



**Senate Education, Employment and Workplace Relations Committee  
Inquiry into the Education Services for Overseas Students Amendment  
(Re-registration of Providers and Other Measures) Bill 2009**

**Submission by  
The Independent Schools Council of Australia (ISCA)**

***About ISCA***

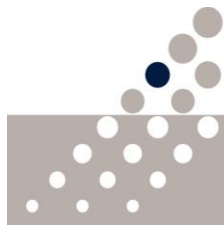
*The Independent Schools Council of Australia (ISCA) is the peak national body covering the independent schools sector. It comprises the eight State and Territory Associations of Independent Schools. Through these Associations, ISCA represents a sector with 1,100 schools and around 530,000 students, accounting for 15 per cent of Australian school enrolments.*

*Independent schools are a diverse group of non-government schools serving a range of different communities. Many independent schools provide a religious or values-based education. Others promote a particular educational philosophy or interpretation of mainstream education. Independent schools include:*

- *Schools affiliated with larger and smaller Christian denominations for example, Anglican, Catholic, Greek Orthodox, Lutheran, Uniting Church, Seventh Day Adventist and Presbyterian schools*
- *Non-denominational Christian schools*
- *Islamic schools*
- *Jewish schools*
- *Montessori schools*
- *Rudolf Steiner schools*
- *Schools constituted under specific Acts of Parliament, such as grammar schools in some states*
- *Community schools*
- *Indigenous community schools*
- *Schools that specialise in meeting the needs of students with disabilities*
- *Schools that cater for students at severe educational risk due to a range of social/emotional/behavioural and other risk factors.*

*Independent schools are not-for-profit institutions founded by religious or other groups in the community and are registered with the relevant state or territory education authority. Most independent schools are set up and governed independently on an individual school basis. However, some independent schools with common aims and educational philosophies are governed and administered as systems, for example the Lutheran systems. Systemic schools account for 16 per cent of schools in the independent sector.*

*Independent Catholic schools are a significant part of the sector, accounting for 10 per cent of the independent sector's enrolments. These schools have been included in the figures above.*



## Key Points

1. ISCA appreciates the opportunity to make this submission. Many of the issues covered could have been addressed if there had been an opportunity to comment prior to the introduction of the ESOS Amendment Bill 2009.
2. With regard to the introduction of further regulation for international education providers, and particularly the independent schools sector, it is important to note that:
  - independent schools already comply with an exhaustive range of reporting and accountability requirements;
  - there is already a significant amount of regulation and legislation covering the enrolment of overseas students at Australian educational institutions.
3. It is ISCA's view that the federal government already has at its disposal a range of enforcement mechanisms to deal with unethical providers under the ESOS Act and that the majority of problems have arisen due to the ESOS Act not being adequately enforced at either the state or federal level.
4. At the same time, the compliance cost and administrative burden for providers is high and any requirement for the blanket re-registration of all providers can only increase these costs for individual providers.
5. With regard to the specific amendments in the Amendment Bill:
  - ISCA does not regard re-registration of all providers in the independent schools sector as the best way to address the issue of a small number of unethical providers;
  - The proposed new criteria for registration are redundant for the independent schools sector;
  - ISCA is concerned that the requirement to list education agents could be detrimental to the interests of some independent schools;
  - ISCA supports a number of the amendments which are designed to correct or clarify some previous wording or to assist providers and students.
6. ISCA is concerned that any increase in the regulatory burden could result in schools deciding to relinquish their *Commonwealth Register of Courses and Institutions for Overseas Students* (CRICOS) registration.
7. There is a case for the independent schools sector to be treated as institutions that provide reliable, high quality education services to overseas students and for the streamlining of any additional regulatory burdens to the sector.

