



Australian Government
Department of Education

Reform of the ESOS framework

Discussion Paper



ISBN

978-1-74361-851-6 [PDF]

978-1-74361-852-3 [DOCX]



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The document must be attributed as the (*Reform of the ESOS framework: discussion paper*).

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Introduction

International education is our highest earning service export, with the latest data for the year ending June 2014 indicating a 12 per cent increase in enrolments compared with the same period in 2013. While this recent growth is encouraging, the Government remains strongly committed to building an even more prosperous future for international education in Australia so that it remains both sustainable and a central element of our economy. As an overarching policy, the Government has also committed to deregulation to increase productivity and ensure Australian businesses can grow, become more competitive and take advantage of global opportunities.

The *Education Services for Overseas Students Act 2000* (ESOS Act) and the *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007* (National Code) are the main elements of a broad legislative framework that places obligations on education institutions to deliver a high-quality service to international students. ESOS articulates Australia's commitment to the protection of international students' consumer rights, and in this regard is unique in the world. The ESOS framework also supports the integrity of the student visa system.

Several reform strategies already announced by the Government will have a positive impact on organisations involved in international education in Australia.

The Government's response to the 2013 *Review of Higher Education Regulation* by Professor Kwong Lee Dow AO and Professor Valerie Braithwaite supports better alignment of the various quality assurance and standards frameworks that apply to both domestic and international registration, in particular the ESOS Act and the National Code.

The reforms to the vocational education and training system recently announced by the Government, including new draft standards and arrangements for the streamlining of training packages, seek to create a system that highlights the importance of quality while reducing burdens on education organisations.

Implementation of the recommendations from the 2013 *Review of Reporting Requirements for Universities* will also advance the Government's objective of reducing red tape by addressing a major concern—the burden of providing duplicative data and information to government agencies. Streamlining information technology systems, including the Provider Registration and International Student Management System (PRISMS), and adopting measures that allow education institutions to provide information once for many purposes, is both consistent with the review's recommendations and central to the Government's deregulation agenda.

While ESOS is well recognised as an important component of the broader education framework, its role has been changing for a number of years, in particular since the establishment of the Tertiary Education Quality and Standards Agency (TEQSA) and the Australian Skills Quality Authority (ASQA). The ESOS National Code predates the standards now used by TEQSA and ASQA to monitor quality in higher education and vocational education and training respectively. Stakeholders believe this has created excessive duplication and complexity. Other more recent changes that have had a significant influence on education services include advances in technology and online learning, strong global

competition and the changing demands of students themselves. The ESOS arrangements also need to change to better reflect this new environment.

Purpose of this review of the ESOS framework

The ESOS arrangements and their relevance in the current policy environment are of considerable interest to stakeholders, who are seeking a system that is more contemporary and better reflects developments in international education over recent years. There have been calls for some time for the National Code in particular to be revised.

As part of an ongoing process of improvement, other legislative requirements, such as the English Language Intensive Courses for Overseas Students (ELICOS) and foundation program standards, will need to be updated.

The regulation and reporting requirement reviews outlined above also provide clear direction for the future of quality assurance and international education in ensuring the system is progressive, efficient and effective.

The current review of the ESOS framework seeks to address these broad objectives by:

- reducing burdens on education institutions offering courses to international students by ensuring government and statutory agencies request only the information they genuinely need and use to ensure Australia's education system is of the highest quality and integrity
- ensuring a more efficient registration process for education institutions by streamlining domestic and international education standards and quality assurance frameworks
- increasing opportunities and flexibility for organisations to provide education in a contemporary manner that meets the needs of international students
- supporting the student visa system.

Through this discussion paper the department seeks your views and suggestions on potential changes to improve the ESOS arrangements. Your views will be critical to shaping and informing direction on future changes. Your comments on other issues or matters that will support the effective implementation of any changes are also welcome.

**Written comments on this discussion paper
should be provided by
Friday, 31 October 2014
to the following email address:**

ESOS-Policy@education.gov.au

Summary of issues raised by stakeholders

The Department of Education undertook initial consultations with stakeholders, including peak bodies and government agencies, from March to May 2014. This process has helped identify the main issues of concern and opportunities to improve and deregulate the ESOS legislative framework.

