

Submission to the review of the Commonwealth *Education Services for Overseas Students (ESOS) Act 2000*

Agency: Queensland Department of Education and Training
Sector: Education and Training (School, VET, Higher Education & ELICOS)
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Introduction

The Queensland Department of Education and Training provides this response to the ESOS review from a broad regulatory perspective covering schooling, VET, Higher Education and the ELICOS sectors in the interest of ensuring a world class, quality driven, student friendly education experience for international students.

It is acknowledged that this is a dynamic sector and that a range of other work is underway to strengthen quality assurance and legislative arrangements related to international students.

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:

There are deficiencies in the current system as evidenced by recent events. It appears that agents are sometimes providing inaccurate information purely in order to recruit students.

There appears to be a lack of accountability in agent behaviour (particularly in the VET sector).

The Education Agent and Migration Agent roles should be kept separate as those who currently perform both will sometimes seek to sell education and training as a permanent residency pathway instead of promoting sound education outcomes.

Recommendations:

- Investigate the possibility of providing key information directly to the student during the student visa application process - ie apart from information provided by the education provider or their agent. Such a practice would help address potential misinformation given to students by providers / agents promoting unrealistic lifestyle and employment prospects.

- Introduce an ‘Education Agent Register’ to enable education providers to make informed decisions in their choice of agent. The register could be based on a similar model to the current Migration Agents Registration Authority (MARA) model, with entry on this register based on a demonstrated understanding of the requirements within the ESOS Framework. Mandatory training should be a requirement of registration. Sanctions should be applied to agents who do not comply with registration conditions.
 - Continuing support should be given to the Indian Federal government’s initiative to legislate the conduct of their education agents within India and promote similar arrangements with other source countries of international students.
 - Education providers be made accountable for the behaviour of the agents they use (as is currently the practice in the Higher education sector). A national instrument should be developed that clearly sets out the obligations of providers and agents and the sanctions to be applied if these obligations are not met.
 - Require providers to disclose information about agents’ fees / commissions and include sanctions if providers fail to do so.
 - DEEWR to develop, maintain and promote information accessible in a number of forms on studying in Australia, living costs, visa and work conditions and cultural matters specific to Australia’s major study destinations.
 - Ensure information materials are available in the languages of the source countries to ensure comprehension by potential students.
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ii. How should the Australian Government and the international education sector protect international students if a provider closes? How should this be resourced?

Comments:

The current financial viability tests in the VET sector are not sufficiently robust. Non self-accrediting higher education institutions (NSAIs) undergo an independent financial review as part of the initial registration process with a follow-up review conducted every five years. NSAIs’ applications for registration and re-registration must also demonstrate the institution’s financial viability and its capacity to sustain quality higher education operations into the future. While a risk management approach would be required in the VET sector because of the large number of registered providers (for example, delivery to international students would increase the risk rating of the provider), a similar approach is warranted in the VET sector.

The current arrangements related to the Tuition Assurance Scheme (TAS) are unsatisfactory as the level of funds available to cover defaulting VET or HE providers may be insufficient.

Recommendations:

- Tightening financial viability requirements, particularly for VET providers (both at initial registration and throughout the period of registration) in an effort to minimise the risk of providers closing due to financial failure. These requirements could include a full business plan (with budget), a profit and loss statement, a statement of solvency (including asset, liabilities and contingencies), an audited financial statement and details of a specially appointed (independent) auditor who does not usually perform auditing

services for the organisation. Alternatively the model used in the Higher education sector in Queensland could be used as a basis for the entire tertiary sector.

- Investigate the feasibility of requiring that providers contribute a proportion of those student fees paid in advance to an independently administered trust fund.
 - Critically examine the viability of the current TAS to evaluate its capability to respond to potential closures flowing from the re-registration process; as well as the current cost to industry in the case of provider closures.
 - Consider how to construct, and underwrite, a scheme that is financially self sufficient. It is critical that any scheme properly assesses the risk factors particular to each provider which then informs the level of contributions they are required to pay.
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iii. Are different mechanisms needed to support international students to resolve complaints effectively? Are additional complaint mechanisms needed?

Comments:

The current complaint resolving mechanisms for international students are not proving effective.

There is some evidence that students are reluctant to complain out of fear it will compromise their student visa status.

It is also recognised that international students, particularly those who are studying with providers catering to international students exclusively, may not be well positioned to assess the quality of their education experience.

Recommendations:

- Clarify current legislative requirements around complaints and appeals and if necessary develop supporting policy and guidelines. Providers be required to publish the appeals processes in their marketing materials.
- Develop an effective shared responsibility framework that takes into account areas of complaints as they intersect with the current domestic quality framework, such as complaints in relation to the quality of course provision.
- Establishment of a national 'International Student Conciliator' should be considered – this office would provide a free mediation / conciliation service to resolve disputes between students and providers. The conciliator would have prescribed powers to, where appropriate, refer matters about poor provider behaviour to the regulator.