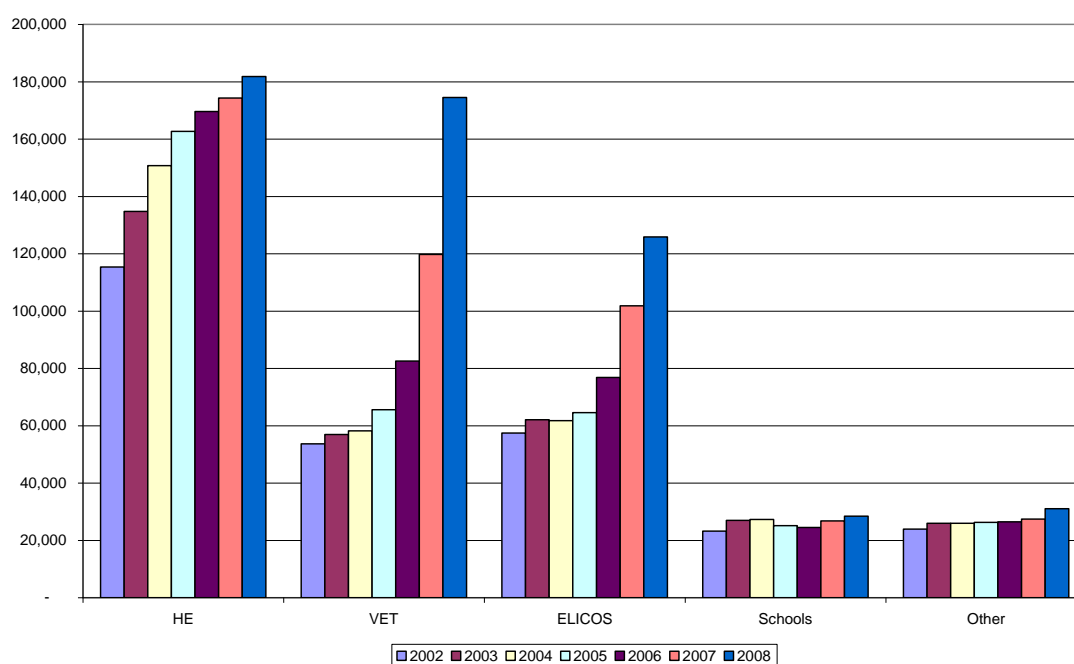
## Introduction

1. ISCA recently made a submission to the Senate Education, Employment and Workplace Relations Reference Committee's Inquiry into the Welfare of International Students and there is some overlap in content. The welfare of overseas students is closely linked with the way in which our regulatory framework is being applied.
2. ISCA appreciates the opportunity to make this submission. Many of the issues covered could have been addressed if there had been an opportunity to comment prior to the introduction of the ESOS Amendment Bill 2009.

## Independent Schools and International Education

3. Overseas students are an important part of the independent sector's diversity with approximately 11,000 overseas students enrolled at nearly 400 independent schools<sup>1</sup>. This represents less than half the total number of schools in the sector and enrolments in schools vary from 1 overseas student to over 400 overseas students. The median number of students at an independent school is 11 students.
4. This profile differs quite substantially from other sectors. For the vast majority of independent schools, overseas students do not determine the school's sustainability. Overseas students provide a much valued international element and diversity to school populations.
5. Chart 1 shows that overseas student enrolments in the schools sector have remained relatively steady for some years. While there was overall growth of 22% from 2002 to 2008, the schools sector share of total overseas student enrolments fell from 8% to 5%.

**Chart 1: Overseas Student Enrolments by Sector 2002 – 2008<sup>2</sup>**



<sup>1</sup> Based on DEEWR Non-government School Census 2008 data

<sup>2</sup> AEI PRISMS Data

## **Regulation and Accountability of Independent Schools**

6. The schools sector differs from the other sectors because of the unique requirements of dealing almost exclusively with children under the age of 18. In addition, there are multiple registration processes and legislation relating to schools at both state and federal levels for both domestic and overseas enrolments.
7. The independent schools sector provides high quality, reliable education services for overseas students. To our knowledge, there are no unethical providers in the sector. However, ISCA is concerned that the overall reputation of education institutions in Australia has been damaged by providers in other sectors. Regrettably, this has the potential to damage the reputation of independent schools.

