

The Hon Michael O'Brien MP

09MET/1113

Date: 04/11/09

Hon Bruce Baird
ESOS Review
Department of Education, Employment & Workplace Relations
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Canberra ACT 2601



Government
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Dear Mr Baird

Thank you for the opportunity to respond to the Review of *Education Services for Overseas Students (ESOS) Act 2000*.

The South Australian Government supports continued growth of a high quality education sector for overseas students and enhancing Adelaide's reputation as a world class city for education, training and higher education.

Evidence suggests that the vast majority of students enjoy a positive, safe and culturally enriching experience. However there is always scope for improvement.

A number of issues have arisen recently within the international education sector that need remedial response if we are to protect the continued growth and reputation of Australia as a quality education destination. These issues are outlined further within the enclosed response and recommendations include:

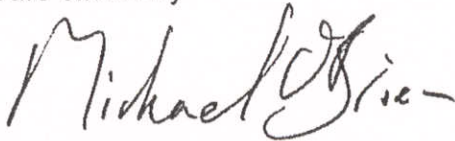
- investment in the sector to make Australian destinations attractive to overseas students
- ensuring initiatives that build community support for international education and foster positive exchanges between international students and Australian residents
- regulatory arrangements must allow for registering bodies to manage the entry of new providers through undertaking risk management which includes a proven capacity and compliance history.

A taskforce has been established in South Australia to investigate and address key issues affecting the experience that overseas students have while studying in Adelaide and ensure that Adelaide provides Australia's best educational and lifestyle experience for overseas students studying at our universities and training institutions. This taskforce looks at issues such as accommodation, student welfare and safety, employment and tourism experiences.

The South Australian Government has also established a unique advocacy service through the Office of the Training Advocate. This service provides assistance and advocates for all consumers, including overseas students of regulated training services. The Office of the Training Advocate has been a successful innovation and I encourage a similar adoption across all States and Territories.

Should you require any further clarification with regard to the contents of the enclosed response I encourage you to contact [REDACTED]

Yours sincerely



Hon Michael O'Brien MP
MINISTER FOR EMPLOYMENT, TRAINING AND FURTHER EDUCATION
MINISTER FOR ROAD SAFETY
MINISTER FOR SCIENCE AND INFORMATION ECONOMY

Encl.

Submission template

Please note that the Department usually publishes and reserves the right to publish any written submission received and the names of persons making written submissions in the course of this consultation process.

If you consider that information in your submission should be treated as confidential, or if you wish to remain anonymous please clearly indicate this in your submission or in a cover note and provide reasons for your request.

The Australian Government reserves the right to accept or refuse a request to treat information as confidential and will use the criteria set out in the Department of Finance and Deregulation's Financial Management Guidance No. 3 on confidentiality in procurement, July 2007, as a guide when determining whether to accept a claim for confidentiality. Information relating to individuals will be protected under the *Privacy Act 1988*. Requests for access to such information will be dealt with under the provisions of the *Freedom of Information Act 1982*.

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: Hon Michael O'Brien, Minister for Employment, Training and Further Education

Sector: Department of Further Education, Employment, Science and Technology (DFEEST)

Prepared by: _____

Contact details: _____

Phone: _____

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

The ESOS Act 2000 and the National Code 2007 stipulate that providers must market their education and training services in a professional and accurate manner that maintains the integrity and reputation of the industry. Information is provided through both print and electronic means by each of the 1,013 providers currently registered on CRICOS and their education agents. While each provider must continue to have the opportunity to market its services to its potential clients complaints about inaccurate and misleading information must be addressed.

The decision to study in Australia must be based on current and accurate information. Matters such as cost of living, access to and cost of accommodation, employment opportunities, links if any between education and migration, student concessions and community support programs are not unique to each provider and should be made available to all intending students prior to confirmation of enrolment. In high risk countries where visa applications are closely scrutinised, students should be asked to confirm that they have accessed this information in addition to that provided by the provider or their agent.

