



Feedback on proposed amendments to the ESOS Act to improve the regulation of supplementary courses

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Overview

TAFE Directors Australia (TDA) thanks the Department of Education, Skills and Employment for the opportunity to provide feedback on the proposed amendments to the ESOS Act to open opportunity for student visa holders to take up supplementary courses and micro credentials.

We note the purpose of the amendments is to provide international students with the opportunity to gain qualifications in the form of tickets or certificates needed for entry into employment without compromising the obligations that they only undertake their primary qualification.

We note the proposed amendments will:

- I. narrow the definition of 'course' in the ESOS Act to mean the primary course and thereby open up opportunity for international students to take up supplementary training without compromising their visa status or impacting their primary provider; and
- II. give the Minister responsible for international education the power to exempt certain courses from ESOS requirements so they can be taken up from across the VET sector more generally.

TDA supports the objective of the amendments and confirms the benefits it would bring to international students and employers. There appears, however, to be some unintended consequences and risks stemming from the proposed amendments as they are currently framed. Unchecked, international students can game the system by taking up courses from the broader sector to substitute into their primary course, at significant savings. Equally, these students, who are keen to work, could be exploited to take up courses that may not necessarily be required for entry to work. Students also lose basic protections offered through ESOS and regulated CRICOS providers.

Overall, the broader risk is compromising the operation of international education for the VET sector, particularly for providers which dedicate their efforts to holistic and quality courses.

While supporting the intent of the amendment, TDA suggests a more tailored implementation involving:

- limiting the supplementary courses to be delivered by CRICOS registered providers;
- implementing a consultation mechanism for determining supplementary courses to ensure that the requirements for entry to work are genuine and substitution into the primary qualifications is limited;
- putting additional safeguards in place such as limits on the volume of supplementary courses;

- implementing supplementary changes to VET qualifications policy that otherwise insists on credit recognition across any Registered Training Organisation (RTO) of completed national courses that gives RTOs the option not to recognise them; and
- staging the new measures so the implications can be monitored, particularly in respect of the number of supplementary courses.

As a follow-on measure, enrolments and activity need to be closely monitored. On the basis supplementary courses are only delivered by CRICOS providers PRISMS should be adjusted to record this activity specifically, If not, the mainstream VET reporting must record the supplementary activity, which can be tracked at the student level by USI.

Further, the concurrent COE functionality in PRISMS should be decommissioned as the supplementary courses which triggered this change will be monitored in different ways, as above, and the current functionality is being exploited by some providers enrolling students in new 'primary' courses with no regard to ESOS requirements.

Broader Impact on VET International Sector

While acknowledging the need for such a measure to assist international students to access job opportunities it is worthwhile contemplating its potential operation within the VET sector.

VET operates a system of national qualifications that can be delivered in a modular fashion. As a consequence, there are high rates of single-unit take-up and mobility across providers by students. While it is difficult to foresee behaviours in the sector several could emerge. Firstly, International students may pick up units and ask for credit in their primary qualification, driven by the substantially lower cost of these courses in the domestic market. Due to their broad use across the labour market, mainstream providers offer these courses at high volume and low cost. Secondly, providers are likely to see the business opportunity and push these courses and savings to the detriment of the overall benefit of international students in terms of visa and other compliance.

All round, this puts pressure on CRICOS providers and the viability of their mainstream international activities. This is exacerbated as the regulatory system is limited in being able to oversight the full extent of this activity, leaving an open field for exploitation.

It is worth noting under this proposal that the international business model is not put at risk for higher education in the same way for VET providers. Higher education providers each deliver unique qualifications and hold the power for recognition.

The rest of this submission outlines suggestions for moderating this risk.

Only CRICOS registered providers should be entitled to deliver supplementary courses

TDA suggests that the supplementary courses can only be delivered to international students by CRICOS providers.

Despite current and prospective regulation reform in the mainstream VET sector there are still too many stories of training that falls short of requirements. This is likely to be pronounced in the supplementary courses proposed as they are often high-volume low-cost courses to facilitate safe entry to occupations. With over 4 000 registered providers and over 2 million Australians undertaking

this form of training it is near impossible to guard against, as students demand it and competition puts pressure on providers to cut corners.

