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NTEU Submission

to the

Baird Review

of Education Services for Overseas Students (ESOS) Framework

Organisation: National Tertiary Education Industry Union

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Details:

Date: 30 October 2009

Australia has been one of the leaders in attracting international students to undertake studies in our country. Australia has also attracted such students who have ultimately become permanent residents. Education standards are important, both for the student wishing to obtain a qualification, and for those immigrants who wish to live in Australia. It is for these reasons that it is important to re-examine the link between requirements for international students and requirements for permanent residency.

Government must retain the power to enforce high standards and impose sanctions within the ESOS Act if we are to retain our international reputation in education services, and work collaboratively with other countries.

In this submission, NTEU argues that the ESOS Act should be strengthened in terms of regulatory oversight, and for standards to be monitored, especially in the private provider sector and Vocational Education and Training (VET).

Response to Questions

(1) 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

Much of the commentary related to international student issues in recent months has revolved around the accuracy and timing of information that potential students receive. It is evident from the testimony provided by international students that in many cases they believe the information they receive is misleading. NTEU is of the view that the only effective way to ensure the nature of information provided to prospective students from education agents or educational institutions is timely and accurate is to make Australian higher education providers legally responsible for all information provided to students even where this information is being sourced from education agents. Where providers or their agents fail to meet these standards penalties should apply.

Another issue that the NTEU believes needs to be addressed is the provision to students of a consolidated source of information on different educational providers which would allow them to easily compare the curricula, status, size and scope of potential providers. This would ideally be in the form of an on-line data table or database which would be controlled by the relevant regulatory body.

Recommendation/s

1. **Relevant information about and related to the education programs and training should be provided in a comprehensive way before final enrolment. At a minimum this should include information about:**
 - the education provider
 - the ESOS system
 - relevant regulatory bodies
 - student grievance measures
 - student representative bodies
 - conditions of enrolment
 - conditions of visa entry
 - costs including all course-related penalties and hidden costs
 - procedures for withdrawal
 - circumstances of termination
 - domestic avenues for grievance relating to employment and housing.
2. **Providers must be made legally responsible for education agents used to recruit students and process student applications. This would apply to all education agents to whom any commission or other payment for service is made.**
3. **The capacity for education agents to also act as immigration agents should be discontinued.**
4. **In order to provide accessible authoritative information about studying in Australia, it would be useful to establish a consolidated online database that maintains updated summary information about all institutions registered under CRICOS. This information should include:**
 - name of the institution
 - location
 - curricula
 - contacts
 - institution type (e.g. public/private, self-accredited/accredited)
 - status as university where relevant
 - number of students subdivided according to international and domestic numbers
 - number of staff subdivided on the basis of employment type (full-time, part-time, fixed-term or casual)
 - whether the institution has dedicated staff to deal with student welfare and services
 - date of original accreditation.

- 5. The consolidated database should also provide students access to a summary of the compliance record of each institution according to the relevant regulatory and quality assurance authority.**

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

Comments

There are a number of fundamental questions around the design and implementation of the ESOS Assurance Fund and in particular its relationship to (and interaction with) Tuition Assurance Schemes (TAS). The assurance mechanisms operate at two levels:

- Tutorial Assistance Schemes (TAS)
- The ESOS Assurance Fund.

It appears that where students are unable to complete their studies with the provider to whom they are enrolled the TAS, for which the provider is a member, will seek to relocate those students into a comparable course. This is meant to happen within 28 days and at no additional tuition cost to the student. It is only when a student cannot be successfully relocated by the TAS that the student is referred to the ESOS Assurance Fund and may have their fees refunded.

The operation of a TAS is limited by the fact that educational institutions which are directly funded by government (for example, universities and public TAFE colleges) are exempt from being members of a TAS. Where students find they cannot complete their education with the original provider, the choices offered to them will be limited to institutions or providers that are members of the relevant TAS. We are aware of examples of international students being denied the opportunity to transfer to a provider of their choice on the grounds that the provider was not a member of the same TAS as the original provider.

Recommendation/s

NTEU recommends that there be only one national assurance fund for all providers of education to international students. This scheme should be independent of all providers. NTEU recommends that a public reporting structure which includes information about student relocation and course refunds be available to provide greater transparency of the operation of this assurance fund.