Overseas students are not readily able to access information on a provider's history and performance. At the very least, information on a provider's history and profile sourced from regulatory bodies should also be made in an accessible form for students. Provider information such as date of first registration, numbers of students and graduates for each qualification or at least discipline area offered and whether any sanctions have been recorded against the provider would provide some basis for comparison for consumers.

The current penalties for false or misleading information should be strengthened and rigorously enforced. If Australian Government regulation of offshore agents is not possible then providers must bear the penalty for agent behaviour. The proposed amendment to the ESOS Act 2000 that will require each provider to list education agents on their websites is supported. Further, providers should be required to report to a regulatory agency any agent found to have mislead prospective students. The agency may then determine whether the agent should be barred from acting on behalf of any other registered ESOS provider.

Recommendation/s

1. Establish a single authoritative web-site that all overseas students are directed to prior to enrolment. The website will provide government endorsed information on studying and living in Australia with specific information on each state and territory. This website could be supported by a nationally produced DVD that could be made available at overseas posts in major source countries. The DVD could also be made available to providers to distribute to their education agents, and any student who contacts the provider directly.
2. Establish a mechanism to confirm that every student who has enrolled to study in Australia has accessed and understood this information prior to leaving their home country; this could occur at the same time students are applying for a student visa.
3. Provide intending students access to authorised information on each provider's history inclusive of but not limited to; date of first registration, approved capacity, source countries and relative percentages of each in the student population, current and past numbers of students and graduates for each qualification or at least discipline area offered and whether any sanctions have been recorded against the provider.
4. Increase and enforce penalties for providing false or misleading information to potential students and identify a means by which providers will not be authorised to use agents who have engaged in deceptive practices.

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 sudden closure of a provider is particularly distressing for overseas students. Effective and efficient arrangements to deal with this event are essential to minimise the disruption to each student's studies and to protect the reputation of the education sector.

The Overseas Students Tuition Assurance Schemes (OSTAS) has served the overseas education sector well. However this scheme was established when there were smaller numbers of providers and students. The OSTAS and also the Tuition Assurance Fund (that provides an additional level of protection) should be independently reviewed to determine their adequacy and efficiency for the size and complexity of the current market.

The resourcing of Assurance schemes or other future arrangements should primarily be resourced by the registered providers in a manner that is proportional to their risk.

Clear and consistent procedures must be agreed and applied between the various government and non-government agencies involved in responding to provider closure as these events are exacerbated by adverse media attention if they are not dealt with swiftly and consistently.

Recommendation/s

5. The OSTAS and also the Tuition Assurance Fund should be independently reviewed to determine their adequacy and efficiency for the size and complexity of the current market.
6. The resourcing of Assurance schemes or alternative future arrangements should be resourced on a commercial basis, proportional to risk and funded by each registered provider. There may be an argument for limited government support for agreed alternative arrangements given the economic benefits to the country derived from this education sector.
7. Clear and nationally consistent procedures must be agreed and applied between the various government and non-government agencies involved in responding to provider closure

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

Comments

Standard 8 of the National Code prescribes in detail the handling of complaints and appeals. If a client is not satisfied with the outcome of an internal complaint or appeal the provider must have arrangements for a person independent of and external to the provider to hear the complaint or appeal. Given the complexity of regulatory standards (visa regulations, ESOS Act and National Code and national standards relevant to the education sector) and the multiple agencies that intersect with many complaints, students are often unclear about their rights and obligations. Regulatory agencies have authority to enforce compliance with standards but do not have a legislated role to support or advocate for the complainant.

South Australia has established an Office of the Training Advocate - a State Government initiative to assist and advocate for all consumers, including overseas students, of training services regulated under the Training and Skills Development Act. The Training Advocate's functions include:

- promotion of employment, education and training
- independent complaint handling process
- advocacy
- information and advice
- monitoring the training system.

The Office of the Training Advocate has been a very successful innovation, so much so that in some instances international students from Victoria have contacted the Training Advocate to assist in resolving their issues.

