



Australian Government

Stronger, simpler, smarter ESOS: *supporting international students*

Final report—February 2010



Review of the *Education Services for Overseas Students (ESOS) Act 2000*



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The Hon Bruce Baird

Education Services for Overseas Students Act 2000 Review

The Hon Julia Gillard MP
Deputy Prime Minister and Minister for Education
Parliament House
Canberra ACT 2600

Dear Deputy Prime Minister

In August 2009 you asked me to review the Education Services for Overseas Students (ESOS) regulatory framework and report back to the Government with changes designed to ensure Australia continues to offer world-class, quality international education.

I am pleased to present you with my final report—*Stronger, simpler, smarter ESOS: supporting international students*.

This review was recommended by the Bradley Review of Australian Higher Education to take place before 2012. It was brought forward in the context of significant growth in the number of overseas students, the changing composition of the international student body and emerging issues in the sector, including recent attacks against international students.

Extraordinary growth in the sector, from 228 119 students in 2002 to 491 565 students in 2009 resulting in an industry worth \$17.2 billion in 2008–09, has enhanced Australia's cultural richness, strengthened diplomatic ties and delivered great economic benefit to Australia. It has also put a number of pressures on the sector in terms of education quality, regulatory capacity and infrastructure.

The recent attacks, predominantly on young Indian students, have saddened me as an Australian. I have a strong interest in Australia's successful multicultural ethos through my involvement in refugee issues, and it is extremely disappointing to see Australia's reputation as a safe and tolerant country damaged. I condemn these acts of violence.

In undertaking this review I considered the need for enhancements to the ESOS legislative framework in the four key areas set out in the terms of reference: supporting the interests of students, delivering quality as the cornerstone of Australian education, effective regulation and sustainability of the international education sector. I have also looked at issues of concern closely related to recent provider closures.

Following the release of my issues paper on 23 September 2009, I spoke to nearly 200 students and education providers from the tertiary, school and English-language sectors and other stakeholders at consultation forums. I also met with provider and student peak bodies, regulators, state and territory government officials, embassies, education industry bodies and Members of Parliament. The review received around 150 formal submissions and more than 300 people registered with the online discussion forum. I have also considered recommendations from the International Student Roundtable held in September 2009.

Concerns raised during consultations included reports of: false and misleading information provided by some education agents, poor quality education and training, gross over-enrolments, lack of appropriate education facilities, providers paying exorbitant commissions to education agents, limited financial scrutiny of providers, ineffective application and enforcement of regulation, low English language entry requirements, poor social inclusion of students in their institutions and the broader community,

inadequate complaints and dispute handling services and some duplication between Commonwealth and states and territories leading to confusion and unnecessary regulatory burden.

Many related issues raised were out of the scope of the review such as alleged workplace exploitation, migration and visa issues, deficient and expensive student accommodation, lack of transport concessions and health matters. Perhaps surprisingly, concerns around student safety and racism were rarely raised in student forums. Nevertheless, these are important issues and have formed part of my considerations.

While the concerns were numerous, support for international education in Australia remains strong. Overwhelmingly there was acknowledgement of Australia's long-standing reputation for quality education and training: that the majority of providers are doing the right thing; that ESOS is a sound regulatory framework; and international students are, by and large, satisfied with their Australian education experience.

Individuals and organisations alike offered valuable, practical suggestions to deal with the issues facing the sector. These included how to improve education quality, tighten registration, create stronger, simpler, smarter regulation, inform and support student choices and enhance the student experience.

ESOS can play a major role in achieving these objectives and I have made specific recommendations within this report about how the legislative framework can be amended to do so.

However, ESOS can only do so much. Governments, providers, peak bodies, students, agents and the broader Australian community all have a role to play. They must work together to achieve these goals. Governments and providers need to reinvest in compliance and enforcement, infrastructure, student services and in the students' educational experience. There is an urgent need to develop, implement and enforce relevant and robust solutions to address those issues outside of ESOS, including student safety, accommodation, employment, transport and health matters.

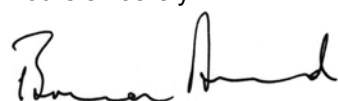
In providing you with my report I am mindful of the complementary processes taking place including the development of the Council of Australian Government (COAG) strategy for international students, reforms to the quality frameworks for the vocational education and training sector, the imminent establishment of the national regulators in both the vocational education and training and higher education sectors and the forthcoming transfer of the marketing functions of Australia's international education brand. With this latter development I caution that the focus of promoting Australia's international education needs to be about quality, not pursuing growth at all costs. I believe the initial separation of these functions is a first step in clearly articulating the Australian Government's various roles in international education and further consideration of how to support and gain the substantial public diplomacy benefits of this vital export sector.

I am confident that if all players within the sector take responsibility for their roles and make necessary changes now, Australia's reputation for offering world-class quality, international education will be restored and enhanced.

Thank you for engaging me to conduct this review. I am impressed with the dedication of good providers and the enthusiasm and obvious ability of the international students I have met.

I look forward to the Government's response to the report.

Yours sincerely



The Hon Bruce Baird, AM

26 February 2010

Executive summary

Australia's international education sector provides life-changing opportunities for international students, strengthens Australia's diplomatic relations, brings considerable benefits to our education institutions and builds on our already unique and successful multicultural society. In addition, international education is Australia's fourth largest export industry generating substantial income and jobs.

This review was conducted at a time of substantial challenge for international education. While recent unparalleled growth in the sector has brought undeniable benefits onshore and abroad, it has also resulted in damaging pressures affecting education quality, regulatory capacity, students' tuition protection and infrastructure. These pressures are adversely impacting on international students' experiences in Australia and Australia's reputation for international education.

This review examined what changes need to be made to ESOS, the legal framework for the delivery of education to overseas students in Australia, to ensure Australia continues to offer world-class quality, international education.

Extensive consultation with stakeholders across Australia found ESOS is considered a sound legislative framework which has served Australia's international education sector well. However, the lack of consistent and rigorous enforcement of the legislation generated significant concern. There have been reports of ineffective monitoring activities, complex and duplicative procedures and limited information sharing between government, providers and students. In addition, its tuition protection arrangements were considered in need of substantial revision to provide support to international students.

This report proposes a number of recommendations that aim to strengthen, simplify and streamline ESOS, which would in turn provide greater support for international students in Australia and protect Australia's reputation for quality education. Changes are also required beyond ESOS around student safety, access to transport concessions, accommodation and community engagement—key factors that contribute to a student's overall experience in Australia.

Supporting students

Adequately and appropriately supporting students in Australia is at the heart of the sustainability of the sector.

Recommendations to better support students include requirements for improved information prior to students coming to Australia and during their stay, an enhanced process to address the role of education agents, more support to study and live in Australia, including having somewhere to go when problems arise, and stronger consumer protection mechanisms.

When students are making decisions about moving to Australia to study they require **clear, accurate information**. They need to be able to choose which city they would like to live in, what type of provider they wish to enrol with, and what courses they would like to study. Students need to be able to compare consistent information to make the most accurate choices. Students also need to be aware of what it is like living in Australia: culture and customs, services and resources as well as protections, rights and responsibilities.

Currently some providers and overseas education agents are issuing incomplete, irrelevant, old and/or misleading information to students. There is a need for strengthened requirements for information provision about learning and living in Australia by both providers and governments and increased

emphasis on providers taking responsibility for their agents' actions. Once in Australia, international students need ongoing access to comprehensive, informative and relevant orientation programs and ongoing access to orientation information.

Students need somewhere to go for support and advice, referral services, information on how to engage with the community and an avenue to have their voice heard. This review supports the International Student Roundtable recommendation and the suggestion from many students throughout the ESOS review consultation process to create **international student hubs** in all capital cities.

Even with improved information and support, there will still be times when international students have a complaint. Providers are already required to have suitable dispute resolution processes but the review considers the final step in this process—an independent, robust external **complaints handling process**—would be improved by mandating all providers use the relevant Ombudsman.

The recent dramatic growth in students coming to Australia, alongside the increase in vocational education and training (VET) providers offering a narrow range of courses linked to migration outcomes and sourcing students from a limited number of countries, has increased the risk of closures. This has put considerable pressure on the current tuition protection framework, with fears it is unsustainable. Consultation with key stakeholders and independent actuarial advice has informed the recommendation to replace the current arrangements with a **single tuition protection service**. This service would be fully funded by industry and could either be run by a Commonwealth body or outsourced and independently operated.

Protecting Australia's reputation for quality education

Whilst recognising the primacy of domestic education quality frameworks, recommendations have also been made to rebuild and assure Australia's reputation for quality education. This includes improved regulation of providers, enforcement of clear minimum standards and support for better integrated and automated systems for information sharing.

Education is important for domestic and international students alike and there is no need to duplicate education quality assurance frameworks already in place. However, more needs to be done to improve the link between ESOS and education quality assurance frameworks.

The **entry requirements** need to be strengthened for providers wanting to enter the sector. Changes need to be made to ensure providers have the financial resources to operate and a sustainable business model. They need to have the right capacity, capability and intent to operate successfully.

Risk needs to be better identified at entry into the sector and a range of indicators need to be used that go to the heart of whether the provider will be able to operate successfully now and in the future. This assessment of risk should guide whether the provider gains entry to the sector, and it should be used to test and scrutinise providers already through the gateway.

There needs to be a much stronger regulatory presence and the move to national regulators is a step in the right direction. However, there also needs to be **greater transparency** of regulatory activity so that both providers and students can monitor the level of regulatory activity and be informed by its outcomes.

Beyond ESOS

Migration-skewed demand has undoubtedly impacted on the reputation of our international education sector but the recent changes to general skilled migration will go some way to address this. Where possible, future changes should be grandfathered to soften the impact for students.

Beyond ESOS, Australia's international education reputation depends on how well we provide for the wellbeing of international students and their whole experience of studying and living in Australia. We need to ensure they are safe, have appropriate health insurance, have access to adequate and appropriate accommodation and are not being exploited by landlords or in the workplace. The development of COAG's strategy for international students is an important step in this regard. The inequitable treatment of transport concessions for international students by some state governments is strongly felt by affected students.

The recommendations and findings in this report acknowledge the challenging environment in which the sector is operating and are designed to build on what is working and improve those areas that are not.

Immediate implementation of the recommendations in this report will position Australia's international education sector for a sustainable future. All stakeholders—governments, providers, peak bodies, students, agents and the wider Australian community—need to play their part in delivering these much needed changes.

Recommendations and findings

Recommendations

Chapter 2—Enhancing Australia’s reputation for quality education

1. That ESOS be amended to require providers to demonstrate that the:
 - a. delivery arrangements for each course do not undermine the integrity of the student visa program
 - b. English language entry levels and support are appropriate for the course and, where relevant, the expected professional outcomes.

Chapter 3—Building a stronger gateway

2. That ESOS registration be amended to only allow providers to be registered and maintain registration if they have:
 - a. access to the financial resources to meet the objects of ESOS
 - b. a sustainable business model
 - c. the capacity, capability, governance structures and management to uphold Australia’s reputation for quality education and training to international students.
3. That ESOS regulators adopt a consistent, comprehensive risk management approach developed and maintained in consultation with stakeholders and experts to:
 - a. profile providers at entry to determine the level of scrutiny, evidence, tests and costs that apply at registration and through the period of registration
 - b. update every provider’s profile on a regular basis to reassess the level of scrutiny and tests that should apply.
4. That ESOS be amended to support better risk management by:
 - a. allowing conditions on initial registration and throughout the registration period so a provider can be subject to additional scrutiny and tests as their risk profile demands
 - b. limiting the period of registration for each provider.

Chapter 4—Stronger, simpler, smarter regulation

5. That ESOS be made stronger by:
 - a. introducing financial penalties for a broader range of non-compliant behaviour
 - b. establishing clear, objective and enforceable standards that providers must meet
 - c. ensuring resourcing levels for regulatory activities are adequate
 - d. publishing targets and regularly reporting on all regulatory activities undertaken.
6. That ESOS be made simpler by:
 - a. allowing national registration of providers with assessment of the suitability and capacity of individual courses at each location
 - b. supporting the principle that wherever possible each provider should have only one regulator
 - c. developing shared regulatory philosophies and business practices to ensure a consistent and effective approach to regulation.

7. That ESOS be made smarter by:
 - a. giving the Australian Government Minister for Education the discretion to exercise otherwise delegated powers where necessary, and authority to issue directions as to the consistent application of ESOS
 - b. ensuring the level of prescription in the standards is only that which is required to achieve the intent.
8. That ESOS be amended to specify that all providers must utilise a statutorily independent complaints body as their external complaints and appeals process, and amend the *Ombudsman Act 1976* to extend the Commonwealth Ombudsman's jurisdiction to include those providers without access to such a body.
9. That the *Migration Act 1958* be amended to enable a more flexible approach to the current visa cancellation requirements for students who are reported for failing to maintain satisfactory course progress or attendance.

Chapter 5—Ensuring accurate information and ethical recruitment

10. That ESOS be amended to ensure students can accurately compare potential study choices by requiring information from all providers relating to the:
 - a. history, scope, location and type of provider
 - b. student cohort
 - c. course, including entrance standards, costs, award and anticipated professional outcomes
 - d. academic and student support services offered
 - e. local employment opportunities, the accommodation situation in the locality and safety risks.
11. That the Australian Government expands the Study in Australia website to include a comprehensive international student manual, available in the languages of major source countries.
12. That ESOS be amended to restrict unethical recruitment practices by:
 - a. introducing financial penalties for providers whose offshore agents act unethically
 - b. implementing a unique identifier for each student
 - c. requiring all provider payments to agents to be contingent upon disclosure of the recruiting agent and their commission structure to both students and regulators
 - d. expanding the requirements of student written agreements to more completely describe the course, course costs, refund provisions and transfer limitations
 - e. prohibiting the payment of any commission or inducement to anyone for securing the transfer of any currently studying onshore international students
 - f. prohibiting a provider from enrolling a student who is currently studying with another provider and who has yet to complete the first study period of their initial course.
13. That the Australian Government should work with industry stakeholders and foreign governments to strengthen students' consumer protection rights in their home country; and continue to support the professional development of education agents.

Chapter 6—Supporting students in Australia

14. That ESOS be amended to require providers to demonstrate that they deliver a comprehensive induction program and access to information on a continuing basis that:
 - a. is reasonably adapted to the needs of their students
 - b. allows students to easily access the information on an ongoing basis
 - c. includes information on safety, student rights, and where to seek support in making complaints.
15. That the Australian Government, working in conjunction with states and territories, establish international student hubs in each capital city as a place for international students to seek information, access referral and advocacy services, build ties with the Australian community and strengthen the voice of international students to providers and government.

Chapter 7—Safeguarding students' interests: stronger tuition protection

16. That ESOS be amended to establish a single Tuition Protection Service that:
 - a. provides a single mechanism to place students when a provider cannot meet its refund obligations and as a last resort provide refunds
 - b. allows placement with any appropriate provider
 - c. makes the cost of being a member of a tuition protection scheme risk based
 - d. requires providers to regularly maintain student contact details in PRISMS and other information on a risk basis
 - e. removes providers having ministerial exemptions from membership of a tuition protection scheme.
17. That ESOS be amended to:
 - a. only refund the portion of the course not delivered or assessed when the provider fails to meet their obligation
 - b. establish that where a provider does not meet their refund obligations, this would be an issue in the fit and proper test for any future registration application.
18. That ESOS regulators impose conditions on higher risk providers that only allow the collection of 'course monies' as defined in ESOS.
19. That the Australian Government explores harmonising tuition protection arrangements for domestic and international students.

Findings

Chapter 2—Enhancing Australia's reputation for quality education

- i. Education Ministers should:
 - a. ensure the vulnerabilities exposed in the education quality assurance frameworks by unscrupulous international education providers are addressed
 - b. consider whether the current education quality assurance frameworks appropriately assure Australian education and training delivered offshore
 - c. ensure regulators and policy makers actively take into consideration student outcomes and industry benchmarks, where available, when considering the adequacy of a provider's resources, facilities, teachers and support services.

- ii. The Australian Government should:
 - a. consider changing the skilled migration program settings to remove the bias towards particular courses and instead focus on higher skilled qualifications in the VET and higher education sectors
 - b. 'grandfather' future changes to skilled migration policy, where possible and appropriate, for international students and recent graduates.
- iii. The Australian Government should work with the sector to adapt the *Good Practice Principles for English Language Proficiency for International Students in Australian Universities* to each education sector and encourage implementation.

Chapter 6—Supporting students in Australia

- iv. Further research should be undertaken to better understand the causes and frequency of violence against international students.
- v. The state and territory police forces should work with providers, student representative bodies and the international student hubs to deliver better safety information to international students.
- vi. International students should have access to equitable travel concessions.
- vii. Providers should play a more active role in securing accommodation for international students.
- viii. The Fair Work Ombudsman should continue to deliver outreach programs that work with providers, unions, students and peak bodies to promote and enforce the safeguards of the Australian industrial relations system.
- ix. The Department of Health and Ageing (DoHA), in consultation with international students, should work with health insurance providers to make a wider range of health insurance policies available to international students.

