

Submission template

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The template reflects the terms of reference for the review and the issues identified in the issues paper. Please refer to the issues paper and terms of reference for more information.

A field for general comments has been included below for you to raise additional issues.

Written submissions are to be received by 30 October 2009 and sent by email to:
esosreview@deewr.gov.au.

About you:

Institution / organisation

Name:

International Student Legal Advice Clinic (an initiative of Western Suburbs Legal Service)

Sector:

Law

Prepared by:

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Contact details:

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Student / individual

Name:

Institution / organisation:

Course / role:

Home Country:

Contact details:

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

EDUCATION AGENTS AND MIGRATION AGENTS

Education agents are an integral mechanism for recruiting international students. International students rely heavily on education agents for advice on the availability of employment and accommodation in Australia, as well as for advice on appropriate courses of study and education providers.

There appears to be a widespread problem of unscrupulous education agents misleading the students they are trying to recruit in order to maximise recruitment numbers and the commissions paid by providers. The conduct of such agents gives rise to a number of issues. For example, the Executive Director of the Overseas Students Support Network Australia, Robert Palmer, told ABC Radio's 7 September 2009 'PM' program that he had received 1500 "legitimate and serious" complaints from students about "being tricked and ripped off" since the beginning of this year. Such complaints included one from a student who was supposed to be enrolled in a nursing course but arrived at the college to find they were enrolled in hairdressing and another from a student who thought they were enrolled in motor mechanics but arrived to find they were enrolled in business marketing (see www.abc.net.au/pm/content/2009/s2679064.htm).

These are serious cases of deception which have profound implications for the students concerned. But even a deception as seemingly innocuous as an incorrect course start date can have serious implications for international students, as the following case study from the International Student Legal Advice Clinic demonstrates:

CASE STUDY 1

Student A from India arranged to study at University Z through an Indian education agent. She received an offer of enrolment from the university and when she paid her fees for her initial semester, they were accepted. Student A arrived in Australia to begin her course on the date specified in the offer of enrolment and went to University Z to enrol. At that point she was told by the university that the date specified in the offer of enrolment was incorrect and that there were no courses starting at that time. The university also suggested to her that it was probably a 'fake' offer of enrolment. University Z has allowed Student A to enrol in some subjects but they are not the subjects she wanted to do. Furthermore, she was not able to enrol in as many subjects as she needed in order to complete the course within the period of her student visa. She will therefore have to apply for a new student visa at a cost of \$540. Also, as a result of this deception, Student A's relationship with university administration is now extremely hostile to the point that she feels she has been harassed by them.

The ESOS framework fails to adequately regulate education agents and additional regulatory protections are urgently required. The Explanatory Guide to the National Code of Practice makes it clear that the authorities are leaving the regulation of agents entirely up to the education providers, stating in Part D Standard 4 that "it is the responsibility of a provider to undertake monitoring activities to ensure their

agents are acting in accordance with the responsibilities and expectations outlined in the agreement and the National Code 2007". However, the provisions of the National Code contain numerous 'loopholes' which allow providers to evade this responsibility.

Part D Standard 1.2b of the National Code, which prohibits the provision of false or misleading information, is directed solely at the education providers, not their agents. While Part D Standard 4 of the National Code is clearly an attempt to indirectly regulate the conduct of education agents, in our view it fails to do this. Standard 4.3 provides that an education provider must not accept students from an education agent or enter into an agreement with an education agent if it "knows or reasonably suspects" that the agent is engaged in dishonest practices or is providing unauthorised migration advice. However, while Standard 4.1 of the National Code requires that a provider enter into written agreements with any education agents it "engages to formally represent it", Part D Standard 4 of the Explanatory Guide makes it clear that "informal" arrangements that require no contract are legally possible. It is therefore not necessary for a provider to "enter into an agreement" with an education agent, regardless of their conduct. Standard 4.5 specifically requires that a provider "take immediate corrective and preventative action" upon becoming aware that an agent is being negligent, careless or incompetent or engaging in false, misleading or unethical advertising and recruitment practices. However, as providers are dependent on agents for recruitment it is not in their interests to proactively scrutinise their conduct. As long as a provider remains 'unaware' of the unscrupulous conduct of its agents, it does not fall foul of any aspect of the ESOS regulatory regime. The ESOS framework therefore does not place any real onus on providers to scrutinise agents apart from suggesting in the Explanatory Guide that providers' agreements with agents may include mechanisms for evaluating the activities of the education agent.

Education agents who provide students with migration advice also create problems. There is no requirement that people providing migration advice or assistance outside Australia are registered in the same way that migration agents based in Australia must be. Overseas education agents can therefore provide prospective students with migration advice and assistance without constraint or regulation. Often the migration advice provided by education agents is misleading or deceptive and creates significant problems for international students. For example, while the landscape of Australia's skilled migration policy has changed in the last few years, it would seem by the continued increase in enrolments in the VET sector that this information is not being conveyed to prospective students. The processing of applications for permanent residency under the Migration Occupations in Demand List was frozen in January of this year. Yet on SBS's 21 July 'Insight' program, Racy Du of Dream Overseas education agents defended her company's continuing description of its courses as 'PR courses' as a legitimate "marketing strategy" (see <http://news.sbs.com.au/insight/episode/index/id/87#transcript>). Students from the Indian sub-continent and China are continuing to invest large sums of money in VET courses with the expectation that they will be able to get permanent residency, when this is not necessarily the case.

It would seem that the Australian government has done nothing to deter education agents from giving migration advice or to monitor the advice given. For example, the Australian High Commission in India states on its website that it "works closely" with the Association of Australian Education Representatives in India (AAERI) (see www.ausgovindia.com/ndli/study.html). AAERI is the peak body for education agents recruiting students on behalf of Australian education providers and was developed with support from the New Delhi office of the Australian Department of Immigration

and Citizenship (DIAC). AAERI's website includes its Code of Ethics, which contain nothing to deter education agents from giving migration advice. In fact, AAERI's website clearly contemplates that AAERI agents would be giving migration assistance, if not advice. Their suggested fee schedule includes a fee for "assisting with visa application[s]" and their website links to DIAC's 'Agents Gateway' webpage, which contains information for migration agents regarding visa applications, migration legislation and so on (see www.aaeri.org).

Even where migration advice provided overseas is provided by a registered migration agent, it is not regulated. The potential for misleading and deceptive conduct on the part of registered migration agents operating overseas is deeply concerning. The following case study from the International Student Legal Advice Clinic is an illustration of such conduct:

CASE STUDY 2

Student X from India is enrolled in a Certificate III in Hairdressing with a private VET provider in Melbourne. Prior to enrolment, the migration agent representing the institution in which Student X enrolled told Student X that she would receive 900 hours of work experience as part of her course. After commencing her course, Student X was told by her VET provider that students only receive approximately 384 hours of work experience as part of their training program. Student X claims that signs posted at the college read "we provide 900 hours work experience incorporated". Student X assumed that 'incorporated' meant incorporated into the Certificate III course, which confirmed what she had been told by the VET provider's migration agent. Her failure to achieve 900 hours of work experience by the end of her course will impede Student X's application for permanent residency.

In our view, the Australian government has been highly remiss in its failure to regulate this part of the international education industry and urgent reforms are required. The need for reform in this area was also recognised by the Victorian Department of Innovation, Industry and Regional Development's 'Overseas Student Experience Taskforce', which recommended the establishment of a national registration framework for education agents in its December 2008 report (see www.isana.org.au/files/Overseas%Student%20Experience%20Taskforce%20Report%202008.pdf).

MARKETING AND PROMOTION BY EDUCATION PROVIDERS

International students are a particularly vulnerable group when it comes to the marketing of international education, as they are unlikely to have any local knowledge about private or public education in Australia. Section 15 of the ESOS Act prohibits misleading or deceptive conduct by VET providers. Furthermore, Part D Standard 1.2 of the National Code provides that VET providers must not give false or misleading information or advice regarding themselves or their courses. Standard 2.1 requires that VET providers provide students with current and accurate information regarding their facilities before enrolment. Despite these requirements, we believe that the websites and other advertising materials of most private VET providers are significantly misleading. We have formed this view based on our visits to over 25 Victorian VET providers' premises and our examination of the websites of approximately the same number of Victorian VET providers by random selection (a full list of premises visited and websites examined can be provided upon request).

