

Chapter 1

Introduction

1.1 On 19 August 2009 the Hon. Julia Gillard MP, Minister for Education, Employment and Workplace Relations, introduced the Education Services for Overseas Students Amendment (Re-registration of Providers and Other Measures) Bill 2009 (the bill) in the House of Representatives. On 20 August 2009, the Senate referred the provisions of the bill to the Senate Standing Legislation Committee on Education, Employment and Workplace Relations for report by 16 October 2009.

Conduct of the inquiry

1.2 Notice of the inquiry was posted on the committee's website and advertised in *The Australian* newspaper, calling for submissions by 11 September 2009. The committee also directly contacted a number of interested parties, organisations and individuals to notify them of the inquiry and to invite submissions. 19 submissions were received as listed in Appendix 1.

1.3 The committee decided to prepare its report on the basis of the submissions received and thanks those who assisted by providing submissions to the inquiry. The committee was also informed by the evidence to the Standing References Committee on Education, Employment and Workplace Relations inquiry into the welfare of international students. This inquiry is currently looking at roles and responsibilities and broader issues including safety, accommodation, social inclusion, support services and protection from exploitation. It is due to report on 16 November 2009. A number of submissions to the references committee inquiry deal with issues relevant to this bill and will be referenced in this report.

Background

1.4 There have been a number of inquiries into the ESOS Act. This committee has reported on the ESOS Act eight times since 1991.¹ The 1991 ESOS Act (Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991) was introduced in response to the closure of a number of private education providers in the late 1980s and early 1990s. A reduction in student numbers, as a result of government visa processing backlogs and tighter visa entry requirements to control the high incidence of visa non-compliance, had affected the viability of some of these providers.²

1.5 In November 2000, the committee reported on an ESOS bills package.³ The report covered five related bills including the ESOS Bill 2000 which became the current ESOS Act (amended in 2007). As a result of reviews undertaken by then DEEWR and DIAC, the 2000 bill addressed deficiencies identified in the regulatory

1 The reports were by the Senate Standing Committee on Employment, Education and Training, or the Senate Employment, Education and Training Legislation Committee, *Education Services (Export Regulation) Bill 1990* (tabled 7 May 1991); *Operation of the Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991 (ESOS Act)* (tabled 1 December 1992); *The Efficacy of the Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991 in the Light of the Collapse of the Australian Business College in Perth in January 1993* (tabled 19 August 1993); *Overseas Students Tuition Assurance Levy Bill 1993 and Education Services for Overseas Students (Registration of Providers and Financial Regulation) Amendment Bill 1993* (tabled 9 December 1993); *The Nature, Implementation and Effects of the Statutory Rules 1994 Nos 146 and 154 – Being Regulations Pertaining to the Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991* (tabled 28 June 1994); *Consideration of the Provisions of the Education Services for Overseas Students (Registration of Providers and Financial Regulation) Amendment Bill 1998* (tabled August 1998); Senate Employment, Workplace Relations, Small Business and Education Legislation Committee, *Consideration of the Provisions of the Education Services for Overseas Students Bill 2000, Education Services for Overseas Students (Assurance Fund Contributions) Bill 2000, Education Services for Overseas Students (Registration Charges) Amendment Bill 2000, Education Services for Overseas Students (Consequential and Transitional) Bill 2000 and the Migration Legislation Amendment (Overseas Students) Bill 2000*, (tabled November 2000); *Bills relating to the establishment of Carnegie Mellon University 2005*, (tabled November 2005), which included the *Education Services for Overseas Students Amendment Bill 2005*.

2 Senate Employment, Workplace Relations, Small Business and Education Legislation Committee, *Consideration of the Provisions of the Education Services for Overseas Students Bill 2000, Education Services for Overseas Students (Assurance Fund Contributions) Bill 2000, Education Services for Overseas Students (Registration Charges) Amendment Bill 2000, Education Services for Overseas Students (Consequential and Transitional) Bill 2000 and the Migration Legislation Amendment (Overseas Students) Bill 2000*, November 2000, p. 2.