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1 Positioning ESOS to support international education into the future

International education in Australia has a proud history. Beginning with the Colombo Plan in the 1950s, international students were welcomed to Australian shores to study under full or partial scholarships from the Australian Government. Many of these students are now prominent citizens in their own countries with links to Australia that run much deeper than fond memories of their time studying here. For example, the current Malaysian Minister for International Trade and Industry, Dato' Mustapa Mohamed, studied at the University of Melbourne.

In the late 1980s, Australia moved beyond this first wave of international education to welcome full fee-paying international students to its education institutions. This move towards greater internationalisation of Australian education has served Australia well. The growing number of international students over the past two decades, and remarkably over the past five years (up 84 per cent from 2005 and 2009¹), has embedded a cultural richness in our education institutions and their communities, built linkages and goodwill and fostered a sector that delivers great economic benefit to Australia in terms of export income in the order of \$17.2 billion² and 126 000 jobs³.

The *Education Services for Overseas Students Act 2000* and associated legislation (referred to collectively as ESOS) was born from this second wave of international education. It is widely acknowledged as contributing to the success of international education during this period.

The principal objects of ESOS are to:

- a. provide financial and tuition assurance to overseas students for courses for which they have paid
- b. protect and enhance Australia's reputation for quality education and training services
- c. complement Australia's migration laws by ensuring providers collect and report information relevant to the administration of the law relating to student visas.

ESOS is administered by the Australian Government. However, there is a significant role for state and territory governments in applying the legislation. Chapter 4 explores how this will change as national regulators in the areas of higher education and VET, as announced by the Australian Government and COAG respectively⁴, take on ESOS functions. Therefore throughout this report I have used the phrase 'ESOS regulators' as an inclusive term for any group or body responsible for the regulation of the international education sector.

International education in Australia is at a crossroad. Its success is not necessarily assured into the future. Nefarious incidents in Australia over the past year involving young Indians, many of them students, have tarnished Australia's reputation as a safe and welcoming country. These attacks have also highlighted the pressures from the extraordinary growth in the numbers of international students studying in Australia and a small segment of the Australian international education sector with questionable motivations, poor education quality and a distinct lack of concern for providing a rewarding student experience.

1 AEI enrolments data as at December 2009

2 2008–09 FY figures. Source: Tables 2, 9, 10 and 12 of the Australian Bureau of Statistics' publication *International Trade in Services, by Country, by State and by Detailed Services Category, Financial Year, 2008–09* (ABS Catalogue no. 5368.0.55.003)

3 2007–08 FY figures—Source: Access Economics 2009, *The Australian education sector and the economic contribution of international students—April 2009*

4 The Australian Government announced the establishment of a national higher education regulator as a 2009–10 Budget measure on 12 May 2009. COAG announced the establishment of a VET national regulator on 7 December 2009

These emerging pressures impact on education quality, regulatory capacity, local communities and infrastructure such as transport and accommodation. Much is being done to address these challenges: regulators are looking at issues relating to quality within their states and territories; providers are looking at issues within their own institutions; police have been dealing with an increase in incidents; and immigration officials have been reviewing the skills needed for the future. Yet, no one has been drawing the threads together in a coherent strategy. Government has failed to view the situation holistically. Perhaps this is why some of the cracks have appeared.

Negative publicity about these issues has damaged Australia's international education brand. There are reports of students looking to the United Kingdom and North America as alternative destinations to study. The deteriorating image of Australia's international education sector is likely to spill over into broader relations, detracting from science and research collaboration, trade and investment and business relationships.

The objects of ESOS are well founded and ESOS provides a sound regulatory structure. However, the current environment has decisively shown that ESOS needs to be strengthened and applied by regulators more consistently and rigorously. Compliance and enforcement efforts need to be stepped up. It is clear the rapid growth of international education was not matched by a commensurate increase in resourcing of regulatory functions with the negative consequences we have now seen.

Significant changes are needed to restore Australia's reputation for high quality education and training. We need a focus on quality and student experience rather than volume and dollars, and we need to recognise the contribution of international students to their institutions and community and the formation of long lasting people-to-people linkages, and its vital contribution to Australia's public diplomacy and role in the region. As a former Trade Commissioner I believe the forthcoming separation of the marketing functions of Australia's international education brand from the regulatory functions of the industry should be an interim measure only, with the Government giving consideration to other possible models, such as the British Council and Education New Zealand as possible useful starting points. In considering these models, I would urge a more holistic approach to managing and supporting the international education sector to fully realise its benefits for Australia.

While immediate action is needed, I caution that changes to ESOS and other areas that impact international education should not be so draconian that they cripple the sector.

1.1 ESOS: part of the picture of building a sustainable international education sector into the future

[International] Students who return to their countries with negative experiences could become poisoned alumni, conveying critical attitudes in other countries about Australian society and poor impressions about Australia's reputation as an education provider. They could ultimately destroy a strong export product.⁵

International education has often been referred to in the context of the export income it has generated. The focus on international education as an export industry has been accompanied by a focus on watching and supporting its growth, both in terms of student numbers and export earnings. I believe this has been to the detriment to the underlying pillars that make the sector great: quality education, the student experience and viable businesses with sustainable operations. We are now paying the price for being distracted by the money. Poor treatment of international students and the

5 Wesley, Michael 2009, *Australia's Poisoned Alumni: International Education and the Costs to Australia*, Lowy Institute, August 2009, www.lowyinstitute.org/Publication.asp?pid=1103

quality of international education has ramifications that ricochet across a wide range of areas and industries from government relations to tourism. For example, the Tourism Forecasting Committee is predicting a significant decline in arrivals from India for 2010.⁶

Given the strong correlation between educational attainment and employment and earnings outcomes, international students can be seen as investors; they and their families invest in education to gain long-term benefits. For some this is an investment in education that they will reinvest in their home countries. For others it is a pathway to global mobility and an investment that will benefit the countries in which those students work. If we view international education through this prism rather than export dollars, I think we can begin to better understand why it is important for us to better support the long-term sustainability of the sector. We want students to be coming to Australia for a high quality education; this is what our strategies, infrastructure and policies should support.

In my view this approach would support the development of a more sustainable sector that adds to this country's social, economic, knowledge and productivity agendas. It would result in better equipped and more satisfied students with more students interested in choosing an Australian education experience, better quality education for all and greater internationalisation of Australia's education. This places an emphasis on the holistic student experience and provides the avenue through which to engage the broader community about the benefits of international education and international students in their community. In this context, I believe there are four key outcomes that the whole sector—governments, providers, peak bodies, student organisations and agents—must work together to achieve:

1. A well-informed student

A good student experience hinges on the successful balance between setting and delivering on student expectations. This includes ensuring potential students have all the information they need to make an informed choice and once that choice is made, are well prepared for study and life in Australia. In order to achieve this outcome, governments, education providers and agents must work together to ensure that students have access to timely, accurate and complete information from trusted sources.

2. An engaging study experience

Twenty-first century education demands a student-centric approach. Study should be engaging, challenging and rewarding. It should be flexible and responsive to the needs of students, employers and the community. The study environment should be positive and supportive, enabling individuals to achieve their full potential. This is particularly important for international students. Students often come from different educational and social backgrounds and they need to be supported to make the transition to living and studying in Australia in order to achieve their desired outcomes.

3. A rewarding life experience

International students are coming to Australia to study and to immerse themselves in another culture. The international student's stay in Australia needs to be viewed as part of a wider experience. Stakeholders need to work together to achieve a positive experience that stays with the student for their life. This includes helping the student through inclusion and networking opportunities, support and safety and establishing appropriate living and work arrangements.

⁶ Tourism Forecasting Committee *Forecast 2009 Issue 2*, Tourism Research Australia, Canberra, p.38

4. A future with potential

International students choose to study overseas in order to fulfil a dream and improve their long-term prospects. In this respect, it is important that Australian education and training is recognised, well regarded and that it supports mobility and employability.

ESOS is only one part of the equation. The COAG International Student Strategy for Australia can go much further than ESOS to support a holistic student experience that encompasses student interactions with work, communities and support networks. Providers, students and communities need to work together to achieve these outcomes.

Australia will benefit broadly from these outcomes, particularly through trade, tourism, diplomacy, government relations, productivity and social inclusion. But these outcomes cannot be achieved without addressing the broader issues that have arisen from the attacks on overseas students and young workers; street violence and crime, racism and the settlement and engagement of temporary and newly arrived residents.

What this report covers

This report largely focuses on the core issues relating to ESOS and its role in building a sustainable sector. This includes ensuring Australia's reputation for quality, looking at entry to and regulation of the international sector, and examining how ESOS is placed to improve the student experience by way of ensuring consumer rights through better information, support and tuition protection.

Building education into Australia's fourth largest export industry is an extraordinary achievement. However, there can be no question that many of the challenges currently facing international education are because we were distracted by the money. It seems that on many levels both governments and providers have failed to sufficiently re-invest in compliance and enforcement, in infrastructure, student services and in the educational experience. This report outlines the sector's achievements and vulnerabilities, and makes a number of recommendations to improve ESOS.

2 Enhancing Australia's reputation for quality education

One of the three objects of ESOS is to protect and enhance Australia's reputation for quality education and training services. ESOS does this by requiring providers to provide a range of consumer protection measures and student support services. These requirements are additional to the underpinning education quality assurance frameworks, such as the Australian Qualifications Training Framework (AQTF) and the National Protocols for Higher Education Approval Processes (National Protocols). Indeed, the amendments to ESOS introduced in 2007 following the last review tried to minimise duplication with the underlying education quality assurance frameworks to streamline the regulatory burden. This is the right road. ESOS should not be getting into the business of separate quality assurance. All students studying in Australia deserve a quality education. Quality measures should not apply just for international students.

2.1 Improving the link between ESOS and the education quality assurance frameworks

Some sector frameworks, notably the AQTF, may not be well-equipped for regulating providers in the international market... It could be argued that entry to the VET market is relatively easy compared to the arrangements in place for schools or higher education providers... Given the links between sector frameworks and the National Code, this limits the effectiveness of regulation under ESOS.⁷

In recent years, the relationship between the international education sector and education quality assurance frameworks has not worked as well as it could have. Concerns raised by international students surrounding the quality of VET provision prompted COAG, in December 2009⁸, to agree to urgently amend the AQTF to strengthen the regulatory requirements underpinning the VET sector. Similar policy shifts in other education sectors—for example the establishment of national regulators in the VET and higher education sectors and the introduction of a national curriculum for schools—continue to enhance our domestic education quality.

I commend and support these moves to enhance quality across the board. They are necessary to protect Australia's reputation and ensure Australia remains at the forefront of quality education provision and can participate and compete in the global knowledge economy. Markets and expectations do not stand still and the policy and regulatory environments must recognise and respond to this.

In reviewing these frameworks I believe international education is a leading indicator for domestic policy makers. For the Australian Government's aspiration of increasing participation in education to be realised the education sector will need to grow. The international education experience has shown that the private sector has the greatest ability and capacity to be responsive to demand and hence grow quickly. However, where profit is a key outcome from delivering education services, the quality of the service will at some point and for some providers come under pressure. The issues international education is facing right now are likely to be future issues for the whole education sector. It would be naive of us to think otherwise.

⁷ Government of Victoria, *Submission 51*

⁸ Council of Australian Governments 2009, *Council of Australian Governments meeting Brisbane 7 December 2009, Communiqué*

Now is the time to future-proof the underlying education quality assurance frameworks by drawing on the lessons from the international education sector. It is time to reconsider the strength of the entry requirements, the standards providers must meet and ensure the frameworks are streamlined—in effect make them stronger, simpler and smarter.

Supporting a better quality experience

Some submissions proposed that some of the standards providers must meet under ESOS represent best practice and address gaps in the underlying education quality assurance frameworks. For example ESOS mandates minimum support services and requires providers to have critical incident policies. It supports students to achieve good education outcomes by requiring intervention if they are not succeeding in their course. I can see no reason why these gaps cannot be addressed in the underlying frameworks instead of ESOS so all students are entitled to be supported to have a successful education experience.

The New South Wales Administrative Decisions Tribunal's (ADT) AusTech decision on 24 December 2009 points to a gap in ESOS and the underlying frameworks. The ADT held that the student experience is not considered in determining a provider's performance. In making its decision, the ADT noted that the provider's practices led to poor education delivery, but did not consider or rate the student's education outcomes in considering the issue. The student was missing from the picture. It seems unlikely that a quality education and a reputation for quality is truly possible when the person who has the largest stake in the quality, who has invested considerable amounts of time and money and personal commitment, is not considered as integral to the education delivery standard.

Transnational education

Just as international education has exposed weaknesses in domestic quality, submissions have questioned the ability of the education quality assurance frameworks to survive the stressors of transnational education (Australian education delivered in other countries). Providers delivering high quality education in other countries have the potential to spread appreciation of the excellence of Australian education and training. Transnational education provides growth opportunities for providers as well as the capacity to contribute to deeper relationships between Australian institutions and those in other countries. This will only occur if offshore education is done well: if it is delivered to the same standard as in Australia and people have confidence in the qualifications. Poor education delivered under an Australian banner has the potential to damage not only our education reputation, but also perceptions of Australia and Australians more broadly.

2.2 The impact of Australia's migration policy on its reputation for education quality

The opportunity to migrate to Australia is a significant reason for the increase in international student numbers over recent years. It was resoundingly clear from the consultations that migration as a driver of student demand has an impact on the behaviour of a range of stakeholders, including providers, agents, governments and students. Of key concern was how the link between specific courses and the skilled migration program impacts the sector's reputation for quality education, with one provider noting that:

..the coupling of immigration and education has brought short-term benefits to a few providers to the long-term detriment of the sector as a whole.⁹

9 International College of Management Sydney, *Submission 61*

This link has resulted in some providers and their agents being interested in 'selling' a migration outcome to respond to the demand from some students to 'buy' a migration outcome. Providers showed me flyers handed out at Flinders Street Station in Melbourne aimed at students driven to achieve something other than a quality education, with claims of cheap courses delivered to allow students to work more (e.g. fewer study hours mainly provided on weekends). Providers were concerned about how the link to migration impacted on quality and perceptions of quality. Students were concerned these perceptions might affect the value of their own Australian qualification. However, the importance of this link to the sector and the contribution high quality international graduates can make to Australia's skill base and community, should they choose to make Australia their home, was widely recognised.

The desire of some providers to pursue the dollar has sometimes, but not always, come at the expense of the quality of the education delivered. Of great concern to me were frequent allegations of vertical integration of agents, providers, employers and landlords, exploiting international students anxious to achieve permanent migration. In some cases students appear to collude with these people for mutual gain. In such cases this usually results in poor education outcomes, poor living conditions, low pay, poor working conditions and visa conditions being breached by students working more than 20 hours a week to be able to afford to be here. Australians would not want such dubious, if not illegal, practices in their community.

An intention to migrate to Australia is not the issue. I spoke to many students during the course of the review and I know that if given the opportunity they would make a great contribution to this country as permanent residents and citizens. The problem is how some providers and agents are exploiting these students and how the migration policy settings have skewed provider course offerings channelling students into courses and occupations that do not necessarily suit students' skills and expertise. The students also have a role to play. Some students are sacrificing their studies to complete the cheapest course and working to fund their stay in Australia in order to apply for skilled migration. They often do not stand up for themselves in fear that it may impact their visa status. Furthermore, the education regulatory frameworks have not withstood the test of providers entering and operating in a market where short-term profit is the key driver.

With these issues in mind I welcome the Australian Government's announcement on 8 February 2010¹⁰ to change the skilled migration program to ensure it delivers the skills needed in the Australian labour market. This will also de-emphasise the link from international students to migration. I believe any future changes need to consider the impact of migration as a driver of demand for international education to ensure there are no negative unintended consequences.

Australia will continue to attract bright, capable students and educate and train them in their areas of interest and expertise. Many of these students will be attracted, in part, by the opportunities to gain work experience in their field after graduation. Access to a temporary visa that enables them to seek employment in their field of study for 12 to 18 months to enable students to demonstrate an ability in their chosen field or profession would improve their job prospects in their home country. The capacity for students to do this now is limited and was an issue students raised with me.

At present, the temporary graduate visa is only available to students who have qualifications leading to a set of occupations on the Skilled Occupation List (SOL). While this list is currently reasonably extensive, the Australian Government has announced that this will be reviewed. I will not be surprised if the number of occupations on the SOL is reduced.

¹⁰ Senator the Hon Chris Evans, Minister for Immigration and Citizenship, 'Migration reforms to deliver Australia's skills needs', *media release* 8 February 2010, www.minister.immi.gov.au/media/media-release/2010/ce10006.htm, accessed 18 February 2010

A general graduate visa which was not tied to particular occupations, but rather the level of qualification, would introduce international graduates to Australian work culture and assist them acquire soft employment skills—team work, interpersonal skills and so on—which are desired by employers in Australia and other countries. For those students who subsequently wish to make Australia their home, this period of employment would perhaps contribute to them finding an employer who would sponsor them for permanent residency.