Some areas that need specific attention are:

- Stronger regulation with regard to the contentious issue of re-sit fees is essential, as the current practice of levying these fees is often seen as a bribe by international students. Consideration should be given to **not allowing** providers to charge a re-sit fee or, at the very least, requiring more explicit advice from providers to students at the time of enrolment, as to the circumstances in which such charges will be levied. A limit on the number of re-sits permitted, and defining with greater precision the point at which a charge may be levied, could

also be considered. While such measures would not be popular with providers, action to address this major source of complaint is vital; and

- providers delivering training in specific areas beyond their capacity to provide high quality training / assessment (ie because of inadequate facilities).
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iv. Should an international student's ability to change their education provider be limited, if so in what way?

Comments:

International students, like their domestic counterparts, should be entitled to exercise consumer choice regarding their enrolment. However, closer regulation of education agents may be required to prevent undue influence (from 'poaching' providers) that is not in the best interest of the student. It is important that decision making by students is informed by professional advice rather than what might be deemed the vested interests of agents / providers.

A provision where students may not change provider within six months of commencement is seen as an appropriate limitation on the freedom of choice, except where exceptional circumstances can be demonstrated, such as provider misconduct.

Recommendations:

- Mandatory counselling or advice be provided to the student, from a reputable source independent of any agent or the current provider, as a pre-requisite to changing education provider. This recommendation is based on anecdotal evidence that some agents encourage students to change providers, with no benefit to the student, but a financial benefit to themselves or the provider. The office of International Student Conciliator, as described under recommendation (iii), could be an appropriate source of this advice.
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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:

The Australian VET quality assurance framework, in its current form, does not differentiate between domestic and international students. Element 2.4 (of Standard 2) of the Australian Quality Training Framework (AQTF) prescribes that an RTO must ensure that learners receive training, assessment and support that meets their individual needs. Properly applied, this standard is sufficiently robust.

Similarly, the higher education quality and regulatory framework doesn't differentiate between domestic and international students and is also sufficiently robust if sufficiently applied. It is noteworthy that the Australian Universities Quality Agency has focussed on the theme of 'international' in its current round of university quality audits. There is currently no parallel focus on the regulation of Australian VET providers delivering training overseas.

The current ESOS Act amendments being considered present an opportunity for new criteria to be applied for CRICOS registration – for example, proof of a track record of successful delivery to domestic students.

Recommendations:

- Support strengthening the AQTF as the benchmark for access to the VET system, particularly the financial viability standards for providers - refer to earlier recommendations offered in response to question (ii).
 - Support measures to promote national consistency in application of the higher education and VET quality and regulatory frameworks.
 - Consider better integration between AQTF and ESOS monitoring and auditing activities.
 - Require that, in future, new providers must have established a successful track record of delivery to domestic students (a qualifying period of two years is suggested). Given their specialised purpose, ELICOS providers would need to be exempted from this requirement.
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vi. Where do international students' needs differ to other students, such that additional or different regulation is required?

Comments:

International students' needs differ in:

- English language proficiency;
- their lack of local knowledge in areas such as employment rights and obligations, accommodation, student safety etc;
- restrictions on the period of residency - providers must ensure students can complete the qualification within the approved visa duration; and
- choice of education provider prior to enrolment – cannot easily 'view' an education provider prior to enrolment (dependent on marketing material and education agent recommendations).

International students are dependent on the ongoing support of education providers in maintaining a student visa and therefore residency rights within Australia until the completion of their qualification. This makes international students vulnerable to exploitation by unscrupulous education providers and less likely to bring concerns in relation to the quality of a course to the attention of the responsible government entity.

Recommendations:

- Implement a requirement that providers (excluding ELICOS providers) delivering to international students must also provide training to domestic students – this practice would enrich the learning experience for both the international and domestic students. Ideally, international students would be from a range of countries to prevent legitimising an enclave culture within a provider.
- Consider requiring staff involved with international students undertake appropriate induction, including cultural diversity training and awareness of the requirements of the ESOS Act.

- Additional information needs to be provided to international students with respect to 'Vocational Placements'. The arrangements around unpaid work must be clearly communicated to ensure international students do not perform unpaid work in excess of the hours approved under the Vocational Placement scheme.
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Effective regulation

vii. Is ESOS compliance and enforcement adequate?

Comments:

Activities by some VET providers have highlighted weaknesses in the current regulatory regimes. In some circumstances the AQTF, with its emphasis on continuous improvement, can obscure threshold tests of compliance that may apply under the ESOS Act, such that the intent of one piece of legislation can unintentionally undermine another or provide loopholes for unscrupulous providers to exploit.

Regulation wherever it is practised is not a popularity contest. Where enforcement decisions are required the regulator must be prepared make these decisions for the wider benefit of the sector and in the interests of the reputation of the system as a whole.

