

Draft submission

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

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

In Australia, migration advisors must be registered with the Office of the MARA to give migration advice. To satisfy the rigorous requirements, migration agents must demonstrate a sound knowledge of migration law and practice, and they must continually update their knowledge. Registered migration agents must abide by the industry's Code of Conduct which includes requirements on ethical standards and professional business practices. Agents who are members of the professional association, the Migration Institute of Australia, also uphold an additional Code of Ethics.

Offshore migration agents as well as both on and offshore education agents representing Australian education and training institutions are not regulated. They operate without scrutiny or checks. They are not obliged to declare conflicts of interest.

Many potential overseas students obtain advice and information about Australian educational institutions from education agents. Often, the advice these education agents give extends to migration matters, and may be influenced by commissions they receive from Australian educational institutions.

This situation has arisen in part by the legitimate pathway for overseas graduates of Australian educational institutions to apply for permanent residence (PR) through the General Skilled Migration program. However, in the worst cases, this has led to education agents touting courses as "PR courses" and to some education providers offering courses with little regard to actual educational and skills-based outcomes.

Recommendations

1. Education agents should be registered with the Australian government.
2. Education agents should undertake a relevant course of study prior to registration.
3. Education agents should have to disclose any arrangements they have for commissions from Australian education providers.
4. Australian education providers should publish a list of education agents to whom they pay commissions.

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

Comments

Basic consumer protection principles oblige the Australian government to ensure that overseas students are protected when educational providers are no longer able to provide the service for which overseas students have paid.

Recommendations

1. Establish an Australian Government guaranteed and controlled assurance fund to provide adequate placement, refunds or compensation for overseas students whose Australian education provider closes.
2. Establish levies on Australian education providers to adequately finance such an assurance fund.
3. Set levies at levels which reflect the risk associated with any given Australian education provider.
4. Provide automatic visa extensions in the event of a student being forced to enrol in an alternate course due to provider closure.

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

Comments

Australian education providers do not have adequate complaints mechanisms for overseas students. Overseas students are unfamiliar with dealing with Australian education bureaucracies. Many come from backgrounds where consumer protection and customer service are unknown.

Overseas students are often unwilling to complain about Australian education providers because of:

- fear of reprisals
- threats to report them to the Department of Immigration
- a general feeling of powerlessness
- unfamiliarity with the procedures of an education provider

Recommendations

1. Establish an Overseas Students Ombudsman's Office
2. Australian education providers should have clearly and easily identified procedures for overseas students to make complaint and enquiries.
3. DIAC should provide overseas students with clear information about their rights as students, including information that intimidation by education providers is not acceptable, and giving examples of types of intimidation.

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

Comments

The previous policy of restricting student visa holders from changing education provider within the first 12 months of study had unintended consequences of holding a student to ransom to their provider. Students legitimately feared reprisals if they expressed dissatisfaction with their provider.

Currently most students are still restricted from changing education providers until they have completed six months of study. This still places too much power in the hands of providers without protecting vulnerable students dependent on providers for their visas and continued ability to stay in the country.

Recommendations

1. The ability of an international student to change their education provider should be the same as that of local students.

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

While the *Education Services for Overseas Students Act 2000* mandates a nationally consistent approach to registering education providers so that tuition quality remains high, in practice - whether through a lack of will or capacity - there appears to have been a failure in the enforcement of the Act

Similarly, the high ideals of the National Code of Practice 2007 have fallen short in reality:

- Potential students still receive poor and inaccurate information
- Education providers do not all have written agreements with education agents nor monitor their activities. This allows agent behaviour ranging from ignorant to irresponsible through to knowingly misleading to go unchecked.
- Not enough is done to encourage or ensure that overseas students use support services, orientation days or complaint processes.

Some education providers structure courses to fit in with permanent residence requirements and do not follow a national standard. A course registered on CRICOS and designated under AQF can vary considerably in terms of structure and length among different providers. For example, a search of CRICOS registrations for Certificate III in Commercial Cookery reveals that course lengths range from 28 to 104 weeks.

Recommendations

1. Ensure competency and character for those who establish and manage institutions as part of the education provider's accreditation process.
2. Regular audits of education providers to monitor compliance. This should include a review of National Code compliance and better enforcement and monitoring.
3. Standardise course durations to ensure skill-based outcomes.

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

Comments

International students' needs differ from those of local students, and these needs are generally not being very well met by Australian education providers, whether in the area of consumer protection or engagement with local students, who may be of assistance in helping them negotiate complaints or enquiry mechanisms.

Many overseas students have very little contact with their education provider apart from attending lectures, tutorials and exams. Unlike local students, most do not have contact with student unions and ethnic group associations tend to be social rather than provide advocacy for their members in dealing with their particular educational institution.

In many instances, overseas students have little contact with local students, or indeed with the wider Australian community.

If Australia puts itself forward as an education destination, then we have an obligation to ensure the treatment and experience of international students is commensurate with the high value they bring to the economy.

Recommendations

1. Australian education providers should be encouraged to facilitate closer engagement between overseas and local students, through measures such as those described in the *Examples of good practice in assisting international students to integrate with Australian students and the wider community* report.
2. Consider ensuring that Australian education providers have a ratio of local to overseas students in each course to assist in the connection of both student populations.

