

Chapter 2

Issues

Introduction

2.1 Submissions supported action being taken by the government to address the presence of poor quality education and training providers in the international education sector. Many submissions also looked beyond the scope of this bill and made further suggestions for improvements to the regulatory framework. As noted in chapter one, this is transitional legislation focussed on addressing the immediate issues of quality education and training delivery. The longer term issues are under review by Mr Baird. Where appropriate, some additional suggestions which fall outside the scope of the bill have been incorporated in the report. Issues raised with the committee regarding the bill focussed on fairer targeting of high risk providers, addressing ad hoc relationships of providers with agents and the capacity of the regulatory authorities to ensure compliance with agreed standards of education and training.

Re-registration of providers

2.2 Schedule 1 provides for the re-registration of providers. The bill requires re-registration of all institutions currently registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) by 31 December 2010. Item 25 inserts proposed section 92A which details that providers not registered by this date will have their registration cancelled. DEEWR advised that the purpose of this measure is to:

Build confidence in the quality of education services provided across the entire international education sector, and to strengthen the registration process by allowing only providers who can satisfy the higher entry standards that will be applied in the re-registration process to be registered. It will establish a clean slate register of education providers for overseas students.¹

New registration criteria

2.3 Items 5 and 7 introduce two new registration requirements:

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

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

2.4 If the new criteria are not met by a provider, its registration will not be renewed. This will be assessed by the designated authority in each state and territory in the first instance but the Australian Government's delegate will also be able to refuse re-registration if the delegate believes the two criteria have not been met.²

Implementation

2.5 These measures received general support. The National Union of Students (NUS) welcomed the re-registration and new criteria and noted:

NUS has become increasingly concerned about the registration procedures undertaken by the state authorities that should have involved on-site examinations of the campus, teaching spaces and equipment. It has been apparent in many of the media articles that these initial examinations were not undertaken or were not legitimately undertaken, given the teaching spaces and equipment would not have been able to meet the required standards.³

Call for a risk management approach

2.6 While there was no outright opposition to this measure, implicit in the submissions was the view that those who are compliant with legislation are being punished for the actions of a few unscrupulous providers. The committee acknowledges that the majority of providers demonstrate a commitment to education and training and it recognises the unfortunate necessity that all providers will have to go through processes to eliminate the few poor performers. The differences between the providers of education and training are not well understood overseas and, in order to restore confidence in the whole sector, the committee understands a 'clean slate' approach is necessary.

2.7 Submissions suggested a targeted approach to implementation to address the areas experiencing most problems. The Australian Technology Network (ATN) pointed out that between 2005 and 2008 international enrolments at private providers increased by 195 per cent and accounted for 84 per cent of all international VET enrolments. In contrast, international higher education enrolments grew by 12 per cent over the same period. In the same period, Indian student enrolments in private VET providers grew by 1,724 per cent. ATN advised that each education sector has unique characteristics and suggested applying a risk management approach to the various sectors. This risk profile would look at elements such as:

- the percentage of international students against the full cohort;
- diversity in source countries;
- management of agents;

2 Ibid.

3 NUS, *Submission 8*, p. 5.

- pathway composition;
- that universities are first and foremost providers of education; and
- length of registration.⁴

2.8 Universities Australia also suggested that a risk management approach would direct attention to institutions with a higher risk profile which could be characterised by:

- a high proportion of students from a single source country;
- provision of a limited number of education programs (including those linked to future migration outcomes);
- a rapid increase in enrolments in the recent period;
- previous breaches of the National Code; and
- a history of visa fraud in student visa applications.⁵

2.9 Independent Schools Council of Australia (ISCA) also pointed out that the new requirements do not differentiate between the private vocational sector and other education sectors and advocated for re-registration to focus on high risk institutions. It believed that the new registration requirements are redundant for the independent schools sector.⁶