Recommendation/s

8. That each state and territory establish a Training Advocate or similar to provide an advocacy and advisory service to overseas students.

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

Comments

The provider and the overseas students are entering into a commercial contract for the provision of education services. The contract will establish the rules for entering and breaking the contract and the availability and amount of refunds if this occurs. If the contract is established on terms that are fair to all parties and in accordance with Australian consumer law it is questionable whether further restrictions on transfer between providers need to be applied.

Overseas students like domestic students will have many different reasons for wishing to change providers and/or courses. It is questionable whether there should be additional restrictions on the transfer of overseas students over and above those that apply to domestic students and also whether these restrictions are in students' interest.

Recommendation/s

9. That the National Code not restrict student transfers between registered providers unless it can be demonstrated that protections afforded to parties through Australian consumer law are unsatisfactory in this context.

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 underpinning regulatory frameworks (National Higher Education Protocols and Australian Quality Training Framework) apply to both domestic and overseas students. If additional regulatory requirements are to be imposed through these frameworks there must be demonstrable benefit for both the domestic and overseas sectors.

At present the regulatory space in this sector is crowded with legislation, standards and agencies. In South Australia, there is a high level of cooperation across agencies which is essential to the effective management of this sector. Proposals for a national regulatory body and associated legislative change provide an opportunity to streamline regulatory arrangements.

Proposals to specify the mix of student populations in providers should be treated with caution. A preferred approach as recommended above is to publish information about each provider's profile and let the consumer choose based on this and other factors.

Recommendation/s

10. The legislative requirements and standards unique to the overseas students sector should not be imposed upon providers and students in the domestic sector.

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

Comments

International students are away from their home country, in a different culture and environment. Some international students use, and pay for the advisory services of education agents who assist them with the selection of the appropriate provider. Depending on the source country, international students may be hindered by their level of English language proficiency. However, if the provider is rigorous in his/her selection and recruitment, this should not be an issue.

Given the importance of the overseas education market to state and national economies, investing in the sector to make Australian destinations attractive to overseas students is justified. These investments can include essential resources such as accommodation and transport concessions. Further, the experience of international students and the local community will be enhanced through opportunities to build community engagement and positive cross-cultural exchange.

An international student who has chosen to study in Australia also has a responsibility to make his/her experience of living and studying in Australia memorable.

Recommendation/s

11. The current regulatory provisions with the exception of arrangements to regulate education agents are adequate.
12. The experience for international students and Australian communities will benefit from initiatives that build community support for international education and foster positive exchanges between international students and Australian residents.

Effective regulation

vii. Is ESOS compliance and enforcement adequate?

Comments

The rapid growth of the education sector for overseas students has presented challenges to State, Territory and Commonwealth regulatory bodies. In South Australia a site audit is conducted to assess all applications for initial registration. In a significant number of cases applicants for initial registration agree to reduce their proposed scope of registration (number of qualifications to be delivered) and/or the maximum number of students to be studying at any one time. A second audit is conducted once a sufficient number of students has commenced studying, or at least within the first 12 months of registration, to evaluate whether the provider is operating in compliance with standards.

New providers and providers with a poor record of compliance are monitored regularly until there is sufficient evidence of satisfactory performance. If a registered provider is not operating in compliance with standards the registering body will impose sanctions to restrict their operations (for example a condition of no new enrolments) until the provider is demonstrably operating in accordance with standards.

Recent changes to the Provider Registration and International Students Management System (PRISMS) that enable registering bodies to more effectively monitor a provider's capacity and to place an electronic lock to prevent over-capacity providers enrolling new students are significant improvements to the regulatory tools available.

Recommendation/s

13. Resources dedicated by all Australian governments to monitoring and enforcing compliance in the overseas students sector must be at a level commensurate with the size and complexity of the overseas students market.
14. Regulatory arrangements must allow registering bodies to manage entry of new providers into

the market by risk managing their scope and size commensurate with the providers demonstrated capacity and their performance and compliance history.