There is strong support from stakeholders for retaining ESOS as a demonstrable and contemporary statement of Australia's commitment to providing a high-quality, safe and competitive education system for international students. While it was clear during the department's initial consultations that ESOS was highly valued, it was also evident that the current arrangements and one-size-fits-all approach in some elements of the ESOS framework need to better reflect the diversity of institutions in higher education, vocational education and training, ELICOS and foundation programs, and schools.

National and state and territory quality assurance agencies identified the following issues that as their priorities in improving the ESOS arrangements:

- streamlining of decision making powers and allowing more discretion and flexibility in decision making and enforcement so that quality assurance agencies can focus on areas of high risk
- removal of duplication between the 'domestic' and 'international' standards assessment and related quality assurance processes within agencies, which can complicate the accreditation and registration process and result in time delays and higher costs for education institutions
- elimination of different timeframes between the domestic and international processes for registration, which cause unnecessary repetition of processes and requests for information.

Peak bodies nominated the following issues as requiring attention in reviewing the ESOS arrangements:

- unrealistic and unnecessary reporting timeframes
- excessive manual data entry requirements
- the restriction on education institutions taking more than 50 per cent of tuition fees for a course before a student commences
- the requirement for a designated account
- the requirement to specify exact study periods and tuition fees in written agreements and on PRISMS
- limitations on different modes of education delivery through inflexible requirements that do not reflect advances in technology or changes in pedagogy—for example, online learning and work-based learning
- the transfer of students from one education institution to another before they have completed six months of their principal course
- guidance on appropriate and adequate welfare arrangements for students aged under 18
- high registration and associated charges for education institutions to meet certain obligations.

Specific stakeholder views are outlined in the following sections under common issues. After consideration of these views and the department's own policy analysis, several proposals are put forward under each of the main issues raised for further consultation.

Proposals for the reform of the ESOS framework

Streamlining quality assurance agency processes

The proposals described below are intended to deregulate the current system by supporting a simpler and seamless approach to the accreditation and registration of institutions providing education and training to international students.

Simplifying administrative arrangements

Stakeholder views

The ESOS Act was established in 2000 in a very different environment, when quality assurance and registration processes largely rested with the states and territories. At the time there were concerns about inconsistencies in processes between the different jurisdictions. While ESOS largely addressed this by creating a single structure for international education quality assurance and registration, the more recent establishment of TEQSA and ASQA has again changed the overarching structure. Stakeholders believe there needs to be greater cohesion across the domestic and international quality assurance frameworks, in particular in applying the standards and undertaking registration processes, to create a more seamless system.

TEQSA and ASQA suggested several ways to better align their processes under the *Tertiary Education Quality and Standards Agency Act 2011* (TEQSA Act) and the *National Vocational Education and Training Regulator Act 2011* (NVR Act) respectively with the ESOS arrangements. For example, the ESOS Act gives a number of decision making powers to the Minister and the Secretary of the Department of Education, and these powers are delegated to TEQSA and ASQA. A number of other separate functions are also performed by TEQSA and ASQA as designated authorities under the ESOS Act. This creates dual roles for TEQSA and ASQA: one in assessing and the other in approving an application for registration. Better alignment of these processes so that applications can be processed more efficiently was also strongly supported by other stakeholders.

Stakeholders also raised the issue of different registration periods for domestic and international education, and the need to allow for extensions of registration deadlines. TEQSA and ASQA could then undertake domestic and international registration activities at the same time, thereby avoiding the duplication of requests for information from education institutions.

TEQSA and ASQA suggested there should also be more consistency between the monitoring provisions of the ESOS Act and those in the TEQSA Act and NVR Act—for example, that ESOS more clearly recognise the need to carry out assessments and audits.

These suggestions from the quality assurance agencies would also help address the broader concerns of the international education community by creating a more seamless system for quality assurance and registration.

