



Australian Government

Department of Education, Science and Training

SUBMISSION 56

Mr Andrew McGowan
Senior Researcher
Standing Committee on Economics, Finance and Public Administration
House of Representatives
PO Box 6021
Parliament House
CANBERRA ACT 2600

Dear Mr McGowan

Thank you for your email on 2 April 2007 requesting the Department of Education, Science and Training's position and advice regarding the issues raised by Service Skills Australia and the Australian Council for Private Education and Training during the Standing Committee's hearing on 14 March 2007. I am pleased to provide DEST's responses to each of the issues raised as follows:

- Training Packages online (**Attachment A**); and
- student protection and regulation of the international education export sector (**Attachment B**).

If you require any further information or clarification please contact Mr Peter Mulligan, Director, Strategic Policy and Coordination Unit on 6240 7426 or via email at peter.mulligan@dest.gov.au.

Yours sincerely

Fiona Buffinton
Chief Executive Officer
Australian International Education

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TRAINING PACKAGES ONLINE

The Australian Government is committed to a high quality vocational education and training system which is underpinned by the Australian Quality Training Framework (AQTF).

The AQTF provides nationally agreed standards for registering and auditing training organisations, and for state and territory registering and course accrediting bodies. National vocational education and training qualifications are delivered by Registered Training Organisations who meet these standards.

The qualifications are largely drawn from national endorsed Training Packages. Training Packages comprise competency standards, national qualifications and assessment guidelines for skills development and certification. They specify the combination of competency standards required to achieve a particular qualification.

The units of competency in a Training Package describe the skills and knowledge needed to perform effectively in the workplace. Training Packages are developed by industry and are subject to an extensive quality assurance process which includes endorsement by the National Quality Council. Following endorsement they are placed on the National Training Information Service (NTIS).

1. Training Packages Online

- The intellectual property for the training packages is owned by the Australian Government. Training packages are stored on and available from the National Training Information Service (NTIS) (www.ntis.gov.au). NTIS is the official national register of information on Training Packages, Qualifications, Courses, Units of Competency and Registered Training Organisations (RTO's). Printed versions are also available for purchase.
- The Australian Government's position is that training packages should be made available to industry and the Australian community. This ensures the investment made by the Australian Government in funding the development of training packages allows access to industry and increases usage by both formal and informal users. It supports the domestic economic agenda by making available the key resources necessary to increase the skills of the Australian workforce.
- The intellectual property is managed through the AEShareNet licensing scheme, operated by TVET Australia Ltd. All training package materials are covered by the "Free for Education" (FFE) instant licence. Details can be found at www.aesharenet.com.au/ffe2 . This licence enables the acquirer of the materials to use and copy the materials. It prevents modification and commercial exploitation.
- In some instances permission for the commercial use of materials is requested. In those cases a "mediated" or commercial licence is negotiated with TVET Australia and the requester.
- Some states have legislation that refers to "qualifications" as formal certification in a nationally endorsed training package registered on NTIS. For example the New South Wales legislation states:

(NSW) VOCATIONAL EDUCATION AND TRAINING ACT 2005

SECT 4

"qualification" means formal certification in vocational education and training by an RTO that a person has achieved all the units of competency or modules comprising learning outcomes stated for the [qualification](#) in:
 (a) a [training package](#) endorsed by the [relevant Commonwealth agency](#) and for which details of the [qualification](#) have been recorded on the [National Register](#).....

...

"National Register" means the National Training Information Service managed by the [relevant Commonwealth agency](#).

Victoria, Queensland, ACT, Tasmania have legislation with similar wording (please refer to Attachment A1).

2. Australian Quality Training Framework

The Australian Quality Training Framework (AQTF) is a set of nationally agreed standards that ensure the high quality of vocational education and training (VET). The AQTF comprises the standards for registered training organisations (RTOs) and standards for state and territory registering and course accrediting bodies. While the AQTF is nationally agreed, currently state and territory bodies undertake the required audits. Registration and deregistration is thus the province of the states and territories.