While the Australian Government has the prerogative to change its migration policies at anytime, I think we also need to recognise that international students are taking a leap of faith and making a substantial investment of time and money in their future. As one student noted:

[The] Australian government lacks a coherent and long-term view on skilled migration policy. The frequent policy changes confuses us overseas students all the time. Policy uncertainty increases the uncertainty of coming to Australia to have our higher education. We want our investment worth the cost we have paid for it.¹¹

I welcome the changes to the skilled migration program that recognise the impact on current students by allowing them to continue to apply for a temporary skilled visa enabling them to gain work experience in Australia and potentially gain an employer who will sponsor them for skilled migration. Making future provision for those international student graduates (or ‘grandfathering’ as it is known) currently pursuing temporary graduate visas shows some sensitivity to the situation these applicants may find themselves in now they have completed their course. Avoiding sudden and significant policy changes and grandfathering major changes to give providers some stability as well as sufficient time to adjust and better support the sustainability of the sector. However, I recognise that this will not always be possible or appropriate in the context of the myriad factors impacting on Australia’s skills needs.

2.3 Ensuring ESOS supports Australia’s reputation for quality

A reputation for quality is as much about perceptions and experience as the actual education. Quality, or lack thereof, was a recurring theme in the forums held with students. Some students questioned whether their masters degree was really being taught at the masters level. They also queried if English language entry standards were sufficient and if intensive-model and concentrated delivery courses were really appropriate for international students.

ESOS supports Australia’s reputation for quality education and training. However, more could be done to ensure entry requirements and structures encourage quality, support good education experiences that take advantage of emerging teaching trends and delivery techniques and better manage risks to quality.

As an international student noted in her submission:

Quality, is, at least in my experience, a huge issue you should focus on. I was appalled to find out how many people in my masters classes are not prepared for it. And it’s not just a few—there are significant numbers who should not, in my mind, have been admitted to a masters program at an English [language] university. I am fully aware of the challenges of study in another language, but that doesn’t negate the need for strict standards. Much time in my courses has been wasted going over things that should be learned in undergraduate programs; not only is this annoying for prepared students and the lecturer, but it significantly undermines the quality of the degree.¹²

¹¹ Beifen Huang, *Submission 25*

¹² Sarah Templeton, *Submission 95*

I would urge all providers to think carefully about their own entry level requirements. The international education sector needs to take responsibility for the education experience it offers students and whether the expectations of the students who invest in it are being met in such a way that will sustain the sector into the future.

Course delivery that supports quality education experiences

All courses offered to international students must be registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) established by ESOS. This is because there are specific requirements around courses for international students; they require the student to be in Australia (i.e. require the majority of course to be face to face delivery) and for the student's primary purpose in Australia to be study (i.e. be completed within a specified duration). This approach supports the integrity of the student visa program. A student visa is only granted for the purpose of studying in Australia.

One higher education provider noted in its submission:

The ESOS framework actually stifles innovative opportunities for international students to engage in flexible teaching practices.¹³

For example, standard 9 of the *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007* (National Code) allows international students to undertake no more than 25 per cent of their course online. Another example is part C of the National Code, which only allows courses to be registered with a work experience component if it is essential to gain the qualification. Another higher education provider noted in their submission that this:

...results in several programs with optional work-based learning components and a combination of compulsory and optional work-based learning components not being registered and thus not being available to international students.¹⁴

It is important that the requirements in the National Code supporting the integrity of the student visa program achieve their intent without reducing innovation in the delivery of the education experience providers can offer their students.

I have also been made aware of the flip side of these issues. For example providers offering accelerated courses on weekends or in the evening. This does not appear to be consistent with the primary purpose of international students' presence in Australia which is to study. These courses seem designed to allow international students to work full time which would be in contravention of the student visa condition that allows students to work for up to 20 hours per week while their course is in session.

One way of balancing these competing requirements for quality and flexibility is to take into account a provider's compliance and complaints record. For providers with a good record, greater flexibility should be available as long as the basic premises remain: that the student has to be in Australia to undertake the course and their primary purpose is to study. For other providers, unusual course delivery arrangements involving weekends and nights should be subject to greater scrutiny as these practices might suggest the provider's primary purpose is not to deliver quality education.

¹³ Australian National University, *Submission 21*

¹⁴ Griffith University, *Submission 52*

English language competency

Throughout the review students have raised concerns about English language standards being too low and the lack of opportunities to improve their English language skills. Students seek the opportunity to improve their English language competency as an important part of studying in Australia and are disappointed when this is not achieved.

Although the International English Language Testing System (IELTS) is widely used and recognised, the consultations revealed widespread concerns that providers are not adequately considering the actual English language needs of a student to complete a particular course, and rely too much on student visa specified requirements.

I believe the diversity of courses within Australia means that any regulation of minimum English language entrance standards for courses by the Australian Government would be too blunt an instrument and limit providers' ability to tailor courses to meet the needs of students. But I recognise that IELTS itself has published what it believes to be the appropriate test scores for particular types of study. Many Australian providers accept students at a lower level than recommended by IELTS.

Table 1—English language competency required for different courses¹⁵

Band	Linguistically demanding academic courses (e.g. medicine, law, linguistics, journalism)	Linguistically less demanding academic courses (e.g. agriculture, pure mathematics, information technology)	Linguistically demanding training courses (e.g. air traffic control, engineering, pure/ applied sciences, industrial safety)	Linguistically less demanding training courses (e.g. catering, fire services)
7.5–9.0	Acceptable	Acceptable	Acceptable	Acceptable
7.0	Probably acceptable	Acceptable	Acceptable	Acceptable
6.5	English study needed	Probably acceptable	Acceptable	Acceptable
6.0	English study needed	English study needed	Probably acceptable	Acceptable
5.5	English study needed	English study needed	English study needed	Probably acceptable

As one group of higher education providers noted in their submission they:

...require international students to have a high level of competence in English before they are accepted and enrolled. A minimum IELTS score of 6.5 is required for most programs and for law and medicine and some postgraduate programs, the minimum score is set at 7.0 or higher.¹⁶

Yet as can be seen by reference to the IELTS resource above, these entry standards are on the low side of the English language standards that IELTS believes are necessary.

¹⁵ Adapted from *IELTS Guide for educational institutions, governments, professional bodies and community organisations* p9, www.ielts.org/pdf/IELTS%20Guide%20for%20Stakeholders%20March%202009.pdf, accessed 8 January 2010

¹⁶ Group of Eight *Submission* 53, p.5

Providers should, as currently required by ESOS, take responsibility for setting a level of English language competence required for entry to their courses so all students enrolled in that course can fully participate and contribute to it. Providers should also be required to give consideration to how students will, where necessary, be supported to improve their English from the level required for entrance to the course to the standard required for professional accreditation. Therefore I think providers should be subject to greater scrutiny of the English language entrance standards they set.

Where providers have unusually low English language entry standards I believe they should be obliged to demonstrate how they are providing additional English language support to students in order to help them succeed at their studies and improve their English language competency. It is not to say that low English language entry levels are always inappropriate and may be reasonable where English support is offered.

Providers and students have a responsibility to ensure that learning outcomes are achieved, including those related to improving English. A useful starting point for providers that have not already adequately factored these issues into their programs and support services is the *Good Practice Principles for English Language Proficiency for International Students in Australian Universities* developed by the Australian Universities Quality Agency (AUQA). This guide sets out 10 principles that acknowledge the role of the provider and student to support better English language outcomes. While these principles have been written for the higher education sector, they have useful concepts which can be adopted by other sectors and acknowledge the key role providers have in supporting students to achieve English language competency.

This approach offers flexibility and support for innovative courses, but requires the commitment of providers to ensure it is not an avenue for eroding standards. Therefore, I believe this approach should be reviewed within 18 months of its implementation. Any negative impact observed may lead the Australian Government to consider mandating minimal English language entrance standards.

Recommendation

1. That ESOS be amended to require providers to demonstrate that the:
 - a. delivery arrangements for each course do not undermine the integrity of the student visa program
 - b. English language entry levels and support are appropriate for the course and, where relevant, the expected professional outcomes.

Findings

- i. Education Ministers should:
 - a. ensure the vulnerabilities exposed in the education quality assurance frameworks by unscrupulous international education providers are addressed
 - b. consider whether the current education quality assurance frameworks appropriately assure Australian education and training delivered offshore
 - c. ensure regulators and policy makers actively take into consideration student outcomes and industry benchmarks, where available, when considering the adequacy of a provider's resources, facilities, teachers and support services.
- ii. The Australian Government should:
 - a. consider changing the skilled migration program settings to remove the bias towards particular courses and instead focus on higher skilled qualifications in the VET and higher education sectors
 - b. 'grandfather' future changes to skilled migration policy, where possible and appropriate, for international students and recent graduates.
- iii. The Australian Government should work with the sector to adapt the *Good Practice Principles for English Language Proficiency for International Students in Australian Universities* to each education sector and encourage implementation.

3. Building a stronger gateway

Low quality providers are damaging the international education sector in Australia. More stringent mechanisms are needed to screen providers seeking CRICOS accreditation.¹⁷

Barriers to entry and risk management practices for new institutions have not been adequately enforced, leading to the emergence of training businesses with unsound business models and in need of more support than regulatory authorities are able to provide.¹⁸

Through registration on CRICOS, ESOS confers the ability to offer education and training services to international students. CRICOS registration provides the gateway to a lucrative market as the success of the international education sector and its rise to be Australia's fourth largest export industry attests.

A key question for the review has been whether the gateway to international education through CRICOS registration—the entry requirements and their application—is appropriately set. Feedback suggested the gateway should be strengthened through consistent consideration of matters such as financial viability, sustainability of business operations and the bona fides of key personnel. Addressing these issues upfront should relieve downstream pressure on the tuition protection mechanisms.

Other feedback suggested the current requirements are sufficient but lacked consistent application and compliance and enforcement after entering the gateway.

3.1 Current registration requirements and process

ESOS requires a two-stage registration process.

An application is first assessed by the relevant state or territory government authority designated under ESOS. Once an applicant has satisfied the domestic requirements (for example become a registered training organisation (RTO) in the VET sector), the state/territory designated authority considers if the applicant is compliant with the National Code and is fit and proper to be registered.

If the applicant meets these requirements then the designated authority makes a recommendation to the Department of Education, Employment and Workplace Relations (DEEWR) to register the provider, instigating the second step in the process. At this point DEEWR determines whether the provider:

- is a resident of Australia or recognised under the *Higher Education Support Act 2003*
- has paid the initial registration charge and has no outstanding charge or late payment penalty
- is a member of a Tuition Assurance Scheme (TAS) and has paid its first annual ESOS Fund contribution (if not exempt).

ESOS requires the provider to be registered if these requirements are met and there is no reason to believe the provider is not complying or will not comply with ESOS.

The *Education Services for Overseas Students Amendment (Re-registration of Providers and Other Measures) Bill 2009* (ESOS Amendment Bill) has now been passed by Parliament and introduces two additional criteria: the principal purpose of the provider is to provide education; and the provider has clearly demonstrated the capacity to provide education of a satisfactory standard. These criteria are addressed in greater detail below.

¹⁷ TAFE NSW Sydney Institute, *Submission 113*

¹⁸ Australian Council for Private Education and Training, *Submission 10*

3.2 Registration requirements for the future—supporting a sustainable sector

ESOS requires applicants to have met the underlying education quality assurance framework before they can be registered on CRICOS. Consequently, at the point of CRICOS registration there is no further quality judgement. For the most part, this approach works as the majority of providers are in the international education business for the long term and understand the implications of damaging their brand and reputation. However, the drivers for delivery in international education are not the same as those in the domestic market. The pathway to general skilled migration has resulted in opportunistic providers entering the market with an eye to short-term profits, with a lack of focus on providing a high quality education and/or training experience.

Business operations, bona fides and ensuring quality

A key area of concern for stakeholders was the provider personnel bona fides, their business operations and the quality of their education service. Whether a person is fit and proper to be registered is currently checked by state and territory designated authorities when considering whether to recommend a provider for CRICOS registration. This assessment considers a small range of matters which in themselves may not necessarily result in an application being refused: whether the person has been convicted of an offence; has previously had their CRICOS registration cancelled or suspended or had a condition applied; ever become bankrupt; been disqualified from managing corporations; involved in another CRICOS provider when one of the above occurred; and any other relevant matter.

The Minister for Education, the Hon Julia Gillard MP, recognised the limitations of the current registration process with the introduction of the ESOS Amendment Bill on 19 August 2009 to:

...restore confidence in the quality of the Australian international education sector and to strengthen the registration process by reducing the number of high-risk providers currently in or seeking entry into the sector.¹⁹

The Bill which is currently awaiting Royal Assent requires all existing providers to be re-registered by the end of 2010 including assessment against two new registration criteria:

- the principal purpose of the provider is to provide education

This test is the same as that in the *Higher Education Support Act 2003*. It is understood that it may consider a range of evidence including establishment documentation, governance arrangements, strategic plans and policies, qualifications and experience of teaching and management staff, infrastructure and teaching materials, and financial statements related to business activities.

- the provider has clearly demonstrated the capacity to provide education of a satisfactory standard

This test is likely to include a number of indicators of capacity, which are relative to the number of students enrolled and courses offered, such as adequacy and relevancy of infrastructure, financial viability, teaching materials and student support services, relevant qualifications and experience of teaching staff and management, and student educational outcomes and satisfaction.

These criteria and the range of matters they cover address most of the concerns and suggested additions to the registration requirements raised throughout the review. The key exceptions are ensuring the financial risk a provider poses is acceptable and mandating the delivery of education and training to domestic students first.

¹⁹ Australia, House of Representatives 2009, *Debates*, no 12, 2009, p. 8274

The Australian, state and territory governments have agreed to include a risk approach in managing the re-registration process. Lessons learnt through the re-registration process, particularly about which risk factors will prove to be good indicators of poor practice, should be considered alongside the recommendations within this report.

With the strengthening of the AQTF, the establishment of national regulators for the VET and higher education sectors and changes to skilled migration policy, these two criteria may not be needed on an ongoing basis. In the implementation of this report it may be appropriate to consider whether these additional requirements are addressed in other ways.

Financial viability and risk—impacting sustainability

Many of the failed providers closed their doors within 5 years of operation because they could start a business with relatively small working capital and insufficient assets to protect the students' interests. Current entry requirements are dangerously undemanding in terms of the financial backing needed to operate successfully in this industry. Student fees in advance are used as a start up capital and we have all seen the risks to the wider education community in this approach.

It is very important to regulate newcomers to the industry so that the failure of a new provider is not at the expense of long established good providers.²⁰

I believe there is an ongoing need for financial viability and risk to be considered as a specific CRICOS registration requirement due to the obligation ESOS imposes on providers to refund students if they are unable to deliver a course and to support the sector's reputation. While some businesses may fail, more could be done to reduce the likelihood of closure for financial reasons by checking the financial operations of providers at registration to ensure they are viable, have sufficient backing to operate for a reasonable period and present an acceptable medium-term financial risk.

An ESOS regulator said financial viability alone is not sufficient as it is a point in time measure: we need to consider the degree of financial risk involved in a particular provider's operations. Financial viability considers cash flow and future projections based on a limited set of information, whereas financial risk considers the risk of failure due to financial issues arising from assumptions and business practices embedded in the business plan and model. Determining financial risk needs to include a provider's current financial standing as well as how the business plan and operations will influence the provider's viability in the medium to long term and its resilience to potential shocks. Examples of risk include recruitment strategies that focus on one country and contractual arrangements that require the payment of a large portion of student fees to education agents.

Current assessments of financial viability

Financial viability is already assessed by some state and territory designated authorities under other legislative frameworks. In Western Australia the *Education Service Providers (Full Fee Overseas Students) Registration Act 1991* (ESPRA) establishes that a person, firm or body corporate who is seeking registration to deliver education to overseas students in Western Australia must have sufficient financial and other resources available to enable them to comply with the provisions of the Act (ESPRA, ss 9(c), 10(c), 11(c)). Stakeholders from Western Australia noted how this approach had assisted with the good health of the international education sector in that state.

In Victoria, the Victorian Registration and Qualifications Authority (VRQA) has recently developed additional *Guidelines for VET Providers* to govern the registration process for all organisations seeking RTO status, which will also be applied to all CRICOS registrations. These guidelines came into effect on 1 January 2010 and consider information concerning a provider's business and

²⁰ Sydney College of English, *Submission 107*

financial operations such as business, strategic and financial plans, governance arrangements and management systems and a large range of other matters concerning the quality of the education provision and experience for students.

All RTOs in Victoria delivering education to international students also undergo a financial health check. As the *VRQA Financial Health Guidelines* notes:

RTOs and Institutions must be in good financial health to be able to deliver quality education and training services to students.

Poor financial health is very likely to significantly and negatively affect the management or operation of an RTO or Institution. This was evident in the financial collapse of a number of RTOs in November 2009.²¹

I am encouraged by these approaches. However, I note financial viability is not comprehensively assessed by all state and territory designated authorities through the CRICOS registration process. Given the importance of the financial sustainability of providers to the objects of ESOS to deliver tuition protection and maintain the sector's reputation, a consistent national approach is needed with a clear basis in the legislation.