However, in changing the balance of powers in the ESOS Act the department believes it is also important to ensure that appropriate checks and balances are in place. It is therefore also proposed that the Minister be able to give a direction to the national quality assurance agencies under the ESOS Act to guide their focus in areas of priority. This is consistent with ministerial powers in the TEQSA Act and the NVR Act. It is not proposed to change the powers of the Secretary or Minister in relation to the making of standards (including the National Code), legislative instruments and the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS).

Proposed changes

- 1 Amend the current legislative arrangements to simplify decision making powers and responsibilities by directly providing rather than delegating some powers to TEQSA and ASQA. This will also simplify the registration and assessment process for ELICOS and foundation programs.
- 2 Allow quality assurance agencies to deem compliance with ESOS standards if equivalent domestic standards are met.
- 3 Amend the registration period in the ESOS Act to ensure it allows more flexible registration periods and extensions of registration timeframes, in line with domestic registration timeframes.
- 4 Provide a 'check and balance' power to the Minister responsible for ESOS to direct TEQSA and ASQA in relation to the performance of their functions and the exercise of their powers under the ESOS Act, in consultation with other relevant ministers where appropriate.
- 5 Amend the ESOS Act and the National Code to enable quality assurance agencies to consider additional relevant material gathered through other registration processes in assessing CRICOS registration.
- 6 Amend the ESOS Act to increase consistency in compliance and enforcement powers under ESOS and domestic legislative frameworks.

Reviews of decisions by quality assurance agencies

Stakeholder views

Under the ESOS Act the formal review of decisions made by quality assurance agencies is through an application by an education institution to the Administrative Appeals Tribunal. These review arrangements can result in considerable time being taken to resolve a matter. TEQSA and ASQA suggested including powers in the ESOS Act that allow quality assurance agencies to undertake an internal review if an education institution disagrees with a decision, as a first option. This would be consistent with relevant provisions in the TEQSA Act and the NVR Act.

Proposed changes

- 7 Amend the ESOS Act to allow an education institution to seek an internal review of decisions made by the relevant quality assurance agency prior to application to the Administrative Appeals Tribunal.
- 8 Require publication of information regarding the quality assurance agency's internal review approach and process.

Reducing the reporting burden

Stakeholder views

All stakeholders raised concerns about data and information requirements under the various quality assurance processes for domestic and international education. The *Review of Reporting Requirements for Universities* proposed a number of changes to ESOS, in particular better recognition of the risk profiles of education institutions in determining appropriate reporting requirements. The Government has accepted all of the report's recommendations. The Government's response to the review includes a commitment to streamlining or removing Tuition Protection Service (TPS) default reporting requirements and streamlining data collections among higher education institutions.

The *Review of RTO VET Data Reporting Requirements* was released in April 2014. This report found that there were a number of opportunities to improve, streamline and standardise data reporting in PRISMS.

While these reviews were specific to the delivery of higher education and vocational education and training, the adoption of their recommendations will also result in fewer data requirements of schools, and ELICOS and foundation programs institutions.

As part of the review of ESOS the department is separately reviewing the range of data items currently required to be reported in PRISMS and on CRICOS. A number of lower value data items have been identified as being unnecessary. The culling of unnecessary reporting requirements will continue, in consultation with relevant stakeholders.

Proposed changes

- 9 Streamline the student default reporting process in PRISMS to align with the 14-day reporting timeframe, consistent with the proposed policy changes to Tuition Protection Service (TPS) (see below), to allow easier reporting of student defaults through the student course variation process.
- 10 Provide data upload facilities and links between PRISMS or CRICOS and other data systems to decrease manual entry and increase data quality.
- 11 Standardise data elements to assist with data collection and reporting, including utilisation of information provided across different data collection systems.
- 12 Remove redundant data items from PRISMS and CRICOS.

Minimising Tuition Protection Service requirements

Stakeholder views

The TPS was established in 2012 to protect the consumer interests of international students. The TPS steps in when the education institution cannot or refuses to meet its obligations to the student. It assists the student to either complete their studies in another course or with another education institution, or to receive a refund of their 'unspent' tuition fees.