Firstly, the names of many private VET providers suggest that they are national or statewide institutions that are in some way connected with the State or Federal government. To use Victorian examples, the names of private VET providers include:

Victorian International College, Melbourne Institute of Technology, Institute of Tertiary and Higher Education Australia, the Australian College of Hair Design and Beauty, Australian Institute of Technical Training, Australian National Institute of Business and Technology, Australian Institute of Technology and Education and Victorian Institute of Technology. Some of these providers even have names that are inconsistent with the VET courses they offer; for example, the Institute of Tertiary and Higher Education Australia offers no 'higher education'. This is clearly misleading.

The illusion that students are enrolling in institutions of substance is reinforced through the language and imagery of prestige that providers use on their websites and in their prospectuses. It is language and imagery that is commonly associated with conventional public universities, including logos that resemble coats of arms, pictures of students wearing academic gowns, pictures of manicured lawns with imposing old buildings in the background and teaching premises routinely referred to as 'campuses'.

In combination, all of these things convey an impression to international students that they are enrolling in institutions of a calibre and with facilities that are quite different from the reality. Furthermore, the levels of course fees charged by private VET providers may also suggest to international students that they are enrolling in an institution that is vastly superior to the VET college they ultimately find themselves in.

In reality, many of these private providers are very small and operate out of office premises in the CBD which are no more than a few rooms in total or a single floor. Many of them have only been in operation for a few years and it is unlikely that they offer the facilities and quality of education expected from a public university. Harry Singh recently told SBS's 'Insight' program that he had expected the colleges in Australia to be big colleges like those in his home country of India. Harry went on to refer to the college he was enrolled in as a 'cabinet college' (see <http://news.sbs.com.au/insight/episode/index/id/87#transcript>).

Unless education agents clearly prepare students for the reality of a private VET education in Australia, which they are unlikely to do, many international students will be misled by the advertising and promotion strategies of private VET providers. The regulation of VET providers in this regard needs to reflect the vulnerability of international students so that they do not continue to be misled about the educational experience they will have when they come to Australia.

PROVISION OF INFORMATION ABOUT LIFE IN AUSTRALIA

Part D Standard 2.1h of the National Code requires that VET providers provide students with print or electronic information about living in Australia, including indicative costs of living, accommodation options, and schooling options and fees for school-aged dependents. Notwithstanding this Standard, our examination of the websites, prospectuses and handbooks of over 25 private VET providers in Victoria has revealed that many of them do not provide information about the cost of living in Australia and many fail to provide information regarding accommodation options. We also noted a great deal of variance in the information provided. Some VET providers give students information about accommodation options but not the cost of living. Others do the opposite. Others still provide information regarding the cost of living that is outdated and unrealistic given current prices. Figures provided by VET providers for a year's living expenses range from \$8 500 to \$24 000. Many VET providers' websites suggest that \$12 000 is the likely cost of living per year. DIAC also requires that students have \$12 000 in order to obtain a student visa and some VET providers seem to base their assessment of the cost of living on that amount. However, given escalating rent, transportation costs and general inflation, this figure

is insufficient for a student living independently.

The failure of VET providers to provide students with adequate and accurate information before they arrive in Australia is substantially contributing to student poverty when they are here. Students are unprepared for the cost of living in Australia and in particular, the high cost of rental accommodation.

Students are also often unaware of the implications of the different accommodation options available to them. Private providers' failure to provide students with adequate information regarding the operation of the private rental market, the various ways of finding accommodation and the different support services they can access leaves them open to exploitation. For example, on 14 August 2009 the Melbourne Age reported that there were numerous cases of accommodation providers using free airport pick-ups and other free bonuses such as iPods to lure international students into signing long and expensive leases (Dobbin, M. 'Swoop on rooming house firm', The Age, 14 August 2009).

Many international students are unaware of their rights and responsibilities under tenancy law. They are also unaware of where to access assistance should tenancy problems arise, even though education providers are required to provide students with information about accessing legal services, and with the opportunity to access welfare-related support services including for accommodation issues.

Inflated rents, inadequately maintained properties and over crowding are amongst the most common tenancy problems that students experience. On SBS's 'Insight' program, Harry Singh reported that he and his co-tenants were paying \$500 a week for a house with no lock on the back door, no stove, a shower with no head and a yard full of junk. Despite repeated requests to the landlord to clean the place up, no action was taken (see <http://news.sbs.com.au/insight/episode/index/id/87#transcript>).

The Age also reported on two cases of severe overcrowding in Melbourne. Landlord Hem Temang leased three Coburg houses to some 90 Nepalese students. Despite being raided, Temang received council approval to open another accommodation facility for 26 students. Student Care Australia operates five rooming houses for international students in and around Clayton. It was raided by Consumer Affairs Victoria in August. Along with over crowding, Student Care Australia had failed to properly lodge thousands of dollars in bond money (Dobbin, M. 'Swoop on rooming house firm', The Age, 14 August 2009).

This is an issue of monitoring and ensuring compliance with the National Code, rather than an issue with the contents of the Code. Although the Code creates a standard that VET providers must meet, many are failing to meet that standard and international students are bearing the brunt of this.

Recommendation/s

1. We recommend that the government swiftly introduce a regulatory regime that will apply to overseas-based education agents, including effective enforcement mechanisms.
2. We recommend that the National Code be amended to require education providers to proactively monitor and report upon the conduct of all education agents with whom they work, both formally and informally.

3. We recommend that the government take steps to regulate the conduct of agents providing migration advice outside of Australia in connection with Australian education providers.

4. We recommend that there is greater regulation and monitoring of the advertising and labelling of VET providers' services.

5. We recommend that the government conduct an audit of the advertising and promotion materials currently used by VET providers, including the appropriateness of terminology used by providers and in the ESOS framework.

6. We recommend that there be greater monitoring and enforcement of Standard 2.1 of the National Code.

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

Comments

DISPLACED STUDENTS INCUR ADDED EXPENSES

The ESOS framework attempts to protect international students who are affected by closures of their education provider through the ESOS Assurance Fund and Tuition Assurance Schemes (TAS). We are concerned, however, that the current ESOS framework does not ensure that students are not out-of-pocket as a result of college closures.

Regulation 3.08(2) provides that students who are placed with new course providers must not be required to pay any additional course fees for the part of their replacement course that they had already paid for with their original course provider. Under the Australian Council for Private Education and Training's (ACPET) TAS, however, students will have to pay for any new materials required plus "relocation" expenses (see www.acpet.edu.au/index.php?option=com_content&task=view&id=158&Itemid=102). Students will also have to pay the new provider's course fees beyond the study period they have already paid for, even if the new provider's courses are more expensive than the student's old provider. Furthermore, if, as a result of the closure, a student's study period is extended beyond the expiration of their student visa, that student will also have to pay the \$540 application fee for a new student visa.

Once a student is enrolled with a new provider, there is nothing requiring that the new provider recognise the prior learning of that student. If students' prior learning is not recognised, this may lead to them having to repeat course units at additional expense. It will also extend the duration of the students' studies and potentially create the need for a further visa application.

All of these things mean that displaced students may still be financially disadvantaged by the closure of a VET provider, notwithstanding the TAS and ESOS Assurance Fund. Regulation of these funds should therefore be amended to ensure that students can access the funds for reimbursement of all costs associated with transferring to a new provider, not just the course fees they have already paid.

TAS placement committees should also be required to find placements that will recognise students' prior learning. Placements where a student's prior learning will not be recognised should be deemed unsuitable.

LACK OF REGULATION OF TUITION ASSURANCE SCHEMES

Division 3.2 of the ESOS Regulations deals with TAS's. It provides little guidance, however, as to how a TAS should operate and what rights students should have in relation to the TAS relevant to them. It is therefore open to TAS operators to create their own rules and these may not always be in the best interests of international students. For example, we are concerned that under ACPET's By-Laws, students will only receive one offer of placement with an alternative education provider. If they refuse this offer, ACPET's Placement Committee will not make a further offer to the student unless they consider there to be "special circumstances" (see www.acpet.edu.au/dmdocuments/ACPET_Corporate/ACPET_By-laws_endorsed_and_approved_by_the_Board_of_Directors_18_July_2008_V14.pdf). It is unclear whether a student's refusal of a new placement because it is too expensive, poorly located, of inferior quality, professionally unaccredited, or because they are not happy with the course content, will constitute special circumstances.

