

The Senate

Education, Employment
and Workplace Relations
Legislation Committee

Education Services for Overseas Students
Amendment (Re-registration of Providers and
Other Measures) Bill 2009

October 2009

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Senate Standing Committee on Education, Employment & Workplace Relations

Legislation Committee

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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;

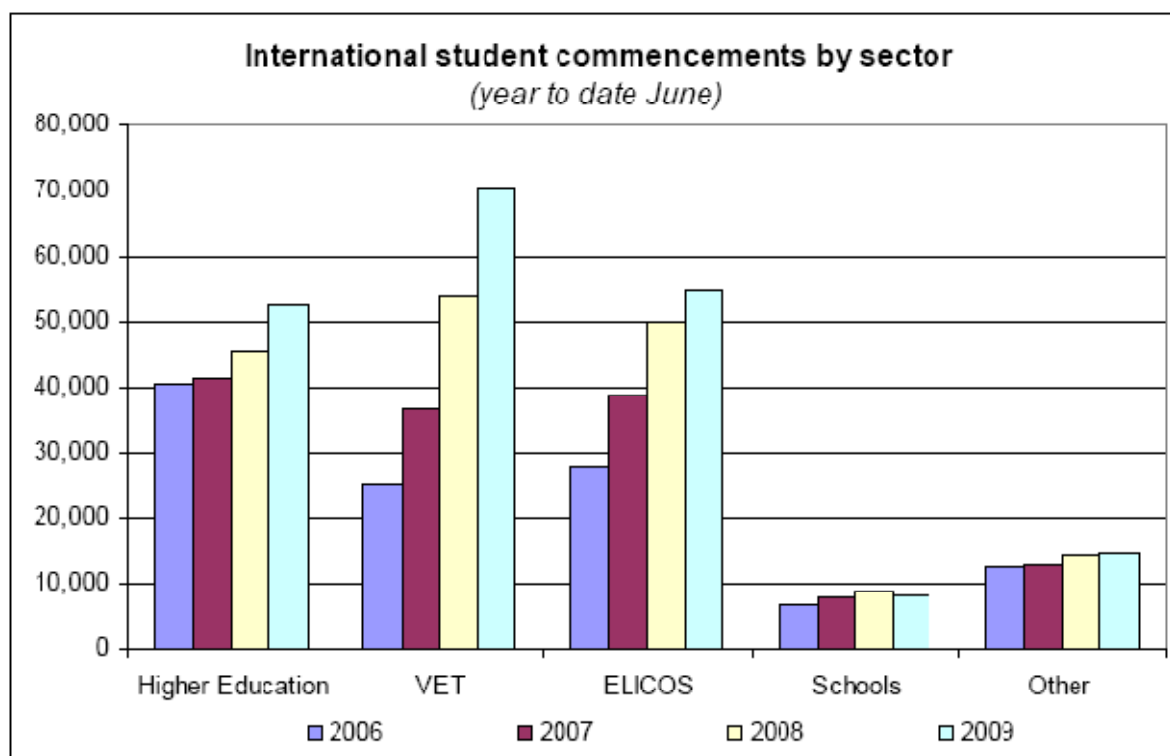
4 DEEWR, *Submission 13*, p. 2.

- 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.

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 with 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

Additional Comments from Senator Hanson-Young

Introduction

Australia's thriving international education sector has come under local and international media scrutiny over the past few months, following a series of reports surrounding violent attacks against Indian students. This follows calls for better assistance and support for international students that have fallen on the deaf ears of successive governments and opposition parties.

Since then, an intense spotlight has been placed on our international education sector, with issues such as visa exploitation and discrimination within employment, student safety, questionable information provided by education and immigration agents, and sub-standard educational services and support by some providers, contributing to the perception of rotting within our education sector.

According to statistics from the Australian Education International Monthly Summary of International Student Enrolment Data, as at June 2009, there were 467 407 enrolments by full-fee international students in Australia on a student visa, compared to 204 401 in June 2002.

Background

This Bill seeks to amend the Education Services for Overseas Students Act 2000 to require the 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 requirements for education providers to adhere to; and the list of all agents used by the providers on its website or in any manner prescribed by the Regulations.

While the Greens welcome moves by the Government to protect our third biggest export, questions remain as to how the new registration requirements will actually work in practice, and whether or not the amendments proposed within this Bill are appropriately targeted.

The fact that Australia's international sector has grown by 19.6 per cent in the past year alone, highlights the importance of tightening the regulatory frameworks within the ESOS Act to ensure that we are providing the best possible educational experience for international students studying within Australia.

It is important to note that while the university sector originally accounted for the initial growth in international students, since 2005, enrolments in the VET sector have grown significantly, with the last twelve months seeing an increase of 39.3 per cent.

The rapid growth in the VET sector is largely attributed to courses within the cooking, hairdressing and hospitality fields. It is also worth noting that the growth in the number of Indian students partaking in these courses has increased from 217 enrolments in 2002, to 18,269 in 2008.

While the Greens support the intent of this legislation, we remain concerned that it fails to adequately target the problem areas in our international education sector, and is limited in its overall scope, with many areas such as student safety and welfare not included in the Government's initial legislative response to concerns within the sector.

A major criticism of the current Act is the lack of guidance given to the definition of support services for students, which are simply left to the individual provider to determine.

Issues in the Bill

Two new registration requirements:

Schedule 1 – 5 of the Bill states that the provider must be able to demonstrate that their principle purpose is providing education and have clearly demonstrated their capacity to provide education of a satisfactory standard.

