

ESOS Legislation Amendment Bill

Submission from ISANA: International Education Association

Overall view of ISANA

ISANA values the amendments that this Bill covers, but it also sees a lot more work required for the majority of the Baird Review's recommendations to be translated into legislation. While legislators are clearly not bound by the Baird Review recommendations, the focus here on urgent and achievable changes is welcomed. And ISANA believes that significantly more work is needed to complete this important task.

ISANA notes that this is the first of two proposed tranches of amendments (as identified on p.1 of the AEI, Q & A pages) and regards this as a strong start. The second proposed tranche of amendments, proposed for later in 2010, will have a lot to address to adequately consider the remaining Baird Review recommendations. Much of the 'ESOS amendment wish list' that ISANA is interested in may fit more strongly with future tranches of amendments.

ISANA is particularly interested in the Baird recommendations that focus on student services. These are very important but often quite difficult to monitor under legislation. Since this is not the focus of this tranche of amendments, this submission will directly address what has been proposed.

ISANA believes that a generous amount of time is needed for peak bodies and other stakeholders to consider these proposals and provide well informed submissions. ISANA therefore hopes that any future tranches of amendments are supported by adequate timelines for consultation and feedback.

Specific Comments

The amendments considered in this bill can be grouped into two distinct categories:

1. Initiatives designed to strengthen the integrity of the ESOS Act and the people served by that Act, and
2. An initiative to engage the Commonwealth Ombudsman to serve in a universal capacity to all student visa holders.

Category 1. Initiatives proposed to strengthen the integrity of the ESOS Act

What's good about them

ISANA believes that the aims of strengthening the operation of the Act and improving the academic and personal welfare of student visa holders are highly commendable. The

intended effect of these initiatives will be to increase the protection of international students by reducing the number of education providers who provide an unsatisfactory level of services to international students.

ISANA views these aims as ultimately of benefit to students, to its members, and to the reputation of as a quality education destination. This is true even though it is possible that some ISANA members may be affected by job losses in the immediate to short term as a result of these initiatives.

ISANA fully supports the principle that CRICOS registration should not be indefinite as education providers are not static and neither are the risks they and their students face. ISANA also values the attempt to balance the transparency of these tougher initiatives and the privacy entitlements of registered education providers and their staff.

What's missing from them

ISANA notes that this Bill considers the quality of international education services particularly in terms of the integrity of the registration processes. ISANA views this as only one part of the overall integrity of the ESOS legislation, and recognises many other Baird Review recommendations that are not addressed in this tranche of amendments. ISANA hopes that each of the Baird recommendations will ultimately be considered under this legislative review process.

Category 2. engaging the Commonwealth Ombudsman to serve in a universal capacity to all student visa holders.

What's good about it

This initiative forms a logical and much needed extension to the existing provisions under Standard 8 of the National Code. ISANA believes that the complaints of international students form essential feedback on the quality of service provisions from education providers. Moreover, complaints deserve to be heard at the level that is most appropriate, which will benefit from being able to include services offered by the Commonwealth Ombudsman.

What this amendment achieves is universal independent complaint handling capacity for all student visa holders, regardless of who owns of the education provider they attend. ISANA strongly supports this amendment.

What's missing from it

What the legislation does not spell out is how students will gain access to these services. Arguably, this is not the role of the legislation per se; but the amendments must consider the logistics of this proposal in full for it to be deemed viable.

At present, a minority of students may access some state or territory ombudsmen, as outlined at:

While the provision to access the Commonwealth Ombudsman is an additional option that ISANA applauds, there is a risk that students with lower levels of education and/or English proficiency cannot readily access this service, or understand what must take place before the Commonwealth Ombudsman can hear their complaint. ISANA would like to see a functional model for how these proposed complaint handling powers can be used as intended by student visa holders.

Towards the Next Tranche of Amendments

ISANA sees the next tranche of amendments as the most likely point at which it will provide detailed comment. Regarding the current Bill, general and specific comments have been made above. For future tranches of amendments, ISANA provides the following general comment.

Moving from Recommendation to Legislation

ISANA values the intent of the Baird Review recommendations, but sees many difficulties in converting these recommendations into functioning legislation.

1. For example, Baird Review Recommendation 14 states:

That ESOS be amended to require providers to demonstrate that they deliver a comprehensive induction program and access to information on a continuing basis that:

- a. is reasonably adapted to the needs of their students
- b. allows students to easily access the information on an ongoing basis
- c. includes information on safety, student rights, and where to seek support in making complaints. (Baird, pp. X & 43)

Of this list, only one aspect of complaints handling appears in the current tranche, and nothing on the other listed items. Under the current National Code, only if a student faced exceptional hardship or tragedy, or clearly voiced a complaint is it likely that these other matters would be examined. This represents a major problem in legislative compliance because compliance actions would most likely only take place post hoc, and when failures have been significant. ISANA would always prefer to see a pre-emptory monitoring approach rather than disciplinary action after the event etc.

2. Baird also correctly observes that:

Currently some providers and overseas education agents are issuing incomplete, irrelevant, old and/or misleading information to students. There is a need for strengthened requirements for information provision about learning and living in by both providers and governments and increased emphasis on providers taking responsibility for their agents' actions. Once in , international students need ongoing access to comprehensive, informative and relevant orientation programs and ongoing access to orientation information. (pp. v & vi)

Many ISANA members are actively involved in tackling these issues and would support moves to make this easier; but objectives like this are difficult to handle under ESOS.

3. The Baird Review provides a strong focus on the delivery of accredited quality education to student visa holders, but makes no specific mention of the quality of student advising, counselling and other support staff, or the qualifications expected of these staff. For example, “the capability, governance structures and management to deliver education of a satisfactory standard.”

(p. 1) does not consider the capability of support services staff to deliver services of a satisfactory standard.

ISANA is of the view that the professional standards of student services providers remains a very important part of the risk management strategy because it impacts on the overall quality of services provided to international students, particularly where students face a range of vulnerabilities, and depend on the quality of the guidance they receive.