DISPLACED STUDENTS RECEIVE NO VISA GUARANTEES

After an education providers' accreditation to deliver a course is removed, students have 3 months to demonstrate to DIAC that they have secured enrolment in another course by providing a letter of offer or a certificate of enrolment. If students have not done this within 3 months they are advised to contact DIAC. They are offered no guarantee that their visa will not be cancelled or that they will be offered a bridging visa to cover them in the interim period (see www.immi.gov.au/students/education-providers-approval.htm). In our view, the ESOS framework should be amended to afford displaced students visa protection in the event that there are delays in finding a suitable new course provider that are beyond the student's control.

STUDENTS UNPROTECTED WHERE PROVIDER'S CLOSURE IS IMMINENT

Where a VET provider has closed in one state, students of the same provider in another state are not covered by the TAS if the provider continues to operate in that other state. For example, at the time that Sterling College in Sydney closed, students of Sterling College in Brisbane were not covered by the TAS and would not have received a refund or alternative placement offer if they took action to terminate their enrolment. If students were concerned about Sterling College, Brisbane as a result of the closure of its Sydney counterpart and terminated their enrolment, they would simply have been in default of their agreement. As discussed at length under question iv below, most VET providers do not provide refunds upon student default. As such, students would have lost any course fees already paid. This was confirmed to students in a memorandum produced by AEI and made available on the AEI website (see www.aei.gov.au/AEI/ESOS/default.htm). The memorandum told students that Sterling College, Brisbane was continuing to provide courses and that they did not need to take any action. They were advised to continue attending classes. Sterling College, Brisbane closed on 6 August 2009.

LACK OF INFORMATION PROVIDED TO STUDENTS

The case of Sterling College, Brisbane illustrates the inadequacy of information provided to students in the period immediately prior to closure of a VET provider. When Sterling College in Sydney closed students gathered at the college's main building, concerned that they had received no information about the closure. One student said, "We are panicking, there is no information from the college regarding what is going to happen" (see www.abc.net.au/news/stories/2009/07/28/2638356.htm).

In the case of Sterling College, Brisbane, the government failed to warn students of the closure. In fact, it did the opposite by trying to reassure students that it was

'business as usual' at Sterling College, Brisbane. In our view, this is completely unacceptable and represents a failure by government in its duty of care to international students.

Recommendation/s

7. We recommend that TAS schemes be required to reimburse students for all costs associated with transferring to a new education provider.

8. We recommend that TAS schemes be required to place students with new education providers that will recognise their prior learning.

9. We recommend that the ESOS framework and migration laws be amended so that students displaced by the closure of a provider are offered visa guarantees in respect of suspensions of their study as a result of the need to find a new course provider.

10. We recommend that students who default on their agreements with providers due to imminent closure of their provider be covered by the relevant TAS.

11. We recommend that strengthened protection of international students in the event of provider closure be resourced through additional levies on education providers and that providers be prevented through the ESOS framework from passing those additional costs on to students in the form of increased course fees or other charges.

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

Comments

BARRIERS TO STUDENT COMPLAINTS

We note under question iv below that international students are often reluctant to complain about their VET providers due to fear that providers will cause problems with their student visas or a concern that this will adversely affect their chances of obtaining permanent residency. This means that many international students do not make complaints about VET providers or appeal the decisions of VET providers even where they have strong grounds for doing so. In addition to international students' own fears, there are two other barriers to student complaints.

ESOS operates under a 'Shared Responsibility Framework', which means that responsibility for administering the ESOS regime lies with multiple agencies and departments (see www.aei.gov.au/AEI/ESOS/NationalCodeExplanatoryGuide/PartB/Shared_Responsibility_Network_pdf.pdf). These include DEEWR, DIAC and the various state-based registration authorities. Pursuant to Items 4.9 and 4.10 of the Shared Responsibility Framework, student complaints are divided between the state authority and DEEWR, dependent upon the type of complaint that is being made. For example, a student wanting to complain about the written agreement they signed at enrolment should make the complaint to their state authority, whereas a student complaining about refunds, fees or charges should contact DEEWR. This is an unusual and confusing complaints regime, especially for international students who will not always be familiar with the distinctions between state and federal authorities and departments. The complaints regime under ESOS needs to be streamlined so that students are

directed to one Federally located body with their complaints. We suggest that a new Federal body needs to be established for this purpose. (Such a body should also be responsible for provider registration, course accreditation, assessing applications for course transfers, monitoring and compliance. We discuss these issues in more detail under questions iv, v, vii and viii below).

With respect to complaints and appeals, Standard 8.1 of the National Code requires that education providers have appropriate internal complaints handling processes that meet a series of specified requirements. However, Chris Tulloch, International Students Online education agent, suggests that many small private colleges do not meet this requirement. If students are not able to demonstrate that they have exhausted internal appeals processes, state based authorities or DEEWR may refuse to hear their complaint. Indeed, this is exactly what Mr Tulloch suggests is happening:

"If a student comes to [VRQA or DEEWR] with a problem, they bounce back, really, to the student and say, 'have you gone through your complaints and appeals tribunal and processes at your college'.

"Now that's not occurring at a lot of smaller colleges, so the students usually can't get past first base" (Bourke, E. "'Exploited' students want national regulator", ABC News, World Today, 8 September 2009).

In addition to internal complaints processes, Standard 8.2 requires that education providers make arrangements with an external body or person that can hear complaints at little or no cost to the student. Students of VET providers who are members of ACPET are able to access the ACPET External Student Appeals process (see www.acpet.edu.au). It is a process which ACPET indicates is to be instigated by the student lodging their appeal, resulting in the student incurring the lodgement fee (see www.acpet.edu.au/index.php?option=com_content&task=view&id=4947&Itemid=348) . The cost of accessing this process is \$200, which may be prohibitive given the limited financial means of most international students. In our view, given the vulnerability of international students, all external appeals should be free of charge for the student and the National Code should be amended to specify this.

LACK OF PUBLIC INFORMATION REGARDING SUBSTANTIATED COMPLAINTS
Substantiated complaints about providers are not made publicly available, nor are the reports of the audits of VET providers. The AQTF 2007 National Guidelines for Responding to Complaints about VET Quality does not include any requirement that adverse findings about VET providers be published (see www.training.com.au/documents/AQTF_National%20Guideline%20for%20Responding%20to%20Complaints.pdf). Prospective students would find it very difficult to obtain information in order to identify unscrupulous providers. Even where colleges are forced to cease operation, there is a lack of public information about such closures. This is highly detrimental to international students. International students are in many ways a fractured group who are generally unlikely to complain about education provider misconduct, whether that be because they do not understand the mechanisms for complaint and the avenues for redress or because they are too fearful to complain. The lack of publicly available information about the enforcement of the ESOS framework means that international students are liable to feel isolated in their experience and, as such, are even less likely to come forward. They are likely to lack local knowledge about complaints mechanisms and the failure to publicise enforcement of the ESOS framework does nothing to remedy this. A more transparent system would augment the confidence international students feel in the

system and provide them with reassurance that they are not alone in their experience. It would thereby increase the efficacy of the framework itself, which will always be partially reliant on individual complaints.

In our view, information regarding substantiated complaints against VET providers, including information about rectification measures required or sanctions imposed, should be publicly available and easily accessible. Where VET providers are suspended or closed, this information should be made available via a number of online sources including government websites such as www.studyinaustralia.gov.au, the National Training Information Service website and other government agencies.

Recommendation/s

12. We recommend that the complaints process under the ESOS framework be streamlined through the establishment of a Federally located body responsible for handling all student complaints (see also recommendations 18, 20, 21, 22, 26 and 31).

13. We recommend that where providers' internal complaints procedures prove inadequate (for example, where a student is denied access to complaints procedures, where a student's complaint is ignored by a provider or where complaints procedures do not exist), that the new Federal body be compelled to hear the complaint.

14. We recommend that Standard 8 of the National Code be amended to provide that all external appeals must be of no cost to the student.

15. We recommend that substantiated complaints against VET providers be publicised including the substance of the complaint, the outcome and any rectification required by or sanctions imposed upon the provider.

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

Comments

We are concerned that most VET providers have harsh and inflexible policies around the refunding of course fees and course transfers that overly limit international students' ability to change their education provider. We do not believe that international students should be restricted from changing their education provider any more than domestic students are.