2.10 The Australian Council for Private Education and Training (ACPET) called for the measures to be strategic and targeted so that the majority of education providers who operate ethically are not disadvantaged by the actions of a few. It advocated that those providers with a history of regulatory compliance should not be disadvantaged by an additional regulatory and administrative burden.⁷

Costs

2.11 In arguing for a risk management approach, submissions also pointed to the financial and administrative burden that re-registration will impose on institutions.⁸ DEEWR noted that the financial effects could be reduced by state and territory registration authorities taking a risk management approach and by possible changes in prioritisation of their current activities.⁹

4 ATN, *Submission 3*, pp. 2-3.

5 Universities Australia, *Submission 4*, p. 2.

6 ISCA, *Submission 6*, p. 7.

7 ACPET, *Submission 9*, p. 6.

8 Universities Australia, *Submission 4*, p. 1; ATN, *Submission 3*, p. 4; ISCA, *Submission 6*, p. 2.

9 DEEWR, *Submission 13*, p. 8.

Resources

2.12 Submissions also expressed concern about the ability of the regulatory authorities to undertake the measures proposed in the bill, questioning whether they have sufficient resources.¹⁰ The AEU noted:

The issue of adequate resourcing of state and territory agencies charged with the responsibility of registering and auditing international education providers has been highlighted by a number of stakeholders throughout the current debate. Requiring a wholesale re-registration of all providers will not serve its intended purpose if governments fail to provide adequate resources to ensure that such processes are effective.¹¹

2.13 NUS submitted:

...NUS hopes that there will be adequate qualified staff through which to conduct the large number of audits required for this process. Given that in 2008 in Victoria there were 21 contract auditors (according to the VRQA taskforce background information) as well as qualified staff auditors, there may need to be an increase in resources in order to ensure the system does not end up in the same position it began, due to under resourced auditing and monitoring.¹²

2.14 In addition to the comments made on resources in chapter one, the committee notes advice from DEEWR that the Commonwealth departments involved in regulation will fund their own contributions to the re-registration process through re-prioritisation and management of existing resources.¹³ As noted in chapter one, states and territories will not receive additional resources.¹⁴

Comment

2.15 How the process for universal re-registration will proceed has not yet been announced. The committee notes that the Commonwealth is working with states and territories to develop a consistent approach to the measures contained in the bill, particularly re-registration.¹⁵

2.16 Some submissions suggested a more targeted approach to re-registration. The committee supports dealing quickly with high risk providers, if only to ensure the best use of resources. It notes that DEEWR appears to support a risk management approach:

10 See ACPET, *Submission 9*, p. 9; NTEU, *Submission 12*, p. 2.

11 AEU, *Submission 2*, p. 5.

12 NUS, *Submission 8*, p. 5.

13 DEEWR, *Submission 13*, p. 9.

14 Explanatory Memorandum, p. 2.

15 Ibid.

Implementation can be designed in a streamlined way using a risk management approach and using reference to other regulatory regimes where relevant to avoid as far as possible any unnecessary burden on providers.¹⁶

Recommendation 1

2.17 The committee recommends that a re-registration process be developed which gives priority and directs resources to high-risk providers.

2.18 In demonstrating the two new criteria have been met, the committee notes advice from DEEWR which stated:

Capacity to deliver quality education can be demonstrated through a track record of successful provision in Australia or in another jurisdiction, or by ensuring that a new provider has in place all the elements needed to give confidence in its ability to meet the required standards.¹⁷

2.19 The committee understands that the cost to the government of the re-registration process will be managed within the current budget. As outlined in chapter one, the committee has reservations about the ability of the regulatory authorities to carry out the measures in the bill in the time required. The committee expects the issue of adequate funding to be addressed during the review of the ESOS Act being undertaken by Mr Baird.

