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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 agents are held to account for supplying prospective and current international students with accurate and timely information?***

Comments

For the most part, the quality and accessibility of information provided by the majority of education institutions to prospective and current international students is adequate. This is evident from the generally positive audits of a large number of education providers under the ESOS Act and the multiplicity of research studies, including by the Australian Government, indicating a high level of student satisfaction about the information the vast majority of students receive.

The problem is the quality (validity, truthfulness and completeness) of advice to students in a small number of cases, generally involving a small number of education providers and their agents.

Ensuring students receive accurate and reliable information in all cases is a challenge. The ESOS Act can set minimum requirements. It does that now, largely successfully. From time to time refinements and additions may be necessary.

The Act on its own is only one tool in the armoury to protect international students as consumers. Accompanying actions are needed if student rights and entitlements are to be properly assured. This is a recurring theme throughout this submission.

The effective regulation of agents is a complex and controversial issue. The Australian government does not have jurisdiction over agents located outside Australia. The power to regulate offshore agents rests with other authorities in the countries concerned. This should be encouraged.

Commonwealth or State government regulation of agents is unlikely to be workable. Ultimately, the management of agents and ensuring they act within the requirements of Australian laws, in particular the ESOS Act, are the responsibilities of education providers.

Many providers already publicly list their agents. Obviously, public listing of agents is no guarantee of quality performance by the agents concerned. Providers need to take other actions to achieve quality.

Education institutions should set standards for the operation of agents, possibly at a sector wide or possibly industry wide level and be held accountable for ensuring agents act to meet these standards.

The review of the Act is certain to strengthen requirements for heightened oversight of agents by education providers. This can only be a good thing. Consultation with industry in the course of the ESOS review will be critical to ensure the right solutions are found to achieve effective regulation and management of agents.

The ESOS Act should be amended to provide for a mechanism for the establishment by industry of standards for better agent management, with responsibility for ongoing auditing against these standards given to TEQSA or an equivalent authority.

Many providers already spend considerable time, effort and resources to manage their agents, and do so effectively. Industry good practice should be more widely disseminated across industry, to maximise effective agent management. This is a task IEAA is undertaking through its conferences, seminars and professional development programs. Good agent management will not be guaranteed by tightening the requirements of the ESOS Act alone.

Essentially, the Act should be strengthened to discourage poor quality providers establishing and operating in the first place while encouraging and supporting all providers to properly manage their agents (see below).

Recommendations

1. The ESOS Act should be amended to provide for a mechanism for the establishment by industry of standards for effective agent management, with responsibility for ongoing auditing against these standards given to TEQSA or an equivalent authority.

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

Comments

A priority risk management approach should be taken to reduce the incidence of failure in the first instance, thereby reducing adverse impacts on students by the closure of a provider.

For the most part, risk management should be focused on potentially wayward providers. Good providers should not be burdened or penalised for the behaviours of a few poor providers.

Risk management should include minimising the incidence of failure in the first instance where possible. It should be focused at the front end of the provider life cycle, with a view to reducing the incidence of business failure or quality failure, or both, and thereby reducing the impact on students and avoiding remedial action by government and industry.

To that end, risk management should ensure an adequate and accurate assessment of potential providers for registration. Potential providers should be required to demonstrate their business bona fides (including business propriety and financial capability to establish, operate and sustain a business) up-front.

While Ministerial discretion to grant exemptions under the regulation process should probably remain, this is a grey area and one which raises issues of transparency and fairness. Potential apprehension and misunderstanding should be avoided through transparency by authorities granting any exemptions. The granting of exemptions should be strictly limited. The present grounds for exemption should be scrutinised to eliminate loopholes and the potential for "back door" processes bypassing normal regulatory requirements. The grounds for granting exemptions should be clearly specified and the number of exemptions given publicly reported together, if appropriate, with the names of education providers concerned.

State regulatory agencies need to be resourced adequately to carry out proper assessment of proposals. This means the agencies concerned are likely to need to acquire and house technical business assessment skills over and above those they currently have.

In the case of existing providers, periodic audits should include assessment of business propriety and financial standing. Again, a priority risk management approach should be applied. Large, publicly funded providers and large private providers with a strong compliance track record should not be subjected to onerous or frequent business and financial checks, although they should be periodically audited for other purposes under ESOS, as all providers are.

On the other hand, high risk private providers should probably be assessed on a more regular band more rigorous business basis. Again, it should be possible to produce a risk ranking that allowed more frequent monitoring and assessment of potentially weaker providers while allowing long standing, high quality and soundly based providers to be assessed on a more extended time frame.

Again, the resources must be provided to state regulatory authorities to ensure this additional work is carried out effectively.