### ***State/territory registration***

8. Independent schools must meet the criteria established by their state or territory government for registration as a school and for their accreditation for credentialing of students. Non-government school registration is rigorous and is reviewed on an ongoing basis, which ensures that the school's curriculum complies with state or territory government requirements.
9. State and territory governments provide some funding support for independent schools, and schools must comply with any related conditions of funding as well as reporting and accountability requirements.

### ***The Schools Assistance Act 2008***

10. Additionally, independent schools that receive federal government funding are subject to the requirements of the *Schools Assistance Act 2008* which contains conditions of funding and accountability arrangements. The Act requires:
  - funding agreements to be in place with the federal government
  - national student assessments
  - national reports on the outcomes of schooling
  - reports on individual school information
  - reporting to parents
  - publication by schools of information relating to schools
  - implementation of the national curriculum
  - acquittal of grants
  - reports on programs and financial operations
  - access to accounts, records and documents for monitoring purposes
  - participation in evaluation of programs
  - completion of the annual Non-government Schools Financial Questionnaire
  - participation in the annual Non-Government Schools Census
11. Overseas students enrolled in independent schools are excluded from financial assistance provided by the federal and state/territory governments.

### ***Other legal requirements***

12. Independent schools are bound by a number of other legal requirements associated with their operations. For example, as companies limited by guarantee or as incorporated associations, independent schools are accountable to the Australian Securities and Investments Commission, or to their state or territory registrar of associations. They must submit audited

annual financial statements to these bodies, which are available for public scrutiny. They are also subject to regulation by the Australian Taxation Office.

13. As employers, independent schools must comply with legislation and regulations covering such issues as equal employment opportunity, industrial awards and occupational health and safety. As educational institutions they must comply with health, safety, privacy and child protection requirements as well as regulations relating to building and fire codes.

### ***The ESOS Act 2000***

14. All providers that enrol overseas students (i.e. student visa holders) must comply with the provisions of the *Education Services for Overseas Students Act 2000* (the ESOS Act).
15. Providers must register on the *Commonwealth Register of Courses and Institutions for Overseas Students* (CRICOS) for both the course it is offering and the school itself. To obtain CRICOS registration from the relevant state or territory registration authority (designated authority), the school must comply with the ESOS Act and the *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students* (the National Code 2007) and any other state authority specific requirements.
16. The ESOS Act also includes a range of other requirements for providers including:
  - The requirement not to engage in deceptive or misleading conduct
  - The fit and proper person test
  - The payment to the federal government of the Annual Registration Charge (ARC)
  - The financial requirements of the Act including Tuition Assurance Scheme membership and the ESOS Assurance Fund
  - Conditions for refunds to students
  - Requirements for reporting to the Department of Immigration and Citizenship (DIAC) for visa related issues including notice of visa breaches
  - Record keeping.
17. For the federal government, the ESOS Act allows for a number of compliance and enforcement actions including:
  - Conditions for removal or suspension from CRICOS
  - The ability to monitor and search providers
  - The use of production and attendance notices
  - The use of monitoring and search warrants.
18. Unlike the government school sector where a state system may be registered to enrol overseas students and there are centralised registration and compliance processes, each independent school is separately registered and responsible for compliance with the ESOS Act and the National Code 2007.

### ***The National Code 2007***

19. The part of the National Code 2007 which relates to providers is a standards-based code of practice which covers:
  - Marketing information and practices
  - Student engagement before enrolment
  - Formalisation of enrolment
  - Education agents
  - Younger overseas students

- Student support services
- Transfer between registered providers
- Complaints and appeals
- Completion within expected duration
- Monitoring course progress
- Monitoring attendance
- Course credit
- Deferment, suspension or cancellation of study during enrolment
- Staff capability, educational resources and premises
- Changes to registered providers' ownership or management.