Recommendations:

- The relationship between compliance frameworks needs to be considered in this review of the ESOS legislation. The link between compliance with domestic quality assurance frameworks and ESOS should be strengthened to allow breaches of the domestic quality assurance frameworks to be taken into account in ESOS regulation.
 - To ensure the current ESOS Act amendments are effective, more specific guidelines are under development to define precisely the new provider registration requirements. This will also be an important consideration in ensuring amendments flowing from the current review achieve the desired outcomes.
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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 purpose of the education system as a whole is the provision of quality education through quality providers therefore all the relevant legislation, not just the ESOS Act, must work together to achieve this outcome.

All the states / territories and the Commonwealth must work closely together to ensure a nationally consistent, quality system that provides all students with a positive educational experience.

The mix of responsibility / accountability and differing legislation across jurisdictional boundaries exposes the system to opportunities for misconduct.

Recommendations:

- Establish one Commonwealth Act to cover the entire education services to international students sector (removing state / territory legislation) and place the management of this legislation under one (Commonwealth) authority.
 - Implement a more coordinated and consistent approach to enforcement, drawing on industry experience, as well as active involvement by other government agencies with a vested interest in the international student sector (such as immigration).
 - Publish and publicise the outcomes of sanctions imposed on CRICOS registered providers.
 - Also refer to recommendation made at question (vi) with respect to a mix of international / domestic students and recommendations related to question (ii) with respect to financial viability.
 - Include a mechanism in the Commonwealth legislation for hearing appeals related to provider decisions (such as transfers & exclusions).
 - Also refer recommendation made at (v) related to requiring that, in future, new providers must have established a successful track record of delivery to domestic students (a qualifying period of two years is suggested). Also note recommended exemption for ELICOS providers.
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ix. What should be the balance between a focus on inputs and prescription versus outcomes?

Comments:

The more prescriptive the system the greater the need for regular auditing and monitoring of that system and the consequent rise in the level of resourcing required. Being unnecessarily prescriptive may not be sustainable, particularly in an environment encouraging reduction of the regulatory burden.

Recommendations:

- Ensure all legislation relevant to the provision of education is complementary and supports an effective regulatory and quality system.
 - Following from this is the need for clear policies and guidelines to support the framework and legislation, and ensuring education providers have access to unambiguous information from a single definitive source to assist them in understanding and complying with the system.
 - Ensure a timely (and transparent) response where providers are found to be significantly non-compliant.
 - Consider collecting information such as student satisfaction, retention and completion rates (across the international student sector). This information could be one factor used to determine a provider's risk profile.
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x. How can ESOS better support Australia's student visa program?

Comments:

Department of Immigration and Citizenship (DIAC) must be more cognisant of the consequences rapid changes to immigration policy have on the international education sector in influencing student choice of qualification as it intersects with prospective permanent residency outcomes.

Recommendations:

- Investigate the lack of rigor in the current visa system which allows fundamental requirements, such as a student's language ability as a requirement to a successful completion of the qualification, to be compromised.
 - Articulate clearly the separation that exists between the granting of a student visa and the granting of permanent residency in Australia.
 - Investigate student / working visa provisions which would allow graduates to undertake professional experience so they can attain registration with the relevant professional body. There should be no suggestion of a claim to permanent residency as a result of this additional visa consideration.
 - As part of the visa application process, students should be required to acknowledge that they have read and understood a selection of key statements covering topics related to studying in Australia. For example, "I acknowledge that I have adequate funds available to support myself during my study period in Australia"; "I acknowledge that successful completion of this course does not guarantee an entitlement to a subsequent visa." etc.
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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:

The effectiveness of any legislation is in its clarity of purpose and the ability and willingness to enforce its provisions if necessary. ESOS is the key legislative instrument to ensure the viability of this important sector.

Recommendations:

- Refer to recommendation at question (viii) – specifically, the establishment of Commonwealth legislation exclusively and the removal of state / territory legislation would deliver this clarity.
 - Adequate resourcing of the regulator(s) is critical to ensuring provider compliance and ultimately high quality education / training.
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GENERAL COMMENTS:

- Action needs to be taken to better define the 'fit and proper' person test and to ensure that failed providers cannot jurisdiction shop to re-establish their operations under different trading names.
- Consideration should be given to the resource burden on small providers (particularly schools) who are already complying with a number of pieces of legislation around education provision and child protection. This will mitigate the risk of responsible smaller providers choosing to not participate in international education.
- Enhance or redesign PRISMS to:
 - Capture historical information about providers;
 - Record approved providers' enrolment capacity against individual industry areas that match their infrastructure capacity in those industry areas (rather than recording an approved capacity for the provider overall);
 - Capture data on why student enrolment ceases;
 - Maintain a permanent process to facilitate joint consultation with industry and agencies who deal with international education and training;
 - Remove barriers to sharing PRISMS database information across jurisdictions; and
 - Introduce a new access level which would allow agents to upload enrolment information into PRISMS, but not finalise an enrolment. Final acceptance of any enrolment would be a decision for the provider (this suggestion is made in parallel with earlier recommendations designed to improve agent behaviour).
- Transition arrangements associated with any new legislation will need to be carefully managed (i.e. being careful to allow providers sufficient opportunity to comply and not to add further regulatory burdens on any particular sector).