Recommendations

1. ESOS provisions for registration of providers should be tightened and focused at the front end of the provider life cycle to reduce the incidence of provider failure.
2. To that end, ESOS provisions should be amended to require an adequate and accurate assessment of potential providers for registration by the relevant registration authorities. Potential providers should be required to demonstrate their business bona fides (including business propriety and financial capability to establish, operate and sustain a business) up-front.
3. A risk ranking approach should be taken to provider compliance, monitoring and audit. A risk ranking should be produced that allows more frequent monitoring and assessment of potentially weaker providers while allowing long standing, high quality and soundly based providers to be assessed on a more extended time frame.

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

Comments

As mentioned earlier, the ESOS Act is only one tool in the armoury to protect international students. It is an important but limited tool and should be accompanied by other actions by providers and by government.

The Act already requires providers to explicitly inform students about their rights and entitlements and the means they can use to express concerns and complaints. The incidence of failure under these provisions is likely to be relatively small, but nevertheless of concern.

Existing complaint provisions, within institutions, through the ESOS Act and via normal state and commonwealth ombudsman arrangements are for the most part effective. However, the Act could be amended to provide students the opportunity to explicitly report concerns to the relevant state and commonwealth regulatory authorities. This needs to be accompanied by greater consistency in processes and resources used by the states for handling of complaints. See vii. below).

The real difficulty concerning reporting of complaints is that some students may feel constrained or unable for particular reasons (cultural, visa related or because of a simple lack of a representative international student body) to voice their concerns. ESOS audits of providers should be alert to these difficulties and more rigorously examine student complaint mechanisms and handling by providers and by regulatory authorities.

The incidence of concern and complaint by international students will reduce if provider registration and accreditation processes are tightened as suggested in ii. above.

A crucial need is for education providers and governments to support the development and expression of a strong international student voice through representative international student associations. Over recent years the international student voice has been weakened and has fragmented. Strong, representative student groups would provide the vehicle for expression of views on a wide range of policy and procedural matters affecting international students. This is one of the best mechanisms to ensure students receive their rights and entitlements.

The ESOS Act should help facilitate the development and expression of a strong international student voice. Amendment to the Act could require that education providers actively foster and support the development and operation of an effective student forum/mechanism for hearing the student voice within the provider institution, including on and between multi-campus sites.

Recommendations

1. The ESOS Act should be amended to provide students the opportunity to explicitly report concerns to the relevant state and commonwealth registration/regulatory authorities.
2. The ESOS Act should be amended to require that education providers actively foster and support the development and operation of an effective student forum/mechanism for hearing the student voice within the provider institution, including on and between multi-campus sites.

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

Comment

Other submissions are likely to adequately cover this point. No additional IEAA comment.

Recommendations

N.A.

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

Simplifying, clarifying and strengthening aspects of the Act's provisions, streamlining its enforcement by ensuring its consistent implementation between states and across Australia, and fixing long standing state based failure to properly resource and enforce the Act, would go a long way towards underpinning education quality assurance and to guaranteeing improved services to international students as consumers.

Recommendations

Recommendations in vii. below cover this point.

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

Comments

Other submissions are likely to adequately cover this point. No additional IEAA comment.

Recommendations

N.A.

Effective regulation

- vii. *Is ESOS compliance and enforcement adequate?*

Comments

As already stated, enforcement is the Act's Achilles Heel.

Over the duration of the Act, and at the points of its periodic review, industry has frequently pointed out the weakness of enforcement, for two reasons primarily:

1. The failure of some of States to adequately resource enforcement by the relevant state regulatory authorities.
2. The frequently inconsistent implementation of the Act and regulations, including the sometimes ambiguous and inconsistent interpretation of the provisions of the Act and regulations, by and between the relevant state and commonwealth authorities.

Unnecessary complexities, ambiguities and inconsistencies in provisions governing provider registration and accreditation in different states have allowed underhand and poor quality providers to establish themselves and to operate with inadequate initial evaluation or ongoing monitoring and review. This combined with poorly conceived and aligned Australian immigration rules are largely behind the highly publicised system failures in recent years.

These problems were pointed out to governments over many years by sectors of industry and by independent commentators, but the advice was ignored. Existing consultative mechanisms between government and industry on international education matters do not work. These mechanisms should be reworked to ensure an effective partnership between government and industry in the interests of students (see *General Comments* below).

Fixing long standing state based failures to resource enforcement of the Act and simplifying and streamlining the Act's provisions and its implementation between states and across Australia would go a long way to guaranteeing improved protection of international students as consumers.

