

ESOS Review Secretariat
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October 29, 2009

Dear Sir/Madam

Thank you for your invitation to provide feedback to the review of the Education Services for Overseas Students Act 2000.

Swinburne University of Technology welcomes the review, particularly if it results in a strengthening of the ESOS regulatory framework. In economic terms, international education is now Australia's third largest export earner. While Australia has an enviable reputation for the quality of its education system and the quality of the international student experience, the dramatic growth in private VET provision over the past 5 years has meant that regulation and regulators have not been able to keep pace with growth in the industry.

The actions of a few unscrupulous providers have put at risk the whole international education sector. Universities are, in the main, strongly committed to complying with the ESOS regulatory framework. Our universities have developed significant compliance infrastructure since the introduction of the ESOS legislation. The Australian Universities Directors' Forum undertakes an annual benchmark of international office operations: since 2005 the AUIDF benchmark has analysed the compliance infrastructure in our institutions. Compliance is defined as "activities that are necessary to ensure that universities comply with legislation, administrative requirements and codes specific to international students in Australia, including the ESOS framework, the DIAC student visa regime and the [Universities Australia] Code of Practice".

In 2008, the 37 Australian universities employed an aggregate 97.65 staff dedicated to compliance with an aggregate international student enrolment of 180,890. The 2008 benchmark found there were 0.54 compliance staff per 1,000 enrolled international students in our universities, up from 0.45 in 2007 and 0.37 in 2006. Each compliance staff member managed a caseload of 1,852 enrolled students, an improvement on caseloads of 2,202 in 2007 and 2,823 in 2006.

The investment made by Australia's universities in compliance with the ESOS legislative framework is increasing. More complex regulation leads to higher compliance costs in our universities. However, the recent crisis in our industry has demonstrated that this investment is worthwhile. The ESOS framework protects international students as consumers, and in the end helps to protect and reinforce Australia's reputation as a high quality destination for international students.

Changes are, however, required to the regulatory framework to ensure that the actions of those few unscrupulous providers do not continue to put at risk a nearly \$16 billion industry. Changes are required to the enforcement and governance provisions of the legislative framework to clarify the roles of the various state and federal government

agencies involved in managing international education provision, so that timely action can be taken where significant non-compliance is discovered.

Swinburne University of Technology currently provides education to nearly 7,000 international students in ELICOS, non-award, TAFE and Higher Education programs. We have a clear objective to continue to grow our onshore international cohort, and to provide more opportunities for Australian students to engage in international experiences as part of their studies. Quite apart from the positive impact our international student population has on our campuses, our internationalisation agenda is at the heart of our vision to transform Swinburne from a middle-ranking institution to one of pre-eminence in our chosen areas of research specialisation, while continuing to deliver high quality, industry-relevant training outcomes for Victorians.

Anything that threatens Australia's reputation as a high quality destination for international students puts our international aspirations at risk. For these reasons, Swinburne supports the current review of the ESOS regulatory framework.

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?

A range of providers operate within the international education industry in Australia. While many take their responsibilities to provide accurate and timely information to prospective students seriously, some do not.

It is in the interests of the industry to ensure that, through regulation, students are appropriately prepared for their study experience. While regulation can require that specific information is provided to prospective students, the experience of the end-user, the student, is the most legitimate method of determining whether this information is fit for purpose.

As the international education industry matures and becomes more sophisticated, the type of information provided to prospective students and the manner in which it is delivered is changing, rapidly. The regulatory framework, which - since the introduction of ESOS in 2000 - has required the delivery of specific categories of information to prospective students, must be able to contemplate the changing information needs of students, and changing modes of delivery.

Implementing an independent complaints handling body, as a permanent mechanism by which international students could feed information into the regulatory process, would assist in assessing the effectiveness of information given to students by providers. Such a body would need to be appropriately resourced and be seen to act on complaints in order for students and providers to have faith in it. A website detailing the types of complaints referred to it and the action taken would assist in this regard.

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

State regulatory authorities should ensure, and be able to ensure through the relevant regulation, that only organisations meeting strict due diligence and good governance criteria, and whose primary mission is the provision of education, be accredited to deliver education to international students.