The ESOS Act has the intrinsic value of ensuring that education providers delivering courses to international students have robust processes and procedures in areas such as marketing, recruitment and enrolment, student support, student transfers, complaints and appeals. CRICOS registration is also a way to ensure that education providers are fully cognisant of the protection needed toward their international student cohort, including cultural inclusion and well-being.

The discussion paper identifies four key reasons to move the supplementary courses from the regulatory realm of the ESOS Act:

- the additional administrative and financial investment needed to maintain CRICOS registration;
- the need for students to have access to a broader range of providers to access the training most likely needed for access to job opportunities;
- students being denied opportunities to pursue their personal interests while studying in Australia; and
- potentially distorting eligibility assessment for mainstream student visas.

TDA argues that none of these reasons hold under scrutiny:

- the risks to international students in opening up supplementary courses to non-CRICOS providers outweighs the protections offered to them through the CRICOS regime, and helps in maintaining the reputation of the VET sector for international students;
- CRICOS providers in total are likely to have sufficient coverage and scale for the supplementary courses anticipated to be needed by students;
- international students can pursue personal interests outside of the CRICOS regulatory system and accredited training; and
- it is most unlikely that a student applying for a supplementary or CRICOS registered short course would be approved for visa purposes.

Furthermore, dual track enrolments inevitably opens the door for students and providers to game visa provisions, or at least it complicates and therefore clouds compliance by providers and monitoring by regulators against the intent of international education policy.

The risks of opening the international student market to providers that don't need to meet the CRICOS requirements are significant, as follows:

- non-CRICOS registered providers are unlikely to be aware of the specific circumstances limiting the enrolment of international students in supplementary courses and may inadvertently lead students to violate visa conditions;
- international students may not be aware that they are violating their visa conditions and obligations towards their primary provider;
- Non-CRICOS providers are unlikely to have the support mechanisms in place expected for dealing with the international student cohort; and
- Regulators would have less information and tools at their disposal to target compliance to protect the education integrity of courses for international students.

Overall, the obligation on CRICOS providers to protect the interests of international students is compromised as there will be activity by students outside of their purview, yet student behaviour may count against the provider's rating for international student purposes. In addition, students may not

be aware of the implications of their choices which impact their visa conditions and are likely to push back on their CRICOS provider for restitution.

Selecting supplementary courses

TDA supports the proposition of exempting some supplementary courses from primary course provisions under ESOS, however, they need to be selected carefully. In the main, only courses deemed as mandatory for entrance to job opportunities should be selected.

The main courses identified by the TAFE network as priority are:

FOOD AND HOSPITALITY

Responsible Service of Alcohol

SITXFSA001 Use hygienic practices for food safety (Food Handlers Course)

SITXFSA002 Participate in Safe Food Handling Practices (Food Safety Supervisors)

HORTICULTURE & AGRICULTURE

AHC30616 AusChem AgVet Chemical Users Course

TLILIC0003 Licence to operate a forklift truck

CONSTRUCTION & TRADES

CPCWHS1001 Prepare to work safely in the construction industry

RIIWHS202 Enter and work in confined spaces

Plus First Aid, CPR and recent COVID-19 infection control skillsets.

The discussion paper refers to micro-credentials as possibly in scope as supplementary courses. The recent review of the AQF recommended that for micro-credentials to be recognised they must be accredited within regulatory systems. TDA supports the inclusion of micro-credentials as supplementary courses on this basis. Non-accredited micro-credentials are readily available now to international students, so there is no need to cover them within this proposed policy.

If, however, the intent in the discussion paper is to include non-accredited micro-credentials in the scope of the scheme, TDA would seek further dialogue. The development of these micro-credentials is disrupting regular paths of learning to recognition by allowing non-accredited providers to offer close to RPL-ready products and learning. The disruption may be justified but there must be some broader consideration of the risks to students in the labour market and the stability of accredited supply. These issues apply to international students as much as domestic students.

Consultation and Transparency

The selection of supplementary courses should be subject to a transparent process and consultation. The selection of a course as supplementary must be able to be justified on the grounds it is a mandated requirement for entry to a job, or other grounds in extenuating circumstances.

Supplementary courses should be capped by nominal hours

As the primary purpose of international education is for students to achieve their primary course, close limits should be placed on the workload of supplementary courses.

Thought should be given to making sure that the secondary courses do not adversely impact primary course progress. International students are required to undertake a minimum of 20 scheduled contact

hours per week as part of their student visa conditions and they are also allowed to work no more than 40 hours per fortnight. There is a risk that students over-commit themselves by taking on supplementary courses.