Working smarter—leveraging existing tests

It is a significant undertaking for a regulatory authority to check a range of information concerning the financial and business operations of a provider. Any new registration requirements need to avoid imposing an undue regulatory burden on providers and enable regulators to work smarter by leveraging existing tests.

There is already some checking of financials under the domestic education quality assurance frameworks. Recent amendments to the AQTF require RTOs to provide financial projections for the first two years of operation for initial registration upon request and the National Protocols require non-self accrediting institutions to provide information on a range of financial indicators. Many education providers are also required to provide extensive financial information to obtain government funds for delivering government programs to domestic students. For example, the *Higher Education Support Act 2003* requires education providers that seek to offer FEE-HELP and VET FEE-HELP (see glossary for definitions) to undergo financial viability checks. Similar checks apply to schools that receive recurrent Australian Government funding.

Given these existing processes to assess financials it would seem sensible to adopt a differentiated approach to assessing financial risk for CRICOS purposes. ESOS regulators should allow providers to show they have undergone a check of their financial resources for other regulatory purposes, including under other legislation where the tests in that legislation are deemed acceptable given the risk profile of the provider. This would reduce the regulatory burden on providers and build a smarter, more streamlined system that supports the move to national regulators.

Working smarter—leveraging expertise and ensuring consistency

Assessing financial viability and risk requires specialised skills and expertise, which needs to be applied consistently to all providers. Regulators need to leave the sifting to the experts and consider the findings they present.

²¹ VRQA 2009, *Financial Health Guidelines*, p.1, www.vrqa.vic.gov.au/vet/monitoring.htm

One way to ensure a provider's financials are reviewed consistently by those with appropriate expertise is to require providers to submit agreed-upon procedures or financial risk audit covering a range of issues that regulators identify as indicators of medium-term viability. What should be considered needs to be further explored with regulators, industry representatives and financial experts. This will ensure the audit focuses on matters key to the viability of businesses operating in the international education sector as the sector has unique characteristics and stressors, but is likely to draw on a provider's financials and their business plan. This audit would not be needed for applicants that have had their financials appropriately assessed for other purposes.

When required to do so applicants would engage an independent company-registered auditor selected from a government-established panel to undertake the audit against the set audit criteria. I believe this approach will result in benefits to international students, the sector and the government through greater confidence in the financial capacity of the provider to offer quality education services, meet their tuition protection obligations and maintain the sector's reputation.

ESOS regulation should work to minimise the likelihood of business failures and the impact on students and the sector's reputation. However, changes should not be so draconian that they damage the sector and result in a closed shop. As the Australian Prudential Regulation Authority (APRA) acknowledges:

APRA cannot eliminate completely the risk that a regulatory entity might fail and it recognises that any attempt to do so would impose unnecessary burden on regulated entities and harden the arteries of the financial system.²²

I believe I have outlined proposals for a smarter ESOS that will minimise risks without unduly burdening the sector.

3.3 Registration processes for the future—supporting a sustainable sector

The problems with the current gateway to international education are the weakness of the requirements and how registration occurs—the decision to register relies on the assessment of 12 other regulators applying the substantive registration requirements.

The matters which DEEWR must take into consideration when deciding to register a provider on CRICOS are limited and largely administrative in nature, given the preceding step of state and territory designated authorities recommendation for approval. This process does not make it sufficiently clear what matters have been considered by the designated authority and what evidence was accepted as meeting the registration requirement.

Given concerns about the quality and viability of some providers, the question arises whether the split of responsibilities for registration between the Australian, state and territory governments works. It also raises the question of whether it is realistic to expect state and territory designated authorities to anticipate and identify these trends in isolation of one another, be able to assess applications consistently and avoid 'jurisdiction shopping'. It is, however, appropriate that in the future, applicants' education and training bona fides are thoroughly assessed.

²² Australian Prudential Regulation Authority 2008, *Probability and Impact Rating System*, p.6, www.apra.gov.au/.../PAIRS_Final_May_2008_External_Version.pdf

As noted in the next chapter, it is expected the VET regulator and TEQSA will take on the regulatory responsibilities for ESOS in their sectors, including registration. To ensure these new regulators, and those with responsibility for schools and English Language Intensive Courses for Overseas Students (ELICOS), interpret the registration requirements consistently, a common view of what is needed to meet the requirements must be developed.

3.4 Working smarter: ensuring our reputation for quality by better managing risk

The adage of prevention is better than the cure is very pertinent in this industry where providers with no intellectual or financial capacity to successfully establish an education institution, with a business model destined to fail and some with ulterior motives (e.g. agents establishing RTOs) are a recipe to disaster.²³

The international education sector has been poorly served by both the underlying education quality assurance frameworks and ESOS. This has been primarily due to the absence of consistent, formalised risk management processes and frameworks and the resources to adequately implement the risk management frameworks in place. What has resulted is regulatory action that has tended to jump from one crisis to the next, rather than taking a proactive, planned approach that relies on indicators of risk grounded in evidence and the collective experience and knowledge of regulators. Furthermore, the regulatory frameworks sometimes burden good providers without addressing the underlying issues that poor providers exploit.

Addressing risk better by considering a basket of issues

The answers to these issues lie in a regulatory framework that embeds good risk management practices. Organisations and businesses wishing to operate in the international education sector should be profiled at the point of registration and regularly thereafter, to identify the risk they pose. This assessment should guide the tests and scrutiny that must be met to gain and maintain registration.

Assessment needs to consider indicators of key risks that impact the ESOS objects: tuition protection, reputation for quality and supporting the student visa program, such as:

- financial risk: financial and business information that points to the sustainability of the operations and business model such as marketing and recruitment strategies, income streams and projected enrolments, financial backing arrangements
- quality risk: entry requirements, track record of teaching domestic students, course delivery arrangements, marketing material
- bona fides: governance and management operations, capacity and capability of key personnel and business connections.

This leads me to think ESOS regulators need a risk management framework that uses a basket of issues or indicators to determine whether a provider is fit to enter the sector and make ongoing evaluations of a provider's risk. With the exception of financial risk, which should be a threshold hurdle providers need to meet to be registered, the other indicators need to be considered as a package to ensure a holistic picture. Failure to meet one criterion is unlikely to exclude a provider by itself, but failure to meet many could.

Assessing providers against a basket of issues should enable regulators to determine the provider's level of risk and whether the provider should not be registered or what category of risk they pose.

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These categories, such as minimal, low, moderate and medium, would help regulators determine what level of scrutiny is needed to monitor the provider's registration.

Under this approach, a provider without experience delivering education or training to Australian students would not necessarily be precluded from gaining CRICOS registration. However, if that provider (or its key personnel) does not have a history of successfully delivering education services and it does not have arrangements or connections with a reputable established provider, these factors in combination raise questions about the provider's capacity to operate successfully in the sector.

Another example is of a business that wants to run cooking courses in the evenings with only a web-based email account as its contact details and a short-term lease on the premises. This type of provider should ring alarm bells for regulators—not only in terms of capacity to deliver quality education but also to meet tuition protection obligations. I acknowledge that while these examples are stark, the regulator is often faced with more grey situations and needs a system in place to support well-considered judgement calls.

This basket of issues approach will offer a more systemic, consistent way of assessing risk. What is in the 'basket' needs to be developed in consultation with all ESOS regulators, drawing on the best of what is already in place and utilising the knowledge and experience of the sector. As a starting point I engaged the services of KPMG to identify some of the key risks and indicators in international education (see **Appendix D** for further details). It will also need to be reviewed regularly to ensure it adequately caters for new and emerging risks. As a starting point, I think the experience of regulators in implementing the two new registration criteria in the ESOS Amendment Bill will provide a solid evidence base of which indicators work and which do not.

Risk should also determine entry fees and levels of ongoing monitoring and support

A provider's risk profile should not only guide entry to the sector: it should influence the level of regulatory resources dedicated to monitoring and supporting a provider. The risk assessment should influence the calculation of the Annual Registration Charge so the fee better represents the risk and regulatory need of that provider. It should also dictate how often a provider is checked, what the checks focus on and the nature of those checks.

A comprehensive risk-based approach to regulation provides a framework for regulatory decision making (i.e. whether to allow initial registration), a guide for the effective allocation of resources for compliance and monitoring activities, and influences provider behaviour by rewarding providers that meet a low-risk profile. It will ensure that good providers are not unnecessarily burdened with red tape and that high risk providers pay the true price—in terms of fees as well as more rigorous scrutiny—for the risk they represent to the sector and its reputation.

Supporting a risk approach—conditions on registration and time limits

Risk is not static. ESOS needs to support the regular review of providers and allow an avenue for imposing additional scrutiny on providers where needed. For example, a provider that has a higher financial risk should have conditions applied at registration that require additional financial assurance. This may involve requiring the provider to have in place measures to better assure financial viability through a bank guarantee, regular assessment of financials, only allowing fees to be taken in arrears or having the parent company indemnify the risk. It could also involve putting in place measures to minimise the disruption to students if the provider does fail. This may involve requiring the provider to regularly report student results, and identifying other providers in the local area that could have suitable alternative courses and mapping their courses against them.

The capacity to impose conditions at registration could also be used to provide better student outcomes and greater certainty if registration or compliance monitoring identifies a weak area. For example, for a provider with low English language entrance requirements, there could be a condition to provide a particular level of English language support. Conditions should also include strict monitoring to ensure if requirements are not met, swift regulatory action is taken.

At present, conditions cannot be imposed at the time of registration; they can only be placed on a provider's registration for being non-compliant with the legislation in some way. This is a barrier to supporting a truly successful risk-based approach that applies throughout the registration cycle.

CRICOS registration should be time limited. Providers should not be registered without an end date as is currently the case. Thorough assessment should be a regular process undertaken by all providers, particularly to support a comprehensive risk based approach to ESOS and to ensure the ongoing effectiveness of registration tests such as sufficient financial resources. To reduce the regulatory burden on providers registration cycles should be aligned to the underlying education quality framework and, where possible, assessed by a single regulator.

Greater scrutiny of new providers

Some submissions supported probationary registration for new providers with one government noting this issue in its submission that consideration should be given to:

...the notion of 'probationary or provisional' registration until a track record can be established...Monitor providers more closely in their initial registration period. A full follow up audit post initial registration should be conducted within a six to nine month period.²⁴

Greater scrutiny of new providers could be achieved by putting more stringent conditions on their registration, such as audits every six months, and registering them for a shorter time period. This would give new providers the opportunity to prove their intent, capacity and capability to operate successfully in the sector through greater scrutiny and support.

Of course for the risk management framework to be successful it must be consistently applied by regulators. This is currently difficult given that there are 13 regulators involved in registering a provider on CRICOS. The next chapter looks at how ESOS roles and responsibilities can be enhanced to support greater consistency and smarter regulation.

²⁴ Department of Education Services WA, *Submission 40*

Recommendations

2. That ESOS registration be amended to only allow providers to be registered and maintain registration if they have:
 - a. access to the financial resources to meet the objects of ESOS
 - b. a sustainable business model
 - c. the capacity, capability, governance structures and management to uphold Australia's reputation for quality education and training to international students.
3. That ESOS regulators adopt a consistent, comprehensive risk management approach developed and maintained in consultation with stakeholders and experts to:
 - a. profile providers at entry to determine the level of scrutiny, evidence, tests and costs that apply at registration and through the period of registration
 - b. update every provider's profile on a regular basis to reassess the level of scrutiny and tests that should apply.
4. That ESOS be amended to support better risk management by:
 - a. allowing conditions on initial registration and throughout the registration period so a provider can be subject to additional scrutiny and tests as their risk profile demands
 - b. limiting the period of registration for each provider.

4. Stronger, simpler, smarter regulation

Overwhelmingly, submissions to the review considered the biggest problem with regulation to be the lack of consistent and rigorous enforcement of ESOS. There were complaints about the regularity, targeting and effectiveness of monitoring activities and enforcement action; and complexity and duplication, particularly for providers who teach in multiple jurisdictions and sectors. The need for the regulatory system to be responsive to differences between providers and to ensure information is better shared across Government and between governments, providers and students was also raised.

4.1 Stronger regulation—better compliance monitoring and enforcement

[T]he approach to ESOS compliance and enforcement is ad hoc, reactive and incomplete.²⁵

ESOS compliance and enforcement is no where [near] adequate and at the current stage, the Act is more like a guide than an Act that must be compliant by relevant stakeholders in the industry.²⁶

Many submissions raised concerns that the level of monitoring and enforcement work undertaken, and seen to be undertaken, by the various regulatory bodies is inadequate and ineffective. In any regulatory system, effectiveness is at least somewhat contingent on people's assessment of how likely it is that they will be caught and the possible consequences. Too many international education providers have become comfortable with the idea that they will not get caught, and if they do get caught, the sanctions will be weak and they will be given time to come up to standard. This is not a sensible way to operate a regulatory system. Nor is it likely to achieve what ESOS sets out to do: protect international students and Australia's reputation for high quality education and training.

The adoption of a risk framework, outlined in chapter 3, should allow regulators to better target their monitoring and compliance activities making ESOS regulators more efficient. However, targeting itself is not the answer. Regulators must also have the systems and resources to do the job effectively and the right sanctions to encourage compliance.

Resourcing

The rapid growth in the number of international education providers in recent years, from 1029 in 2002 to more than 1330 in early 2010, has not been matched by increased resources at either the Australian, state or territory government levels.

DEEWR noted in its evidence to the Senate Inquiry into the Welfare of International Students:

In the [DEEWR ESOS] compliance section itself there are 10 staff.²⁷

This seems a very small number of staff dedicated to meeting the Australian Government's role under ESOS across more than 1300 providers across Australia.

²⁵ Deakin University, *Submission 39*

²⁶ Australian Federation of International Students, *Submission 13*

²⁷ Chaudhury, T. Senate Committee Hansard 12398, 2009, p. EEWR 76

Adequate resourcing needs to be addressed as a matter of urgency in order to strengthen ESOS regulation. As one current provider noted in its submission:

There is a perception at the moment that government doesn't have any teeth and hasn't acted in a timely manner once serious breaches have been brought to their attention.²⁸

Consistent with current Australian Government practice, the international education sector needs to bear the cost of its regulation. However, if the sector is expected to pay for the regulatory work government undertakes, the sector is entitled to greater transparency so it can be convinced of its value and efficacy.

The Australian Government collects some revenue from the sector to address the costs of regulation. However, the amount is quite small relative to the value of the industry. Under the current formulation for the Annual Registration Charge (ARC), providers are charged a base fee of \$356 plus \$30 per student enrolment.

States and territories also levy charges for their role in regulating international education. However, some governments subsidise the costs to international education providers; for example, the Victorian Registration and Quality Agency (VRQA) charges up to \$1600 to assess a RTO's CRICOS registration application. While some governments charge on a full cost recovery basis, meaning that in NSW the initial registration fee for a RTO wanting to offer five to eight courses is \$12 875.

These regulatory charges are not excessive when the average annual cost for an Australian international education course is almost \$17 000, noting that annual course costs can vary substantially.

Stronger compliance is not possible if the resources are not available to undertake proactive monitoring. Stronger enforcement is not possible if the resources are not there to react quickly to address compliance issues to ensure the sanctions are swiftly applied and effective.

Sanctions

ESOS creates a number of sanctions: the imposition of conditions, suspension or cancellation of a provider's registration, financial penalties, and even imprisonment. However, these sanctions can only be imposed in a reactive manner once a breach has been established. Financial penalties and imprisonment are linked to a small number of particular breaches.

I agree with the submission that recommended:

That the penalties under Commonwealth and state and territory legislation be reviewed to determine if they provide a sufficient deterrence against non-compliance and that governments educate providers that regulatory bodies will act decisively against non-compliance and enforce sanctions and penalties.²⁹

In order to have a more proactive and flexible legislative framework I believe we need to give ESOS regulators a more flexible toolbox. Increased use of financial penalties could encourage corrective action without having to restrict a provider's ability to operate.

²⁸ Phoenix Academy, *Submission 89*

²⁹ Minister for Employment Training and Further Education, South Australia, the Hon Michael O'Brien, *Submission 77*

For example, where a written agreement did not include any information about refunds (as required by the National Code) it might be appropriate to issue a fine. The requirement to include information about refunds is fundamental to ESOS and the breach represents an unacceptable failure to advise students of their rights and a risk to the reputation of the sector. A fine would be an effective and timely enforcement that gives a strong incentive for rectification.

Transparency

Not only does monitoring and enforcement activity need to take place, but students and providers need to know that it is taking place. This is so students can feel assured by the system and providers will know they are being held account for their compliance with the rules. DEEWR has made some high-level data available on an ad hoc basis about its compliance and enforcement activity. This is not enough. Many submissions suggest making more regulatory activity public and I support this position.