REFUNDS

Division 2 of the ESOS Act relates to refunds of course fees to international students. It requires that education providers provide students with refunds in certain situations, these being:

1. Where the provider defaults on the agreement with the student in that:
 - a. The course does not start on the agreed starting day;
 - b. The course ceases to be provided after commencement but before completion;
 - c. The course is not provided in full to the student because a sanction has been imposed on the provider under the ESOS Act's enforcement provisions.
2. Where the student defaults on the agreement but the provider never entered into a

written agreement regarding refunds with the student.

3. Where the student defaults on the agreement because they are not granted a student visa.

Section 28 of the ESOS Act also requires that education providers enter into written agreements with students regarding refunds where there is a student default. This requirement is reiterated in Standard 3.2 of the National Code. However, the ESOS Act and the National Code do not require that education providers make any specified amount or percentage of refund in the event of student default.

Consequently, where a student defaults on their agreement with an education provider, the ESOS framework does not provide that student with any entitlement to a pro rata refund. There is also no obligation on education providers to consider student circumstances or to provide compassionate consideration when determining student applications for refunds.

Given this lack of direction, VET providers are treating international students as ordinary consumers entering into a business contract. Of the student handbooks and prospectuses that we examined, almost all provide that no refund will be available to students after course commencement in the event of student default. Only a very small minority make reference to the possibility that they will consider the student's circumstances when determining a refund application.

The types of issues created by the refund policies adopted by most VET providers are illustrated by the following case study from the International Student Legal Advice Clinic:

CASE STUDY 3

Student B is a student from Nepal. He arrived in Melbourne in early 2009 and is on a student visa. He has been studying at a VET college in Melbourne. After commencing his studies, Student B was repeatedly sexually assaulted. He has suffered trauma as a result of the sexual assaults and he reported the matter to the police. He wants to stay in Australia to complete his studies but he no longer feels safe staying in Melbourne. He does not want to return to Nepal without finishing his course. He says that he would feel a great shame if he returned mid-way through his studies as his parents saved a lot of money for him to undertake his studies in Australia. In order to finish his studies outside of Melbourne, Student B wants to move to Brisbane to stay with a friend. He received an offer to study with a Brisbane VET provider and decided to leave his Melbourne VET provider. Student B attempted to get a refund from the Melbourne VET provider for a module he had paid for but not received. The Melbourne VET provider refused to provide a refund as their policy states that no refunds will be provided after commencement. Student B appealed that decision internally but received no response to his appeal. Due to these circumstances, Student B has also had to enter into discussions with DIAC who, because of the exceptional circumstances of his case, agreed to give him time to enrol in the new course. Without the refund, however, Student B does not have sufficient money to enrol in the Brisbane course and there is a concern that he will not be able to enrol in time to avoid cancellation of his student visa.

In our view, VET providers should be required to enter into much more flexible refund agreements with international students. Given the large amounts of course fees paid by students and the fact that many students are recruited through agents outside of Australia with no opportunity to view the VET providers' facilities, students should be provided with a reasonable 'cooling-off period' after the commencement of courses, similar to census dates in higher education. This would also recognise that students

have little bargaining power when entering into agreements with VET providers because they are unable to compare the courses and facilities of various providers and they lack knowledge of the Australian education system. They are also vulnerable once they commence a course because their visas are dependent upon the study they are undertaking. They are therefore less likely to assert themselves in the face of harsh or unjust refund policies.

VET providers should also be required to consider student circumstances when determining refunds, and agreements should provide for refunds on compassionate grounds. International students are not in the same position as domestic students. Failure to obtain a refund can lead to financial hardship and subsequent loss of accommodation, without the alternative of going home to one's family that domestic students have. International students may also have family emergencies that prevent them from continuing with their course because they have to return to their home country, whereas a domestic student is at least geographically able to manage both. Furthermore, when international students experience violence or some other trauma, they have far fewer supports available to them in Australia and may therefore need to return to their home country to access the supports that they need. This type of situation arose in the case of Suketu Modi, an 18 year old international student from India. Suketu was bashed on a train as he travelled home in early 2009 and decided it was too dangerous to stay here. He lost the course fees he had paid because Holmesglen Institute refused to provide him with a refund (Dhillon, A. 'Fear wins out as Indian student heads for home, The Age, 2 June 2009).

We believe that our concerns regarding refunds relate to both commercial and non-commercial VET providers. An examination of the current refund policy of Holmesglen Institute in its 'International Student Prospectus 2009' reveals that it is the same as those of most other VET providers we have examined. That is, refunds are not available after course commencement and there is no provision for consideration of a student's individual circumstances, even where they may be exceptional (see www.holmesglen.edu.au/_data/assets/pdf_file/0016/23137/2009Prospectus.pdf).

TRANSFERS

Under Standard 7 of the National Code, education providers are prohibited from enrolling a student who is transferring from another provider unless they have completed at least 6 months of study with their current provider. One exception to this is where the student has a letter of offer/enrolment from a new provider and on that basis, has been provided with a letter of release from the old provider and has terminated their enrolment. Other exceptions occur where the provider ceases to be registered, stops offering the course or has sanctions imposed on it that prevent it from offering the course.

At a 15 July 2009 information session for international students hosted by DIAC in Melbourne, a representative of DEEWR expressly stated that Standard 7 "clearly contemplates that the student should be released". This is confirmed by Standard 7 of the Explanatory Guide to the National Code, which indicates that providers should have a policy around transfers that identifies reasonable grounds for refusing a student's request. The Explanatory Guide also confirms that the intent of Standard 7 is to recognise students as consumers and support them to exercise choice, while simultaneously acknowledging that they are a group requiring support. This may be the aim of Standard 7, but the reality for international students is quite different. VET providers operate profit-making enterprises. They are therefore reluctant to release students and lose the significant revenue acquired with each enrolment. When students commence study with a VET provider they have usually not seen the provider's facilities or premises and have not had an opportunity to compare VET

providers. As noted above, due to their lack of knowledge of the Australian education system, many students effectively have their VET providers chosen for them by education agents. It is therefore understandable that a significant number of students may wish to transfer to another institution shortly after commencing study with a VET provider, indeed in the first 6 months of study.

The transfer policies of VET providers that we have examined are generally restrictive and do not accord with the supposed intent of Standard 7. For example, the transfer policy of one VET provider, Academia International, provides that in order to get a letter of release, students must prove (amongst other things) that “the new course better meets their long-term goals” plus “any other exceptional circumstances Academia International sees fit”. Furthermore, the policy states that the release can be refused where Academia International “determines that the transfer would be detrimental to the Student’s study or career goals” or where “the documents provided by the Student do not, in Academia International’s reasonable view, provide adequate justification for the transfer”. These kinds of policies give VET providers broad discretion to refuse transfers and are highly paternalistic. They are not consistent with DEEWR’s reading of Standard 7, nor with the Explanatory Guide. Nonetheless, transfer policies like these are not rare and there does not appear to be any provision in the ESOS regulatory framework to monitor and control them.

The vulnerability of international students also means that they are unlikely to report harsh transfer policies that violate the National Code. The issue of VET providers obstructing student transfers and students’ reluctance to report the problem was raised on SBS’s 'Insight' program. Navjot Singh reported that when a student requests a letter of release, they are sometimes asked by providers to pay up to \$5000. Harry Singh reported that students were unwilling to expose this practice publicly because they were fearful that their colleges would make trouble for them with DIAC (see <http://news.sbs.com.au/insight/episode/index/id/87#transcript>).

We suggest that students' applications for course transfer should be assessed independently of education providers and that a new Federal body be established for this purpose. (Such a body should also be responsible for provider registration, course accreditation, managing student complaints, monitoring and compliance).

Recommendation/s

16. We recommend that the refund agreements entered into by VET providers be required to include a reasonable ‘cooling-off period’ (such as a census date) that lasts beyond course commencement.

17. We recommend that VET providers be required to consider individual student circumstances when determining refund applications upon student default and that refund agreements between providers and students be formulated accordingly.

18. We recommend that all transfer applications be independently assessed by a newly established Federal body (see also recommendations 12, 20, 21, 22, 26 and 31).

19. We recommend that if this is not possible, there be greater monitoring of the transfer policies of VET providers and that they be required to conform their policies to the intent of the National Code.