A number of risk management measures were included in the TPS provisions to ensure it would continue to be viable and sustainable. These included requirements that education institutions:

- be limited to collecting no more than 50 per cent of tuition fees from a student before they commenced their study
- maintain a designated account in which to hold 'prepaid' fees
- specify the length of each study period in written agreements and the tuition fees paid for each of those study periods
- report within three days if the education institution defaults and within five days if the student defaults.

A number of stakeholders have indicated that they believe these restrictions are excessively burdensome. In particular stakeholders consider the limit on fees paid prior to a student commencing to have a significant impact on an education institution's cash flow. There is an additional administrative burden in issuing invoices to students for further amounts. Also, some students are unable to pay for the full course, even if they want to. For example, paying full fees up front is often preferred by scholarship students from other countries. Some stakeholders also indicated they believed some caution was needed in relation to removing these requirements. The TPS Director, for example, indicated that any potential impacts arising from the removal of this requirement, including on the sustainability of the TPS, need to be carefully considered.

Proposed changes

- 13 Change the requirement that all education institutions be subject to the 50 per cent limit on the collection of tuition fees prior to commencing a course.
- 14 Amend or remove the requirement to maintain a designated account for all education institutions, for instance making it a condition of registration for fewer education institutions.
- 15 Remove requirements to identify study periods in the ESOS Act.

Increasing flexibility in education delivery

Stakeholder views

The National Code includes a number of provisions that seek to ensure students meet their visa obligations while studying in Australia. These include:

- completing a course within a certain period of time
- monitoring the course progress and attendance of a student
- other obligations on students when they cancel or defer their enrolment.

Stakeholders have indicated that this approach no longer reflects the considerable developments to education delivery over the last few years, largely due to advances in technology and innovations in pedagogy.

During consultations several peak bodies raised concerns about the National Code's approach to online learning. They see as an impediment the restrictions on students undertaking more than 25 per cent of their total course by distance and/or online learning and on an education institution enrolling a student exclusively in distance or online learning units in any compulsory study period.

Peak bodies also questioned the limitations on work-related training, which they consider do not allow for mentoring or internships, or the acquisition of the indirect or 'soft' skills necessary to prepare students for future employment. Several also raised concerns about the restrictions on student attendance and the implication that study should involve primarily face-to-face, location-based learning for international students in contrast to what might be offered to domestic students.

Several stakeholders also commented on attendance monitoring provisions in the National Code. Schools stakeholders noted that in their case these limits may actually be too low; other stakeholders stated the limits did give sufficient scope for innovative education for international students.

Proposed changes

- 16 Amend the National Code to increase flexibility and discretion in the use and allowable amount of online and distance learning, within visa requirements.
- 17 Amend the National Code to broaden the work-based training or work-integrated learning provisions.
- 18 Amend the National Code to allow course progress to be deemed by the relevant quality assurance agency as sufficient for meeting visa compliance requirements where appropriate.
- 19 Amend the National Code to allow existing practices for monitoring attendance to be deemed to satisfy the requirements under the National Code where appropriate.

Transfer of students

Stakeholder views

The transfer of students from their original education institution to another was raised by a number of stakeholders from several perspectives. Primarily this issue has been associated with standard 7 of the National Code, which is based on a previous Department of Immigration and Border Protection restriction on students wanting to transfer to another education institution at the same course level.

Standard 7 restricts student movement by outlining a process for ensuring that a new education provider does not knowingly enrol a student already enrolled with another education institution prior to the student completing six months of their principal course. There are exceptions to the restriction of movement, including in circumstances where the original education provider has ceased to be registered or where it has provided a letter of release.

Standard 7 also requires education institutions to have and implement a documented student transfer request assessment policy and procedure, which must be available to staff and students.

This policy must specify the circumstances in which a transfer will be granted and state what it considers are reasonable grounds for refusing a student's request to transfer.