3 Senate Employment, Workplace Relations, Small Business and Education Legislation Committee, *Consideration of the Provisions of the Education Services for Overseas Students Bill 2000, Education Services for Overseas Students (Assurance Fund Contributions) Bill 2000, Education Services for Overseas Students (Registration Charges) Amendment Bill 2000, Education Services for Overseas Students (Consequential and Transitional) Bill 2000 and the Migration Legislation Amendment (Overseas Students) Bill 2000*, November 2000.

framework. The associated Migration Legislation Amendment (Overseas Students) Bill 2000 introduced a regime of automatic cancellation of student visas in certain circumstances.

1.6 As required by section 176A of the ESOS Act, an independent review of its operation was commenced in 2004 and delivered in 2005. As a result of this review, amendments were made to the Act by the Education Services for Overseas Students Legislation Amendment (2006 Measures No.1) Bill 2006, the Education Services for Overseas Students Legislation Amendment (2006 Measures No.2) Bill 2006 and the Education Services for Overseas Students Legislation Amendment Bill 2007. These bills were not referred to the committee for inquiry.

1.7 In 2009, the closure of several private education providers and allegations of corruption and substandard education services revealed weaknesses in the regulation of training providers in the international education sector and questionable practices by some education and immigration agents. A small number of unscrupulous operators have been able to operate resulting in damage to the reputation of the industry overseas. The Education Services for Overseas Students Amendment (Re-registration of Providers and Other Measures) Bill 2009 (the bill) addresses the growth of training providers capitalising on rising demand, especially from India, for an education and the chance for permanent residency. The key amendments of the bill strengthen the registration process which is intended to reduce the number of high risk providers currently in or seeking entry into the sector. The bill is a transitional measure intended to address immediate matters of concern regarding regulation of the industry while longer term issues are considered by the Education Services for Overseas Students Act Review underway (see below).⁴

Purpose of the bill

1.8 This bill amends the ESOS Act to improve processes ensuring the quality and accountability of international education and training services providers. The key amendments include:

- re-registration of all institutions currently registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) by 31 December 2010;
- two new registration criteria which require state and territory registration authorities to be satisfied that the provider's principle purpose is to provide education and that the provider has demonstrated capacity to provide education of a satisfactory standard;
- requiring providers to publish the names of overseas and Australian education agents used to recruit students and requiring providers to comply with any matters prescribed in the regulations concerning their agents;

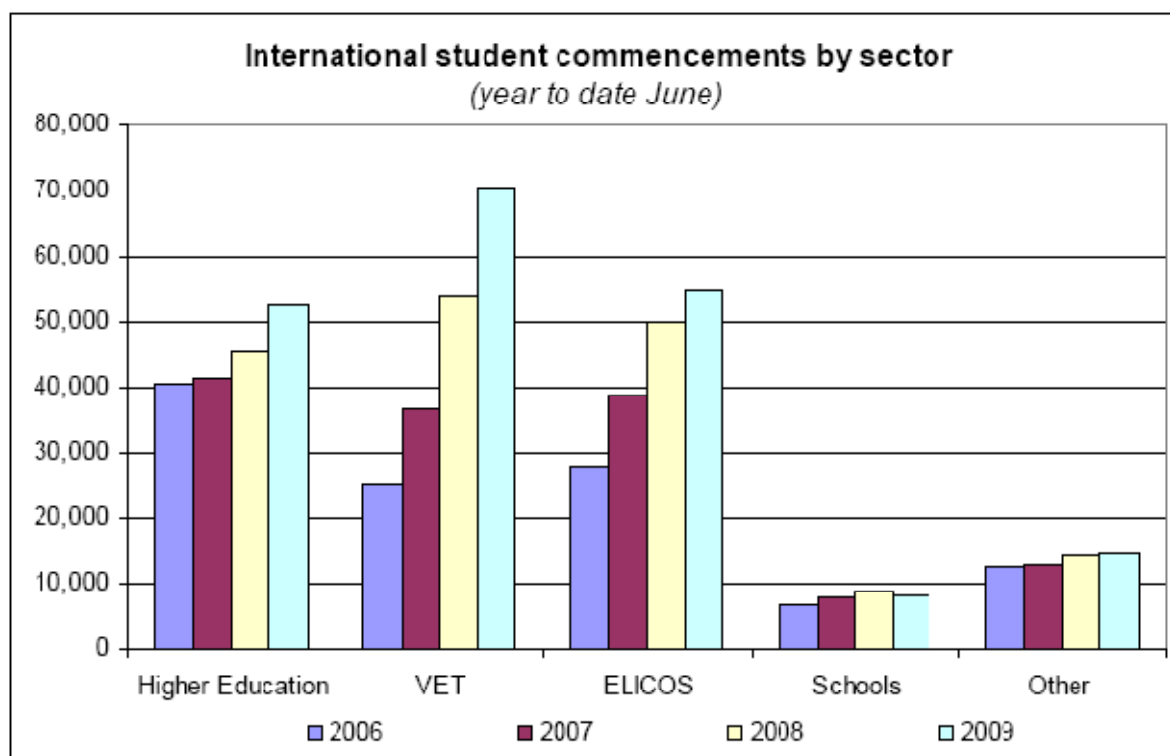
4 DEEWR, *Submission 13*, p. 2.