Ensuring support for students

2.20 While supporting the re-registration measure, the Australian Federation of International Students (AFIS) cautioned that students must be provided with adequate support where providers do not meet the new standards and face de-registration.¹⁸ Support for any displaced students was also urged by ACPET. It advised that it is currently undertaking modelling of the increased audit activity and assessing the capacity for the market to absorb any displaced students and looking at its possible financial obligations through the Tuition Assurance Scheme (TAS). It also recommended the formation of a taskforce to respond to the needs of displaced students.¹⁹

2.21 The NTEU expressed concern about the design and implementation of the ESOS Assurance Fund and its relationship to the TAS. It had sought clarification from DEEWR about whether students have the right to apply directly to the ESOS Assurance Fund where they wish to access a provider of their choice. NTEU is concerned that the choices offered to students will be limited to providers that are

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

17 Ibid.

18 AFIS, *Submission 5*, p. 3.

19 ACPET, *Submission 9*, p. 6, 10.

members of the relevant TAS. The NTEU recommend that there be only one national assurance scheme for all providers of education to international students.²⁰

Comment

2.22 DEEWR advised the committee that while it is not possible at this stage to predict the need for the ESOS Assurance Fund, these arrangements will be considered by the review underway by Mr Baird.²¹ The committee is reassured that the reviews of the possible use of the Tuition Assurance Scheme and the ESOS Assurance Fund will occur in time for the re-registration process and trusts that issues such as the one raised by the NTEU will be clarified.²²

Identification of agents used by providers

2.23 Schedule 2, Item 4 inserts proposed section 21A which requires providers to maintain and publish a list of its agents. This measure was supported. It also provides for regulations to be made dealing with providers' agents. DEEWR advised that the regulations to provide further protection for students will be developed in consultation with providers and may include:

...training requirements for providers, recognition of overseas schemes of registration for providers and the provision by providers of media through which students may record their experiences of agents.²³

2.24 AFIS listed of a number of unrealistic promises made to international students by irresponsible agents. It also pointed to the links between education and migration agents and the commissions received.²⁴

2.25 This measure was supported by the Tasmanian government which suggested a national register and selection criteria for education agents.²⁵

2.26 Submissions noted that this requirement is already carried out by some providers. ATN submitted that all ATN universities undertake thorough 'due diligence' when entering into relationships with overseas education agents and already list agents who work on their behalf on their websites.²⁶ Universities Australia noted that all universities either publish a list of their agents on their website, plan to do so as soon as possible or are open to doing so.²⁷

20 NTEU, *Submission 12*, pp. 3-4.

21 DEEWR, *Submission 13*, p. 9.

22 Ibid.

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

24 AFIS, *Submission 5*, pp. 3-4.

25 Tasmanian government, *Submission 14*, p. 3.

26 ATN, *Submission 3*, pp. 5-6.

27 Universities Australia, *Submission 4*, p. 2.

2.27 While supporting the amendment, some organisations noted that agents often represent parents. ISCA explained:

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.²⁸

2.28 ISCA noted that, under the current legislation, schools are not required to have agent agreements with these agents although some schools choose to do so. It requested clear guidelines about which agents need to be posted on websites.²⁹

2.29 This requirement appeared to cause concern for some submitters but the reasons were not clearly articulated. English Australia pointed out that the English language sector is particularly dependent on education agents and that this is not the sector which has provoked these amendments. It mentioned that the requirement has the potential to fracture long-standing and important business relationships but did not explain why. English Australia then asked for the legislation to be delayed so as to allow more consultation on unintended consequences.³⁰

2.30 ISCA submitted that there are some schools with very limited representation by education agents but they do have relationships with specific regions or areas. It argued that requiring their details to be published could compromise the commercial relationship, 'leaving the agent open to 'poaching' by another provider'.³¹