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

Comments

Although NTEU supports the principles outlined in Standard 8 of the *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students Conduct 2007 (Cwth)* relating to the complaints and appeals procedures, we believe these could be considerably strengthened if providers were required to meet the full costs associated with appeals processes and ensure students have access to genuinely independent advice and advocacy, including from registered student organisations. The current standard provides student access to grievance procedures at '*minimal or no cost*'. NTEU recommends that providers be responsible for meeting *all costs* associated with student grievance procedures. Many international students may not have the capacity to meet the cost associated with grievance procedures even if they are required to be provided at (an unspecified) minimal cost.

The grievance procedures outlined in the Standard allow a complaint or appellant to be '*accompanied and assisted by a support person*' (Standard 8.1 c.). The effect of this provision would be strengthened if students were also guaranteed access to genuinely independent advocacy and advice.

Recommendation/s

NTEU's recommendations in relation to Standard 8 are that:

- i. Student access to grievance procedures (both internal and external to the provider) be at no cost to students,**
- ii. Students be guaranteed independent advocacy and advice,**
- iii. All providers submit an annual report to the relevant regulatory body summarising the number of student complaints and outcomes.**

NTEU supports the establishment of a national student ombudsman or similar body which would provide a single point to which international students could direct all inquiries and/or complaints and receive the appropriate assistance and support.

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

Comments

The NTEU does not support measures that limit a student's ability to change courses or providers where the student meets the entry requirements for the alternative course.

2. 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

NTEU is of the opinion that improvements in the quality assurance framework may occur through a major realignment of existing regulatory responsibilities (see response to question 3).

Recommendation/s

To the extent that it is both reasonable and effective, quality assurance should be undertaken by one regulatory body. In the higher education context this would be through the Tertiary Education Quality and Standards Agency (TEQSA).

NTEU supports the re-introduction of a student amenities fee for all students. As part of the amenities and support delivered through this fee universities should be required to support organisations which provide independent advice and advocacy.

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

Comments

Certain parts of Standard 6 of the National Code need to be substantially strengthened. NTEU feels that Standards 6.2 and 6.3 are far too weak by simply requiring a registered provider to *'provide the opportunity for students to...'* At a very minimum, NTEU recommends that all registered providers be required to provide *'services designed to assist students in meeting course requirements'* (Standard 6.2) and *'welfare related services'* (Standard 6.3).

Both of these standards need greater explication to clearly define to providers and potential students the nature of educational assistance and welfare support that is expected to be provided to international students.

In relation to Standard 6.2 which deals with assisting students in meeting course requirements, NTEU believes that the standard should be more specific about the following types of educational facilities and support services:

- The range and quality of the learning and information resources including access to libraries and computing facilities.
- Access to specialised teaching facilities for the course, such as laboratories, studios or specialised classrooms.
- Processes to identify students at risk and the services available to assist these students.

In relation to more general welfare services, NTEU refers this review to the *New Zealand Code of Practice for the Pastoral Care of International Students* as a starting point to identify the types of specific services that would fall under the general rubric of student welfare. New Zealand's mandatory *Code of Practice for the Pastoral Care of International Students* (Code) was established under the *Education Act 1989*, and provides a framework for the delivery of services by educational providers and their agents to international students.

The New Zealand Code is notable in that the issues it covers are wide-ranging. Like Australia's National Code, it refers to ethical recruitment methods and contractual dealings, but expands the requirement for the provision of up-to-date information to broader issues, such as driving laws, welfare facilities, safe accommodation, what to do if experiencing difficulties and advocacy procedures. A more recent amendment to the code requires education providers to ensure that international students have 'appropriate' medical and travel insurance, and although needing refinement, a comparison between Australia and New Zealand policies relating to insurance for international students demonstrates that 'the New Zealand student is much better protected'.¹

Research on the impact of the Code has found that most New Zealand institutions tended to view becoming a signatory to the Code as positive, and that those institutions which needed to make changes did so. Peddie and others have noted that '*the introduction of the mandatory code has had a positive effect on programmes for IS [international students] in all sectors and throughout New Zealand*'.²

In addition, the introduction of voluntary student unionism has seen the collapse of many student organisations at Australian universities. It is important to note that student associations have played a central role for both international and domestic students in terms of social support and have provided opportunities for students to interact in a variety of clubs and societies. The re-establishment of a mechanism to pool funding for student amenities and support is vital to enriching the international student experience. Funding for student amenities and support should also extend to the provision of genuinely independent advice and advocacy through student bodies and associations.

