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# ESOS REVIEW 2022

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## TAFE Directors Australia submission

April 2022

TAFE Directors Australia (TDA) is pleased to make this submission in response to the discussion paper seeking feedback on the Education Services for Overseas Students (ESOS) Review published on 10 February 2022.

TDA is the national association for TAFEs and TAFE divisions of dual sector universities in Australia, the majority of which deliver a range of courses to international students, both onshore and offshore.

TDA has consulted with its members and makes this submission acknowledging that there were a variety of views in some areas. Many individual TDA members will submit their own responses.

### 1. Introductory remarks

Australia has been a leading international student destination for over 20 years. The international education sector has contributed significantly to the Australian economy. Short term benefits include tuition fees paid to Australian education and service providers and increased financial revenue through the multiplier economic effects of international students living in Australia. Long-term benefits are derived from improved social and cultural engagement with students on shore through the linkages built between Australia and other countries. Offshore partnerships have also provided enduring benefits.

Australia's post-COVID environment has shifted the discussion. The focus on what is a student, how delivery should occur and where, how many hours students can work, and the nexus between skill demands, migration, and study all now need to be considered. Therefore, it is timely for there to be a mature discussion of these elements, noting the diversity of views that exists.

As a safe, English-speaking destination renowned for its high quality of life and hospitality and an early developer of international education services, Australia has some inherent historical advantages. However, in a rapidly changing global education market more must be done to maintain Australia's position as a leading education destination and to ensure that international students get the best possible education experience within Australia.

The ESOS framework is one part of this discussion. It is an essential element of the system as it ensures the integrity and long-term sustainability of Australia's education offering to international students studying in Australia on a student visa. The ESOS framework protects Australia's reputation for quality education by setting out specific obligations for registered education providers welcoming international students as well as detailing protective measures such as tuition protection.

The current legislative framework regulating the delivery of AQF courses to international students in Australia is comprehensive. While it is timely to consider if the framework is still relevant to the rapidly changing context, any amendments need to maintain the focus on the quality of education and the lived experiences international students are seeking to gain from living and studying in Australia. It is also important not to add unnecessary administrative burden on Australian education providers.

TDA suggests that changes to the current framework are not always necessary. For a number of topics covered by this consultation, the current issues are more around the implementation of the existing regulation than around the framework itself. Not all the existing regulations are being systematically enforced. Therefore, the focus of the regulators should be on how to better enforce the regulations already in place.

Given that the ESOS legislation relates to the delivery of education to international students studying in Australia on a student visa, we have not considered in this submission non-accredited courses (except for ELICOS) and offshore delivery. However, this doesn't take away the importance going forward of non-accredited products such as microcredentials, Australian Government endorsed IST courses, and other non-AQF training offerings in complementing AQF qualifications as part of the Australian international education product mix. These courses are and should remain outside of the ESOS Act realm.

## **2. Expansion and diversification**

After nearly two years of significant disruptions related to the COVID-19 pandemic, the Australian international education sector is in a recovery stage. Much focus has been given in the National Strategy for International Education 2021-2030 to the regrowth of the sector through the expansion of online and offshore delivery. In this submission the focus is on the relevant aspects of the ESOS Act in relation to accredited courses.

Currently, Standard 8 of the National Code states that registered providers can offer overseas students up to one-third of their course online, with overseas students required to study at least one unit face-to-face in each study period. The flexibility given to providers

during COVID has been an important feature of the Australian Government's response to the pandemic.

Blended learning with components of face-to-face learning is consistent with the applied learning requirements of vocational education and training. TDA recommends that sustained flexibility in how the mix of online and face to face is achieved during a student's qualification has many benefits. Although some component of face to face is recommended, reinstating tight guidelines per study period limits the possibilities of innovation in delivery, especially in the early stages of study where much could be achieved through e-learning.

Fully online qualifications are not recommended as not only is applied learning required, but there are benefits for international students studying face-to-face and in person on campus with their domestic cohorts.