2.31 NUS provided a possible reason for any reluctance to publish agents:

...many education institutions are reliant on the work of the education agent for their share of this extremely lucrative market and as such, the most successful education agents are increasingly of the most value to the providers and the unethical agents is more likely to be the successful agent...Therefore, it is unlikely that an education provider will disengage an unethical agent unless they are concerned about the consequences of engaging with this agent, such that the law is being monitored and enforced with penalties which will impact detrimentally on the trade of the provider...³²

2.32 Beyond the specific amendment to address unscrupulous agents, some submissions suggested the introduction of education agent protocols or a code of

28 ISCA, *Submission 6*, p. 8. See also ISANA, *Submission 7*, p. 3.

29 ISCA, *Submission 6*, p. 8.

30 English Australia, *Submission 1*, pp. 2-3.

31 ISCA, *Submission 6*, p. 8.

32 NUS, *Submission 8*, p. 7.

practice, and capping the percentage of commissions paid to agents and education agents practicing as migration agents.³³

Comment

2.33 The committee does not believe that reasons opposing this amendment have been clearly articulated or persuasively argued. If a provider has a relationship with an agent, then they are responsible for establishing the bona fides of the agent. Having done so, there should be no problem in listing them publicly. For example, the committee notes comments from English Australia:

...colleges spend a lot of money developing relationships with agents. The good colleges send their staff offshore to visit their offices, meet their staff and provide induction or training programs.³⁴

2.34 Where such a relationship exists with commitment from both sides, it would seem counterintuitive not to wish to publicly acknowledge it. Even in the case of ad-hoc relationships, where a provider may occasionally be approached by an agent on behalf of a family seeking a particular location or course, the committee believes there is still a responsibility for a provider, on behalf of their students, to assure themselves that they are dealing with a reputable agent.

2.35 The committee believes the requirement to publicly list agents would have little effect on most providers of education and training. Universities maintain such a list and almost all of them publish the list on their websites. The committee also notes that the private college sector has announced that it will establish a public list of approved agents.³⁵

2.36 The committee is pleased to note the advice from DEEWR that more protection for students in this area will be addressed as the regulations are developed. The references committee will have more to report on this matter in its report on the welfare of international students.

Consultation

2.37 DEEWR outlined the consultation that has taken place on the amendments outlined so far in the report:

The amendments related to re-registration and education agents were developed in a short time-frame in response to public concerns about the impact unsatisfactory providers and agents could be having on overseas

33 NUS, *Submission 8*, pp. 8-9.

34 John Ross, 'Heavy-handed treatment of agents could backfire', *Campus Review*, 1 September 2009, p. 4.

35 Guy Healy and Andrew Trounson, 'Crackdown on student recruitment', *The Australian*, 12 August 2009, p. 29; Joanna Mather, 'Report card for education agents', 14 October 2009, p. 6.

students and the reputation of Australia's international education industry. Consultation on these two amendments involved states and territories through the Joint Committee on International Education (JCIE) and, particularly in relation to the re-registration proposal, by teleconference with selected industry stakeholders including the Australian Council for Private Education and Training, English Australia, TAFE Directors Australia and Universities Australia. In her second reading speech, the Deputy Prime Minister noted the need for further consultation with stakeholders in implementing these amendments.³⁶

Discretionary removal of the prohibition on education providers collecting monies from students when a course has been suspended

2.38 Schedule 2, Item 14 provides for the discretionary removal of the prohibition on providers collecting money from students who have started the course when a course has been suspended for the whole or part of the period of suspension. Evidence supported this amendment which will facilitate the continuing provision of courses with the minimum of disruption to students.³⁷

2.39 However, the AEU did not agree and stated:

The AEU sees no valid reason why a ministerial discretion should be introduced to enable a provider to solicit or accept money for a course from an overseas student or prospective student while they are suspended. At a time when grave concerns have been raised about the quality of education being provided to international students every effort should be made to protect them from operators whose registration is at risk. As a right all prospective students should be able to access the audit history of providers and be advised of any suspensions or sanctions.³⁸

2.40 DEEWR explained the reasons for this amendment:

Currently, while suspended, [from registration on CRICOS] providers are permitted to continue teaching students who had commenced their study prior to the date of imposition of the suspension. Depending on the circumstances, it may be unreasonable to deny a provider the right to collect fees from students that it continues to teach. If the provider is continuing to provide a service, and is incurring costs to do so, it is reasonable for the provider to collect fees from existing students if the suspension is for minor offences. This will assist the provider to continue providing education to enrolled students, which will help avert potential insolvency and disruption to students' education.