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

On SBS's 'Insight' program, host Jenny Brockie asked international students what they thought of the quality of their VET course. Navjot Singh replied:

"Worthless...Yeah, they are worthless. They don't teach you anything. The private colleges, as far as cookery classes goes, they got classes for theory, but practical, they do not have any kitchen. Sometimes the college is in the city and the kitchen class will be in Liverpool, which has not taken place yet. So as far as practical training, they do not give you anything back" (see <http://news.sbs.com.au/insight/episode/index/id/87#transcript>).

In light of the above comments, anecdotal evidence from international students, news reports and our own visits to VET providers, we are concerned that the courses and facilities provided by VET providers do not meet the standards set out in the ESOS framework, let alone the standards international students are led to expect when they are recruited. Our concerns pertain to both the quality of facilities and resources offered to students, as well as the standard of education provided through VET courses.

In a recent article on 'Immigration Policy Change and the International Student Industry', Bob Birrell and Bronwyn Perry make the following comments:

"...[F]or some time there has been concern within DIAC about the skill levels of overseas students trained in Australia. This came to a head in the course of an Evaluation of the General Skilled Migration Categories conducted through 2005 and published in March 2006 ... The Evaluation concluded that the available evidence on job outcomes for former overseas students trained in Australia showed that these outcomes are poor" (Birrell, B. and Perry, B. 'Immigration Policy Change and the International Student Industry', *People and Place*, Vol.17, No.2, 2009, pp.68-69).

In the same article, Birrell and Perry also point out that in respect of the Migration Occupations in Demand List, applicants with VET qualifications have been given visas but there has been no apparent impact on job shortages in the 'in demand' occupations (Birrell and Perry, *ibid*, p.69). The suggestion here is that, despite these qualifications, the education that these students have received is insufficient to translate to a job outcome. In respect of the cooking industry, for example, the authors point out the following:

"According to informants in the cooking training field, the cooking skills of a student completing a one year full-time course in these fields are roughly equivalent to those achieved by a second-year domestic apprentice in cooking, or around the level of a semi-skilled kitchen hand. This is well short of the trade standard expected for domestic apprentices on completion of their apprenticeship. The value added to a student's earning potential on returning to India with a VET cooking credential is minimal" (Birrell and Perry, *ibid*, p.67).

This is particularly concerning given the substantial amount of money international students pay for VET courses, which on average cost approximately \$10 000 per year.

In the wake of the investigation of various Melbourne VET providers, Victorian newspapers have reported on the questionable standards of courses and facilities at VET colleges. On 10 May 2008 the Melbourne Herald Sun reported on student claims that several colleges have woeful computer or book stocks and that at some institutions, 40% of student fees are spent on student-recruitment promotions. The article went on to quote Gautum Gupta, Secretary of the Federation of Indian Students of Australia, as saying that “Sometimes there are no teachers, sometimes there have been only three computers for a class of 50” (Dunn, M. and Higginbottom, N. 'Foreign students feel high price to study', Herald Sun, 10 May 2009).

In a 23 July 2009 article on the closure of the Melbourne-based Victorian Institute of Training and Learning, The Age reported that a 2008 audit of the college found that it had failed 54 of the 85 audit criteria. Amongst other things, the audit reportedly found that course units were being taught back to front, student records were not properly kept and teachers' qualifications had no certification verifying their authenticity (Das, S. 'College in gross breach of standards', The Age, 23 July 2009).

Before a state regulatory authority such as the Victorian Registration and Qualifications Authority (VRQA) in Victoria registers an education or training provider, it must be satisfied that the provider meets the requirements for registration set out in the Australian Quality Training Framework (AQTF), Essential Standards for Registration. The first of these Standards includes a requirement that “staff, facilities, equipment and training and assessment materials used by the [Registered Training Organisation] are consistent with the requirements of the Training Package or accredited course and the RTO's own training and assessment strategies” (see www.training.com.au/documents/aqtf2k7_ess-std-reg_final2.pdf).

Notwithstanding these requirements, clearly there are VET providers who provide sub-standard courses and facilities. The issue is therefore one of monitoring and enforcement. That is, the extent to which this aspect of the ESOS framework is monitored and enforced is unclear and the criteria for assessment remain mysterious. Under Part C Item 11 of the National Code, state registration authorities are required to conduct inspections of the premises of education providers seeking registration to ensure that they meet the standards required by Standard 14 relating to staff capability, education resources and premises. Item 11 also requires the state registration authority to conduct further inspections “as appropriate”. In Victoria, the VRQA reports that it conducts audits of new providers at the end of their first 12 months of registration and then re-registration audits every five years after that (see www.eduweb.vic.gov.au/edulibrary/public/govrel/reports/2007vrqaannualreport-rpt.pdf).

We are concerned, however, that in reality the monitoring of VET providers' services has been extremely limited. As a result, many have been able to get away with providing sub-standard education and facilities without consequence. Indeed, following the collapse of the Leer Institute in October 2009, the Australian Education Union accused the VRQA of “failing to regulate providers rigorously because it was 'grossly understaffed for the magnitude of the problem'”.

We suggest that a new Federal body should be established and adequately resourced to more effectively manage the provider registration and course accreditation process. (Such a body should also be responsible for managing student complaints, assessing applications for course transfers, monitoring and compliance).

Standard 14.2 of the National Code requires that registered providers “must have adequate education resources”. However, the standard provides little guidance as to

what is “adequate” and is therefore open to interpretation. As profit-making enterprises, VET providers’ incentive is to keep costs down by spending the minimum required on facilities and resources that will be sufficient to maintain enrolments and avoid complaints. Given that many international students are unlikely to complain about their providers because of their visa status and concerns about obtaining permanent residence, students are clearly open to exploitation on this front. Without stringent regulation via the ESOS regime, VET providers can continue to provide sub-standard courses and facilities with impunity.

In its report the Victorian Taskforce recognised the need for effective quality control processes and recommended a rapid audit of Victorian education providers (see www.isana.org.au/files/Overseas%Student%20Experience%20Taskforce%20Report%202008.pdf). We support the Victorian Taskforce’s recommendation.

Recommendation/s

20. We recommend that a widespread audit of all Australian VET providers that enrol international students be undertaken by a newly created Federal body (see also recommendations 12, 18, 21, 22, 26 and 31).

21. We recommend that the provider registration and course accreditation processes be managed by a newly created Federal body (see also recommendations 12, 18, 20, 22, 26 and 31).

22. We recommend that the government introduce more effective quality control processes in respect of VET providers, including ensuring that providers meet all requirements before being registered and that annual inspections of providers are undertaken by a newly created Federal body (see also recommendations 12, 18, 20, 21, 26 and 31).

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

Comments

THE CONSUMER PARADIGM

As discussed above, international students are a particularly vulnerable student cohort because they lack familiarity with Australian systems and support services, they lack family and social support networks and they are often in a tenuous financial position.

As others have pointed out, including the Victorian Equal Opportunity and Human Rights Commission, the ESOS framework positions international students first and foremost as consumers (see www.humanrightscommission.vic.gov.au/publications/legal%20submissions/internationalstudentssubmission.asp). The degree of protection and types of safeguards the ESOS framework offers international students is impacted by this formulation. A consumer paradigm is inadequate because it fails to recognise the particular vulnerability of international students or their welfare needs. There is, therefore, a need to expand the ESOS framework to recognise international students as a group of people requiring broader protection of their welfare and rights.

INADEQUATE PROVISION OF WELFARE SERVICES

We are also concerned that the support services that are provided by VET providers are not monitored for quality and may therefore be inadequate. The ESOS framework requires VET providers to have support services for students and Part D Standard 6 of the National Code requires that VET providers “must provide the opportunity for students to access welfare-related support services”. In our view, however, the ESOS framework does not sufficiently specify the types and level of support services that VET providers must provide. Standard 6.6 is open to interpretation and, as profit-making enterprises, it is likely that VET providers will implement the most cost-effective rather than the most welfare-effective system of support services. This means that the welfare-related needs of international students will not always be met. Based on our observations it seems that VET providers tend to have one Student Support Worker who may be called upon by any and all students, regardless of the total number of students. Depending on the size of the college, this may or may not be sufficient. This issue was highlighted by the National Liaison Committee for International Students in their submission to the Victorian Taskforce (see www.nlc.edu.au/Submission_Doc/Victoria_Taskforce_Submission_2008.pdf). As the ESOS framework does not provide a high degree of regulation in respect of support services, technical compliance with the National Code by VET providers will not necessarily lead to a quality outcome for international students.