In the event that a provider closes it is imperative, for the wellbeing of students as consumers and the health of the industry, that students experience a smooth transition to a new provider. Regulators and providers need to work together to ensure that students impacted by provider closure are not unduly disadvantaged.

Where a provider closes, students should be guaranteed an alternative place with a high quality private or public provider. Where there is a price differential between the original provider and new provider, the gap should be covered by a Tuition Assurance Scheme, funded by private providers.

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

Swinburne supports calls for the introduction of an independent, complaints handling body: an international education ombudsman.

An independent complaints handling body would need to be adequately resourced and be seen to act on complaints in order for students and providers to have faith in it.

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

The 'non-release' period should be extended to 12 months in the **principal** course – or the principal course in a package of courses - unless the student can demonstrate a clear educational progression to a higher AQF program, a previous interest in the study area, or other compelling academic or personal circumstances.

This change would provide clearer guidance than currently exists under the National Code.

Importantly, this change would also serve to protect students from unscrupulous agents who seek to have them change provider as soon as they arrive in Australia simply in order to obtain a commission. This type of churn has been particularly evident in Melbourne.

Reinstating the 12-month non-release period will also allow providers to reinforce the intention of the student visa program. Visas are granted on the basis of the principal course. Visa applications are assessed against the sub-class requirements applying to the principal course. The ESOS regime should be strengthened to support the student visa program, permitting a change in the non-release period only where the change is the best interests of the student, or the change demonstrates a clear educational progression.

A 6-month non-release period does not support the student visa program: it is too easy for onshore agents to entice international students to move from one level of study or field of study to another once they have arrived in Australia.

Swinburne is very happy to provide the review with examples of advertisements, taken from the local Melbourne press, placed by some agents enticing international students away from their current provider, with promises of 'spotters fees', 'transfer fees', 'guaranteed part-time work', low study hours, and several days off per week.

Such enticements do nothing to advance the international education sector in this country, or the interests of students.

v. How can the intersection between ESOS and the underpinning education quality assurance frameworks be improved?

The introduction of systematic risk-based auditing of provider compliance with the education quality assurance frameworks would assist. The regulatory cost of more audits can be offset if the auditees are required to pay for the audits (as universities have had to pay for AUQA audits).

High-risk providers should be audited more regularly, perhaps annually. State regulators could have a pool of auditors from which providers were required to choose and require that providers arrange their own audits and submit the audit reports to the regulators by a certain date.

Publicising audit results would enhance the transparency and accountability elements of this approach.

There is also an argument to be made for more regular audits for all providers. If providers are following quality frameworks this should not be onerous; in fact, it is a way of maintaining standards and gaining valuable feedback, which can then be fed into decision-making processes to achieve better outcomes.

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

The ESOS regime has, arguably, assumed that institutions have a more significant duty of care for international students than for Australian students. The regulatory framework has required universities to formalise pre-enrolment engagement, admissions and orientation, academic progress and monitoring, and student service provision – for *international* students.

International students are consumers in a totally free-market education industry. International students make a significant purchase decision – involving the commitment of intellectual, personal, financial and temporal resources – often at a distance from the supplier, and often through a third party.

When they arrive in Australia international students do not have support networks, and may experience specific and intense cultural, language and learning adjustments.

In this respect, the needs of international students are different from the majority of Australian students.

International students must also maintain a student visa.

In this respect, the needs of international students are significantly different from those of Australian students in that there is a requirement that the student visa holder demonstrate their *bona fides* through: attendance, good academic progress, and so on.

vii. Is ESOS compliance and enforcement adequate?

ESOS compliance and enforcement is not adequate.

Various state jurisdictions have interpreted the requirements of the student visa program or the ESOS regime in different ways. What is ruled against in one jurisdiction may be allowed in another: creating a demand-shift in the market.

A national approach to the interpretation of regulation is required.

Regulators have been under-resourced to carry out auditing activities. However, they have also approved providers for registration who clearly should not have received it. Regulators should be better resourced to carry out audits of providers not just for ESOS compliance but also for compliance with the educational quality assurance systems under which they are governed.