- allowing the discretionary removal of the prohibition on education providers collecting monies from students when a course has been suspended;
- allowing conditions imposed by states and territories on education providers to be recognised by the Commonwealth;
- allowing exemptions from punitive provider default refund requirements for providers changing their legal entity; and
- clarification of the definition of 'suitable alternative course'.

Changes in the sector

1.9 The international education industry provides services to international students on student visas in the higher education, Vocational Education and Training (VET), secondary school and English language sectors. The international education sector has grown substantially over the past decade to be worth \$15.5 billion, making it Australia's third largest export industry.⁵

1.10 Most of the growth has come from the VET sector where enrolments have more than tripled since 2002 to now account for the largest proportion of total enrolments.⁶



Source: DEEWR, Monthly Summary of International Student Enrolment data – Australia – YTD June 2009.

5 Australian Education International, Research Snapshot, *Export Income to Australia from Education Services in 2008*, June 2009.

6 DEEWR, *Submission 13*, p. 3.

1.11 The private education sector is a significant stakeholder in this industry and in the VET sector in particular. Enrolments in the non-government sector grew from about a third of total enrolments in 2004 to half of all enrolments in 2008.⁷

1.12 Research by Australian Education International confirms that the growth in VET student numbers has been significant in the private education sector.

The majority of all VET enrolments were with the 437 non-government providers. The non-government provider share has grown from 73% in 2002 to 84% in 2008 and is more dominant in New South Wales than in any other state or territory – 92% of VET enrolments in the state are enrolled with a non-government provider.⁸

1.13 India in particular has seen strong growth in VET commencements between 2008 and 2009 of 60 per cent from 13,014 to 20,656.⁹ DEEWR reported:

Most enrolment growth has been driven from the sub-continent, notably India and Nepal. Enrolments from this region (Southern and Central Asia) increased from 33,848 in 2004 to 136,359 in 2008 (an increase of 302 per cent). In 2008, they accounted for 25 per cent of total enrolments. China and the North-East Asia region is still the source of most enrolments accounting for 37 per cent in 2008, although enrolments from this region have a more moderate rate of growth.¹⁰

1.14 The Bills Digest noted that half of the total growth in the VET sector since 2005 has been in the cooking, hairdressing, hospitality and hospitality management fields. In addition, the growth in the number of Indian students in these courses has grown from 217 commencements in 2002 to 18,269 commencements in 2008.¹¹

Immigration policy

1.15 It is clear that the chance of permanent residency has been a driver of the growth in international student enrolments. The committee understands that some students intend to migrate when choosing to study in Australia. However, this opportunity has been exploited by some agents and providers which have used the lure of permanent residency to recruit students and provide them with inadequate education or training. In most cases, this exploitation starts overseas with expectations

7 DEEWR, *Submission 13*, p. 3.

8 Australian Education International, Research Snapshot, *International Student Enrolments in Vocational Education and Training in 2008*, April 2009.