Furthermore, because VET providers are businesses, it is not possible to rely on them to fulfill all of the welfare-related support needs of international students, who as noted above are a particularly vulnerable group. It is therefore imperative that the ESOS framework incorporate funding arrangements for support services that are additional to those provided by VET providers themselves. This will ensure that a comprehensive range of support services are available to international students and that they are not disadvantaged where a VET provider fails in their duty to provide support services.

Recommendation/s

23. We recommend that the ESOS framework, in particular the National Code, be amended to include greater protections for the welfare and rights of international students.

24. We recommend that the ESOS framework be amended to increase the obligations of education providers to supply effective and adequate support services that are proportionate to the size of their total student body.

25. We recommend that the ESOS framework be amended to incorporate funding arrangements for on-going support services for international students that supplement those provided by education providers.

Effective regulation

vii. Is ESOS compliance and enforcement adequate?

Comments

We are deeply concerned that the ESOS framework is not functioning effectively to protect international students and to regulate the conduct of VET providers.

It is unclear how the prescriptive content of ESOS which relates to the obligations of education providers (specifically, the prescriptions contained in Parts 2 to 4 of the

ESOS Act) are enforceable or carry any regulatory weight in the absence of a centralised enforcement body.

We note that DEEWR is the government body currently charged with overseeing the enforcement of ESOS regulations. A number of problems are apparent with the current model of enforcement and compliance.

First, there is little, if any, publicly available information regarding enforcement and compliance procedures under ESOS. The obvious consequence of this opacity is that students, staff or their support workers who have knowledge of breaches by education providers may not be aware of the mechanism for reporting these. The effect is that DEEWR may not be carrying out enforcement and compliance activity where it is required.

Second, the information currently available about DEEWR's enforcement activities suggests that very few enforcement, compliance or investigative actions have been made by that body since the enactment of ESOS. For example, there are currently 1317 CRICOS registered providers throughout Australia. Yet the 'ESOS Compliance and Enforcement Actions – 2007-2008 Report' shows that only 48 compliance monitoring visits were conducted by DEEWR in that period (see www.aei.gov.au/AEI/ESOS/EnforcementActions_pdf.pdf). No further information concerning the basis of the monitoring visits made, what the consequences of the visits were for the providers concerned, or how aggrieved parties might initiate such a visit against a particular provider could be found during the preparation of this submission. For example, while Section 86 of the ESOS Act provides for various conditions that may be imposed on education providers who breach the ESOS Act or the National Code, it is unclear how compliance with those conditions is ensured. It may be assumed that 'compliance monitoring visits' arise following complaints made against education providers, and are not tantamount to the full audit of a provider's operations. Given recent reports regarding widespread VET provider breaches in relation to international students, as well as the sheer number of providers currently in operation, this negligible level of enforcement activity is a cause for concern.

In our view, all of our discussion in this submission clearly demonstrates that there are significant problems with monitoring and enforcement of the ESOS framework. The ESOS framework provides education providers with many desirable standards to aspire to, however, actual enforcement of these standards seems to have been negligible to date. Over and above an examination of the contents of the ESOS regulatory regime, there must be a significant examination of the mechanisms through which VET providers are monitored and the ESOS framework's standards enforced.

We are not only concerned about VET providers with respect to enforcement of the ESOS framework. The International Student Legal Advice Clinic has had a number of cases referred from major public universities where schools and departments are, we believe, overstepping their immigration powers to evade the complaints and appeals processes contained in ESOS.

In a case from a major Melbourne university, a student who required her school to sign off on her visa renewal request form (required if the student's end date for their studies is impacted by other factors), was told she could not have the form signed because of her poor academic progress. The student has since had her visa cancelled. Not, it should be noted, for a breach of visa condition 8202, but simply for not having it renewed. Before the student was able to access the university's appeals process for academic progress decisions, the school used its discretion to prevent

her from obtaining a visa renewal request. The university eventually conceded that the school should have signed the visa renewal form and followed its normal academic progress policy. But by this time, the student's visa had already been cancelled.

We discussed this case with both DEEWR and DIAC representatives at the ESOS Consultation held in Melbourne on 20 October 2001. DEEWR representatives asked DIAC what happened to a process that used to exist, whereby a student who reported a breach of the National Code to DIAC was given a form to fill out that would enable that information to go to a specific staff member within DEEWR and allow for investigation and direct communication between DEEWR, the DIAC case officer and the student. The DIAC representative at the ESOS Consultation claimed that DEEWR had stopped this process because "you said it was impacting too much on your workload".

We are concerned that a streamlined process of communication between DEEWR, DIAC and student about alleged breaches of the National Code has been abolished and replaced with a less than transparent process.

We believe that a process that makes clear to students and their advocates how National Code breaches are investigated and how communication with DIAC occurs so that a student is not breached before an investigation is completed is required. The current National Code framework does not necessarily provide this, particularly in instances like that described above, where the "external appeals process" is actually to another body (the Victorian Ombudsman) and not to DEEWR.

Recommendation/s

26. We recommend that a centralised Federal body be established with responsibility for monitoring compliance with ESOS by registered providers (see also recommendations 12, 18, 20, 21, 22 and 31) and that information regarding compliance mechanisms and the compliance activities of that body be made available for public access.

27. We recommend that provisions of the ESOS framework relating to enforcement and quality audits of education providers be strengthened to achieve uniformity in the way VET providers are regulated.

28. We recommend that a transparent process that makes clear how breaches of the National Code are investigated and how communication occurs with DIAC concerning the possible impact of such a breach on a student's visa be established.

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

As noted in the terms of reference for this review, there is currently a confusing 'split' in operation between the Federal ESOS framework and VET course and provider registration, which takes place at the State level. The result is that there is currently no overlay or consistency between the ESOS standards and the registration

requirements for education providers and courses. Any amendment to the ESOS framework should provide for a nationally consistent set of registration requirements for VET providers as a priority.

Under the current ESOS framework, VET education providers are registered at the State level by specified 'designated authorities' - in Victoria, for example, the Victorian Registration and Qualification Authorities. As guidance when considering applications for registration, these bodies have reference to the Australian Quality Training Framework (AQTF). The AQTF contains three, minimal standards for providers relating to governance and quality service provision (see www.training.com.au/documents/aqtf2k7_ess-std-reg_final2.pdf). These standards do not appear to be based on the prescriptive standards for education providers contained in ESOS. Once providers are approved as Registered Training Organisations (RTOs), the registering bodies in each State may recommend that the RTO receive Commonwealth CRICOS accreditation for the courses it offers. It thus appears that the entire process for RTO and VET course registration takes place in a way that is minimally accountable to ESOS prescriptions.

We describe the problems with the current registration scheme as:

1. There is no overlay between national ESOS standards and the process through which providers are registered.
2. The State-based registering bodies that authorise RTO registration appear to be under-resourced for the function of properly reviewing and considering education provider applications for registration.
3. There is no centralised body to enforce minimal registration standards, or to make sure ESOS standards are observed by RTOs once they have been registered.

We note that at the 2009 COAG meeting, governments across Australia committed to achieving a clearer articulation of regulations affecting international students across the State and Federal levels (see www.coag.gov.au/coag_meeting_outcomes/2009-07-02/index.cfm?CFID=53093&CFTOKEN=85421708&jsessionid=0430a89378d241ee6512103932443197653d#iss). We suggest that the process of RTO and CRICOS registration is a paradigmatic example of where such articulation is required.

The preceding discussion makes clear that there needs to be a stronger focus on ensuring ESOS compliance by providers at the registration stage. At the same time, however, we wish to emphasise that compliance mechanisms for providers once registered also need to be bolstered as they are currently inadequate under the administration of DEEWR.

We propose that a new Federal body be established and resourced to manage the provider registration process. (Such a body should also be responsible for managing course accreditation and student complaints, assessing applications for course transfer, monitoring and compliance).

We believe that the risk posed by sub-standard education providers could also be managed through a requirement for regular audits to be conducted by either a centralised registration body once established, or DEEWR. These audits should take place automatically once a specified number of complaints regarding a particular provider are received or a serious complaint against a provider is substantiated. Where a provider is required to implement rectification measures as the result of an audit, the provider should be required to undergo bi-monthly or six monthly audits over a period of two years following the initial audit. The authority should have the

ability to affect de-registration or suspension of registration following dissatisfactory audits.