Better resourcing of regulatory authorities could be achieved by implementing differentiated auditing. In Victoria, the VRQA has proposed – though no final decision has yet been taken – that universities manage their own CRICOS registrations. Universities would then be audited to ensure that they have followed the required processes for a selection of courses. This type of approach could be extended – by allowing certain categories of providers to manage their own capacity without reference to regulators, for example. Universities are required to go through the same capacity audits as smaller providers. Yet universities are able, to a certain degree, to grow Australia student numbers without reference to regulators. By establishing clear ‘self-managed compliance’ guidelines, certain types of providers could be invited to apply to operate within this space. By adopting this approach with providers who are considered low risk, compliance funds will be made available to focus more intensively on the high risk providers.

Defining ‘high’ and ‘low’ risk providers will be contentious. Several measures may be used to define risk levels including: history of compliance, history of external audit findings by relevant bodies, commitment to compliance measured by industry benchmarks, such as the AUIDF benchmark outlined in the introduction to this submission.

Registration requirements could mandate that a provider be registered under the domestic quality framework for a specified period of time and have a certain level of domestic student enrolments before being registered on CRICOS for delivery to international students.

Further to this, more rigorous examination of the financial backgrounds (including bankruptcy) of persons opening educational institutions needs to occur. Adequate business plans need to be in place and these operators should also have relevant backgrounds in education and training.

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?

As noted above, initial CRICOS registration requirements could mandate that a provider had to be registered under the domestic quality framework for a specified

period of time and have a certain level of domestic student enrolments before it could be registered on CRICOS for delivery to international students.

Given that one of the primary indicators of concern for regulators is the absence of a domestic student cohort, providers could be required to notify regulators annually of the numbers in their domestic and international student cohorts. Regulators could then make a risk-based assessment of which providers required more regular and stringent auditing. Further, if this information was made publicly available, it would be a useful resource for international students and their families.

Cross-checking and complementing PRISMS data with data from other sources eg. education quality, financial assessments and complaints data as suggested in the issues paper (p 12) to build up a provider risk profile would be beneficial. Providers who had a proven quality, financial and complaints record could obtain some regulatory benefit. The issues paper makes reference to high-risk providers having to comply with stricter standards (p 12). It might be possible, for example, to specify that providers with a high-risk profile only be able to recruit a certain number of students from a particular country and must have a specific mix of domestic and international students.

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

Inputs and prescription and outcomes are not mutually exclusive means of regulation. All are important. Given some of the migration drivers in the international education industry it is important to have prescriptive standards so there is a base level with which all providers are required to comply. However, it would be worthwhile introducing some elements of outcomes-based regulation which should favour genuine education providers.

This could, for example, be used to address some of the perennial concerns about international students' language ability. If outcome measures involved a review of student's English language ability, providers would be incentivised to include language immersion and applied language training within their programs. Providers whose graduates did not indicate an appropriate language ability could have their risk status adjusted and be subject to increased regulatory scrutiny.

Alternatively, the regulations could require that providers follow the requirements of the various Good Practice Principles relating to international students – for example the new Good Practice Principles in English Language Proficiency. These Principles could be adjusted over time, without regulatory changes being required.

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

As noted in the issues paper, legitimate education providers are uncomfortable with educational decision-making being the basis for visa decisions (p13). However, the ability to report for unsatisfactory attendance or academic progress can act as a spur to students to attend or improve their academic performance or leave the provider if the program is not suitable for them.

As noted in point iv., above, reinstating the 12-month non-release period (principal course) will assist ESOS in supporting the student visa program.

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

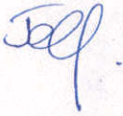
A strong regulatory regime is required to support quality education and protect students. This is particularly the case when migration drivers are involved in the industry as these can attract scurrilous providers, agents and students.

A regulatory regime also requires enforcement, and regulators must be adequately empowered and resourced.

In particular, regulators should review the assessment criteria for providers at the point of initial CRICOS registration. As noted above, registration requirements could mandate that a provider had to be registered under the domestic quality framework for a specified period of time and have a certain level of domestic student enrolments before it could be registered on CRICOS for delivery to international students.

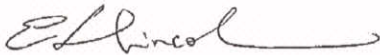
Swinburne is happy to provide further assistance, advice or support to the taskforce as it considers the international student experience. Please do not hesitate to contact us if you require clarification or further information.

Yours sincerely,



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and



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