Whilst details of ESOS compliance visits are not publicly available, AUQA publishes detailed audit reports. While greater transparency is desirable, it is important that the information is practical and easily understood—the style of AUQA reports would probably be of limited use to international students. However, I believe compliance visit reports outlining strengths, areas of concern and what steps are being taken to address concerns will provide students with valuable information to inform their choice of provider. Details of the level of compliance activity undertaken by regulators would also allow providers and students to assess the adequacy of government activity. As national regulators are developed it would be useful for them to consider how they will report on their activities to providers, students and other stakeholders.

4.2 Simpler regulation—streamlining roles and responsibilities

Despite changes to ESOS in 2007 there have been repeated comments by both providers and students that there is widespread confusion and gaps between Australian and state and territory governments, where no one seems to know who is responsible for interpreting or enforcing particular aspects of the National Code. One submission said:

One area of confusion that requires examination is the role of various state agencies in overseeing compliance. As a multi-campus with branches in both WA and NSW it is possible for us to receive conflicting advice depending on which state agency is providing it. Clarification is then required through the national office. Clearly this is not a good process.³⁰

The trend in education regulation is clearly towards national regulators. We see this in the Australian Government's announcement of the establishment of the Tertiary Education Quality and Standards Agency (TEQSA) and COAG's announcement of the establishment of a national VET regulator. As part of the process of establishing national regulators and revising national regulatory frameworks, it is critical for governments to take advantage of the strength of each of the systems and move towards a common philosophy of education regulation. Particularly given the national VET and higher education regulators are expected to merge in 2013.

Both TEQSA and the national VET regulator are expected to begin operation in 2011. Allowing for some transitional measures, it seems likely that for higher education and VET providers the outcomes of my review will be implemented by the national regulators. However, it is important to remember that not all international education providers are in higher education or VET. At this stage there is no national regulator envisaged in other areas of education.

³⁰ University of Notre Dame, *Submission 122*

Given the number of providers operating in multiple sectors, it makes sense to retain the regulatory framework for international education for all sectors. However we should move towards a position where each provider only has to work with one regulator. Once TEQSA and the national VET regulator take on ESOS functions, working with one regulator will become a reality for single sector operators in either higher education or VET in most states. For providers operating in both the VET and higher education sectors, the goal of a single regulator is unlikely to become a reality until TEQSA and the national VET regulator merge in 2013.

State and territory governments will continue to be responsible for assessing the quality and suitability of providers to operate in the areas of primary and secondary schooling. Therefore, it may be appropriate for these governments to have the sole responsibility for regulatory activity for international education providers in the schools sector.

It would seem reasonable that where a foundation or an English Language Intensive Courses for Overseas Students (ELICOS) provider is also a school, VET or higher education provider it should be wholly monitored by the regulator for that sector. This approach would enable those providers to have a single regulator. However, in acknowledgement of the unique characteristics of ELICOS courses this regulatory role may need to be assisted by experts in the field. For the small number of stand-alone ELICOS or foundation providers, the Australian Government may need to establish arrangements to assess registration and compliance. The underlying principle for any arrangements should be that wherever possible each provider only has one regulatory body.

4.3 Smarter regulation—operating effectively and efficiently

Smarter regulation means doing more with less and getting better results. Smart legislation is aimed at addressing the problem at hand without imposing undue prescription and stifling innovation. It does not unnecessarily duplicate. It does not unnecessarily over-regulate. Risk approaches are targeted to ensure greatest value for the least overall burden. Smart business processes leverage existing systems wherever possible, working to create integrated government services behind the scenes. Information is collected once and used multiple times. These are key themes that appear throughout my report—chapter 2 arguing to reduce duplication with the underpinning education quality assurance frameworks; chapter 3 arguing to use a comprehensive risk based approach. This section continues these themes.

Smarter legislation—clear and streamlined

Clearly the National Code has caused some difficulties in enforcement. Providers are unsure of their obligations, and regulators and tribunals reach differing opinions about what demonstrates compliance. A comment made during consultations was the National Code was in fact ‘aspirational’, rather than specific with compulsory standards. Regulators need concrete rules in order to assess compliance and, when necessary, apply penalties. For these reasons it is important ESOS be reviewed to ensure it is prescriptive only where detailed prescription is necessary to achieve the intent of the regulation. In other areas it should set clear minimum standards and encourage providers to develop excellent practices.

Given the move towards national regulatory bodies another area where ESOS could be smarter is to allow providers to be registered on a national basis, even if some elements of registration need to be assessed on a locality basis. At the moment providers must seek separate registration in each state.

In the course of implementing the recommendations of this review and the establishment of the national regulators, the national systems should pick up the best aspects of the state systems such that state governments felt able to rescind their own legislation and rely on the national system. This idea was supported by many submissions including those from state governments for example:

Establish one Commonwealth Act to cover the entire education services to international students sector (removing state/territory legislation) and place the management of this legislation under one (Commonwealth) authority.³¹

Smarter systems—greater integration and automation

The regulation of an industry is only as good as the information on which compliance and activities are planned and enforcement action taken. Regulation of international education is underpinned by a central database (PRISMS) which plays a key role in supporting the monitoring of both providers and students. The effectiveness of this database, however, is limited by the linkages it makes with other sources of information that would help identify non-compliant students and providers, support data integrity and highlight risky behaviour. At the moment, the database only actively exchanges visa related information with the Department of Immigration and Citizenship's (DIAC) database. For example if links could be established with the *National Training Information Service* (NTIS) and the data TEQSA will publish about accredited institutions and courses, it could draw the details of courses from those authoritative sources and reduce the regulatory burden on providers. An issue identified by providers in their submissions:

There is generally a very high compliance burden due to the lack of systems that can exchange data and the over reliance on hardcopy forms and associated procedures that make ongoing compliance more difficult than is required.³²

Likewise, smarter interrogation of data held by bodies such as the Australian Securities and Investments Commission (ASIC) would support better monitoring of the business operations of providers and their directors.

Beyond linkages, systems can also support smarter regulation through automating business rules. For example, systems can alert regulators when a provider's recruitment of students already in Australia is unusually high. Such an alert could then be used to initiate compliance monitoring or review risk ratings.

Support to manage the changes

Before we reach the new regulatory environment there is other work to be done. Communicating the changes and educating users are key aspects of ensuring that any regulatory system is successful. Given the many changes that are happening in the regulation of education in Australia, governments need to think carefully about the support that they will give to students, providers, regulatory bodies and other stakeholders to understand the new frameworks and the interactions between them. Governments should ensure there is ongoing consultation and communication as the new systems are developed, and deliver initial and ongoing training and support materials to help all those affected understand their rights and responsibilities.

³¹ Queensland Department of Education and Training, *Submission 91*

³² TAFE SA English Language Centre, *Submission 115*

4.4 Complaints handling—a case study in stronger, simpler, smarter regulation

Strong, independent and transparent complaints processes are fundamental to a sound regulatory framework. As one submission noted:

The right to complain about unsatisfactory service delivery is now widely accepted as a fundamental human right that should be part of government and business administration systems. Other benefits of an effective complaint system include improved transparency, more rigorous quality assurance and a well functioning regulatory system.³³

However, it has become apparent through the review there are many concerns about the complaints handling requirements of ESOS.

The National Code requires all providers to have an independent and external complaints process. Students must be allowed to exhaust both a provider's internal and external complaints processes before action is taken on matters such as reporting for failure to maintain satisfactory course progress or attendance.

Monitoring course progress and attendance is a significant issue for both providers and students. Once a student is reported for failure to maintain satisfactory attendance or course progress, he or she is subject to visa cancellation and a three year exclusion from Australia. The high stakes make providers uncomfortable in making such a report and result in international students pursuing exhausting multiple complaints avenues. There are also ongoing allegations that a small number of unscrupulous providers use their ability to report a student for failing to maintain satisfactory course progress or attendance as a threat to force students to make early or additional payments.

The current requirements of the National Code seem to have created a system that allows non-compliant students to make lengthy appeals on technicalities and removes discretion from both providers and DIAC to support a genuine student who may have been absent from class on reasonable grounds or has struggled with their course. The frustration of providers can be seen in this submission:

...the government agencies such as DEEWR and DIAC [need to] support a provider who is enforcing the regulations, and...not overturn decisions made in good faith by providers in compliance with such regulations.³⁴

ESOS complements Australia's migration law. A student visa is only granted for the purpose of studying in Australia. Students are only entitled to remain in Australia if they are genuinely a student. Providers need to play a role in making that assessment. They are the people best placed to judge a student's engagement in their education. But they are not migration officials and a visa decision should not rely solely on their assessment.

More than half of submissions commented on the issue of complaints handling. The vast majority of those who commented supported measures that would strengthen and streamline the complaints process for international students.

There are a number of steps that could be taken to make this area of regulation stronger, simpler and smarter.

First we could better utilise current statutorily independent complaints handling bodies.

³³ Commonwealth Ombudsman, *Submission 33*

³⁴ Central Queensland University, *Submission 28*

The *Senate Inquiry into the Welfare of International Students*³⁵ recommended that the Commonwealth Ombudsman's jurisdiction be extended to cover the international education sector. I agree that international students should have access to the highest standard of complaints handling, but differ only in how that should be achieved.

All providers, not already within the remit of other statutorily independent complaints bodies, could be covered by extending the jurisdiction of the Commonwealth Ombudsman. By utilising the current structures domestic and international students of public providers will access the same complaints bodies minimising confusion. Parliaments will retain their oversight over public providers via the statutory bodies they have created for that purpose. In practice, this would result in government providers using their state or territory Ombudsman. Non-government providers would come within the remit of the Commonwealth Ombudsman. In South Australia, however, all providers already fall within the jurisdiction of the South Australian Training Advocate and that would continue.

To support this expanded jurisdiction of the Commonwealth Ombudsman providers would be charged a fee based on the complexity of the complaint. This would create incentives for providers to have thorough internal complaints mechanisms and encourage them to resolve complaints internally. The service should be free to students.

This system would also be smarter. A limited number of expert complaints handling bodies could, through sharing information on complaint trends, strengthen quality assurance processes and identify areas where ESOS regulators needed to review requirements or provide additional support to providers.

The process of reporting course progress and attendance could also be simplified. Currently the National Code includes a high level of prescription because of the high stakes for students. As a provider's decision then forms the basis of a government migration decision the provider's policies and processes must be strictly compliant. Amendment to the *Migration Act 1958* to only review a student's visa (rather than initiate automatic or mandatory cancellation) would relieve this pressure. Undue prescription could then be removed from both providers and students.

The benefits of stronger, simpler, smarter regulation are obvious for governments and providers, but international education is about providing a service to international students. For students, stronger regulation means fewer dodgy providers, simpler regulation means students knowing who is responsible and who to go to when there are issues, and smarter regulation means more effective but less costly regulation for governments and providers. This in turn means lower costs to pass on to students. The changes I recommend here and in the previous chapters will have substantial benefits for students. The next chapters look specifically at the issues that directly impact students: what is needed to be well informed and well supported.

35 Education, Employment and Workplace Relations References Committee, *Welfare of International Students*, November 2009, www.aph.gov.au/senate/committee/eet_ctte/completed_inquiries/index.htm

Recommendations

5. That ESOS be made stronger by:
 - a. introducing financial penalties for a broader range of non-compliant behaviour
 - b. establishing clear, objective and enforceable standards that providers must meet
 - c. ensuring resourcing levels for regulatory activities are adequate
 - d. publishing targets and regularly reporting on all regulatory activities undertaken.
6. That ESOS be made simpler by:
 - a. allowing national registration of providers with assessment of the suitability and capacity of individual courses at each location
 - b. supporting the principle that wherever possible each provider should have only one regulator
 - c. developing shared regulatory philosophies and business practices to ensure a consistent and effective approach to regulation.
7. That ESOS be made smarter by:
 - a. giving the Australian Government Minister for Education the discretion to exercise otherwise delegated powers where necessary, and authority to issue directions as to the consistent application of ESOS
 - b. ensuring the level of prescription in the standards is only that which is required to achieve the intent.
8. That ESOS be amended to specify that all providers must utilise a statutorily independent complaints body as their external complaints and appeals process, and amend the *Ombudsman Act 1976* to extend the Commonwealth Ombudsman's jurisdiction to include those providers without access to such a body.
9. That the *Migration Act 1958* be amended to enable a more flexible approach to the current visa cancellation requirements for students who are reported for failing to maintain satisfactory course progress or attendance.

5 Ensuring accurate information and ethical recruitment

Providing students with complete, accurate and timely information has been a matter of great interest in the course of the review. It has also been commented on by the *Senate Inquiry into the Welfare of International Students*, raised at the September 2009 International Student Roundtable, and considered in the development of the International Student Strategy for Australia.

Two main categories of information have been identified: information about studying in Australia; and information about living in Australia. There are widespread concerns that some providers and overseas education agents are providing incomplete or out-dated information, and at worst, deliberately seeking to mislead students in the recruitment process. As one provider's submission noted:

It is an undeniable fact that some education providers often furnish very attractive information to prospective international students in order to lure them to apply to study in their institutions. However, the real experience sometimes on the ground is often nothing to write home about.³⁶

5.1 Providers and their courses

Providers must ensure their marketing and recruitment activities, including those of their agents, are accurate and ethical. ESOS currently includes prohibitions on misleading and deceptive recruitment activities, and specifies requirements around information provision, recruitment practices, written agreements for students, and working with agents. As with many areas in ESOS there are twin concerns: whether current requirements are sufficient; and the monitoring and enforcement of these requirements.

A number of submissions outlined additional information providers should be required to publish about themselves, their courses and their environs. One student at the consultations described this as akin to a 'product disclosure statement'. In this respect, I think it is important to distinguish between the basic information which should be compulsorily supplied and the much wider range of information a provider may choose to publish for marketing purposes.

I believe ESOS should require the provision of key information that will help international students make an informed decision about studying in Australia, including:

- the history, scope and nature of the provider
- the student cohort they will join
- the content and level of the course
- whether the course will lead to professional accreditation or if there are additional requirements for professional accreditation
- the support they will receive from the provider
- local employment, accommodation and safety information.

It is crucial that information provided to international students is accurate, regularly updated and easily accessible. As discussed in chapter 4 some of this can be achieved without placing additional burden on providers by better interlinking a number of authoritative data sources about providers and their courses.

³⁶ Edith Cowan University Student Guild, *Submission 42*

Many providers already publish a lot of the information I am suggesting should be mandatory. However, presenting it in a common, comparable format via a single, authoritative source such as the Study in Australia website will allow students to more easily compare aspects of a particular provider, course or locality that are important to them and aid in their decision making.

5.2 Students making good decisions

Being an international student is a great opportunity. The chance to live in another country, to advance your education, and to make friends from across the globe are all great privileges. Much of this report focuses on ensuring that education providers and governments do all they can to ensure the best possible educational experience for international students. But it is also incumbent on international students to make the decision to study in a foreign country after careful consideration and with good intentions.

All the information in the world will not protect international students if it is not read or is disregarded. As with most purchases if the deal looks too good to be true, it probably is.

With more than 1300 international education providers in Australia there are a range of institution types providing different study experiences. Quality assurance is not intended to make all providers the same. The experience at an older university with a large campus in a major city will always be different to studying at a new university in a regional centre, or at a private college operating in the commercial business district. It is important a student considers the environment they want to study in and what support and ancillary services they value.

5.3 Providers' responsibility for education agents

During the review some providers indicated monitoring their offshore education agents' activities was difficult and there were suggestions the Australian Government should directly regulate the activities of their education agents.

Other providers indicated a disturbing abrogation of their responsibilities, a lack of good business sense or a thorough understanding of the complexities of operating an export business. For example, one provider's submission stated:

It is impossible for Australian providers to take responsibility for their overseas agent's business activities. Agent contracts are not enforceable instruments internationally and are merely a confirmation of the terms of a business relationship.³⁷

It is most concerning to hear that some providers do not believe their education agents are accurately representing them and yet they are taking no action to either cease using such agents or ensure their education agents act in an ethical manner.

Submissions also noted the importance of providers taking responsibility for the information and advice that students receive. For example:

...providers [must be] legally responsible for all information provided to students even where this information is being sourced from education agents. Where providers or their agents fail to meet these standards penalties should apply.³⁸

³⁷ Sydney College of English, *Submission 107*

³⁸ National Tertiary Education Industry Union, *Submission 82*

It is important the message is clearly given to providers that if they contract with an education agent to represent them then they must conduct sufficient due diligence to be confident the education agent will accurately represent them, their courses and living in Australia.

ESOS makes Australian providers responsible for all their agents. Amending ESOS to reflect the standards established in the *Trade Practices Act 1974* (TPA), which establishes a wide range of protections for consumers in Australia, including against unethical marketing practices, and establishing financial penalties for providers whose offshore agents can be shown to have acted unethically, would help prevent unethical marketing practices. These enhancements should be supported by ESOS regulators working closely with the Australian Competition and Consumer Commission (ACCC) to ensure common approaches to interpretation and, where appropriate, referral of cases.

The operation of offshore education agents represents a particular regulatory challenge. While the Australian Government may be able to regulate the actions of Australian citizens or companies overseas, there is little scope to regulate the activities of foreign nationals or foreign companies operating outside of Australia. It is important the Australian Government continues to work with overseas governments to strengthen international students' consumer protection in their home countries.