Recommendation/s

29. We recommend that the ESOS framework be amended to include regulations regarding provider registration that require providers to meet certain prescriptive standards under ESOS as a condition of registration (examples of such standards could include proposed size of premises or number of staff in relation to yearly enrolments etc.)

30. We recommend that the ESOS framework be amended to provide for a nationally consistent set of registration requirements for VET providers.

31. We recommend that a Federal registration scheme be established and that such a scheme be managed by a newly created and adequately resourced Federal body (see also recommendations 12, 18, 20, 21, 22 and 26).

32. We recommend that providers currently registered at the State level be required to re-register under the Federal scheme.

33. We recommend that automatic audits of education providers be undertaken by the Federally established body where a specified number of student complaints are received, or where a serious student complaint is substantiated.

34. We recommend that where a provider is required to implement rectification measures as the result of an audit, the provider be required to undergo bi-monthly or six monthly audits over a period of two years following the initial audit.

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

Comments

We note that the prescriptive elements of the ESOS framework predominantly focus on the the actions and performance of students, and not on education providers. Rather than easing the prescriptive standards required of providers, we believe such standards need to be strengthened and better enforced. We have discussed this issue at length throughout our submission.

In respect of prescriptive standards which impact students, we are particularly concerned about the mandatory reporting of student attendance to DIAC by education providers.

EXCESSIVE MONITORING OF STUDENTS BY PROVIDERS

We are concerned that many VET providers engage in excessive monitoring of students in order to ensure their compliance. While some monitoring may be the result of the requirement imposed on VET providers by Standard 11 of the National Code, which requires that they monitor student attendance and report non-attendance above 30% to DIAC, the excessive monitoring that some VET providers engage in undoubtedly creates an oppressive learning environment for VET students, who are almost always adults.

The following observations made by Robyn Minici, a former VET teacher, on SBS's 'Insight' program reflect the kind of problem that may exist for many international students:

"I could liken it to a detention centre or even a prison. It was quite dehumanising... [W]e had to sign students in the exact time they came in. If they arrived at 8:03, it had to be registered 8:03. If they went to the toilet, I had to mark that down and, you know, be quite aware of if they were returning. If not, I, you know, had to answer as to why they weren't in the classroom, if management was to come around... It's about compliance, that's all. As long as we're working in accordance with the immigration, the education policies, then we can continue to operate and generate the income that we require" (see www.sbs.com.au/insight/episode/index/id/87#transcript).

International students are subject to even further strictures as a result of the monitoring required by the National Code and their visa conditions. Under Standard 11 of the National Code, even absences supported by a medical certificate count towards non-attendance. Providers are also required to have 'intervention strategies' in place with respect to students' progress and attendance. Many VET providers' handbooks warn students that they are liable to be reported to DIAC for non-attendance or a failure to make adequate progress. Due to visa condition 8202, students are also only able to suspend their studies where there are "compelling and compassionate" reasons. There is also a discretionary condition 8303 which provides that student visa holders must not become involved in any activities that are disruptive to or threaten harm to the Australian community or a group within the Australian community.

Visa conditions such as those mentioned above do not just restrict international students in and of themselves. They are also relied upon by VET providers to ensure that international students are compliant. The following comments by complaints investigator Karl Konrad on SBS's 'Insight' program are an example of this:

"Complaints of abuse against students, threatening with deportation, cancelling their visas, if they don't toe the line. Not giving them their results" (see <http://news/sbs.com.au/insight/episode/index/id/87#transcript>).

Testimony that suggests education providers use the threat of deportation to extort additional or advance payments from students also exists. It was reported on ABC Radio's 'PM' program on 7 September 2009 that a number of student complaints have been lodged with the Overseas Student Support Network Australia about this practice. VET providers are allegedly marking students as absent even where they have attended class, refusing students entry to class, ordering students to leave class and banning students from submitting assignments unless they pay for the next semester's tuition fees in advance (Bourke, E. 'Shonky colleges demand extra payments, threaten students with deportation', ABC Radio, 'PM', 7 September 2009). Given that students are liable to be deported where their attendance falls below 70% and they are reported to DIAC by their education provider, the implications of such practices are extremely serious. In fact, Robert Palmer, Executive Director of the Overseas Student Support Network Australia, reported to 'PM' that students who have been deported under such circumstances are still writing to him from their home countries asking for help (Bourke, *ibid*).

Recommendation/s

35. We recommend that the ESOS framework be enhanced to proscribe threatening conduct by VET providers.

36. We recommend that minimum attendance requirements for international students be abolished.

37. We recommend that mandatory reporting to DIAC by education providers be abolished.

38. We recommend that semester-by-semester reporting by students to DIAC on their enrolment status and academic progress become the mechanism for monitoring student visa compliance.

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

Comments

There currently appears to be very little articulation between the way that international education providers are regulated and the conditions that are imposed on international students through their visas. For most students, this mismatch between study and visa conditions renders student life in Australia disjointed and oppressive.

An illustration of this mismatch can be found in the operation of visa condition 8105, which limits students to 20 working hours per week during semester. This condition has not been subjected to Federal government review since 1991, and is radically out of kilter with the financial demands of student life in Australia. Because there is no provision in either the ESOS framework or the AQTF standards which places a cap on provider fees, students' tuition fees continue to increase, seemingly without end. This gap or oversight in the ESOS framework, coupled with stringent student visa limits, works to effectively force international student into under-award waged and informal work in order to service exorbitant education provider fees, which are on average \$10 000 per year.

The International Student Legal Advice Clinic (and Western Suburbs Legal Service before it) has assisted a number of international students with employment related complaints. Based on these encounters, we are concerned at the number of students entering informal employment arrangements - usually for unreported cash-in-hand payments. The looming spectre of DIAC reporting for either defaulting on fee payments, or for working over the 20 hour limit, creates a situation where students are locked into exploitative working conditions and have no mode of redress.

Recommendation/s

39. We recommend that there be cross-communication between ESOS and student visa conditions, to avoid the situation where the frameworks operate in tandem in a manner than oppresses and disadvantages international students.

40. We recommend that the ESOS framework contain within it a provision that regulates the course and other fee levels that providers may charge.

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

In our view the ongoing sustainability of the international education sector is dependent upon three key factors:

1. Course quality, course fee levels and the practices of education providers
2. Students' experience of racism, discrimination and exploitation
3. Students' expectation of permanent residency upon completion of their course

We have discussed issues relating to course quality, course fee levels and the practices of education providers at length throughout this submission, and have made numerous recommendations about the role that ESOS should play in addressing them.

We acknowledge that international students' experience of racism and discrimination, their experience of exploitation in the employment and housing arenas and the expectation of many students that they will obtain permanent residency in Australia upon completion of their course of study are matters beyond the scope of this review. However, we believe that any consideration of the ongoing sustainability of the international education sector, if it is to be fruitful, must take place within this wider context.

Last year there were 1447 Indian victims of violent crime. Indians are substantially over-represented in recorded robberies in Melbourne west, making up one third of all victims (Topsfield, J. 'Indians told to keep a low profile', *The Age*, 19 February 2009). Peak bodies representing Indian students have reported that racist attacks on Indian students are much more frequent than official statistics suggest, because a large proportion of students do not report crime (Ramachandran, A. 'Indian student bashings on the rise in Sydney: community leader', *Sydney Morning Herald*, 20 May 2009). The Chinese embassy has also reported that attacks on Chinese students have occurred (Gilmore, H. And Millar, P. 'China fear over safety of students', *The Age*, 4 June 2009).

The clear impact of this situation is a drop in international student enrolments. The *Age* reported recently that Indian student enrolments at La Trobe University for 2010 were "set to halve to 300 following a dramatic drop in inquiries and applications since the attacks in May and June" (Russell, M. 'Slump in Indian student numbers', *The Age*, 30 August 2009). In the same article, the Australian Catholic University reported a 45 per cent drop in Indian student enrolments nationally and Ballarat University reported a drop of 18.1 per cent. Victoria University – which took part in pre-departure briefings at five Indian cities to reassure students and their parents that Victoria is safe – attributed a 27 per cent drop in the acceptance of offers to "negative Indian media reports about student safety in Australia" (Das, S. 'Fear of drop in Indian students', *The Age*, 30 July 2009).