9 Australian Education International, *Study in Australia 2010 July Update*.

10 DEEWR, *Submission 112* (Welfare of international students inquiry), p. 8.

11 Carol Kempner, *Education Services for Overseas Students Amendment (Re-Registration of Providers and Other Measures) Bill 2009*, Bills Digest, 9 September 2009, No. 28, 2009-10, Parliamentary Library, Canberra, p. 5. See also Bob Birrell and Bronwen Perry, 'Immigration Policy Change and the International Student Industry', *People and Place*, Vol 17, No.2, pp. 66-67.

fuelled by unscrupulous education agents advertising courses solely as a means to permanent residency.

1.16 Action in this area has already been taken to break the link between permanent residency and education. The committee notes the changes announced by the Minister for Immigration and Citizenship in December 2008 which focus on skilled recruitment around employer and state government sponsorships.¹² In July 2009 the Office of the Migration Agents Registration Authority (MARA) was established to regulate the activities of the migration advice profession to provide consumers with appropriate protection and assurance.¹³ In August 2009, the Minister announced that his department would be strengthening checks on student visa applications to address fraud and ensure students have the financial capacity to live and study in Australia.¹⁴ The Deputy Prime Minister as well as the Minister for Immigration both reaffirmed that:

...coming to Australia to study is about being a student in Australia while applying for permanent residence is about Australia's migration system and the two should be seen as separate systems with no automatic link between studying in Australia and access to permanent residence.¹⁵

Review of the ESOS Act

1.17 As noted above, the bill is an interim measure to address the regulatory issues in the industry pending a review of the ESOS Act being undertaken by the former Liberal MP, the Hon. Bruce Baird. The review of the ESOS legislative framework, foreshadowed in the Bradley Review, has been brought forward to the 2009-10 financial year. On 8 August 2009, the Minister for Education announced that Mr Baird would review and consider the need for improvements to the ESOS legal framework in four key areas:

- supporting the interests of students;
- quality;
- effective regulation; and
- sustainability of the international education sector.

12 Senator the Hon. Chris Evans, Minister for Immigration and Citizenship, 'Migration program gives priority to those with skills most needed', media release, 19 December 2008.

13 Senator the Hon. Chris Evans, Minister for Immigration and Citizenship, 'New migration agent authority commences', media release, 1 July 2009.

14 Senator the Hon. Chris Evans, Minister for Immigration and Citizenship, 'Student visa checks strengthened', media release, 20 August 2009.

15 DEEWR *Submission 112* (Welfare of international students), p. 5.

1.18 An issues paper was released on 23 September 2009 with written submissions invited.¹⁶ An interim report will be provided in November 2009 with the review to be completed in early 2010.¹⁷

Complementary measures

1.19 The amendments to the ESOS Act and the review are only two of a series of measures to ensure that Australia continues to offer world class quality international education. Complementary initiatives to enhance Australia's ability to deliver quality education services to overseas students include the following:

- the establishment of the International Student Taskforce in DEEWR to develop strategies to support the wellbeing of students and provide secretariat services for the review of the ESOS Act;
- from 2010 the Tertiary Education Quality and Standards Agency (TEQSA) will be established which will oversee the new framework for quality assurance and regulation for universities and private providers of higher education;¹⁸
- COAG has agreed to develop further reforms to the VET sector including models for a national regulatory body for VET and a model could be TEQSA;
- the *Study in Australia 2010* initiatives to promote Australia's international education, such as on-line training of education agents overseas;
- establishment of a telephone hotline in DEEWR for students to raise their concerns anonymously;
- an international student roundtable was held in Canberra on 14-15 September 2009; and
- the development of the National International Student Strategy under COAG to improve the quality of education and student well-being for the 2010 academic year.¹⁹

1.20 The committee notes that the development of the International Student Strategy will proceed in parallel with the review of the ESOS Act 2000 to enable

16 The Hon Julia Gillard MP, Minister for Education, Employment and Workplace Relations, 'Baird Review releases issues paper', media release, 23 September 2009.