Recommendations

1. Commonwealth and State governments should work together to strengthen, simplify, streamline and coordinate regulatory and quality assurance frameworks for Australian providers, within the context of the review of the ESOS Act and in support of a comprehensive and coherent national quality and standards framework.
2. Commonwealth and State governments should ensure resources are provided to guarantee effective enforcement of regulatory provisions governing the industry.

viii. Can risk be better addressed by strengthening registration requirements and/or better targeting of compliance and enforcement action? How else can risk be managed?

Comment

Action on both fronts is necessary.

Recommendations

See recommendations under i., ii. and vii. above.

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

Comments

Other submissions are likely to cover this point. The answer will vary depending on the circumstances of individual education sectors. A one-size-fits-all solution is not likely to be effective.

Recommendations

1. The balance between a focus on inputs and prescription versus outcomes should take account of the different needs of the different education sectors and avoid a one-size-fits-all solution.

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

Comment

As mentioned in vii. Above, the Act and regulations can better support Australia's student visa program by their simplification, streamlining and consistent application across Australia and between States and by proper and adequately resourced enforcement.

The recent, highly publicised problems were caused essentially by poorly conceived migration policy exacerbated by unnecessary complexity and ambiguity in application of the Act and by its inadequate resourcing and enforcement.

Warnings about compliance failures under the Act were not attended to by some authorities. A suitable mechanism should be established to ensure that valid industry concerns about serious non-compliance under the Act is received and attended to by government.

Recommendations

1. See recommendations under General Comments below.

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

If the statements by past Australian governments are to be believed, the ESOS Act is world's best practice in terms of protection of international students as consumers. Unfortunately, failure to properly enforce the Act has damaged Australia's reputation internationally and has damaged the industry.

ESOS and its associated regulations should strengthen and support the industry. Poorly conceived or excessive regulation should be avoided. Any strengthening of current provisions of the Act should be light touch, developed in close consultation with and the involvement of industry, and properly enforced. See also (x) above and General Comments below.

Recommendations

1. See recommendations under General Comments below.

General Comments

The ESOS Act is not broken, but it does need some refinement. Refinements should strengthen and support industry, encourage good practice and avoid damaging particular education sectors or the industry as a whole. A one-size-fits-all solution is not appropriate.

Industry (including peak bodies collectively) should be consulted about the formulation and implementation of any refinements to the Act and regulations before legislative change is made and as change is being implemented.

Industry should have the opportunity to review the outcomes of the consultation process, including the recommendations emerging from the review, before they are endorsed for the final report, to ensure the recommendations have both Government and industry ownership and support and will result in the maximum positive outcome for students.

Ultimately, over the longer term a partnership between government and industry is needed to anticipate and resolve such problems in advance.

The Australian Government should establish an international education development authority as the focus for ongoing advice about and development and support of the international education industry in Australia. The authority should have a commercial, educational, student welfare, international relations as well as a community focus, and should operate at a distance from government. It should concern itself with consumer protection rights of international students and in doing so should work closely with TEQSA in relation to regulation and compliance matters.

The authority should probably be a statutory body, funded through a government-industry partnership and be comprised of industry, government, and community representatives.

This matter intersects with the COAG initiative to develop a national international student strategy, within which ESOS related matters will sit.

Recommendations

1. The Australian Government should establish an international education development authority as the focus for ongoing advice about and development and support of the international education industry in Australia. The authority should have a commercial, educational, student welfare, international relations as well as a community focus, and should operate at a distance from government.
2. The authority should concern itself with consumer protection rights of international students and in doing so should work closely with TEQSA in relation to regulation and compliance matters.
3. The authority should probably be a statutory body, funded through a government-industry partnership and be comprised of industry, government, and community representatives.

About IEAA

The International Education Association of Australia (IEAA) is the leading national professional organisation for international education professionals in Australia. Its membership is made up of individuals from the higher education, vocational education and training (VET), English language and schools sectors, both public and private, predominantly in Australia. The Association has 1,000 members.

The Association is active in public policy, professional development, industry research, consultancy, project management and quality enhancement and support of international education professionals. It works closely with counterpart professional organisations in Asia, Europe, North America, South and Central America, South Africa and elsewhere.

IEAA jointly presents the annual Australian International Education Conference (AIEC) with IDP Education. The AIEC is the third largest international education conference in the world and the largest in the Asia-Pacific region.

The Association is one of the major peak bodies represented on the Australian Government's GISC (Government Industry Stakeholders Consultative) Committee. The Association works closely with other industry peak bodies – Universities Australia, TAFE Directors Australia, ACPET, English Australia and the Independent Schools Council of Australia - to advance the interests of the international education industry.

For further information see: www.ieaa.org.au