1 J. Pickering (2005) *Medical and Travel Insurance in New Zealand – a lesson for Australia?* IE Limited, New Zealand, pg8

2 R. Peddie, M. Lewis and G. Barkhuizen (2003) *An Evaluation of the Implementation of the Code of Practice for the Pastoral Care of International Students*, University of Auckland, Auckland.

Recommendation/s

Drawing from the New Zealand experience, NTEU believes that Australia's National Code could be strengthened to require providers to deliver students appropriate assistance for the specific needs of international students. This should extend for instance to:

- **Accommodation, including advice on whether the accommodation has been suitably assessed;**
- **Relevant Australian laws including driver licence requirements, road traffic safety, pedestrian and cycling safety, and laws on the sale of alcohol and tobacco;**
- **Measures to improve personal safety;**
- **Personal health services, mental health services, drug education and counselling, and problem gambling;**
- **Sexuality education, health promotion, and sexual and reproductive health services;**
- **Information and advice on addressing harassment and discrimination.³**

NTEU recommends that the list of student welfare services, as well as the minimum level of provision listed under Standard 6, be specified in greater detail in consultation with international students and other interested parties,.

NTEU supports the idea that no education provider should be allowed to offer a course which is restricted only to international students. That is, domestic students should be allowed to enrol if they so choose.

NTEU recommends that all providers should be required to publish the numbers of international and domestic students enrolled in all courses they offered in the preceding teaching period. This information would provide international students with a better sense of the composition of the student body in which they are enrolling and the potential opportunities (or lack thereof) for interaction with domestic students.

NTEU recommends that the ESOS legislation be amended to require all providers to establish a democratically elected student representative body that would have sufficient resources to provide independent support services (including clubs and societies) and advice to students.

3 *New Zealand Code of Practice for the Pastoral Care of International Students (2003), Part 5 15.3*

3. Effective regulation

vii. *Is ESOS compliance and enforcement adequate?*

Comments

The ESOS framework establishes the legislative structure and many of the processes and standards under which international students study in Australia. For instance, if a person or provider intends to offer education or training programs to students studying in Australia on student visas, they are required both to seek approval from the relevant State/Territory authority and to comply with the Federal legislative requirements for registration on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS).

A number of important systemic issues within the current legislative environment place the overseas student market at risk. Amongst these, the State-Federal division of responsibility for maintaining ESOS standards diminishes system accountability overall. This is significant with regards to the delivery of education programs and training by non self-accrediting private providers who are neither subject to periodic audits by bodies such as the Australian University Quality Agency (AUQA) nor benchmarked according to standards set by the Australian Qualification Framework (AQF), applicable to the teaching and learning performance of VET providers.

The most explicit description of the division of responsibilities between State and Federal authorities is provided in Part B of the National Code (Cwth). Paragraph 8 states;

While DEST is primarily responsible for investigating and instigating enforcement action for breaches of both the ESOS Act and the National Code, state and territory governments often have enforcement mechanisms available through their legislation. Pursuing enforcement action through these mechanisms may be more appropriate given the nature of the breach, particularly if the state or territory government has specific legislation related to ESOS matters.⁴

This section establishes that there is a State-Federal division of responsibility in relation to compliance and enforcement of the standards established under the ESOS framework.

Under the ESOS framework there have also been instances of poor adherence to the National Code in the accreditation processes of designated State authorities. For instance, the legislation establishing the Victorian Authority defines the conditions for the

4 *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students Conduct 2007 (Cwth)*. Part B, Para 8, pg4

approval of providers of courses for overseas students in general and ambiguous terms, stating that the Authority *'may have regard to all or any of the following matters'* in deciding to approve that person or body.⁵

NTEU would point out that given the diversity of institutional types included on CRICOS, registration and accreditation provisions vary widely and in some respects may not be particularly rigorous, especially when compared to other relevant standards such as the National Protocols which govern higher education providers. This is despite the fact that the National Code is supposed to provide 'nationally consistent standards for the conduct of registered providers and the registration of their courses'.⁶ Regulatory and audit mechanisms around compliance to the National Code are (a) minimal, (b) assessed during registration, and (c) only require follow-up investigations and inspections when deemed necessary – the 'triggers' for which are often deficiently defined or designated in the relevant acts or instruments.

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

NTEU acknowledges that both the ESOS Act and the National Code attempt to provide a framework which deals with interlocking areas of responsibility and regulation that cut across State/Territory and Commonwealth jurisdictions. NTEU strongly believes that both registration and compliance requirements should be strengthened.