5.4 Supporting providers' work with agents

In general, feedback provided during the review about education agents was negative. However, the lack of a peak body for education agents means that in many ways education agents are the stakeholder who has been least heard in this review process.

While I have not been convinced of the merits of the Australian Government directly regulating education agents, the Government could expand the work being done to establish a professional peak body for agents, which would establish standards for entry into the profession and impose an element of self-monitoring.

The Australian Government should also continue to promote the usefulness of education agents participating in professional development activities such as undertaking the Education Agents Training Course. Recognising that many migration agents also work as education agents the Migration Institute of Australia could explore the development of education-specific elements that could be included in its program of professional development activities.

Provider peak bodies and Austrade, when it takes on its new marketing responsibilities in international education, will need to work together to help some providers establish more balanced relationships with their agents.

In mid-2009 the Australian Government published *Using Education Agents—A guide for providers of education and training to overseas students* to help education providers in managing their education agents. Given the ongoing difficulties that providers express about managing their agents, it may be useful to enshrine some of these practices in ESOS as minimum standards.

5.5 Monitoring agents' activities

Many providers' submissions indicate they believe the Australian Government is withholding vital information that could assist them in better managing their education agents. As far as I am aware the Australian Government is not systematically collecting such information but there are steps that could be taken to better support providers in this area.

Currently DEEWR has almost no information about which education agent may have recruited a particular student and therefore almost no ability to identify patterns in complaints about a particular agent. One way to resolve this issue would be to require providers to identify the recruiting education agent on a students' confirmation of enrolment. In order to do this with integrity, a mechanism would need to be developed to issue each student with a unique identifier.

Generating, collecting and linking such information would allow DIAC and ESOS regulators to identify patterns such as whether students recruited by a particular agent transferred providers more frequently or presented with similar complaints. Such information could then be used to alert providers to regulators' concerns about education agent actions. This information could also be used by DIAC to strengthen the monitoring of the performance of education agents who have been given the ability to lodge visa applications online (eVisa). It would also be useful if DIAC advised providers of agents who had been removed from the eVisa trial. Similarly, where a provider decided to cease using an agent due to conduct concerns the provider could advise their ESOS regulator. The information could be shared with other providers who use that agent via industry managed agent lists that are currently being established.

Commissions

Providers and students raised concerns about agent commissions during the review. It was surprising to hear how beholden some providers felt to their agents, how concerned they were that some agents were driving up commissions to unsustainable levels and that a provider who refused to pay large commissions might be cut out of the industry. One provider noted in their submission:

Education 'agents' reign unchecked across the world of learning. They answer to no one, can bring down a provider by the simple click of their fingers, charge unconscionable commissions (up to 50 per cent of tuition fees and more in some cases), and disappear if there is a problem.³⁹

Providers have also suggested that some agents might be deliberately transferring students from one provider to another in order to increase their commission payments.

Similar to the arrangements being put in place in the financial services industry, it would be useful if students were made aware of the commission an agent was to receive for recruiting a student to a particular course of study. This information would allow a student to note any correlation between commission amounts and program recommendations. Requiring a student's confirmation of enrolment to include the recruiting agent's commission would ensure that students were aware of the arrangements, and allow ESOS regulators to monitor commission levels that might indicate a risky business model.

Written agreements

Strengthen student consumer protection through the development of a standard International Student Enrolment Contract (ISEC) template to replace the current 'written agreement' which is legally unclear. The ISEC template would include the information currently required by the National Code (standard 3) and [include]:

- *strengthened provisions on students' consumer rights; and*
- *additional provisions clarifying the legal status of the contact.⁴⁰*

³⁹ Australian International College of Language (2), *Submission 19*

⁴⁰ Government of Victoria, *Submission 51*

Claims of unethical marketing and recruitment activities are widespread and often difficult to prove. This is especially the case where the claim involves verbal representations made by an offshore education agent to a prospective international student. One way of addressing this would be to expand the information that a provider is required to include in a student's written agreement. Such information could be drawn from the information held in CRICOS which would in turn create pressures for the CRICOS information to be current and complete.

There are ongoing reports of providers who include in their written agreements refund provisions which would be considered by some unconscionable. For example, requiring students to pay the entire course fees even if the student withdraws after one study period has been cited as a not uncommon practice. Withholding a student's fees for a study period where a student cancels their enrolment after teaching has begun may be a necessary business practice, but requiring full payment for the entire course appears to be taking advantage of a provider's strong negotiating position and a student's vulnerability. It might be wise for the Australian Government to expand the requirement for written agreements to specify the maximum amount of fees a provider can require upfront and keep if a student withdraws from a course of study.

5.6 Unethical recruitment of transfer students

The role of some unscrupulous agents and colleges must be held to account for unreliable or inconsistent information that they disseminate and the role they play in creating student uncertainty or churn.⁴¹

There are widespread complaints from providers about the unscrupulous actions of a small number of providers and education agents who are involved in actively recruiting students currently studying in Australia to transfer from one provider to another. This practice, commonly referred to as poaching, often relies on unethical marketing practices, promotion of inappropriate teaching methods, or false guarantees of migration outcomes. Poaching poses an unacceptable risk to both students and the sector as a whole and needs to be stamped out.

The first step in eliminating this practice would be to ban the payment of any commission or inducement to anyone engaged in activities aimed at persuading existing students to transfer from the course of studies they are currently undertaking. The argument for using and paying education agents for offshore recruitment is that it is difficult for prospective students to access information about Australian study opportunities. The same cannot be said for students who are already in Australia, where the information is available by walking into another education institutions, or accessing the internet via a public library or internet cafe.

The current restrictions on student transfers are a source of significant complaint by both students and providers. Students believe restricting their ability to transfer providers without a letter of release prior to completing six months of their principal course is an unjustified limitation. In the words of one advocate it is a punishment on students. Providers complain that the restrictions have not been enforced, the requirements to consider requests for letters of release are onerous and they are concerned students are transferring to lower quality providers for non-educational reasons.

Despite concerns about poaching many providers recognise the current restrictions are too long and a more appropriate limitation might be to prohibit transfers within the first teaching period of students' enrolment—a period long enough to allow students to acclimatise to living and studying in Australia and allow a provider to recoup their costs in recruiting a student without unfairly constraining the student's rights.

⁴¹ Australian Council for Private Education and Training, *Submission 10*

If providers were required to include the end date of the first study period on a student's confirmation of enrolment, both the student and PRISMS would be aware of when a student could freely transfer providers. This would require the introduction of a unique student identifier and a PRISMS 'block' on creating a new confirmation of enrolment that overlapped with a current enrolment.

This is an area where financial penalties would be a useful enforcement mechanism. Where a provider is shown to have actively recruited a current student to transfer courses or to have paid a commission or inducement for the transfer, then a fine equivalent to a teaching period's fees should provide a significant deterrent.

With a number of smart systems changes we can create a regulatory environment that both respects the rights of students to make informed decisions about their education, and protects providers against the actions of unscrupulous agents and providers.

5.7 Living in Australia

Throughout the review there were calls for the Australian Government to extend its work in communicating with students from passive information provision to more active engagement to ensure access to reliable information at all points in the student life cycle. These included a more active program of briefings for students both pre-departure and after arrival and enhancing the Study in Australia website.

The International Student Roundtable considered the issue of pre-arrival information for students and recommended a comprehensive information manual be developed and made available to prospective students. This recommendation was accepted by the Ministerial Council for Tertiary Education and Employment (MCTEE) on 28 September 2009⁴² and an undertaking was given that an online manual for international students will be available by mid-2010. Including this information in the Study in Australia website will make it a must visit destination for both prospective and current international students.

The Study in Australia website is already integrated with CRICOS and can be readily adapted to include the additional information I recommend providers be required to make public. It seems logical that the site be enhanced to allow students, parents and agents to register allowing for tailored communications to be developed and delivered.

We also need to do more to ensure that prospective students are better informed of their rights and responsibilities when deciding whether to study in Australia. While the current Australian Education International website (www.aei.gov.au) contains a brief explanation for students about ESOS far more could be done to describe how ESOS protects international students in a way that is more engaging and accessible in both English and other languages.

⁴² International Student Roundtable Communique 2009, www.deewr.gov.au/Ministers/ReleaseData/Documents/090915_communique.pdf, accessed 8 January 2010

Recommendations

10. That ESOS be amended to ensure students can accurately compare potential study choices by requiring information from all providers relating to the:
 - a. history, scope, location and type of provider
 - b. student cohort
 - c. course, including entrance standards, costs, award and anticipated professional outcomes
 - d. academic and student support services offered
 - e. local employment opportunities, the accommodation situation in the locality and safety risks.
11. That the Australian Government expands the Study in Australia website to include a comprehensive international student manual, available in the languages of the major source countries.
12. That ESOS be amended to restrict unethical recruitment practices by:
 - a. introducing financial penalties for providers whose offshore agents act unethically
 - b. implementing a unique identifier for each student
 - c. requiring all provider payments to agents to be contingent upon disclosure of the recruiting agent and their commission structure to both students and regulators
 - d. expanding the requirements of student written agreements to more completely describe the course, course costs, refund provisions and transfer limitations
 - e. prohibiting the payment of any commission or inducement to anyone for securing the transfer of any currently studying onshore international students
 - f. prohibiting a provider from enrolling a student who is currently studying with another provider and who has yet to complete the first study period of their initial course.
13. That the Australian Government should work with industry stakeholders and foreign governments to strengthen students' consumer protection rights in their home country; and continue to support the professional development of education agents.

6 Supporting students in Australia

International students arrive in Australia as temporary visitors. Many come from countries with significantly different approaches to many issues; from how teaching is delivered and the role of the student learner, to the rights and protections the state offers or is able to uphold. Many students will be living away from home and family for the first time. Living in another country can involve significant cultural differences. Recognising and engaging with these differences will not only assist international students to live and learn in Australia but will also require domestic students, education providers, our community and government institutions to think more consciously about how to study, work and live in an increasingly multicultural and globalised world. As one submission noted:

*International students have special needs that are characterised by their language ability, industry experience, work rights, cultural understanding, accommodation, transport and social needs.*⁴³

6.1 On arrival and ongoing

The review has revealed widespread concerns about the provision of information and support to students, and whether the current requirements of ESOS are sufficient or sufficiently monitored and enforced.

Students often say information needs to be available at all times, not just in the first weeks of studying. In these early days, information overload can be a problem.

One of the challenges of orientating and supporting international students lies in the history of education in Australia. In some countries it is common for people to move large distances to undertake post-secondary education. This is not the case for the majority of Australian students. For this reason our institutions have not had to develop large stocks of student housing or to establish the sort of orientation programs that are necessary when a significant proportion of a student cohort is new to town and has moved away from their support networks. This often means that orientation for international students is conducted separately from orientation for domestic students, even domestic students who are relocating to study, thus missing a valuable opportunity to link international and domestic students.

Culture shock, whether it happens in the classroom or in the broader community, is not an issue that can be addressed by a pamphlet, a website or a brief lecture. It is something international students may need ongoing support to address: buddy programs that link domestic and international students, welcoming teachers and building strong social networks between domestic and international students where you can seek an explanation, are all part of the orientation and support process.

Australian educational approach

One issue raised by students is the importance of including an introduction to the style of Australian education in pre-departure information and orientation activities. Almost all international students will experience some differences between their home education system and the Australian education system. For some, the differences will be significant. These differences apply to issues of plagiarism and referencing, as well as to broader issues such as student-teacher relations, an expectation of independent learning and the acceptability of questioning both authors and academics.

⁴³ Gold Coast Institute of TAFE, *Submission 49*

It may also be useful to describe the culture of many Australian education institutions where there may be quite a diversity of age in classrooms. Some students will be working in part or full-time jobs and hence spend relatively little time on campus. The lower drinking age and social drinking culture, as well as norms around sex and sexuality, are other cultural differences to note.

6.2 International student hubs—space to support, inform, advocate and connect

The International Student Roundtable proposed international student information centres should be established in each city and called for international students to have a stronger voice with their providers and all levels of government.

I support these recommendations and believe international student hubs established by the Australian Government in collaboration with state and territory governments could form central points in capital cities to provide international students with:

- information, advice, support and referrals
- opportunities to engage with the broader Australian community
- support in the event of a provider closure
- a mechanism for building a representative student voice.

Although there is a tendency for governments to provide services via the internet, feedback from the International Student Roundtable indicated a particular need for face-to-face services for international students. A website does not establish a sense of connection to a particular locality, or provide the same kind of support that face-to-face contact can. The position of the International Student Roundtable was also supported by the following submission:

...consider setting up International Student Centres, which are essentially run by students but which are also serviced by other relevant agencies the students have to deal with such as police, immigration, taxation office, legal services etc; membership to such a Centre may be compulsory and may be on the basis of a compulsory fee of a nominal sum (say A\$50per annum); the Centre would function as a 'one-stop-shop' for students' services.⁴⁴

International student hubs would provide a space for government agencies and community organisations to deliver services to international students. This could be a tenants advice service talking about renters' rights, or regulators advising students of their rights and obligations under ESOS. The international student hub could facilitate volunteer, internship and employment opportunities for international students. In the event of a provider closure international student hubs would be a reliable source of information and support as the tuition protection measures were implemented.

International students often report that friends are a large part of their Australian experience. International student hubs could also play a vital role in facilitating international students' engagement with the broader community, whether through creating sporting teams to play in local leagues or promoting the local Rotary Club's Australia Day activities.

By establishing representative committees each of the international student hubs could become an important channel of communication between international students, providers and all levels of government and provide a formal link between the hubs and existing student organisations. While university students have historically had a strong voice, the same cannot be said of VET students.

⁴⁴ High Commission of India, *Submission 54*

Many of the issues that are now facing the international education sector, therefore, could have been avoided had there been a strong and heeded international student voice, whether insisting on better quality teaching at a particular provider, or seeking more from local police services.

The establishment of these international student hubs should not be seen as an excuse for providers to reduce their current commitments to student support staff or student organisations. Instead the hubs would provide additional services or could be used by providers on a fee for service basis to assist in delivering stronger orientation programs. The international student hubs would work with and build on the work of student and community organisations in supporting international students.

International student hubs could be funded by a small additional fee added to the Annual Registration Charge, assessed on the basis of the services a provider already delivers to international students and delivered under tender from the Australian Government. Depending on the community, they might be run by a local or state government or a community organisation. A small staff could support the student committees and ensure that information, referral and advocacy services were delivered professionally.

6.3 Living as part of the community

Part of the reason a person chooses to study in Australia is undoubtedly an interest in getting to know Australia. But this means students getting out and becoming part of the community, reaching out and making Australian friends. This does not always need to be a bold step—using connections through a church, temple or mosque, sporting or musical group often helps ease the way.

Some international students said they were disappointed with the informal aspects of their educational experience in Australia. They questioned how their English language skills could improve given their limited exposure to Australian students and expressed disappointment they had not made more Australian friends or built stronger networks amongst their classmates. Many expressed a desire for more opportunities to engage in the broader Australian community.

The desire to experience Australian culture and participate in the broader community, as well as receive a quality education from a provider, is more difficult to achieve where the student population is overwhelmingly made up of international students, or heavily segregated between international and domestic students. Providers should be mindful of the benefits that will accrue to both groups of students in building such networks. They should actively support programs and activities that build links between the two groups inside and outside the classroom.

6.4 Beyond ESOS—protecting international students' human rights

The terms of reference that established my review focus on ESOS and therefore the actions of providers in recruiting, educating and supporting international students. However, while a student's provider is often their main anchor in the Australian community it is not solely the provider who should be helping international students have a successful life in Australia. I would like to address some comments to the broader issues that face international students.

International students have the same rights to safety and protection under the laws of Australia as other temporary and permanent residents in Australia. However research and anecdote suggest a significant number of international students do not enjoy the rights they have and are either unaware their rights are being impinged or are unaware of how to enforce them. Incidents of overcrowding in sub-standard housing and alleged workplace exploitation are examples of this. These and other issues must be addressed by governments better enforcing the laws that are meant to protect

everyone in Australia from these types of exploitation. In addition, international students must be given better information as to what their rights are and better support to make complaints when their rights are infringed.

As the International Student Roundtable noted in its communiqué of 15 September 2009⁴⁵:

Resonating with the Australian ethic of 'fair go', the Roundtable wants fair and equal treatment for international students. Simply put, this mean protection from exploitation...

Racism

The Australia and New Zealand Race Relations Roundtable held in November 2009 acknowledged in its communiqué that racism and discrimination are issues that face international students in Australia. This Roundtable called for more research to better understand the scope of the problem and I support that call.

Since 1975 discrimination on the basis of race has been illegal in Australia. The *Race Discrimination Act* states:

9 Racial discrimination to be unlawful

(1) It is unlawful for a person to do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life.

However, it would be naive to believe that governments can change how people think and feel simply by legislation. Racism is disappointingly common throughout history and within any individual country, but this should not be an excuse for inaction. International education should be recognised as an important means of building cultural understanding. Governments, the Australian community, providers and students—international and domestic—need to be actively engaged in campaigns and education activities that address the prejudices and ignorance that fuel racism.