17 The Hon Julia Gillard MP, Minister for Education, 'Bruce Baird to head up international students review', media release, 8 August 2009.

18 The government has announced that it will establish a single agency to accredit providers, evaluate the performance of institutions and programs, encourage best practice, simplify regulatory arrangements and provide greater national consistency.

19 DEEWR *Submission 13*, pp. 3-4.

alignment of amended legislation and the new strategy by June 2010.²⁰ The committee also notes the targeted audits of providers underway in states and territories.²¹

Responsibilities

1.21 The provision of education and training to overseas students is a responsibility shared by the Commonwealth and the state and territory governments. The regulatory framework therefore involves Commonwealth and state and territory legislation and the administrative effort of the Commonwealth Department of Education, Employment and Workplace Relations (DEEWR), the Commonwealth Department of Immigration and Citizenship (DIAC), the Department of Foreign Affairs and Trade (DFAT) and state and territory education and training authorities.²²

Legislative framework

1.22 The ESOS legislative framework comprises:

- *Education Services for Overseas Students (ESOS) Act 2000*;
- Education Services for Overseas Students Regulations 2001 (ESOS Regulations); and
- The National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students (National Code).

1.23 These are supplemented by the following legislation which prescribe charges and contributions:

- *Education Services for Overseas Students (Registration Charges) Act 1997* (amended in 2007); and
- *Education Services for Overseas Students (Assurance Fund Contributions) Act 2000*.²³

1.24 It should be noted that ESOS legislation interacts with the *Migration Act 1958* and its regulations which impose visa-related reporting requirements on students and providers.²⁴

20 COAG meeting 2 July 2009, Communiqué, available from: http://www.coag.gov.au/coag_meeting_outcomes/2009-07-02/index.cfm?CFID=72649&CFTOKEN=14821043&jsessionid=0430b7c9a1319c875f8c6478405722232b2d#iss accessed 24 August 2009.

21 See <http://www.premier.vic.gov.au/minister-for-skills-workforce-participation/government-blitz-on-international-education-providers.html> accessed 15 September 2009; See also Joint Communiqué - Ministerial Council on Education, Employment, Training and Youth Affairs & Ministerial Council for Vocational & Technical Education, 12 June 2009.

22 Coral Dow and Angus Martyn, Bills Digest, no 126, 2006-07, 28 March 2007, Education Services for Overseas Students Legislation Amendment Bill 2007, p. 2.

23 DEEWR, *Submission 13*, p. 1.

1.25 The *Education Services for Overseas Students Act 2000* (ESOS Act) and the regulations set out the Commonwealth legislative requirements for the registration of providers, obligations of registered providers, the operation of the ESOS Assurance Fund, enforcement of the ESOS legislative framework and the establishment of the National Code.²⁵ The focus of the ESOS Act is the regulation of providers to protect the interests of students as consumers and Australia's reputation as an exporter of education services. It requires approved institutions for each state to be registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS)²⁶ which is a database of Australian education institutions. To be registered on CRICOS, providers must meet the quality requirements for the delivery of education services which are generally set out in state and territory legislation.²⁷ Registration requires a provider to meet the standards set out in the National Code which addresses areas such as marketing, recruitment and enrolment, student support, monitoring and reporting educational progress and migration requirements.²⁸

1.26 The states and territories have primary responsibility for the quality control of education providers and their courses. They achieve this through approving, registering and monitoring providers and their courses. There must be a recommendation from the relevant state or territory authority confirming that the provider meets the quality standards for their education sector. Responsibilities are detailed in the Shared Responsibility Framework agreed in 2007. This is captured below:

DEEWR is responsible for registration, monitoring, compliance and enforcement activities under the ESOS Act and supporting the provision of consumer protection mechanisms. Under ESOS, state and territory registration bodies are responsible for assessing applications for registering and re-registering providers on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS). State and territories may also undertake monitoring, compliance and enforcement activities under their own state legislation relating to education services to international students (where applicable). Educating providers about their ESOS

24 Carol Kempner, *Education Services for Overseas Students Amendment (Re-Registration of Providers and Other Measures) Bill 2009*, Bills Digest, 9 September 2009, No. 28, 2009-10, Parliamentary Library, Canberra, p. 8.

25 DEEWR, *Submission 13*, p. 1.

26 CRICOS is a database of around 1,300 Australian education institutions. Any education institution that recruits, enrolls or teaches overseas students must be registered on CRICOS.

27 DEEWR, *Submission 13*, p. 1.

28 The Hon. Bruce Baird, *Review of the ESOS Act 2000*, Issues paper, September 2009, p. 6.

obligations is undertaken by both DEEWR and state and territory agencies.²⁹

Enforcement

1.27 The responsibilities of the states and territories include the exercise of enforcement powers which extend to the suspension and deregistration of providers. The Bills Digest pointed out that both the Commonwealth and the states and territories have responsibility for enforcement. Part B of the National Code states that:

...while DEST [DEEWR] is primarily responsible for investigating and instigating enforcement action for breaches of both the ESOS Act and the National Code, state and territory governments often have enforcement mechanisms available through their legislation. Pursuing enforcement action through these mechanisms may be more appropriate given the nature of the breach, particularly if the state or territory government has specific legislation related to ESOS matters.³⁰

1.28 As required by the ESOS Act, an independent evaluation of the Act was conducted in 2005. It generally supported the regulatory model and many of the 41 recommendations to improve the effectiveness of the framework were implemented in the amendments to the Act in 2006.³¹ There were further improvements through amendments in 2007 as detailed below.

1.29 The committee recognises that while there have been some claims that current regulatory structures are inadequate, the overwhelming view in submissions to this inquiry and to the inquiry into the welfare of international students was that the current legislative and regulatory framework is adequate. However, there is clearly evidence of regulatory failure where a small number of unscrupulous agents and providers have been allowed to operate. This has been compounded by an apparent lack of monitoring and effective enforcement at the state level.

1.30 A number of reasons have been offered regarding the cause of this regulatory failure. Some have attributed it to a lack of clarity about responsibilities and a lack of resources:

29 The Hon. Bruce Baird, *Review of the ESOS Act 2000*, Issues paper, September 2009, p. 6. See also http://www.aei.gov.au/AEI/ESOS/NationalCodeExplanatoryGuide/PartB/Shared_Responsibility_Network_pdf.pdf accessed 23 September 2009. See also DEEWR *Submission 112* (welfare of international students), pp. 16-18.

30 Carol Kempner, *Education Services for Overseas Students Amendment (Re-Registration of Providers and Other Measures) Bill 2009*, Bills Digest, 9 September 2009, No. 28, 2009-10, Parliamentary Library, Canberra, p. 9. See also *The National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007*, p. 4.

31 *Ibid.*, p. 10.

...it is not through lack of regulation but due to a lack of enforcement, as a result of under-resourcing of agencies by state and federal governments, and a lack of jurisdictional clarity about enforcing compliance.³²

1.31 The National Tertiary Education Union (NTEU) agreed that there is a lack of clarity and division of responsibility 'regarding the relevant government agency responsible for monitoring and enforcing compliance of education providers listed on CRICOS'.³³ It detailed how this lack of clarity affects accountability:

