

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:

The University of Western Australia

Sector:

Higher Education

Prepared by:

xxxxxxxxxx

Contact details:

xxxxxxxxxx

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

Recommendation/s

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

Comments

Recommendation/s

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

Comments

Recommendation/s

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

Comments

Recommendation/s

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

Recommendation/s

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

Comments

Recommendation/s

Effective regulation

vii. Is ESOS compliance and enforcement adequate?

Comments

Recommendation/s

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

Recommendation/s

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

Comments

Recommendation/s

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

Comments

The University of Western Australia is, in general terms, satisfied that the review of the ESOS Act and associated legislative framework which was completed in 2007 created a strong and satisfactory regulatory regime to safeguard Australia's reputation as a quality provider of education and to protect the rights of international students. The University is pleased that the current regulatory framework gives a clear structure for providers to operate within, as well as sufficient powers for Commonwealth and State bodies to take action against providers if necessary.

The most important area with direct impact on the university sector which the University of Western Australia believes warrants significant changes concerns students who do not make satisfactory course progress. The University believes that changes to policy and legislation in this area can meet the review's goals of better supporting Australia's student visa program and of reducing the regulatory burden on providers.

In common with most providers, the University of Western Australia has long been concerned by the impact of decisions it makes, on academic grounds, to suspend from their courses students who do not make satisfactory progress. While in most cases this results in a one-year academic suspension, the impact on a student visa holder is that, as a consequence of the University's obligations under ESOS to report this, the student is also subject to visa cancellation and a mandatory three-year exclusion from Australia. The mandatory nature of both the reporting and of the visa cancellation means that there is little or no leeway to deal fairly with completely genuine and capable students who have failed a particular course and should be able to transfer to a more appropriate course at the University or with a different provider. A three-year exclusion seems an unnecessarily harsh punishment for these students, and the University would prefer to see a system in which some flexibility is allowed for genuine students who fail a course, and in which visa cancellation is an evidence-based and considered decision made by DIAC, rather than a mandatory consequence of a provider reporting that a student has failed a course.

The University also notes that there are differences between current DEEWR policy and State legislation in the area of external appeals for student visa holders. In particular, DEEWR's policies that providers should nominate a person/body to hear external appeals and that providers' policies must include a time limit within which student visa holders must make an external appeal are irreconcilable with state law in Western Australia. These differences put providers at some legal risk.

As acknowledged in DEEWR's Explanatory Guide to the National Code, there are a number of external bodies with jurisdiction under State and Commonwealth law over issues relevant to an appeal against a decision by a provider that a student has not

made satisfactory course progress. At the Western Australian State level, these include the Commissioner for Equal Opportunity under the Equal Opportunity Act 1984 and the Parliamentary Commissioner (Ombudsman) under the Parliamentary Commissioner Act 1971. A complaint may be made to either of these bodies within 12 months of the alleged contravention of the relevant Act (i.e. a provider's final decision adverse to a student under any internal appeals process). As this is a right granted to potential complainants under the relevant legislation, it is difficult to see how a provider can act on advice from DEEWR that it must impose a shorter time frame in which an appeal may be made.

Legal advice suggests that to report students who do not make an external appeal within a time limit imposed by a provider may put that provider at risk of legal action if, as a consequence, the students' visas were cancelled and they were excluded from Australia before they had exhausted their legal right to appeal. Whether or not a student has made an appeal to an external body, and whether or not this occurs within a timeframe chosen by DEEWR or DIAC for visa compliance reasons, is not an academic issue and would be better dealt with by DIAC than by providers. The University has previously suggested to DEEWR that it considers it more appropriate and straightforward for providers to report a student when their own internal appeals process is complete. Students could then be given the opportunity to present evidence to DIAC that they had made an external appeal, and DIAC would be able to make a decision on visa cancellation on the basis of the information provided.

Recommendation/s

1. The mandatory visa cancellation three-year exclusion period for students who do not make satisfactory progress should be replaced with a system whereby DIAC makes a decision on the merits of each case.
2. DEEWR policy requiring providers to select a person/body to hear external appeals should be replaced with advice in line with State and Commonwealth legislation, which would not limit students to a particular avenue of appeal.
3. DEEWR policy requiring providers to determine the maximum time frame in which students can lodge an external appeal and requiring providers to report students via PRISMS if no external appeal has been made by that time should be replaced with policy requiring providers to report via PRISMS when their internal appeals process is completed. The Section 20 notice should then advise the student of their rights under Australian law to an external appeal, and evidence of any appeal would be taken into account by DIAC when considering visa cancellation.

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

Recommendation/s

General Comments

Thank you.