However, NTEU also contends that one of the major weaknesses of the National Code is the lack of clarity as to which level of Government is responsible for the monitoring and enforcement of the standards and procedures that it sets out. Any lack of clarity about who is responsible for the monitoring and enforcement of the National Code establishes a risk that some providers will fall through cracks in the regulatory framework.

Another related issue is that individual providers are not required to be signatories to Part D (Standards for Registered Providers) of the National Code. Though the potential legal effect of requiring individual providers to be signatories to Part D as a condition of issuing student visas may be minimal, NTEU believes that being a direct signatory to the National Code in the least imposes a strong educative role, as well as a strong ethical or moral obligation upon providers.

5 *Victorian Qualifications Authority Act (VQAA) 2000 (Vic)*, Division 5, Section 27, pg51

6 *National Code of Practice 2007 (Cwth)*, Part A, Para 1.1, pg1

Recommendation/s

NTEU recommends that the relevant Commonwealth department responsible for education (currently DEEWR) or a national regulatory body be made responsible and appropriately resourced to monitor the National Code, and investigate and enforce any breaches of the Code. The Commonwealth could use its power to issue (or not to issue) student visas for participation in courses offered by providers as the ultimate sanction.

The NTEU recommends that as a condition of being listed upon the CRICOS register and thus educating students on student visas, individual providers be required to be a direct signatory to Part D of the National Code.

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

Comments

NTEU understands that the outputs of the education system might be of primary importance for policy makers. Students however are more likely to equate education as an investment rather than buying a consumer product. A negative educational experience cannot be returned or replaced. There is little doubt that less satisfactory providers will be eventually 'found out' and thus go out of business because they can no longer attract students. Potential students on the other hand are making decisions to invest tens of thousands of dollars and a considerable amount of their time in undertaking an education program.

It is a mistake to consider students as consumers purchasing a product. A more appropriate analogy is to view students as investors and therefore to view the regulatory framework which should apply as similar to the domestic building industry where all trades people must be licensed and have insurance. Therefore, NTEU strongly believes that the only effective way to provide effective investor (consumer) protection is to regulate the the providers of education and not the outputs.

The NTEU advocates that a more nuanced approach be taken with regard to the international student experience. This approach must place greater emphasis upon the international student experience and not see them as consumers or as a source of export income. Education must be seen as a mechanism for mutual knowledge and cultural transfer rather than merely tradable services.

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

Recommendation/s

All issues about student visa obligations should be the delegated responsibility of a single Commonwealth department or a national quality assurance body, such as the proposed TEQSA. In determining changes to the student visa status of individual international students there should be a legislative requirement to provide opportunities for engagement with relevant advocacy and student representative bodies.

4. Sustainability of the international education sector

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

Comments

Initiated by the crisis in international student safety and welfare, the reputational risk to the higher education sector caused by the proliferation of 'rogue' providers and migration agents now requires a substantive re-evaluation of the existing legislative framework relating to international students and the international aspects of Australia's higher education system. It is necessary to acknowledge that though the independent review is not constrained by the tension between the potential political danger of substantive legislative reform, and the economic costs of continued collateral damage to the sector's reputation, there is now firmly set in the public domain questions about viewing international students as little more than a source of export income for Australian higher education providers.

NTEU would draw attention to push factors which may have led public providers in the past to aggressively pursue international student income, on the basis of the persistent decline in real levels of public expenditure and investment in higher education.

Therefore a substantive re-evaluation of Australian international education requires a review of areas beyond those ostensibly covered by the review of the ESOS framework. Such a re-evaluation would appropriately address issues around:

- Higher education funding broadly and funding arrangements in relation to the nature and quality of international education
- The pedagogy related to international education in Australia
- The establishment and strategic role of TEQSA, especially in relation to international education
- International student housing, employment, mobility and other student welfare issues
- The juridical gap in the status and rights of international students living and working for extensive periods in Australia
- Student visa conditions and migration pathways.

This review represents a unique opportunity to dispel further reputational risk to the higher education sector, and the international competitiveness of its key institutions, by situating at its centre an interest in re-characterising the significance of international education to Australian society (rather than merely the Australian economy, or the bottom-line of many higher education providers). The revised ESOS framework should focus upon improving the quality of international education in Australia through

systematic reform of the regulatory environment, as well as substantive measures for the better delivery of quality assurance.