20. Since the introduction of the National Code 2007, more responsibility has been devolved to education providers to ensure students' compliance with their visa requirements. This system works well with reputable providers.

21. Some aspects of the National Code 2007 have proved problematic for providers to implement. For example, the complaints and appeals procedures required by the National Code 2007 impose considerable burdens on providers and can take months to conclude. Some of these difficulties have been raised with the Department of Education, Employment and Workplace Relations (DEEWR) and it is hoped that they can be addressed in a manner that is beneficial to providers in the review of the ESOS Act to be undertaken later this year.

#### ***Other state/territory requirements***

22. Some states have additional legislative requirements regarding the accommodation of minors, child protection legislation and also legislation governing the enrolment of overseas students.

#### **Issues with the current regulatory framework**

23. In our recent submission to the Senate Inquiry into the Welfare of International Students, ISCA noted that:

“The current legislation puts the onus on the providers to do what many providers would regard as the compliance work of DEEWR and DIAC. However, in return providers do not see many benefits and certainly it does not seem that this shift in responsibility has enabled DEEWR to have greater capacity to engage in targeted compliance actions.”

24. One example of this which has been covered in the media recently is that of over-enrolment. This is not a new issue and should have been able to be addressed through the combined use of DEEWR's Provider Registration and International Student Management System (PRISMS) and DIAC's student visa application processes.

25. It is also of concern to the sector that unethical providers are able to obtain CRICOS registration under the current requirements. Other concerns include:

- Uneven application or the use of differing interpretations of the National Code 2007 between state authorities;
- The inability of some designated authorities to undertake registrations in a timely manner. Some providers in some jurisdictions currently wait many months for re-registration processes to be completed.

26. The use of more targeted audit processes by state registration authorities would also be welcomed. The Victorian designated authority has recently embarked on a targeted, risk-

management based series of rapid audits to target suspected unethical providers and this seems to be a good model for a more risk-management based approach to audits across jurisdictions.

27. The cost of compliance is also of concern to the sector. For the independent school sector where often the number of overseas students enrolled in a particular school is not large, the administrative burden placed on schools by the requirements of the various regulatory regimes can be very high.

### **The ESOS Amendment Bill 2009**

28. The ESOS Amendment Bill 2009 contains a number of provisions which have the potential to be counter-productive and which could cause significant problems for some independent schools.

#### ***Re-registration of all institutions currently registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) by 31 December 2010.***

29. ISCA has a number of concerns regarding this proposed change to the ESOS Act.
30. First, it is quite clear the majority of concerns regarding unethical providers, which have been highlighted in the media and which the Amendment Bill is designed to address, are concentrated in the private vocational sector, fuelled by the requirements for permanent residency. This amendment does not differentiate between the private vocational sector and other education sectors. Independent schools are not unethical providers. Indeed, the reverse is true, but along with other low-risk providers of educational services for overseas students have been inadvertently caught up in efforts to detect unscrupulous providers.
31. The CRICOS re-registration process is normally a lengthy and potentially expensive exercise for all providers, even where there is no demonstrated risk. The financial impact on designated authorities is acknowledged in the Explanatory Memorandum but not the potential financial impact on providers. Not only are there CRICOS re-registration charges but there is an administrative cost as well. The amendment also does not take into account the 'rolling' nature of registrations and make any special arrangements for providers who have recently registered or re-registered under the current ESOS Act.
32. This amendment will not only place a burden on providers but also on the designated authorities. Registration is a lengthy process and ISCA considers it highly unlikely that state registration authorities have either the trained personnel or the capacity to re-register every provider across all sectors by 31 December, 2010.
33. It is ISCA's view that rather than blanket re-registration for every single provider, which would include every school, every English language college, every vocational college, every TAFE and every university which enrolls overseas students, what is required is more and better auditing activities by both designated authorities and DEEWR. This would be more cost effective and less disruptive to an industry which is on the whole compliant with all the requirements of the current legislation.
34. Alternatively, re-registration efforts could be initially focused on institutions of high risk. This may be sufficient to address the issue of CRICOS registered unethical providers.