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

There are already several layers of regulatory arrangements in the sector. More effective regulatory *practices* are preferable to increasing registration *requirements*.

Risk is best managed on the basis of demonstrated performance, that is, evidence of high quality educational outcomes and services for overseas students in accordance with standards. Other profile data about providers that can be demonstrated to predictably identify high risk providers and contexts can support regulatory intervention.

Risk management approaches are more effective if they are underpinned by a low tolerance and strong penalties for non-compliance.

The ESOS Amendment Bill has included two additional registration criteria, one of which is that a registered provider's principal purpose is education. This could be further enhanced if it also precludes a provider or any staff in a provider from operating as a migration agent.

Recommendation/s

15. That regulatory practices and risk management be focussed on evidence of quality educational outcomes and student services.
16. That registering bodies develop and refine risk profiles to assist in identifying high risk providers
17. That the penalties under Commonwealth and State and Territory legislation be reviewed to determine if they provide a sufficient deterrence against non-compliance and that governments educate providers that regulatory bodies will act decisively against non-compliance and enforce sanctions and penalties.
18. Require providers registered on CRICOS to have no direct role as a migration agent or indirect role through linkages to migration agents by way of common Directors or ownership structures.

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

Comments

The AQTF 2007 was developed in response to agreement by COAG that the standards to be met by Registered Training Organisations should be outcomes focussed. Although the standards are outcomes focussed they also specify essential inputs. The National Code under the ESOS Act prescribes in detail the inputs (eg policies and procedures) with which a provider must comply. In combination these two approaches and standards may provide an appropriate balance between inputs and outcomes.

Inputs are essential in guiding new and current applicants on the expectations of registered providers. However, without attention being paid to how well a provider is able to deploy these inputs or transform them into quality outcomes the regulatory process will be deficient. Further, outcomes are the best means of determining a provider's risk and therefore the scope for reduced regulatory intervention.

Recommendation/s

19. Regulatory settings must ensure regulatory intervention is matched to the level of risk
20. Standards should be clear on the outcome to be achieved and only mandate inputs where these are clearly essential to achieving the outcome across all registered providers.

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

Comments

The current regulatory arrangements are basically sound, noting the recommendations for improvement listed above.

Any changes to ESOS must be directed towards the principal goal of ensuring that students receive high quality education and training services and experiences. The current arrangements also require providers to play a role in ensuring students comply with the conditions of their student visa by monitoring and as required reporting on their attendance. This is a complex area and providers need considerable support in performing these functions.

There is merit in considering whether the current monitoring arrangements performed by registered providers are efficient and effective and what changes could be made to improve these aspects of student visa compliance. The Department of Immigration and Citizenship must also continue to adequately assess student visa applications offshore to ensure that students have the financial capacity to complete their studies without having to work in excess of the maximum 20 hours per week permitted under their visa conditions.

Recommendation/s

21. Review the current monitoring arrangements performed by registered providers to determine if they are efficient and effective and what changes could be made to improve these aspects of student visa compliance.

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

Australia's reputation for quality will determine its continued growth and the sustainability of its international education sector. The ESOS Act and National Code are built upon the quality assurance frameworks for each of the Australian education sectors. Thus the ESOS Act and National Code must encompass the regulation of those factors unique to a quality educational experience for overseas students. There are concerns about the short term projections for student numbers given the Global Financial Crisis and contractions in the demand for labour. However, a longer term view would suggest that the demand for skills and migration will again come to the fore and will need to be satisfied through a robust export oriented education sector that can deliver a quality, globally recognised education experience.

In the short term it is essential that all parties work to respond to the current concerns that have come about in the VET sector in particular because of its rapid growth off a relatively low base of providers and students. To assist the sector respond a high level of collaboration across all levels of government is needed to ensure that the multi-faceted aspects of this sector are effectively managed and that resources of all agencies are coordinated.

Recommendation/s

22. All governments must commit to continue working at a national level through the Ministerial Council and forums for senior officials to implement recommendations arising from this review and other national task forces and enquiries.