The AQTF has been revised to improve the quality of training and assessment in the VET sector, with changes coming in to effect from 1 July 2007. AQTF 2007 is expected to provide industry and consumers with greater confidence in the quality outcomes of training.

AQTF 2007 will introduce a risk-based approach which will help focus regulatory attention on areas where there are risks to the national training system to VET clients. Decisions about the targeting, frequency, scope and depth of audits will be made using a nationally agreed approach to risk management that focuses on a range of agreed risk indicators including:

- performance against outcomes measures
- delivery of qualifications in areas subject to licenses
- multi-site delivery including across jurisdictions, and
- offshore delivery.

AQTF 2007 is outcomes-based and will ensure the focus of audits is on the quality of outcomes of training and assessment. There will also be a greater focus on national consistency between jurisdictions in the audit process.

Extracts from State legislation with references to National Training Information Service

3:

"qualification" means- (a) in relation to [vocational education and training](#) or [further education](#), formal certification by an RTO and under the AQF that a person has achieved all the units of competencies or modules comprising [learning outcomes](#) stated for the [qualification](#) in- (i) a nationally endorsed training package for which details of the [qualification](#) have been [registered](#) by [ANTA](#)

"registered", in relation to [vocational education and training](#) or [further education](#), includes [registered](#) on the [National Register](#);

...

"National Register" means the National Training Information Service maintained by the Australian National Training [Authority](#) to the extent that the Register consists of matters [registered](#) in accordance with this Act;

(Queensland) VOCATIONAL EDUCATION, TRAINING AND EMPLOYMENT ACT 2000

Section 19:

qualification means formal certification in the vocational education and training sector by a registered training organisation and under the AQF that a person has achieved all the units of competencies or modules comprising learning outcomes stated for the qualification in-- (a) a nationally endorsed training package for which details of the qualification have been registered by ANTA; or (b) an accredited course that provides training for the qualification.

registered means registered as prescribed under section 20.

Section 20: National register and national effect of registration

(1) The national register is the National Training Information Service maintained by ANTA to the extent it consists of registered matters.

(2) For subsection (1), a matter is registered to the extent details of the matter are recorded--

(a) for the purposes of this chapter--by the council; or

(b) for the purposes of a corresponding law--by another registering body or course accrediting body; or

(c) for the purposes of this chapter, a corresponding law or a regulation made under either of the laws--by ANTA or another entity. "National Register" means the National Training Information Service maintained by the Australian National Training [Authority](#) to the extent that the Register consists of matters [registered](#) in accordance with this Act;

STUDENT PROTECTION AND REGULATION

The Department of Education, Science and Training (DEST) administers the *Education Services for Overseas Students (ESOS) Act 2000* and its National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students (the National Code). This legislative framework establishes financial and tuition assurance for overseas students, protects and enhances Australia's reputation for quality education and training services and complements immigration policy. It does this by compulsory national registration of providers and courses for overseas students, underpinned by Australia's national education and training quality frameworks (eg. the Higher Education National Protocols, the Australian Qualifications Training Framework and the Australian Qualifications Framework). The Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) currently comprises approximately 1220 providers and 25,600 courses registered under the ESOS Act.

DEST monitors and enforces providers' compliance with their obligations under the ESOS Act and National Code. A major focus is compliance with consumer protection and student welfare provisions and obligations to monitor and report overseas students' compliance with the conditions of their student visas, such as satisfactory attendance and academic progress. State and territory designated authorities have primary responsibility for initial approval of providers and their courses for registration on CRICOS, and for ongoing monitoring of compliance with the National Code, particularly in respect to quality matters such as educational standards and facilities.

1. Consumer Protection for Overseas Students Studying in Australia

The Australian Government has long recognised that the benefits of international education depend on quality education and training services provided to overseas students and consumer protection to ensure that these students receive the tuition for which they have paid. This is demonstrated through the legislated protections established by the ESOS Act and its National Code.