Increased flexibility of the ratio of online to face-to-face is beneficial. Providers should have a degree of discretion in how to achieve that mix. Strict percentages of online or limits to hours of online that is the same regardless of the course the students are undertaking should be dropped.

However, the risk of increased flexibility in delivery modes must be counterbalanced by monitoring of provider activity to ensure that genuine learning is occurring, and students are progressing appropriately.

### **3. Meeting skills needs and graduate workplace readiness**

Careful consideration should be given to how the link between international education and the needs of the domestic labour market is represented. Australia should ensure that the perception among prospective students is that the purpose of an Australian international education is about supporting them in their career aspirations.

A differentiation should be made here between international students working while studying and international graduates undertaking work in their field of expertise at the end of their studies. There are undeniable benefits for both international students and the Australian economy in international graduates working in areas of skills shortages in which they have completed their studies: in such an arrangement, international graduates can gain meaningful work experience in their field while alleviating workforce shortages in Australia.

There are mixed views among TDA members about the current policy of uncapped working hours. It is essential that all RTOs implement rigorous academic assessment of progression to ensure that students are achieving their primary purpose for being in Australia. The regulators must oversight those high-risk providers to ensure students are progressing. With

such controls in place, TDA's position is capped working hours are not needed, rather there should be monitoring of academic progression of individual students.

However, given the impact of COVID on the labour force it is acknowledged that a degree of flexibility is needed. International education must be about education first not filling labour shortages. Therefore, there is need for caution in how far the connection between international education and employment in Australia occurs. Lessons from the past must be remembered. There were known negative consequences to the sector, also there is a risk that the reputation of Australian education as a quality study destination will be diminished. Students may be motivated by migration outcomes over and above genuine desire to study. This has already been reflected in profiles of applicants applying to TAFEs since the announcement of the uncapped working hours during studies in late 2021.

A possible strengthening of regulatory measures within the ESOS framework could be introduced in the CRICOS course registration requirements. Education providers at the time of seeking registration of course/s on CRICOS should be required to demonstrate meeting the following criteria as part of gaining CRICOS course approvals:

- Evidence based assessment of their history of delivery to domestic students and graduate outcomes in filling occupations currently in shortage nationally;
- Evidence based assessment of their industry linkages and workplace learning programs for the courses they are seeking to obtain CRICOS registration.

Putting these strengthening initiatives and regulatory oversight in place would safeguard the sector against past known negative consequences of coupling course delivery in areas of skills shortages that align with Australian workforce needs.

ASQA and TEQSA should also be closely involved in ensuring the quality and integrity of delivery for courses linked to Australian workforce skill shortages. This will avoid issues faced by the sector in the past, including "visa schools" and increased student poaching through unethical provider behaviour.

Finally, linking international education and employment in Australia raises the question of how it will interact with the Genuine Temporary Entrant (GTE) requirement. GTE currently requires that all prospective students indicate their plan to return to their home country on completion of study and temporary visa and how that plan may respond to the skill needs and employment opportunities in their home country. The GTE requirement is currently the cornerstone of immigration assessment of applicants for an Australian student visa and in direct contradiction with the proposed measure of linking education and post study employment. There is a risk of high levels of student visa rejections and a dichotomy

between Australia's messaging to prospective students and the reality if adjustments to the student visa application criteria are not made.

Any decision in the area of student or graduate employment should be taken in a coordinated way by the Department of Education, Skills and Employment and the Department of Home Affairs.

#### **4. Supporting the quality of agent relationships**

Greater transparency around agent performance would be beneficial to the sector. At the moment, providers can only access performance data of agents in relation to their own students, with no visibility over the individual agent's performance beyond their institution. Education agents are often the first point of contact for prospective students and as such play an important part in influencing student decisions and could have a longer-term effect on the student's experience in Australia.

ESOS regulated written agreements may not be the most effective way to regulate agent performance and integrity. The solution is rather in increasing transparency of information and accountability. Education agents should also be held responsible for their activities the same way that providers and students are accountable.