...It will reduce the risk of providers being placed under unreasonable financial distress while undertaking the necessary improvement to their

36 DEEWR, *Submission 13*, p. 8.

37 English Australia, *Submission 1*, p. 2.

38 AEU, *Submission 2*, p. 5.

operations and rectification of breaches that are usually required by a regulator before the suspicion is lifted³⁹

Comment

2.41 The committee agrees that, in circumstances where the offence is minor and steps are being taken to address it, this measure would result in less disruption for students than risking closure of the school by denying it the ability to collect fees. However, the committee believes that a timeframe for the provider to rectify the offence should be specified. It also believes that in these circumstances an audit should be undertaken by regulators to determine whether the offence is symptomatic of more serious problems.

Recommendation 2

2.42 The committee recommends that where a provider's registration has been suspended for a minor offence and it is allowed to continue to collect fees, that a clear and reasonable timetable should be imposed to rectify the offence.

Recommendation 3

2.43 The committee recommends that where a provider's registration has been suspended, but the provider is allowed to collect fees, an audit should be undertaken by regulators.

Technical amendments

2.44 DEEWR advised that the amendments detailed above were developed quickly in response to public concerns about unscrupulous providers and agents. The more technical amendments described below address issues that have arisen in the application of the legislation and which require clarification. The amendments:

...seek to harmonise the application of the Act with the education quality assurance and regulatory frameworks as well as provide greater flexibility to reduce unnecessary red tape. These more technical amendments have been the subject of consultations on a case-by-case basis, and in the course of regular dialogue with industry stakeholders and with states and territories through such fora as the JCIE [Joint Committee on International Education].⁴⁰

Conditions imposed by state/territory governments on education providers to be recognised by the Commonwealth

2.45 The bill will allow conditions imposed on a provider's registration by a state or territory authority under state legislation to be recognised and adopted or modified

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

40 *Ibid.*, p. 8.

by the Commonwealth. This could occur at the time of the initial registration or any time after registration. DEEWR advised that this amendment will for example:

...enable the Commonwealth to enforce restrictions on the number of enrolments which are currently imposed and enforceable only through state and territory legislation.⁴¹

2.46 DEEWR advised that this amendment is necessary because:

At present the Commonwealth must undertake its own investigation and enforcement action in order to impose a condition on a provider's CRICOS registration, even where the state or territory authority has already carried out this work under its own regulatory regime. This amendment will remove this duplication of regulatory effort and allow the Commonwealth, where appropriate to support the state/territory action by adopting the condition for the purpose of CRICOS registration.⁴²

2.47 Evidence supported this amendment to streamline the ability of governments to share information and address provider compliance breaches more effectively.⁴³

Exemptions from provider default refund requirements for providers changing their legal identity

2.48 DEEWR advised that this amendment will:

...lessen the financial and regulatory burden on providers changing their legal entity in circumstances where the delivery of courses and outcomes for international students will not be affected. In the past, a number of providers have been found to be in default when no negative consequences have been imposed on either their students or the organisation's education outcome as a result of the change to the legal entity, for example a normal business takeover or merger.⁴⁴

2.49 Evidence supported this amendment to lessen the financial and regulatory burden on providers.⁴⁵

Suitable alternative course

2.50 When a provider can no longer offer a particular course, it is obliged to offer the student a refund or a place in a suitable alternative course. Currently there are no