Although international students are temporary residents they should be considered as part of the social inclusion agenda and activities that governments are developing. If anything, international students should be included in these programs because of the very barriers their temporary status creates.

Safety

While safety was not raised in many consultations or in submissions, recent incidents have clearly highlighted that Australian governments and the community must tackle this issue if we are to maintain our reputation as a safe and welcoming country.

For the most part Australia is a safe place to live and study. But no society is entirely safe. International students need to be made aware of the risks and given information on how to minimise them.

As this report is written, violence against Indian students is a leading item in the news. These attacks are a tragedy for the individual students, their families, as well as the communities they belong to in Australia and in India. All good governments try to ensure the safety of everyone within their borders; no government has yet succeeded in guaranteeing absolute safety. But it is something our governments are continuing to work towards.

45 International Student Roundtable Communiqué 2009, www.deewr.gov.au/Ministers/ReleaseData/Documents/090915_communique.pdf accessed 8 January 2010

It is regrettable that our police forces are either unwilling or unable to share accurate information about the prevalence of attacks on particular ethnic groups or the number of attacks in which race plays a role. This failure should be addressed as a priority. Governments should also consider whether the current legal frameworks provide adequate penalties for racist acts.

There is a growing body of research by Australian academics relating to violence against international students. Good research on the frequency of violent crime and the motivations of attackers is fundamental to being able to address the underlying causes. Governments and providers need to continue to support this research, and the researchers need to ensure that their research does not just describe the problem but also helps governments, communities and providers develop effective solutions to the issue.

I also believe providers need to do more to make sure international students are made appropriately aware of the risks of violence and have recommended that safety information be included on all provider websites. However, this is not a responsibility of providers alone. Collectively we need to ensure international students are made aware of the risks that may be mitigated differently in Australia than in the students' home country.

Transport

Local governments need to recognise the significant contribution to local communities that International Students make, and grant them reasonable concessions for local services, similar to what local students in similar courses receive.⁴⁶

As a former New South Wales Minister for Transport I am well placed to reflect on the grievances expressed by international students about their exclusion from student transport concession programs by some state governments.

International students frequently describe these state government policies as being racist and discriminatory. Many international students say they believe state governments are exploiting them by willingly encouraging the growth and income they bring to a state economy but not providing equitable access to services. The differential treatment between international and domestic students is perhaps more difficult for students to understand when they are aware that not all jurisdictions exclude international students from their concession programs.

The recent announcement by the NSW Premier's Council on International Education⁴⁷ that it will talk to providers about promoting the pre-purchasing of tickets falls well short of the response I believe to be necessary on this topic.

Accommodation

Although providers are not required to guarantee accommodation for all of their students, whether domestic or international, they should be held responsible for the advice they give to students about the cost and availability of the rental market in their localities.

Housing in most cities of Australia is in short supply, and most students find rental agreements hard to obtain. Accommodation costs are likely to be a significant part of their budget. This may mean that students need to arrive in the country before classes start in order to secure accommodation, or that providers who guarantee accommodation have a marketing edge. In almost any city in Australia, finding accommodation for a student without a job and without a rental history will not be easy. Of course students may decide to live in less luxurious surroundings, but no one should be living in unsafe accommodation.

⁴⁶ Holmes Institute NSW, *Submission 56*

⁴⁷ NSW Premier Kristina Keneally, 'NSW shows it's serious about economic and cultural International Relations', *media release* 10 February 2010, www.premier.nsw.gov.au/sites/default/files/100210-community-roundtable.pdf

In cities where accommodation is difficult to secure the guarantee of accommodation may be a significant competitive advantage. Through the review a number of solutions have been suggested including providers taking the head lease on properties in order to facilitate international students' access to rental accommodation, or working with real estate agents to ensure that letters demonstrating scholarship funds are recognised proof of income.

Concerns have been raised that disreputable landlords are taking advantage of gaps in regulation in order to exploit international students. The Ministerial Council on Tertiary Education and Employment in its September 2009 communiqué announced that Ministers agreed to the following co-ordinated action:

Engaging with state and local authorities responsible for laws and regulations governing the use of private accommodation in each jurisdiction to raise the priority given to preventing exploitation of international student tenants and unsafe housing being made available to international students.⁴⁸

Employment

International students working in Australia are entitled to the same pay and conditions as any other worker. Through outreach to education campuses and the targeting of industries heavily dependent on casual labour the Fair Work Ombudsman already has an active program of work with domestic and international students. It is important this work continues. It is also important that international students are made aware of their rights in the workplace. They should be given all possible assistance to avoid workplace exploitation and effectively take action should it occur.

Many providers already offer assistance to international students in securing employment. I encourage providers to expand their networks with employers and employment agencies to identify both employment and internship opportunities for students. Such services also need to ensure jobs they refer students to meet or exceed the minimum employment standards.

Many international students consider a job as part of their Australian experience. However, Australia does not guarantee that every international student will find a job. Further, there are very few jobs that pay enough to cover room, board and tuition while working less than 20 hours a week, particularly for people still gaining their qualifications. That is why DIAC asks students to establish that they have a minimum of \$18 000 per annum for living costs, in addition to tuition fees and travel expenses.

The 20 hour cap is not an unreasonable restriction. Arguments the cap should be lifted in order to allow students to earn the income necessary to meet rising accommodation costs ignores the fact students should not rely on earnings within Australia to meet basic living costs.

Health insurance

International students are required as a condition of their student visa to maintain Overseas Student Health Cover (OSHC) for the duration of their stay in Australia. The scope of OSHC coverage is regulated by the Department of Health and Ageing. OSHC is designed to give international students access to a similar level of health cover as provided by Medicare. However, concerns have been raised that students allow this coverage to lapse and are left without access to basic medical services. Given the limited number of OSHC providers, it may be appropriate for the Australian Government to explore with the insurance providers how information can be shared between their information systems to allow monitoring of the continuance of students' health coverage.

48 Ministerial Council on Tertiary Education and Employment 2009, *Inaugural meeting of MCTEE—28 September 2009—Communiqué*, www.deewr.gov.au/Skills/Programs/Pages/Ministerial_Council.aspx, accessed 8 January 2010

Although the issue of OSHC was not frequently raised in the course of the review, many submissions raised the issue of access to counselling and other ancillary services and whether different types of OSHC coverage should be available. For example, a policy that included insurance for travel to and from Australia or that covers a range of ancillary services. Some students will of course want the minimum coverage, but some would be willing to pay for a wider range of coverage.

Recommendations

14. That ESOS be amended to require providers to demonstrate that they deliver a comprehensive induction program and access to information on a continuing basis that:
 - a. is reasonably adapted to the needs of their students
 - b. allows students to easily access the information on an ongoing basis
 - c. includes information on safety, student rights, and where to seek support in making complaints.
15. That the Australian Government, working in conjunction with states and territories, establish international student hubs in each capital city as a place for international students to seek information, access referral and advocacy services, build ties with the Australian community and strengthen the voice of international students to providers and government.

Findings

- iv. Further research should be undertaken to better understand the causes and frequency of violence against international students.
- v. The state and territory police forces should work with providers, student representative bodies and the international student hubs to deliver better safety information to international students.
- vi. International students should have access to equitable travel concessions.
- vii. Providers should play a more active role in securing accommodation for international students.
- viii. The Fair Work Ombudsman should continue to deliver outreach programs that work with providers, unions, students and peak bodies to promote and enforce the safeguards of the Australian industrial relations system.
- ix. The Department of Health and Ageing (DoHA), in consultation with international students, should work with health insurance providers to make a wider range of health insurance policies available to international students.

7 Safeguarding students' interests: stronger tuition protection

ESOS established the world's first comprehensive, dedicated tuition protection framework for international students. It was developed and introduced in the early 1990s due to the closure of a number of private providers that were insolvent when they closed, and were unable to refund pre-paid fees to students. In 2000, the *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991* (previous ESOS Act) was amended and the tuition protection framework enhanced to include placements and an Assurance Fund.

The existing three tiered tuition protection framework aims to ensure international students receive the tuition for which they have paid and in the case of a provider closure, that they receive either an alternative suitable course or a refund. Where an education provider no longer provides a course and cannot provide a refund, ESOS specifies that eligible students must be placed in an alternative course by that provider's TAS. If that is not successful, the ESOS Assurance Fund must endeavour to place the student in a comparable course and as a last resort pay a refund to the student. Generally providers that are required to be a member of a TAS and ESOS Assurance Fund are private or non-government providers not in receipt of Commonwealth recurrent funding. Approximately 700 providers with some 280,000 students are required to meet the ESOS TAS and Assurance Fund provisions.

7.1 Why change?

The recent rapid growth of the sector has affected the nature of the industry and put the current tuition protection framework under pressure. Some pressures have arisen from poor provider business practices, the stretched capacity of regulators to monitor the financial viability of providers and changes in demand brought about by external factors such as migration policy settings and the growth of education agents.

The expansion of the private VET sector has given rise to concerns that some operators enter the sector with their eye on the money not education. Results of compliance activities undertaken by regulatory authorities indicate that a number of high-risk providers are poorly managed and are not complying with ESOS. The resulting enforcement action has affected students.

Inadequate financial viability of providers has been evidenced by the number of providers who have closed due to financial reasons. As with any commercial entity, providers' vulnerability to changes and fluctuations in demand can be significantly impacted by events outside their control. The global financial crisis, the increase in the Australian dollar, negative publicity in Australia regarding international students, increased competition and more choice for students have affected the financial viability of providers. Providers that succumb to these pressures are often not able to meet their obligations under the first tier of consumer protection (to pay a refund). Of the 21 providers that closed between January 2008 and September 2009, only five providers were able to meet their obligations. The capacity to pursue a provider that does not meet this obligation is limited, as is the case in most areas of business closures more generally.

The recent growth in providers with narrow course offerings and recruitment concentrated in a few countries has also made them vulnerable to an increased risk of closure. A sudden decline in student visa applications or visa approval rates in a key market for a provider could have significant consequences to the viability of businesses. For example, visa application data for July–December

2009 showed a 35 per cent decline in the number of applications from India compared to the same period in 2008.⁴⁹ DIAC has also seen a decline in student visa approval rates in India over the past year, largely due to high rates of fraudulent documentation submitted in support of visa applications.

These are but a few of the pressures on the current framework and bring into question its ongoing capacity to provide international students with adequate consumer protection without the burden falling to the Australian taxpayer. More specific problems relate to the current structure and shape of the arrangements, for example the limited TAS choice for providers, the insufficient contributions to the ESOS Assurance Fund given the sector's risk profile, and the slow and often confusing process of placing students. Apart from the stress and disruption to their studies, visa obligations make it critical that a tuition protection system places students quickly.

7.2 Current system—how it operates

The ESOS tuition protection arrangements are provided through three tiers of protection.

Tier one—Provider obligations

Where a provider fails to deliver a course they are required to give students a choice of either a full refund of course monies paid, or place the student in an alternative study course, with the student's written agreement.

Tier two—TAS

The role of a TAS is to arrange for one member provider to deliver a suitable alternative course to a student where another member provider does not start a course on the agreed starting date or the provider ceases to provide a course after it starts but before it is completed. In doing so the student must not be required to pay any additional amount to undertake a part of the alternative course for which course money had been paid to the defaulting provider. The TAS does not provide student refunds.

There are currently five TASs:

- Australian Council for Private Education and Training (ACPET)
- English Australia (EA)
- Western Australian Private Education and Training Industry Association (WAPETIA)
- Melbourne College of Divinity (MCD)
- Sydney College of Divinity (SCD).

By far the largest is ACPET covering 85 per cent of students of non-exempt CRICOS providers, followed by EA covering 8 per cent, WAPETIA covering 2 per cent, and MCD and SCD covering 0.2 per cent. The remaining 5 per cent of students are with providers that have obtained exemptions from being a member of a TAS by having either a bank guarantee, a parent indemnity agreement or gaining a Ministerial exemption.

Although a TAS must be approved under ESOS, each TAS sets internal standards in the form of by-laws (which generally include a Code of Ethics) to approve, cancel and regulate provider membership. Breaches of TAS by-laws may result in termination of a provider's membership. Under the ESOS regulations there are limited requirements for a TAS to report activity to DEEWR.

⁴⁹ DIAC, unpublished data

Tier three—ESOS Assurance Fund

The ESOS Assurance Fund (the Fund) is established by ESOS. The Australian Government made an initial contribution of \$1 million to establish the fund in 2001. Since that time non-exempt providers have been required to make annual contributions to the Fund. The Fund Manager has the role of managing the Fund to ensure it is able to meet all its liabilities, collect annual Fund contributions and special levies from providers, arrange alternative courses for students and pay refunds.

In cases where the tuition protection needs of students are not met by the first two layers of protection, the Fund will seek to place students in a suitable alternative course. Failing that, the Fund will assess and pay a refund to eligible students in accordance with the provisions of ESOS.

Contributions for the Fund are based on criteria set by the Contributions Review Panel (CRP). The CRP is established by ESOS and largely comprises members who represent the interests of providers who are liable to pay annual Fund contributions. The contribution criteria establish a base premium, a fixed amount paid annually, plus an additional premium rate multiplied by a provider's estimated overseas student fee income for the year. Providers who have a Ministerial exemption from TAS membership pay a higher additional premium. For 2010 the base premium was set at \$550 with an additional premium rate of 0.189 per cent multiplied by annual overseas student fee income. For example a provider with overseas student fee income of \$2 million in 2009 would pay \$4330 in its annual contribution to the Assurance Fund in 2010.

Recent provider closures and a lower rate of TAS placement have resulted in increased calls upon the Fund with the potential to deplete the Fund's reserves, thereby diminishing the Fund's capacity to respond to future provider default events as required. Under ESOS Fund shortfalls are dealt with by raising special levies. Whether or not this mechanism will operate effectively in the event of a large number of closures is currently untested.

7.3 Current system concerns

Throughout the review concerns were raised about the current three tiered tuition protection framework. There is strong feeling that the system does not work efficiently and needs fixing before it collapses. Concerns have included:

- the capacity of the current system to hold up if there are multiple or large closures
- delays in student placements, the level of support received through the process and whether students should have a greater say in what is a suitable alternative course
- the lack of access to providers' records for student contact details or training records to facilitate more efficient student placement
- whether the current system creates perverse incentives for providers not to refund students
- the large number of students failing to be placed in suitable alternative courses by the TAS and going through to the Assurance Fund
- one TAS dominating the industry
- the unnecessary complexity of the current system
- the cost to providers to maintain the current tuition protection coverage.

Student experience

Feedback from affected students during consultations and in submissions indicates a number of students are not being placed within reasonable timeframes. Some students said that they felt helpless and frustrated as there was no central reference point. They suffered considerable mental anguish waiting for the TAS to find them a place, were unclear about their rights, did not receive adequate updates on the status of their placements, did not know how to access funds in order to

transfer, were frustrated with providers failing to maintain current academic and payment records hindering placement, and were annoyed at not being able to have a say in where they were placed.

Reports from the Fund indicate that some students are waiting more than six months to obtain an outcome. This clearly does not meet the expectation that students are placed quickly or that they are being sufficiently supported when displaced by a closure.

In the majority of provider closures that have occurred over the past 18 months there have been difficulties in both the TAS and the Fund accessing accurate student records. Inability to obtain accurate student contact details has meant that it can take too long to contact students to commence the placement process or that a number of students who were affected by the closure could not be contacted at all. Consequently there are a significant proportion of students who do not seek to be placed in alternative courses through the TAS and do not seek refunds from the Fund. In effect, these students make their own arrangements and wear the cost themselves.

Provider experience

Under ESOS, providers are required to be a member of a TAS (unless deemed exempt), which in most cases involves a membership fee as well as an ongoing premium for coverage. For example, a provider with 200 students with an average course cost of \$10 000 could expect to pay a TAS membership fee of about \$15 000 per annum. The lack of transparency and accountability of TAS financial arrangements make it unclear what the premium covers, particularly as TAS members are required to absorb the cost of accepting displaced students in the case of another member provider closing. This cost burden can be offset in some cases where a provider reaps the benefit of placing a student who has several semesters of yet unpaid course fees.

The cost of TAS membership, as well as the administrative effort in meeting TAS obligations, is not the only cost for providers who must comply with the tuition protection framework. In addition to the TAS membership costs providers also have to contribute to the Fund which can be a considerable cost burden for some providers. For the largest providers this cost can range from \$40 000 to more than \$100 000 per annum.

A number of submissions also raised concerns regarding the current requirements or lack of requirements to gain a ministerial exemption from being a member of a TAS. Currently a provider who is unable to obtain or maintain TAS membership can apply for ministerial exemption where other options have been exhausted. If the provider was rejected or cancelled from all the TASs that cover that type of course, serious concerns and questions arise as to whether an exemption should be available. However, the ongoing refusal of TASs to provide detailed statements of reason for refusing or cancelling membership usually results in the Minister having insufficient reason to refuse exemption. Where ministerial exemption is granted, any closures would result in a call on the Fund by any affected student. Whilst ministerial exempt providers pay higher premiums to the Fund, the availability of such an exemption concerns me.