Effective regulation

vii. Is ESOS compliance and enforcement adequate?

Comments

The current belated scrutiny of Australian education providers, particularly in the VET sector, makes it obvious that the monitoring and enforcement of standards has been inadequate. Strengthening regulations for an education provider is meaningless unless the Government enforces compliance by conducting regular audits and monitoring.

No one stakeholder in the education and migration professions can effect change in isolation. It requires coordinated action by government policymakers to stop the buck-passing.

Recommendations

1. If State Government authorities are unable to properly monitor and enforce standards of education in institutions which cater to overseas students, the Federal Government should take over.
2. Form a Ministerial Working Group composed of representatives of DIAC, DEEWR, DFAT.
3. Form a Stakeholder Reference Group to support the Ministerial Working Group composed of representatives of federal and state government departments, tribunals, the Migration Institute of Australia, education providers, ACPET, DIAC, MRT/RRT/AAT, Regional Certifying Bodies, Advocates (representatives of peak bodies), Community sector representatives and consumer groups.

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

The MIA advocates a stronger regulatory framework and enhanced compliance monitoring. Refer to earlier comments.

Recommendations

1. Strengthen accreditation process to address matters such as character and competence of education provider.
2. Compliance and enforcement action should be random for all providers.

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

Comments

The ideals enshrined in inputs and prescription which were designed to ensure consumer protection and high quality educational experiences for overseas students have not been adequately met. This has been because of a lack of rigour in the monitoring and enforcement of requirements placed on education providers.

Current issues and problems clearly indicate that there has been an imbalance between inputs and outcomes. The emphasis should shift to focus on education outcomes, rather than on requirements.

Outcomes should be defined as measurable educational outcomes and quality of the experience, such as gaining employment, English levels and satisfaction levels.

This will help to rectify the disparity between international and local students outcomes.

Recommendations

1. Establish a body to regularly review redefined educational outcomes.
2. External peer review of assessments, such as skills-based exams for VET course.

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

Comments

DIAC and other government agencies should always be mindful that overseas students are guests in Australia, consumers of education products and also consumers of immigration services and products. From a consumer protection perspective, overseas students do have "expected outcomes" from the decisions they and their families made.

The MIA requests that the DIAC refrain from implementing retrospective legislation or regulation and also allow for transitional arrangements for current overseas students and existing visa applicants when implementing new legislation, regulations or policy.

Many people choose to come to Australia as students with a view to permanent residence. International students who study in Australia with the aim of eventually getting permanent residence are not exploiting illegitimate, "back door" entry. Rather, the Australian Government has, for overseas students studying in Australia, provided the General Skilled Migration (GSM) pathway through the subclass 885, 886, 887, 485 and 487 visa programs. It is therefore disingenuous for DIAC to assert that the student visa program and the General Skilled Migration program are separate and discrete entities.

Ongoing changes to the GSM program, due to its previous failure in addressing Australia's skills shortages and flexibility to respond to economic conditions, adversely affect overseas students.

It is no longer unusual for currently enrolled students to become ineligible to apply for General Skilled Migration using a previously acceptable course of study. Changes can come right at the end of an extensive period of study, giving students the choice to either pay large amounts of money to gain further Australian qualifications, or return to their home countries feeling that they have wasted money on Australian qualifications which may not be recognised in their country of origin. Neither option enhances Australia's diminishing reputation for quality education, as overseas students increasingly regard themselves as victims of money-hungry, uncaring government departments and education providers.

No students should have visas cancelled because of college closures. Students should be given ample time and assistance to arrange new courses with other education providers, with students whose visas are about to expire being given special consideration

Recommendations

1. Avoid retrospective legislative and policy changes for current students and existing visa applicants.
2. Improve certainty of migration outcomes during course duration
3. Improve visa assistance and flexibility to students who are victims of education provider failures.

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

There is a widespread perception among overseas students that while Australia and Australian education providers are very happy to accept the fees overseas students pay for their course, Australian governments and authorities show little concern for student welfare, consumer protection and educational standards of some courses.

This perception arises from the inadequate monitoring and enforcement of current regulations and the absence of regulations and policies to address issues of welfare, consumer protection and engagement with students.

The ongoing sustainability of the international education sector in Australia is in jeopardy as long as is given so little consideration by both education providers and government.

Education is a global playing field, and Australia is at high risk of offering inferior products when held against competitors the UK, Canada and the US. These countries are becoming increasingly popular education destinations through their positive and proactive treatment of students and potential students.

Australia must make real and tangible changes to attract future students, plus restore Australia's standing as an education destination by paying restitution to students who have been poorly treated.

Recommendations

1. Compensate students who have been badly treated by the education system.

General Comments

No amount of good legislation and policy will achieve a satisfactory experience for overseas students unless there is an effective means of monitoring for compliance.

The reality for many overseas students in Australia is that their experience of education in Australia falls far short of the National Protocols for Higher Education.

Where there has been education provider failures, the Australian government and education providers need to work together to re-establish the reputation of Australia.

We need to set high standards then ensure compliance with them to restore Australia's reputation as an education provider.