International education institutions and peak bodies indicated that their concerns about student transfer relate mostly to costs. They need to be able to recoup their investment in recruiting international students and acquiring the necessary resources to run the course, as well as pay administrative costs and agent's fees. If a student or students transfer before a reasonable period elapses, stakeholders suggest that there can be a significant financial loss. For smaller education institutions this may be a more significant issue, as those with fewer students can suffer a proportionately greater financial loss if they lose a number of students and cannot fill vacant places.

There is also the issue of whether the standard 7 restriction interferes with an education institution's ability to determine its own reasonable contract terms when entering a written agreement with a student. Some stakeholders questioned whether it is more appropriate for education institutions to use their written agreements to articulate a cancellation policy that more accurately reflects their individual costs. This was considered particularly relevant given the diversity of international education institutions in size, entity type, capacity and service offered.

Some stakeholders suggested that the six-month period should be extended to 12 months to provide even greater surety for education institutions. Others indicated that this would not resolve their concerns and may further exacerbate problems, in particular by significantly reducing student choice. The restriction on completing six months of the *principal* course means students are often locked into pathway courses as well.

All stakeholders mentioned the role of education agents as a factor in students' choice of education institution and course, as well as in students transferring to another provider. Several suggested that agents were actively recruiting (or poaching) international students onshore.

Several stakeholders also suggested that access to streamlined visa processing was increasing international student numbers and that sometimes students were influenced by perceived visa outcomes. They commended recent information campaigns by the Department of Immigration and Border Protection to ensure the international education community and students understand their obligations and responsibilities under streamlined visa processing arrangements.

Proposed changes

- 20 Amend standard 3 of the National Code to more clearly require a written agreement to include a cancellation (currently refund) policy in the event of a student cancelling an enrolment or transferring to another education institution.
- 21 Amend the student transfer process in standard 7.
- 22 Amend standard 4 of the National Code to require education institutions to enter into a written agreement with each education agent whose services it uses (as opposed to 'each education agent it engages to formally represent it').
- 23 Consider whether further information on the use of agents should be provided in addition to the current requirement for the publication of agent names and details on an education institution's website and the voluntary requirement in PRISMS for education institutions to give details of an education agent for each enrolment.

- 24 Support an industry driven shared set of principles or code of ethics for education agents. This may include an industry-led system for recognising formally trained, high-quality, ethical and suitably qualified or knowledgeable education agents (rather than a formal registration system).
- 25 Support more options for training and informing education agents of their obligations to students.

Welfare of students aged under 18

Stakeholder views

The safety and wellbeing of younger international students is of paramount concern to international education stakeholders and government agencies. Stakeholders support the role of the National Code in providing guidance on good practice and standards that apply nationally to all education institutions responsible for students aged under 18.

Several stakeholders indicated during our consultations that their priority is clarifying appropriate welfare arrangements for international students under ESOS. This includes ensuring adequate accommodation and support for younger students. During consultations both school groups and state and territory agencies raised concerns about the term 'suitable' accommodation in the National Code. Stakeholders also highlighted the importance of recognising other relevant guidelines outside of the National Code and recommended that ESOS should acknowledge these where appropriate.

Schools stakeholders also requested changes to ESOS that reflect their expertise in delivering education to younger students. They argued that their practices and processes were designed around the needs of students aged under 18 and that, because this was their core function, the requirements of ESOS were redundant in some areas. For example, the duplication of attendance requirements was considered unnecessary.

State and territory agencies raised concerns more generally about ensuring welfare for children aged over 18. The Migration Regulations do not specify welfare arrangements as a visa requirement once the child turns 18. However, there remains the discretion for schools to make welfare arrangements when the student turns 18 if they believe it is necessary.

Another concern raised during consultations was in determining who should take responsibility for students aged under 18 during periods when welfare arrangements were not clear. The TPS Director highlighted cases where welfare arrangements break down when an education institution closes and no alternative education institution has been found in which to enrol the student at that time.

Proposed changes

- 26 Amend the National Code to clarify requirements and responsibility for the welfare of international students aged under 18, including clearer references to supervision, accommodation as 'adequate and appropriate', health and well-being, and welfare arrangements.