***Two new registration requirements for education providers:***

- ***the principal purpose of the provider is to provide education; and***
- ***the provider has demonstrated capacity to provide education of a satisfactory standard.***

35. Given the extensive state and territory school registration processes noted on page 4, the first requirement should be covered by registration as a non-government school. Any further requirements would be a redundant exercise for both the school and the designated authority.
36. The requirements for schools set out under the *Schools Assistance Act 2008* listed on page 4, which include participation in national assessment tests and public reporting requirements, provide further evidence that this criteria appears to be redundant for the independent schools sector.

***Providers to be required to list the names of education agents who represent them and promote their education services on their websites and to require providers to comply with any matters prescribed in the regulations concerning their agents.***

37. This proposed change poses a dilemma for many independent schools. There are schools with small overseas student enrolments which have very limited representation by education agents but the relationships they do have are for specific regions or areas. Requiring schools to publish these details could compromise the commercial relationship, leaving the agent open to 'poaching' by another provider.
38. While not denying that there are problem education agents operating both in Australia and overseas, there are extensive requirements for dealing with education agents in the current ESOS Act. These include agent agreements covering all aspects of the commercial relationship, monitoring and education requirements on the part of the provider and finally, that the provider sever any relationship it has with an education agent who has proved to be unethical.
39. It is also a feature of the schools sector that agents often represent parents. Parents will approach agents to seek a place for a child in a school that might be located near a relative in Australia or which offers a particular program. In this case the agent is clearly not recruiting on behalf of the school.
40. In these instances, under the current ESOS legislation, schools are not required to have agent agreements with these agents although some may do so simply as an extra precaution to ensure compliance with the National Code 2007. Schools that do this would need clear guidelines about which agents would need to be posted on websites.
41. Better monitoring and enforcement of the current ESOS Act could address many of the problems that have been raised regarding the relationship between 'dodgy' agents and 'dodgy' providers.
42. The second part of the proposed amendment is non-specific and allows the federal government to mandate any requirement it wishes in the regulations. Given the absence of consultation with the industry regarding the Amendment Bill, this is of concern to the sector.

***Other proposed amendments to the ESOS Act***

43. The following proposed changes are supported by ISCA as beneficial for providers and students:



- Conditions imposed by states and territories on education providers to be recognised by the Commonwealth.
- Discretionary removal of the prohibition on education providers collecting monies from studying students when a course has been suspended.
- Exemptions from punitive provider default refund requirements for providers changing their legal entity.
- Clarify the definition of “suitable alternative course” in the case of provider default.

## **Conclusion**

44. The international education industry is significant for Australia both economically and culturally. Overseas students contribute a great deal to Australia in terms of diversity, inter-cultural understanding and international linkages long into the future. It is imperative that overseas students who come to Australia to study are afforded every opportunity to achieve their educational goals. The independent schools sector is proud of its achievements in offering high quality, reliable education services for overseas students.
45. ISCA is not arguing against enforcement action aimed at shutting down unethical providers and education agents. Rather, we would encourage governments to put greater efforts into targeted approaches to enforcing the world-class regulatory system already in place.
46. Many of the issues that have been raised over recent months are not new. The seeming inability of regulatory authorities to act against ‘dodgy’ providers, despite ample scope to do so under the existing regulatory framework, has been a source of some frustration for the industry since the inception of the ESOS Act.
47. Given the recent announcement of another review of the ESOS Act in late 2009, these issues would be better addressed by a review than by regulatory changes which could potentially impose a burden on all providers of international education, ‘dodgy’ or not. We would rather see measures put in place that actually target the sector of concern.
48. Finally, given the unique pattern of enrolment of overseas students in independent schools, ISCA is concerned that any increase in the regulatory burden could result in schools relinquishing their CRICOS registration. This would result in less diversity, less internationalisation and a lessened educational experience for those schools and their students.

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**ISCA**

Canberra  
 11 September 2009