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

42 Ibid.

43 English Australia, *Submission 1*, p. 2.

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

45 English Australia, *Submission 1*, p. 2.

clear criteria to determine whether a course is a suitable alternative. This amendment will enable the development of clear criteria in the ESOS regulations.⁴⁶

2.51 Evidence supported this amendment which aims to provide clarity in relation to where students can be placed by the Tuition Assurance Scheme.⁴⁷ NUS suggested the criteria for a 'suitable alternative course' include the following:

- the student should not be academically disadvantaged;
- the student should not be financially disadvantaged;
- the course should provide for an equal or higher academic qualification;
- the course should provide a qualification equivalent to the occupation or vocational outcome as the discontinued course;
- the course should allow a student to remain in housing and employment contracts; and
- the course should be offered at a suitable proximity to their residential address.⁴⁸

Other issues

Internal and external complaints procedure

2.52 The importance of a complaints procedure is recognised through the National Code in Standard 8. The Commonwealth Ombudsman suggested that the recent problems with irresponsible providers may mean the requirements are not being met and proposed the following:

This failing could be addressed by stating in the legislation itself that a provider shall not be registered unless the Secretary is satisfied that the provider has adopted a complaints process that complies with prescribed criteria. Section 9 of the legislation should be amended to require all providers to give the Secretary a written complaints policy and procedure (including identification of their external complaints mechanism), as part of the requirements to be met before the provider is registered.⁴⁹

2.53 To address this issue quickly, the Commonwealth Ombudsman recommended a two-part compliance audit be undertaken.⁵⁰ The Commonwealth Ombudsman also noted that apart from WA, the external complaints mechanism used by students is not clear. He suggested that:

46 DEEWR, *Submission 13*, p. 8.

47 English Australia, *Submission 1*, p. 2.

48 NUS, *Submission 8*, p. 13.

49 Commonwealth Ombudsman, *Submission 17*, p. 3.

50 Commonwealth Ombudsman, *Submission 17*, p. 4.

There would be a more effective marshalling of complaints information and trend data, if a single national agency were appointed through the National Code or legislation to undertake this role, or if there was a single entity identified as the external complaints mechanisms for all providers in each state and territory, with annual reporting provided to a relevant agency for collation at a national level.⁵¹

Comment

2.54 The committee supports clear advice to students of the internal and external complaint mechanisms available to them. However, it believes that consideration of these issues should be included in the wider review of the ESOS Act being undertaken by Mr Baird.

Conclusion

2.55 The experience of the majority of students living and studying in Australia is very positive. The committee believes that unscrupulous operators are in the minority but it is disturbed by the exploitation of students that has occurred. It affects not only the students but also their families and the reputation of Australia as a provider of quality education. The committee welcomes this opportunity to review the legislation that is part of the effort to eliminate the harm done by a small number of agents and providers, and to improve the educational experience of international students in Australia.

2.56 The committee recognises that the amendments contained in the bill are only part of the processes to improve the quality of education providers and agents. There is further detail to be worked out, but this legislation is important as a quick response to restore confidence in the quality of the education provided to international students. It sends a clear message about the need to improve quality and compliance with regulations. The bill will strengthen the registration process which will reduce the number of high risk providers currently in, or seeking entry into, the sector and provide a 'clean slate' of providers to restore confidence in the quality of education services.

2.57 While supporting the changes, some submissions questioned proceeding with the amendments before the Baird review of the ESOS Act has reported, since it is likely to recommend further reforms. The committee notes that these amendments are intended as a transitional measure to address immediate matters of concern regarding regulation of the industry. Longer term issues will be considered by the review of the ESOS Act being undertaken by Mr Baird. The committee looks forward to the outcomes of this review.

51 Commonwealth Ombudsman, *Submission 17*, p. 3.

Recommendation 4

2.58 The committee recommends that the bill be passed.

Senator Gavin Marshall

Chair

Senator Gary Humphries

Deputy Chair