

SA GOVERNMENT SUBMISSION TO THE ENQUIRY ON A BILL TO AMEND THE EDUCATION SERVICES FOR OVERSEAS STUDENTS (ESOS) ACT

1. The South Australian government supports the continued growth of a high quality education sector for overseas students. Target T1.16 in the South Australia's State Strategic Plan is to double South Australia's national share of overseas students by 2014.
2. The recent cases of violence towards Indian students and the reported poor quality practices of a small but high profile number of providers in the vocational education and training sector has attracted adverse media attention here and overseas. Strong actions to protect the reputation of this industry are justified.
3. The South Australian government therefore supports moves by the Commonwealth to ensure that all providers registered on CRICOS are genuine and demonstrably offering high quality education services to overseas students.
4. This submission raises some questions about how the objectives sought through the Bill can best be achieved without disrupting the vast majority of providers that are operating in accordance with national standards. Concerns about the quality of training are primarily in the vocational education and training sector and to a lesser extent the English Language Intensive Courses for Overseas Students (ELICOS) sector, where there has been rapid growth in the numbers of providers and students.

Arrangements for providers registered on CRICOS that are not operating only in the VET or ELICOS sectors

5. The amendments proposed in the Bill should make it clear that an organisations principal purpose is education if the organisation meets one of the following criteria:
 - in receipt of funds under a law of the Commonwealth for recurrent expenditure for the provision of education or training; or
 - in receipt of recurrent funds from a state or territory government; or
 - approved under the Higher Education Support Act for FEE-HELP or approved for VET FEE-HELP; or
 - approved under the National Protocols for Higher Education Approval Processes
6. In the above noted sectors, an organisation's clearly demonstrated capacity to provide education and training of a satisfactory standard should be assumed on the basis of current authorisation to operate in its specified education sector. A *designated authority* may report on an exception basis to the *Secretary* any providers in these sectors that do not qualify for re-registration.

Impact of re-registration on registration under the Training and Skills Development Act SA (2008)

7. Providers registered in South Australia to deliver tertiary education and training to overseas students in South Australia are regulated through both Commonwealth and State legislation.
8. The Training and Skills Development Act 2008 (TSDA) (Part 3 Division 1) authorises the Commission to register providers to deliver education services to overseas students. The criteria for registration to deliver to overseas students under the Training and Skills Development Act 2008 are the standards determined from time to time by the Minister.
9. In South Australia the designated authority, in relation to tertiary education providers registered on CRICOS, is the Training and Skills Commission. The Commission has delegated its authority to register providers to deliver education services to overseas students to a senior officer in DFEEST.
10. Thus in South Australia, registration to deliver to overseas students is a two step process. Firstly, the provider must be registered under South Australia's TSDA. Secondly, the provider must then be registered by the Secretary under the ESOS Act 2000 with this registration leading to listing on CRICOS. State registration alone does not authorise a provider to offer education to overseas students under the ESOS Act; this is a decision of the delegate under that Act
11. Legal advice sought by the South Australian Government confirms that the proposed amendment to require re-registration under the ESOS Act will not cancel a provider's registration to deliver to overseas students under the *Training and Skills Development Act 2008*. Providers currently registered under the TSDA will maintain their current registration period.
12. Although registration under the TSDA is not affected by the proposed amendments it is the responsibility of the designated authority in each state to recommend the re-registration of each provider to the Secretary. It is essential therefore that the two additional criteria for re-registration and the evidence to demonstrate that these criteria are met, must be clearly specified by the Secretary.
13. The first of the two new criteria require that a provider must provide education as its principal purpose. This is not a requirement for providers currently registered in South Australia. This criterion will mean that providers with other legitimate primary purposes will have to establish and manage separate legal entities at potentially considerable administrative cost. If this criterion has been introduced to address concerns about links between migration agents and education providers then it may be more appropriate to address this issue specifically. Alternatively, the concerns about legitimacy of providers may be adequately addressed by an assessment of evidence in relation to the second criterion.

14. The second criterion is a demonstrated capacity to provide education to a satisfactory standard. The current standards are established in the National Code under the ESOS Act. These standards also require a provider to comply with the relevant quality assurance framework in which the provider operates (ie the National Protocols for Higher Education, the Australian Quality Training Framework). Therefore the re-registration process will be an assessment of each provider against the current requirements for demonstrating educational capacity. In effect re-registration will offer a “circuit breaker” to enable designated authorities to confirm that current providers are operating in accordance with the Code. This is appropriate given that the growth in numbers of providers has tested the resources of state and Commonwealth regulators.
15. If it is proposed to add additional criteria or evidence to assess demonstrated capacity then these should be made by amendment to the National Code.
16. Therefore the South Australian Government supports the aim of the Bill and:
- requests the Commonwealth Government give consideration to amending the current provisions in the Bill so that an organisation need not apply for re-registration on CRICOS if it meets one of the following criteria:
 - a. is in receipt of funds under a law of the Commonwealth for recurrent expenditure for the provision of education or training; or
 - b. is in receipt of recurrent funds from a state or territory government; or
 - c. is approved under the Higher Education Support Act for FEE-HELP or approved for VET FEE-HELP; or
 - d. Is approved under the National Protocols for Higher Education Approval Processes.
 - supports the proposal for re-registration of existing vocational education and training and ELICOS providers on CRICOS noting that this re-registration process will not impact on the current registration period and conditions of providers applied under the Training and Skills Development Act 2008;
 - requests the Commonwealth consider formalising re-registration under the ESOS Act by developing a nationally consistent application form that sets out the criteria and evidence to be applied by each designated authority in recommending re-registration; and
 - requests the Commonwealth consider amending the National Code if evidence required for demonstrating educational capacity is additional to that required under the current National Code.