The ESOS legislative framework provides three layers of consumer protection in the event of a provider being unable to provide the course for which its overseas students have paid:

1. In the first instance, the provider is legally required to provide a refund to the student as set out in the ESOS Act and the provider's refund agreement with the student, if applicable. In lieu of a refund, the provider may make arrangements to place a student in a suitable alternative course, with the agreement of the student.
2. If a provider is unable to pay a refund to a student or to place him/her in a suitable alternative course, the ESOS Act provides for placement of a student in an alternative course through an industry-run ESOS Tuition Assurance Scheme (TAS).
3. If neither step 1. or 2. results in a solution for the student, the student may be eligible for a refund from the ESOS Assurance Fund.

In 2006-2007 there have been two occasions where DEST, having established that the necessary preconditions had been met, activated the TAS arrangements under the ESOS Act. The role of the TAS is to ensure all affected overseas students are contacted and offered a place in suitable alternative course(s) at no additional cost. Both activations are still in progress and are being managed, by the former providers' TAS provider. The TAS is required to inform DEST of its progress in placing the affected students.

The ESOS Act provides for various types of exemption from membership of a TAS that are applicable to public and private sector providers. These include exemption:

- from the requirement to pay annual ESOS Assurance Fund contributions leading to exemption from tuition assurance membership;
- because the provider has an approved Bank Guarantee;
- because the provider is a body corporate and has an indemnity agreement;
- because the provider accepts payment of tuition fees in arrears; and
- Ministerial exemption.

The Annual ESOS Assurance Fund Contribution is generally payable by all registered public and private sector providers except those that are administered by a State education authority, or a provider that is entitled to receive funds under a law of the Commonwealth for recurrent expenditure for the provision of education or training. This exemption broadly reflects the relative risks attached to these providers in the event of a major default in their obligations to overseas students.

2. Regulation and Compliance of the International Education Export Sector

The independent evaluation of the ESOS Act, which was released in June 2005, found there was overwhelming support across all industry stakeholder groups for the continuation of mandated and legislated framework, as opposed to voluntary, arrangements to promote stability and integrity in the international education industry. There was also a strongly held view that the ESOS Act and its associated framework represented a major improvement over the situation that prevailed prior to 2000.

Costs of Compliance

DEST considers that the cost incurred by Australia's international education industry in complying with the minimum standards mandated by ESOS legislative framework represent a sound investment by education and training providers. Many of the requirements would be part of the effective business systems and practices of well-run educational institutions which are genuinely committed to high quality education and training delivery.

DEST undertakes a targeted and risk-based approach to monitoring of provider's compliance with the ESOS Act. It engages primarily with those providers that may require assistance or intervention to rectify breaches of the ESOS Act and/or National Code. Between 5-10% of registered providers may receive a DEST monitoring visit in any one year. This minimises additional costs to providers from DEST's targeted monitoring activities. Providers with a sound track record are less likely to be subject to additional compliance monitoring from DEST, after their initial registration audit by the state/territory designated authority.

Responding to the recommendations of the ESOS Act evaluation, DEST has worked closely with industry to address concerns relating to red tape and regulation. The result of this consultative approach can be seen in the passing by Parliament of the Government's revised National Code 2007, which takes effect on 1 July 2007. This revision of the National Code included the running of a 'red-tape' test over the standards, which has resulted in the clearer articulation of the National Code through standards, some removal of unnecessary prescription and providing for some greater flexibility and discretion by providers.]

DEST also offers education and other free services to assist all providers understand and comply with their obligations under the ESOS legislation. These services include extensive website material, telephone helplines for ESOS and the Provider Registration and International Student Management System (PRISMS) and the ESOS mailbox. It also works extensively with peak bodies on the development and implementation of ESOS policy in order to achieve the objectives of regulation without unnecessarily burdening providers with additional compliance requirements. An example of DEST's commitment to achieving this balance was the extensive consultation on the National Code 2007. This was subsequently supported with funding to peak bodies and other key organisations to develop tools and host information sessions to assist providers to make the transition to the 2007 National Code.