- 27 Clarify that responsibility for ensuring appropriate welfare arrangements for a student remains with a provider until the student commences a course with another provider, regardless of the date from which the transfer is accepted.

Working with stakeholders to produce a practical and accessible National Code and explanatory guide for ESOS

Stakeholder views

Several stakeholders noted the diversity of the international education community and that the provisions in ESOS had to take account of the differences of our education institutions—higher education, vocational education and training, schools, ELICOS and foundation programs. Once the changes to ESOS were clear, stakeholders expressed a desire to work with the department in workshop forums to develop guidance material and supporting information that is succinct and relevant.

While they support the current standards in the National Code, stakeholders want these to be streamlined and simplified. Quality assurance agencies noted that the standards in the ESOS National Code and domestic standards should be consistent and complementary.

Proposed changes

- 28 Remove redundant provisions in the National Code.
- 29 Develop a simpler and clearer explanatory guide and other supporting material for ESOS, in collaboration with stakeholders, with sector-specific examples.
- 30 Amend the ESOS Act to better reflect the purpose of the National Code, its contents and the changes proposed in this discussion paper.

Registration charges

Stakeholder views

The existing registration charging arrangements set out in the *Education Services for Overseas Students (Registration Charges) Act 1997* (Registration Charges Act) took effect on 1 January 2012. The Entry to Market Charge was introduced to replace the Initial Registration Charge and was designed to support the monitoring of new entrants to international education. The overall effect was to reduce the costs associated with registration charges from what they were previously.

However, some peak bodies consider that the charges remain too high, particularly when additional charges are imposed by quality assurance agencies to recover costs for their registration processes. Further, stakeholders believe there are some circumstances in which an Entry to Market Charge should not be necessary—for example, if there is a short break or simple change in registration status. Stakeholders argue the need to recognise that some institutions may change registration circumstances but have a good track record of delivering international education, meaning they should not be treated as new entrants.

Other issues raised by stakeholders in relation to registration charges, including that some types of private education institutions should be exempted, will be considered in a review of cost recovery processes at a later date.

Proposed change

- 31 Amend the Registration Charges Regulations to include a provision that allows for an exemption from the Entry to Market Charge for a class of education institutions with an appropriate history of education provision and CRICOS registration, and no adverse compliance record.

Consultation

The department has greatly valued the opportunity to engage with stakeholders and other agencies early in the process of improving the ESOS framework. Initial consultations and discussions held with the following stakeholders during March and April this year form the basis of the issues and potential responses put forward for consideration in this discussion paper:

- Australian Council for Private Education and Training
- International Education Association of Australia
- Universities Australia
- Council of Private Higher Education
- TAFE Directors Australia
- Independent Schools Council Australia
- English Australia
- state and territory government departments and agencies
- Department of Immigration and Border Protection
- ASQA
- TEQSA
- TPS
- Australian Government Schools International
- Overseas Students Ombudsman
- Council of International Students Australia.

The department also invited written contributions from these stakeholders, and received submissions from Universities Australia, the Independent Schools Council of Australia, the Australian Council for Private Education and Training, English Australia, TPS, TEQSA, ASQA and the Overseas Students Ombudsman.

Next steps

The department is keen to hear from all stakeholders on the proposals contained in this discussion paper. Written submissions are required by **Friday, 31 October 2014** and should be sent to

ESOS-Policy@education.gov.au.

Feedback on the paper will be considered prior to finalisation of any proposed changes to the ESOS Act or the National Code. Impacts arising from the proposed changes will be assessed to ensure that the benefits are clear and the impacts on students and education institutions are understood and minimised.

Any amendments to the ESOS Act will need to be considered by Parliament as part of usual legislative processes. It is expected that changes to legislative instruments would also be required to support the amendments to the ESOS Act.

Work on redrafting the National Code and the explanatory guide and supporting material will commence following the consideration of feedback on the proposed changes outlined above. It is expected that consultation on a revised National Code will occur late in 2014 and early in 2015. Possible changes to the ELICOS and foundation program standards will also be considered at that time.

An implementation plan will be circulated as a part of this process, covering training, advice and guidance material on the changes to ESOS.