While this requirement is fair and reasonable, there seems to be no further detail on how these two areas will actually be assessed in a practical sense.

While the Minister has stated in her second reading speech that breaches of the National Code can result in enforcement action under the Act, the Greens remain concerned about the capacity to properly monitor and enforce breaches of the Act and the National Code without fundamental changes to the regulatory framework.

There is a clear need for better monitoring and compliance mechanisms governing international education, given the present Education Services for Overseas Students Act is not much more than an aspirational document waiting for proper implementation and enforcement.

Recommendation No.1:

The Greens recommend that the Government implement stringent protocols about how the two new protocols are to be defined and applied by the state and territory authorities to ensure that it is appropriately targeted.

Recommendation No.2:

Given the proposed Bill will require all providers to demonstrate their capacity to provide education of a satisfactory standard, the Greens recommend that this

new registration requirement should also require providers to demonstrate that they have the capacity to provide and define adequate student support.

Re-registration of all institutions

Given the main intention behind the requirement for all education providers to re-register by December 2010 is to restore confidence in the quality of education services for international students, the Greens are concerned that this provision is not appropriately targeted.

While the actual process for re-registration is yet to be formalised, the Greens believe that a more targeted approach that would prioritise the ‘high risk’ areas of the sector is a more appropriate and practical approach in dealing with the current turmoil in Australia’s international education sector.

Recommendation No.3:

Given concerns around the capacity of the regulatory authorities to take on the additional workload of processing all the new registration applications within the set timeframe, the Greens recommend that the Government prioritise the re-registration of providers by starting with those institutions deemed to be ‘high risk’, followed by all remaining institutions.

A high risk profile could be characterised by (as per Universities Australia submission):

A high proportion of students from a single source country;

Provision of a limited number of education programs;

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.

Regulation of education agents

An important requirement contained within this Bill stipulates that a registered provider must “maintain a list of the persons (whether within or outside Australia) who represents or act on behalf of the provider in dealing with overseas students or intending overseas students.”

While the Greens are indeed supportive of this measure, we believe it should go further in ensuring that education agents operating onshore or offshore are properly registered, and quality benchmarks are set on a national level to spell out what is and is not considered adequate information or advice for students who are new to this country.

Recommendation No.4:

There is a clear need for sufficient monitoring of education agents operating on behalf of institutions throughout Australia, and as such, the Greens recommend

that rigid education agent and provider protocols be developed to pave the way for a more transparent system of monitoring the activities of agents and providers into the future.

Recommendation No.5:

The Greens recommend that further to the development of standard protocols, the official registration of education agents must occur to avoid the occurrence of unscrupulous behaviour.

Alternative course provision

Under the proposed Bill, Item 6 allows for regulations to prescribe the criteria for considering whether a particular course is a suitable alternative for a student where a provider can no longer offer a particular course.

In its submission to the Inquiry, the Department for Education state that “the absence of clear criteria to apply when determining whether a particular course is a suitable alternative has presented difficulties for providers, tuition assurance schemes and the ESOS Fund manager.”

The Greens believe that it is paramount that where a provider has failed to fulfil its education commitment, students are able to enrol in an equivalent course as soon as possible, and that they do not incur any additional costs - given they have already paid their course fees.

We also believe that in legislating for the requirement for an education institution to provide an alternative course, there must also be the requirement to provide students with access to their full and accurate academic transcript.

There must also be clarity over who is the responsible departmental contact for dealing with student complaints and grievances with their education institution.

Recommendation No.6:

The Greens recommend that the ESOS Act and the Tuition Assistance Scheme (TAS) be amended to include a definition of what constitutes a ‘suitable alternative course’ as inserted under Item 6.

Recommendation No.7:

We further recommend that specific policies and procedures are implemented in the ESOS Act to ensure that students who are affected by the closure of their education provider, are given appropriate levels of support in securing their academic transcripts, and provided with the recognition of prior learning when moving to an alternative course.

International Education Commission

There is a clear need for better monitoring and compliance mechanisms governing international education, as at present, the Education Services for Overseas Students Act is not much more than an aspirational document.

While beyond the scope of this legislation, the Greens believe that an independent Education Commission should be developed, to define minimum standards for information and advice provision on a national level, and ensure that educational institutions across the country are upholding their duty of care towards their students. The role of a truly independent Education Commission would ensure that there is appropriate oversight of monitoring and compliance, when discussing the provision of consistent, good quality education and support services in all states and territories.

Recommendation No.8:

To ensure appropriate safeguards are in place, the Greens recommend that an independent Education Commission be developed to oversee the improvement of three key areas in the international education sector: immigration requirements, quality benchmarks, and monitoring and compliance.

Senator Sarah Hanson-Young

Australian Greens' Spokesperson for Education

APPENDIX 1

Submissions Received

Submission Number	Submitter
1	English Australia
2	Australian Education Union
3	Australian Technology Network
4	Universities Australia
5	Australian Federation of International Students (AFIS)
6	Independent Schools Council of Australia
7	ISANA International Education Association
8	National Union of Students
9	ACPET
10	Harry Criticos
11	Glenn Pereira
12	NTEU
13	DEEWR
14	Tasmanian Department of Education
15	PLP Group
16	South Australian Government
17	Commonwealth Ombudsman
18	TVET Australia
19	Imperial College of Technology and Management