Exercise of Enforcement Powers

There is no evidence to support, and the Department strongly rebuts, claims that DEST may be reluctant to investigate or take action in regard to allegations against a provider for breaches of the ESOS Act and/or National Code. DEST instigates its own compliance and enforcement action to investigate those providers who may be in breach of the ESOS Act and/or its National Code. It will also investigate allegations that are accompanied by a minimum level of supporting information.

In this financial year (2006-2007) DEST has already undertaken 59 compliance and enforcement actions. Since the commencement of the ESOS Act 2000, these powers have been exercised powers approximately 800 times. The majority of compliance action results in the provider meeting its ESOS obligations.

Between 4 June 2001 and 12 April 2007, DEST's has cancelled the registrations of 16 providers; suspended the registration of some 134; and imposed conditions on the registration of 7 providers,

In addition, over this period, the designated authorities of the states and territories suspended 50 CRICOS registrations and cancelled 416 CRICOS registrations. Most of these cancellations were the result of providers voluntarily leaving the industry.

However, the ESOS Act evaluation did find a perception among industry stakeholders that whilst the enforcement powers under the ESOS Act are sufficient, that they are not used often or quickly enough. To address this perception, DEST will regularly communicate to industry the compliance and enforcement activity undertaken, generally without naming specific providers. A statistical summary of DEST's actions is continuously updated on the DEST website at: <http://aei.dest.gov.au/AEI/ESOS/Enforcement.htm>.

The nature of the regulatory environment in the international education sector involves both domestic education and training quality arrangements and the ESOS framework, as well as linkages with the Australian Government's migration policy through the student visa programme. Consequently DEST operates in close and frequent liaison the Department of Immigration and Citizenship (DIAC) and with state and territory education and training authorities in regard to investigating allegations or complaints made against registered providers.

For example, contrary to an assertion made in regard to a former education provider in Melbourne, International Business and Hospitality Institute (IBHI), DEST was not contacted by ACPET with allegations about this provider. Instead, IBHI's CRICOS registration was automatically suspended on 26 February 2007 and subsequently cancelled on 13 March 2007 in accordance with the ESOS Act, following advice received from the Victorian regulator (Office of Training and Tertiary Education, OTTE) that it had suspended then cancelled IBHI's Registered Training Organisation (RTO) status. ACPET was notified by OTTE prior to IBHI's suspension and placed approximately 15 students with other providers.

Since IBHI was a member of ACPET and the Overseas Student Tuition Assurance Scheme (OSTAS) established by ACPET, its students were required under the ESOS Act to be placed with alternative registered providers by OSTAS since the IBHI was unable to do so.

Unsubstantiated allegations have been made by ACPET, including to the Committee's Hearing in Sydney on 14 March, of 'poaching' by 'Lloyds International College' of overseas students from the former Sydney provider Alpha Beta College. 'Poaching' does not constitute a breach of the ESOS Act or National Code. Consequently, it is not within DEST's responsibilities in administering the ESOS Act to become involved in disputes within the sector which are related to competing interests or differing views in relation to market place behaviour. As long as an overseas student complies with student visa conditions, a student may exercise choice in regards to where they would like to study.

Similarly, the purchase of assets of the business by a third party is not a breach of the ESOS Act or a matter which should disadvantage the students affected by a closure. It should also be noted that Lloyds International College resigned its membership of ACPET on 30 April 2004. It was not expelled as stated by Mr Smith.

The students of the former Alpha Beta College are entitled to the consumer protection provisions of the ESOS Act. This included an offer of placement in an alternative course by the OSTAS, which was notified by DEST on 25 January 2007 to commence placing students as the College would not be able to continue to provide courses or refund student course monies. OSTAS has not yet placed all affected students. DEST is working closely with ACPET and OSTAS to endeavour to have students placed expeditiously and with as little disruption to their studies as possible.