The amendment proposes a cap on the number of units of competency per calendar year – up to five. Units of competency range in study load and hours. The current proposal may end up with high hour units being categorised as supplementary and thereby lead to excessive workloads on students.

Rather than using the number of units of competency as the cap, TDA recommends nominal hours be used. Alternatively, a limit on the number of units of competency and a cap on nominal hours could be put in place.

Work placements need careful consideration

An increasing number of VET units of competency require work placement or work-based assessment for attainment. The selection of the units need to take into account that these requirements could give rise to exploitation of international students. Feedback from the Fairwork Ombudsman indicates exploitation is already at unacceptable levels and it should not be exacerbated by the units selected under this proposed scheme.

Supplementary courses need to be monitored and recorded

Given the uncertain impact of this proposed change, TDA recommends it be implemented only when robust monitoring is in place.

If TDA's proposal to limit suppliers of supplementary courses to CRICOS providers is accepted then PRISMS needs to be adjusted to record this activity specifically. This is a critical tool to ensure the integrity of the international market and protection of the interests of international students. If this does not get taken up then mainstream VET reporting must be able to record and separately identify this activity for each international student, which can be facilitated through the USI. Student level tracking will be crucial to ensure there is compliance. Particularly, it is inappropriate to pass this responsibility on to the CRICOS provider of the primary qualification, given they will not be aware of the activity of the student.

Closing the concurrent COE loophole

TDA has previously raised the issue of providers exploiting the PRISMS functionality allowing for concurrent COEs. Initially created for allowing for international students to access supplementary courses (in the same way as this proposal does) the functionality has been used by some unscrupulous providers to transfer international students without the knowledge or letter of release from the principal provider, including during the initial six month study period. Now that a new mechanism is to be put in place TDA recommends that this functionality be decommissioned from PRISMS.

Staged approach

With the proposed changes likely to lead to significant impacts in the sector, TDA recommends a staged approach. For example, the scheme could start with a limited number of pilot courses (for example RSA and the COVID-19 infection control training) implemented by trusted providers such as TAFEs. This would allow for unintended consequences to be identified and policies refined prior to full implementation.

Enabling CRICOS registration charges to be refunded

TDA supports the proposition to refund CRICOS registration charges but calls for the Department to provide a clear list of special circumstances criteria.

Broader changes to the VET Sector

Nationally portable qualifications in the VET system imply that learning certified as competent by any RTO is equal in value across any provider and therefore must stand as credit for the student on transfer between providers. Unfortunately, there is too much evidence and feedback from within the sector that this is not the case.

This scheme risk exacerbating this dilemma in the VET sector. Until there are some broader policy changes in VET accreditation and regulation policies, compulsion to credit units from other providers can needlessly compromise quality of the receiving provider, in this case the primary CRICOS provider.

TDA recommends that before the scheme is implemented each CRICOS VET provider is given the option whether or not to recognise the unit. This offers some protection to the primary provider against gaming for part qualifications which could arise from the scheme. This may require changes to the RTO standards.

This gives rise to wider changes that need consideration within the international VET market. VET international education policy should allow for more diversity in qualifications in order to meet the needs of overseas students. Current VET qualifications are constructed on the needs of Australian industry and employment conditions and occupational regulation, which do not necessarily align with the needs of international students or the capabilities they would seek to repatriate to their home country. Distinct qualifications for CRICOS purposes should be able to be developed for delivery to international students, similar to the approach in higher education. This would add diversity to the international VET sector and give conditions that would promote excellence in operations, similar to the aspiration of Australian skills ministers for the Australian VET sector generally.

These are issues that need broader consideration across the VET and International Education sectors.

Summary

In conclusion, the discussion paper states "The Australian Government's policy intent is to support and protect overseas students with regard to the course, or package of courses, for which their student visa was granted. This is because of the significant investment of money and time each overseas student makes in their Australian study experience and the value completion of their principal course and pathway of study has to their future opportunities".

TDA fully supports this statement and calls for careful opening of the system in ways that could affect the outcomes of the principal course, which is the key purpose of international students' presence in Australia. While there is undeniable value in allowing international students to undertake supplementary study, it has to be done in a way that doesn't put the quality and integrity of the current system at risk.

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