The State-Federal division of responsibility for maintaining ESOS standards diminishes system accountability overall. This is significant with regards to the delivery of education programs and training by non-self accrediting private providers who are neither subject to periodic audits by bodies such as the Australian University Quality Agency (AQUA) nor VET providers whose teaching and learning performance is benchmarked according to standards set by the Australian Qualification Framework (AQF).³⁴

1.32 A lack of clarity and level of complexity was a finding in the position paper of Skills Australia. This was informed by stakeholder feedback:

...on the desirability of simplifying, providing clearer accountability and rationalising the multiplicity of authorities involved in industry advice on regulation and quality matters at both state and national levels. There is considerable complexity in the current governance of regulatory and quality apparatus with auditing arrangements in place for the AQTF [Australian Quality Training Framework], international students and for user choice purchasing arrangements. This is further complicated for providers operating in both the VET and higher education sectors.³⁵

1.33 Mr Baird has also pointed to the complexity in his issues paper:

...the intersection of ESOS with these underpinning quality assurance frameworks can be complex, cause confusion about roles and responsibilities and raise concerns about consistency and duplication. For example, a VET provider may be audited twice in close succession: by DEEWR for its ESOS Act obligations and certain standards of the National Code. Then by the state regulator for the AQTF, state legislation and the National Code as well. The provider can also be audited by the Australian Government Department of Immigration and Citizenship and other agencies.³⁶

32 Professor Ian Young, 'Time to act is now', *Campus Review*, 18 August 2009, p. 8.

33 NTEU, *Submission 12*, p. 2.

34 NTEU, *Submission 56* (welfare of international students inquiry), p. 10.

35 Skills Australia Position paper, *Foundations for the Future: Draft Proposals for Future Governance, Architecture and Market Design for the National Training System*, April 2009, p. 32.

36 The Hon. Bruce Baird, *Review of the ESOS Act 2000*, Issues paper, September 2009, p. 11.

1.34 On this issue of divided responsibilities, the committee notes the evidence provided by DEEWR to the welfare of international students inquiry when asked about how responsibilities are agreed and dealt with between the Commonwealth and the states and territories:

Firstly, it is a very complex area—there is no question about that—and lots of witnesses have told you that and we do not disagree. Frequently if you get complaints or issues arising they do cross the state responsibilities under the Shared Responsibility Framework and those powers. Most of the issues tend to revolve around quality and that is a state responsibility so they tend to have the lead role in many cases. But that does not mean that we cannot stimulate activity if the complaint or the issue arises on our side.

In many cases if they involve issues which are our responsibility under the Shared Responsibility Framework then we will get involved and we will send a team. For example, under the Victorian rapid audit process, which I think you have heard about, that has been conducted by Victorian officers but our officers have also spent a lot of time with them so that issues arising under our part of the Shared Responsibility Framework can be dealt with at the same time.

Similarly, DIAC have contributed officers and time to that exercise, and the same applies in New South Wales. How is it dealt with? I think it is dealt with on a common-sense basis where we try and sit down and deal with the cases as they arise and come along. So it is a complex area of regulation. We try to deal with it on a common-sense basis. We have that the Shared Responsibility Framework to refer to and that says what we do and what the states do. We try to interpret that on a common-sense basis and take it forward as you would expect us to do in the best interests of the public.³⁷

1.35 Others submit that the regulatory failure is due to a lack of resolve or commitment of the regulatory authorities to engage in effective enforcement because they fear destabilising providers and the subsequent effect on their students.³⁸ David Phillips, an adviser to the Bradley review told the HES [Higher Education Supplement]:

...the states already possessed a “big stick”. Their powers included deregistration of providers. “It may be worth examining whether a lower level of sanctions could be introduced to avoid the problem of states being reluctant to intervene because of the impact of deregistration on students”.³⁹

37 Colin Walters, DEEWR, *Proof Committee Hansard*, 18 September 2009, p. 79.

38 Carol Kempner, *Education Services for Overseas Students Amendment (Re-Registration of Providers and Other Measures) Bill 2009*, Bills Digest, 9 September 2009, No. 28, 2009-10, Parliamentary Library, Canberra, p. 13.

