Legislation Package in 2000. While this was nearly a decade ago, ISCA believes that the sentiments expressed remain current even today.

“In essence, ISCA believes that the economic benefits and the international links and understanding created through international education are important to Australia and need to be sustained and protected. For this reason, ISCA supports the underlying policy aims of the ESOS legislation package and recommends strongly that existing exemptions that enable and encourage independent schools to take on overseas students without unreasonable administrative burden be preserved.

The independent schools sector supports the underlying policy of the proposed *Education Services for Overseas Students Legislation Package 2000* as an endeavour to guarantee the quality of the education provided to overseas students and as an instrument to maintain the good reputation and integrity of the education export industry in Australia, across all sectors.

ISCA strongly recommends a balanced policy approach that ensures that Australia's reputation is preserved whilst maintaining Australia's competitive edge internationally and avoiding too stringent controls that would make it difficult for reputable and established providers of international education to operate."

67. We would also like to reiterate that it is not the quality of the majority of providers that is of concern. There is a small minority of providers which, if the ESOS Act 2000 were properly and vigorously enforced, would be de-registered.
68. ISCA believes that the focus of this Review must be to enable the ESOS Act 2000 to operate in such a way as to ensure that only reputable providers are able to be registered and deliver quality education services to overseas students.

Bill Daniels
Executive Director

30 October 2009
Canberra