Unless the issue of racist attacks on students is seriously and systemically addressed, international students – and Indian students in particular – will continue to go elsewhere.

Government, police and community responses to these attacks have all been deeply problematic. Racism and discrimination towards international students needs to be

acknowledged by both government and police as an ongoing cultural problem and addressed accordingly. All agencies which interact with international students, including police, need to be required to undertake professional development and cultural awareness training relevant to their work with international students. Complaints of racist violence from international students need to be taken seriously by police. State police forces and other agencies, including private education providers, need to develop policies for the provision of information to international students on the legal definition of racism and discrimination in Australia and the legal mechanisms available to address racism and discrimination, as well as information on victims of crime that is specific to international students. Finally, the government must commit to a large scale public awareness campaign about the valuable contribution that international students make not just to the Australian economy, but to Australian society as a whole.

In 2001, the Federal government effectively made study in Australia a direct pathway to permanent residency. The migration rules were amended to allow international students who completed tertiary study in Australia to apply for permanent residency visas onshore under the skilled migration program (Birrell and Perry, *ibid*, p.65). This was the catalyst for the boom in Australia's international education industry.

In 2005, the government raised the number of points required to obtain permanent residency from 110 to 120. The easiest way to achieve the extra points required was to study in an area on the Migration Occupations in Demand List (MODL) (Birrell and Perry, *ibid*, p.68). This change is what led to the rapid expansion of areas of education and training that were on the MODL, including hairdressing and cookery. In 2002, there were just over 30,000 international student enrolments in the VET sector. By 2007, this number had increased to a massive 90,000 (Birrell and Perry, *ibid*, p.65).

In 2007, things changed again. Job outcomes for international students trained in Australia in occupational areas on the MODL were poor. Thousands of international students with qualifications in areas like cookery and hairdressing were being given permanent residency, but the labour shortages in those occupations were not diminishing (Birrell and Perry, *ibid*, p.69). In order to address this problem, the government added the requirement that students demonstrate 1 year of work experience in their chosen field before they could enjoy the benefit of the MODL points (Birrell and Perry, *ibid*, p.69). Despite these more rigorous requirements, international student enrolments continued to grow. By 2008, Indian students were the biggest source of this growth. Between 2007 and 2008, enrolments of Indian students nearly doubled to more than 32,000. Total enrolments in the VET sector increased to nearly 140,000 (Birrell and Perry, *ibid*, p.65). Nearly half of all skills migrant visas were granted through the MODL system in 2007/2008 (Birrell and Perry, *ibid*, p.66).

As noted above, the Federal government froze the processing of applications for permanent residency under the MODL in January of this year. The shift in balance away from general skilled migration to employer and state government sponsored migration that started to occur in 2005 has become much more emphatic (Birrell and Perry, *ibid*, p.70). Relative to the numbers of international students seeking permanent residency, the number of state sponsored visas available is minimal (Birrell and Perry, *ibid*, p.71). The prospects of employer sponsorship are better, but sponsored employment leaves international students with little or no bargaining power, opening them up to even more serious forms of workplace exploitation than already occur.

While applications for permanent residency under the MODL are still being accepted, it is not known when processing of those applications will recommence or whether DIAC will make a determination on the basis of the policies and rules that applied at the time that the application was lodged (Birrell and Perry, *ibid*, p.72). Applicants with skills on the newly created critical skills list will now be given priority. The critical skills list doesn't include occupations like hairdressing and cookery, in which thousands of international students are currently being trained (Birrell and Perry, *ibid*, p.71).

In 2007, the Centre for Multicultural Youth surveyed 1155 international students in Melbourne. Ninety five per cent of those surveyed said they intended to apply for permanent residency (see www.cmy.net.au/Assets/476/1/InternationalstudentsSMYINreport26June2008.pdf). The significant investment that international students make in coming to Australia is not always an investment in education.

As noted in our discussion under question i, education agents are continuing to advertise Australian VET courses to international students as 'PR courses'. International students' expectation that they will obtain permanent residency is no longer as assured as it once was. While we recognise that the Federal government will make decisions regarding migration policy based on what it determines is necessary and in the best interests of Australia, it must also be recognised that those policy decisions may negatively impact the international education industry. At the very least, such policy changes must be effectively conveyed to prospective international students. It is also unconscionable for the government to change the requirements for permanent residency after students have commenced their courses. Students who have invested in permanent residency by spending large amounts of money on sub-standard courses on the basis of an existing migration policy should not lose the benefit of that investment because that migration policy changes.

Recommendation/s

General Comments

The Western Suburbs Legal Service Inc (WSLS) was established in 1978 and as such, is the oldest community legal centre in Melbourne's west.

Community legal centres are independent community organisations which provide free legal services to the public. WSLS is a generalist community legal centre that provides legal advice, information and representation to the local community in a range of legal areas. As the first community legal centre in the western suburbs, WSLS has a history of assisting people from across Melbourne's west. We continue to see clients from outside our immediate catchment area of the City of Hobson's Bay.

WSLS receives funds and resources from a variety of sources including State, Federal and Local government, philanthropic foundations, pro bono contributions and donations. WSLS also relies on the generous contributions of a large group of volunteer lawyers, paralegals and other community members.

WSLS works to provide effective and creative solutions to our clients' legal problems based on our community experience. Our strong relationship with our local community sets us apart from other providers of legal services and enables us to

respond to community needs as they arise.

Like other community legal centres, WSLs combines assistance for individual clients with community legal education work, community development and law reform projects that are based on community need and are preventative in outcome. WSLs has worked on law reform and community development projects related to police issues, anti-terrorism laws, industrial relations issues and more recently, racism and discrimination.

In the context of our work on racism and discrimination, WSLs recently established the International Student Legal Advice Clinic (ISLAC) in conjunction with partners in Melbourne's Indian community.

The International Student Legal Advice Clinic (ISLAC) commenced operation at the beginning of July 2009. ISLAC is a free drop-in service for international students that provides advice and on-going legal assistance and representation with the following types of legal matters:

- Criminal matters
- Discrimination
- Employment matters
- Fines
- Police issues and complaints
- Student rights
- Tenancy matters
- Traffic offences
- Victims of crime compensation

ISLAC is staffed by volunteer lawyers and paralegals with a background in international student issues. Some volunteers have language skills in Hindi, Urdu, Punjabi and Tamil. Telephone interpreter services are available for other languages. ISLAC also has a highly experienced Student Rights Officer present at every advice clinic, who conducts on-going advocacy on behalf of ISLAC clients in order to obtain swift and amicable resolution of client problems and to avoid the escalation of disputes or complaints into legal matters.

International students are often afraid to seek assistance or speak up about legal problems for fear of having their visa revoked, being subject to retaliation by their education provider, landlord or employer, or for fear that their chances of obtaining permanent residency will be jeopardised. International students have also been offered a variety of inadequate services in recent times and many have become skeptical about the efficacy of new initiatives. We are therefore working very hard to build a relationship of trust with the international student community. Despite these issues, in the short time ISLAC has operated we have advised a number of international students on legal matters predominantly relating to racism, tenancy, employment, victims of crime, police issues and traffic offences. There have also been a large number of students attending with complaints or concerns about VET and higher education providers

In establishing and developing ISLAC we have read widely on the issues facing international students. We have also held discussions on the issues facing international students with a range of service providers including lawyers and psychologists working with international students who are victims of crime, international student groups, local council, university student support services, other community organisations (including other community legal centres) and statutory bodies. In promoting ISLAC we have been in contact with a large number of

education providers who enrol international students. We have personally visited over 25 Vocational Education and Training ('VET') providers in Melbourne's CBD. We are also liaising with education providers to arrange for information about ISLAC services to be included in orientation materials provided to international students.

Since the establishment of ISLAC the response from the international student community, other community agencies and even many training providers has been one of overwhelming support. We have consistently received feedback that this is an initiative that was long overdue and that will be of great assistance to international students.

We have written this submission based on all of our aforementioned work on ISLAC, including our experiences conducting the advice clinic itself and incidental interviews we have conducted with international students. Our submission is focused on the experiences of international students in Victoria, although we do make reference to events in other states at times. Where case studies are referred to we have obtained the permission of the students involved. All case studies have been de-identified to protect the confidentiality of the parties involved.

Thank you.