39 Guy Healy and Andrew Trounson, 'Crackdown on student recruitment', *The Australian*, 12 August 2009, <http://www.theaustralian.news.com.au/story/0,25197,25916022-12149,00.html> accessed 16 September 2009.

1.36 The committee notes that all states have benefited from the growth in international students⁴⁰ but the income received is particularly significant for Victoria (\$4.9 billion) and New South Wales (\$5.8 billion).⁴¹ The committee believes the loss of a number of unscrupulous and ineffective operators will enhance the reputation of Australia as a provider of quality education. It notes there are already measures in place⁴² and planning underway to assist any displaced students.⁴³

Comment

1.37 The committee recognises that the issues this bill deals with are not entirely new. Over the past 10 years, the ESOS Act has been amended to deal with the closure of providers in the late 1980s and early 1990s and to address deficiencies in the regulatory framework identified by reviews.

1.38 The committee notes the explanation from DEEWR about shared responsibilities with the states and territories being discussed and agreed by a 'commonsense' approach. It would appear that this commonsense approach has not worked particularly well and/or the parties have not adhered to the agreements. In any case, where there is complexity and overlap in the responsibilities, the committee believes there is scope for further clarification of responsibilities. In addition, this 'commonsense' approach also lacks clear accountabilities.

1.39 Unfortunately the committee received little useful information from the states or territories through this inquiry or to date for the references committee inquiry into the welfare of international students. It is therefore difficult to clarify the exact cause of the regulatory failure from their perspective. The committee recognises a contributing issue, the increase in the numbers of international students in the VET sector, may have hindered the effective regulation by states and territories.⁴⁴ The committee is concerned about the capacity of the regulatory system to handle the increased workload in this bill given it does not appear to have been able to cope to date. The committee refers to the Explanatory Memorandum which mentioned a re-direction of existing resources from auditing activities no longer required and notes that:

Any additional resources will be met jointly by the state and territory governments and the Australian Government under existing funding arrangements including national agreements.⁴⁵

40 See Tasmanian Government, *Submission 14*, p. 1.

41 Australian Education International, Research Snapshot, *Export Income to Australia from Education Services in 2008*, June 2009.

42 The Tuition Assurance Scheme and the ESOS Assurance Fund.

43 ACPET, *Submission 9*, p. 6; DEEWR, *Submission 13*, p. 2.

44 South Australian Government, *Submission 16*, p. 3.

45 Explanatory Memorandum, p. 2.

1.40 Despite these reassurances, the committee remains concerned that the measures outlined in the bill will need to be implemented by the same organisations which were involved in the regulatory failures. However, on the issue of commitment by the states and territories, the committee is encouraged by the Joint Communiqué of the Ministerial Council on Education, Employment, Training and Youth Affairs & Ministerial Council for Vocational & Technical Education which reported:

All Ministers are committed to enhancing the quality of our education and training system to deliver high quality, internationally recognised courses that maximise international students' experiences and outcomes. This will be achieved through renewed emphasis by registration authorities and the Australian Government to address quickly any issues of the quality of education and training providers in their jurisdiction. Ministers have agreed that to achieve this, targeted audits of providers will be undertaken as a matter of priority. In addition, there will be joint action by all governments to design and implement the announced Tertiary Education Standards and Quality Agency. All Ministers support the bringing forward of the review of the Education Services for Overseas Students Act 2000 to commence in 2009-2010.⁴⁶

1.41 In order to implement the measures contained in the bill, the committee notes the importance of adequate and targeted resourcing and commitment from all stakeholders. The committee notes that clarification of responsibilities and adequate resourcing will be addressed in the review of the ESOS Act being undertaken by Mr Baird. It is imperative that all the factors which contributed to the regulatory failures are understood and addressed.

46 Joint Communiqué - Ministerial Council on Education, Employment, Training and Youth Affairs & Ministerial Council for Vocational & Technical Education, 12 June 2009.