The government has access to agent performance data and patterns of behaviour through PRISMS, which could be used to provide aggregated information (for example by sub-sector) to providers. Regulators could also strengthen the ESOS framework and mandate information that providers must include in PRISMS to enable transparency on an education provider's management and monitoring of its education agents, including transactional information in relation to each of its listed education agents. This would provide vital indicators on factors driving student and provider choice, including course transfers. Such data insights would identify providers and education agents thriving on international student enrolments through unethical practices and operating in breach of the current ESOS Framework and National Code of Practice for Providers of Education and Training to Overseas Students 2018 Standards.

Government led transparency measures shouldn't extend to agent commissions, which are commercial in confidence.

#### **5. Course transfers**

Onshore transfers of international students undermine the efforts of providers recruiting offshore and the integrity of the international education system, as many of the rules applied to offshore applicants, including GTE assessment, are not being enforced onshore. This has

led to a number of RTOs establishing a business model of purely onshore recruitment. A proportion of these providers entice international students, often with the support of onshore education agents, through excessively low fees and low study expectations and that may not satisfy educational or industry expectations. As flagged in the TDA-ITECA joint statement on Onshore Transfers in September 2021 and reiterated as part of the DESE Transfer Working Group, it is essential that these student transfer loopholes be closed, particularly the concurrent COE functionality on PRISMS.

Our recommendation is that the concurrent COE functionality on PRISMS, which has been widely used to circumvent the transfer restrictions between providers, should be tightened. One way to limit the unintended use of this functionality would be for the principal course provider be requested to approve any concurrent COEs within the restricted period on PRISMS.

It is also recommended to go back to the minimum transfer time without a letter of release of 12 months, as many of the transfer issues emerged when the 12-month threshold was decreased to the current 6 months.

The regulators should also undertake annual data performance reviews of provider PRISMS data and concurrent study enrolments. This would provide visibility of education providers and agents thriving on remuneration-driven behaviour spurring recruitment practices and directing students to courses and providers with high commission rates, rather than courses that best suit students' needs. Regulators could also monitor and evaluate an education provider's PRISMS and CRICOS course registration data. This could reveal poor practices through investigating cases where there are excessive variations in tuition fees recorded in CRICOS to the pre-paid fees recorded in student COEs on PRISMS.

The regulatory bodies should also be quicker to react to unethical behaviour, imposing timely punitive measures on RTOs breaching the existing regulations. The current auditing system should be reconsidered, as the desktop-based model is not effective in detecting poor performance in the sector. An additional measure that should be introduced is identifying regulation breaches in areas such as student attendance.

Additionally, any change to the AQF level and any significant change of field of study should lead to a new visa application to allow for the student's new circumstances to be reviewed.

However, it is not recommended the Department make any changes to the transfer restrictions for packaged courses as this would only increase transfers to unscrupulous providers attracting international students with excessively low fees and acceptance of non-attendance.

## 6. Written agreements

There is already a level of coherence in the legislation regarding student agreements. Standard clauses could be considered for some aspects of the student agreements.

## 7. English language

Australia already relies on internationally recognised English proficiency testing tools as part of the visa application process, which works reasonably well. Issues arise when students who haven't met English requirements offshore or who have come to Australia under a visa other than a student visa transition to an AQF course.

While there are concerns about a lack of consistency in the way some providers deem international students English proficient, that does not justify adding an extra requirement of English testing with an external entity. Additional testing requirements may be a deterrent for international students as they would represent an extra cost for them. They would also be an additional administrative burden for education providers.

One solution may be to better monitor as part of ASQA's audits the way RTOs are basing their decision on English language and requiring evidence that underlies this decision to be systematically uploaded into the system.

Independent English testing is of no benefit to the sector.

## 8. Additional comment - support services

TDA members provide wrap around support services with designated international student support teams, including availability of counsellors. TDA supports the position of Orygen in their submission regarding the need for all international students to be able to access counselling and mental health support services. These services are already in place across TDA members.