What should be refunded?

In the course of the review the Australian Government Minister for Education asked me to consider what monies paid by students to undertake study in Australia should be protected under ESOS.

One of the principal objects of the ESOS Act is to provide financial and tuition assurance for courses for which international students have paid. ESOS does this by protecting course money received by a registered provider. Course money includes tuition fees, Overseas Student Health Cover (OSHC) premiums and any amount the student had to pay the provider to undertake the course. Australia already provides a level of tuition fee protection for international students that is both generous and comprehensive by world standards. In addition, students may have rights under state or territory

consumer laws, fair trading laws and tenancy regulations. However, concerns have been raised about how students can obtain refunds of non-tuition course money paid to the provider in the event of a provider closure. This could include, for example, pre-paid accommodation for on-payment to an accommodation provider, text books, excursion fees, etc.

There are a number of strong reasons for not expanding the current definition of course monies in regard to refunds. Apart from the more obvious and difficult issue of trying to decide what is in and what is out I am concerned that if consequential costs were to be covered by refunds this would place an even greater financial burden on good providers and more uncosted and unfunded pressure on tuition protection arrangements.

A better alternative to trying to create further financial protections may be the prohibition of the collection of non-course monies. However, I am not disposed to amending ESOS to totally prohibit providers collecting money, which is not course money as defined by ESOS. This would seem excessive and too rigid depriving good providers of the flexibility to offer study packages that are appropriate and relevant for a particular group of students. For example, it would be reasonable and advantageous for boarding school students to have accommodation included as part of their fees collected by a provider.

I believe the current approach to refunds under ESOS is reasonable and balanced and imposing a further financial burden on good providers to fund an even higher standard of fee protection cannot be justified. Where concerns arise with higher risk providers, a condition of registration might be to restrict them to collect course monies as defined under ESOS. There are also a number of actions that could be taken to ensure that students' better understand their rights and obligations regarding what refunds will and will not cover. Students' written agreements could be made much clearer in this regard. These measures could be reviewed in 12–18 months to see if it is necessary to amend the definition of 'course monies' under ESOS.

7.4 Moving forward—towards a sustainable, effective system

Considering the concerns raised, the history of the tuition protection framework, and the suggestions made throughout the review I have developed the following basic principles that I believe should underpin successful tuition protection moving forward:

- A. **Seamless placement of students**—The focus should be on the student experience. Closures are a stressful time for students, and the process should be simple and quick from a student's perspective.
- B. **Refunds are provided as a last resort**—It is far better that students are placed and supported to receive the education for which they came to Australia. However, providers are currently unfairly burdened when there exists the requirement to pay a full refund of all course monies. This principle also recognises that refunds should only be required for the portion of the course for which the student has paid but which has not been delivered or assessed.
- C. **All registered providers must share the burden of placing students**—Australia's reputation is put at risk any time a closure results in displaced students. This will provide a greater pool of courses to draw on in the event of a closure, meaning that finding a suitable alternative course should be easier and quicker.
- D. **The cost of tuition protection to providers needs to be risk based**—Good providers should not bear the cost of risky providers. Pricing entry based on the risk the provider poses to the industry would also act as another entry check.

- E. **Scalability is needed**—As international education is at a cross road its future shape and form is yet to be seen. Any arrangements put in place need to be scaled up and down as the need arises.
- F. **Streamlined tuition protection**—Tuition protection has to be simple, cost effective and sustainable into the future.

A number of submissions made suggestions about how a possible tuition protection framework might look like in the future. The suggestions tended to fall into four categories: strengthen the current system; adopt an insurance model; establish trust accounts, and introduce a single placement/refund organisation. I have considered each of these options against the above principles.

Option 1—Strengthening current three tiered requirements

Under Option 1 non-exempt providers would continue to have TAS membership. Approved TASs would continue to place international students. However, the reporting and accountability requirements would be strengthened. The key measures would include:

- TASs would be required to give detailed statements of reasons for refusing or cancelling a providers' membership
- TAS's reporting requirements to government would be tightened for provider closures to ensure students are being given all the assistance required and being placed into alternative courses promptly
- the definition of 'eligible student' would be amended to ensure that all prospective students who have paid money to undertake a course are included in the TAS placement
- there would be defined timeframes for a TAS to place students to ensure quicker placements
- students could be placed with any provider (public or private) and not restricted to TAS members as is the current practice
- when a TAS has been unable to find an alternative placement and the student is referred to the Assurance Fund, the Fund seeks reimbursement from the TAS for the costs of planning or refunding the student.

The Fund would continue to try to place each student referred or if no suitable alternative course is available, pay a refund to the student of the undelivered portion of the course money paid.

The funding and reporting requirements of the Fund would also be amended to improve its transparency and accountability. This would, in essence, require altering the current CRP and Fund arrangements to ensure they align with requirements under the *Financial Management and Accountability Act 1997* (FMA Act). While the mechanism for the collection and payment of refunds will change, student refunds would continue to be funded via an industry levy. The criteria for determining the contributions would also be changed so it is risk based and determined by financial experts. This would ensure decisions on contribution rates are financially based so the industry covers the required costs of tuition protection arrangements.

Option 2—Tuition insurance scheme

Under Option 2 each non-exempt provider would be required to have and maintain tuition protection coverage with an approved insurer. The tuition insurance cover could also facilitate both placements and/or provide refunds to students.

Premiums paid by providers would be based on assessed risk in the same way as other commercial insurance arrangements. A framework insurance arrangement could be negotiated by the Commonwealth with those insurance companies who choose to offer the insurance product—akin to the arrangements which underpin OSHC.

A number of the submissions suggested this option and that I look at the New Zealand model. In New Zealand, for a private provider to maintain its registration, it must meet the requirements of the New Zealand Quality Assurance's Student Fee Protection policy. A number of options are provided under the policy which a provider can choose from, one of which is student-based insurance. Advice from the insurer that underwrites the insurance policy, called StudentCare, is that the insurance coverage is not widely available. Policies are only made to students whose providers are considered low risk. Currently there are only a handful of private providers that have access.

Singapore also has a tuition insurance scheme where private education institutions are given the option of taking out a policy on behalf of their enrolled students as a means of providing refunds in the case of provider default. About 50 per cent of providers choose this option. However, the insurers can refuse policies to providers they consider to be high risk. The Singapore and New Zealand insurance schemes provide coverage to domestic and international students and provide refunds only.

Under the previous ESOS Act providers could have insurance policies. At the time approximately 100 providers had such policies. Only two insurance agencies offered them and premiums were based on the previous year's earnings from overseas students' course fees. At the time of developing the ESOS Act 2000 the option of mandatory insurance was removed because insurance payouts were slow and involved only fee refunds to students and not tuition. This left students having to find alternative courses on their own.

Option 3—Trust accounts

A number of the submissions have suggested a 'trust fund' option where students' tuition fees are deposited into a trust account. Providers would be allowed to draw down on the funds at set times during a student's course (for example, a certain percentage at the start of the course and thereafter at the completion of study periods). I am wary of a mechanism that would impinge on proper management of cash flows and note that trust accounts have been problematic in other industries.

Under the previous ESOS Act it was a requirement for providers to have Notified Trust Accounts (NTAs) into which students' tuition fees were deposited. During the 1990s when a number of providers closed it was revealed the majority of the NTAs had insufficient money to cover the refund to students of their pre-paid tuition fees as the money had been removed at the time of crisis or financial difficulty. Throughout the 1990s the Australian Government stepped in and paid more than \$70 million in refunds to overseas students and associated costs to protect the reputation of Australia as a reliable provider of quality education and training services.

This option also has the added disadvantage of not placing students—one of the key principles of an Australian tuition protection scheme. I spoke to students who had been displaced following provider closure and their main concern related to their education, the impact this would have on their studies, and time taken to complete their course. Supporting a displaced student into a new course is even more important than the money involved were a refund payable.

Under the New Zealand tuition protection framework, providers are required to have trust accounts unless using one of the other available options (insurance, bank bonds, guarantees, deferred payment or collaborative arrangements). Currently the large majority of New Zealand private education providers have trust account arrangements in place. However, I understand the insurance underwriter for the New Zealand fee protection scheme is receiving an increasing number of requests from providers to join their fee insurance scheme as providers view the costs and practical business implications associated with trust accounts as too high.

Option 4—Tuition Protection Service

Under Option 4 the current TAS and Fund would be replaced by a single tuition protection service (TPS) applicable to all CRICOS providers. This service would be fully funded by the industry and could be administered by either a Commonwealth body or outsourced and independently operated.

The primary function of this body would be to place students in any other CRICOS provider in the event of a provider closure. A placement fee would be paid to an accepting provider to cover administration costs. There should also be the capacity to make a separate payment to the receiving provider in relation to the period of tuition, which must be provided without additional charge to affected students in some circumstances. For example, a provider asked to place a large number of students may be made a payment to ameliorate additional teaching delivery costs. If there is no suitable alternative course available for the student the service could pay a refund but this would be based on strict eligibility criteria and would be expected to occur in rare circumstances. Refunds would only cover the undelivered portion of the course.

The placement service would be funded through a levy collected from all registered providers on a risk basis; consequently, those providers at no risk of closure will pay a minimal TPS fee but may be able or required to place students in the event of a closure. As per Option 1 the mechanism for the collection and distribution of funds would need to meet the requirements of the FMA Act to ensure transparency and accountability to all stakeholders. The amount of funds required to meet the future costs of the service would be assessed on a purely actuarial basis taking into consideration the past experience of calls on the service and likely future risks.

In addition, as discussed in chapter 3, tuition protection arrangements also need to reflect a more risk based approach to ensure good providers are not penalised and higher risk providers pay the cost for the risk they present to the sector. Consequently the amount of contribution for each provider would reflect the risk of calls on the service in respect to that provider. In essence, low-risk providers would incur minimal fees whereas higher risk providers would incur higher fees. Bank guarantees and indemnity agreements may lower a provider's risk to the industry and could be reflected in a lower charge.

The current regulation exempting providers from the requirement of being a member of a TAS would not be available. All providers would automatically be included in this service and may be required to place students in the event of a provider closure.

7.5 Cost analysis of options

The services of Taylor Fry Consulting Actuaries were engaged to conduct a cost analysis of both the current arrangements and Options 1, 2 and 4 discussed above (Option 3 was not costed as it was not viewed as a viable option given the previous failure of trust accounts as discussed above). These costs were then tested against five possible scenarios of reduced enrolments:

- scenario 1—reduction in enrolments from changing demand resulting from migration policy changes
- scenario 2—substantial decline in enrolments from a key source country
- scenario 3—an epidemic (like SARS) affecting several source countries
- scenario 4—re-registration and rapid audit process
- scenario 5—combination of scenarios 1, 2 and 4.

In practice, the cost of any system will be highly variable from one year to the next. The illustrated costs represent the Taylor Fry assessment of the expected cost over many years, based on

assumptions about closure rates and the proportion of affected students that are refunded or placed in a suitable alternative course. Expected cost is defined statistically as the mean of the range of outcome possibilities. Costs are shown based on the 2010 industry size. Option 3 (Trust Account) was not costed as it could not address the fundamental principle of placing students and this mechanism being repealed after the previous ESOS Act NTAs were found to be ineffective.

Table 1.1 Comparison of estimated annual total costs⁵⁰

Scenario	Models ¹			
	Current	Option 1 Enhanced Current Arrangements	Option 2 ² Insurance	Option 4 ² Tuition Protection Service
	\$m	\$m	\$m	\$m
1	15.2	13.5	13.8	10.3
2	17.8	15.8	16.2	12.5
3	28.0	24.0	27.0	20.3
4	11.1	10.1	9.6	7.1
5	20.8	18.2	19.5	14.7

- Notes:
1. Total costs include—as relevant to each model—provider expenses (which capture costs associated with the Assurance Fund, TAS arrangements, insurance premiums, the new entity that would be associated with option 4 responsible for combined TAS and Assurance Fund functions, and absorbing displaced students), DEEWR expenses and costs borne directly by students.
 2. Excludes \$2.4 million of annual TAS membership costs. These represent expenses that must be incurred to access tuition assurance schemes, but are not actually directly attributable to tuition assurance (they fund other services).

Table 1.1 compares the total costs of the current scheme with the alternative models under various scenarios, assuming 25 per cent of exposed providers default and do not provide a refund in the systemic shock⁵¹ contemplated under each scenario as a one in 10 year event, and a baseline likelihood of default in other years.

The analysis indicates that the Current Arrangements are associated with the highest cost in all scenarios. Although Option 1 is an enhancement of Current Arrangements, its costs were slightly less. This can mainly be attributed to higher rates of placement expected under Option 1 as a result of strengthening measures proposed under this option.

A factor that contributes to higher costs for the Current Arrangements and Option 1 (that is excluded from Options 2 and 4) is the inclusion of peak bodies’ membership costs. Under Options 2 and 4, providers would not be required to maintain TAS membership for ESOS purposes. However, in most cases, the TAS is a peak body. Consequently providers could be assumed to maintain their membership of the peak body for the other products and services provided to members.

Option 2—commercial insurance was the second most expensive option. The main reason is that insurance would be offered under commercial conditions.

Notwithstanding the relatively slight differentiation between costs, the least costly option (including current arrangements) under all scenarios was Option 4—the Tuition Placement Service. This is largely because costings for this option assume that in addition to improvements proposed for Option 1, the proposed tuition protection service collapses the second and third tiers of protection into a single structure making it even more likely that placements can be achieved and streamlining costs.

⁵⁰ Taylor Fry Consulting Actuaries 2010
⁵¹ The term 'systemic' refers to factors that increase the likelihood of provider defaults across a range of providers simultaneously.

The reasonably close costs associated with each option reflect the fact that the average difference in cost per student of refunds versus tuition costs is not large. The broad similarity is not surprising since under each option, the total costs of tuition protection will be similar, but the arrangements for meeting these costs and the groups on whom those costs fall, will differ.

Appendix E provides more details on the cost analysis.

7.6 Analysis of options

Option 1

By making the proposed changes and improving the mechanisms to the current arrangements, student placement would be more effective as there would be a far greater choice of providers for TASs to place students and the TASs would be held more accountable to ensure placement of students. The ability of the industry to cover the cost of providing the arrangements would also be strengthened by contribution levels being assessed by financial experts and including risk to the industry as criteria.

Notwithstanding these changes to the system, with its three layers of protection it would remain complex and confusing for students. The existing problem of double handling remains: first the TAS then the Fund attempts to place the student. This leads to delays and in many cases considerable time wasted that international students cannot afford. There is also the question of scalability of these arrangements; that is, their ability to cover one provider closure or many and the placement of 10 students or 1000 affected students.

As previously mentioned the Fund is already under considerable pressure to meet both current and future liabilities. The system has shown itself to be inadequate in times of rapid change.

While the enhancements to the current system under Option 1 would go part way to addressing some of the key concerns raised, I consider that it does not address the issue of its ability to support students, ongoing sustainability and the complexity.

Option 2

While in theory commercial insurance seems an attractive proposition, in practice there are significant hurdles associated with implementing such a scheme that would make it unattractive. In particular:

- underwriting costs (i.e. the cost of assessing risks) are likely to be substantial
- insurers would require detailed financial and other information from providers to enable them to underwrite and price risk
- insurers may exclude certain providers who do not meet underwriting standards resulting in limited coverage
- it introduces another party into the arrangements with the potential to duplicate handling and increase costs
- it may be difficult to obtain a binding commitment from an insurer over many years. The recent example of insurer Vero exiting the home warranty insurance market is a timely example of the risks associated with commercial insurance
- previous experience with insurance arrangements indicates that the time taken to refund students would be a prohibitive factor
- on closure, it may be found that a provider does not have a valid policy (for example, because of non-payment of the policy premium).

Additionally, in the current environment there is little prospect of a commercial insurer taking an interest in accepting the financial risks associated with the current assurance frameworks. Indeed, for some years the Fund has been unable to find an issuer to underwrite it due to the increasing number of closures and calls on the Fund, the difficulties associated with assessing the risk of future closures and the rapid way in which risk profiles have altered. It is unlikely that a commercial insurer would take the view that they could adequately assess and quantify the associated risks with sufficient confidence to underwrite the risk.

Consequently, it is highly unlikely that an insurer could be secured to provide such coverage in Australia, at least in the short term. If such a scheme were to be set up, the New Zealand experience would seem to indicate that coverage would be restricted to only a small proportion of providers.

Option 3

The experience under the previous ESOS Act with trust accounts and the anecdotal information from New Zealand indicates that trust accounts are not necessarily a reliable way to protect fee income and can be expensive for providers. In addition, they would not arrange placement of affected students, which I believe to be one of the fundamental principles of tuition protection.

Option 4

Option 4 would provide a more seamless and flexible service. Students would only need to deal with one body and there would be a much wider choice for students to be placed in alternative suitable courses with both private and public providers, effectively increasing placement rates and student satisfaction. A diagram of how the service would operate is at **Appendix F**.

Providers would have reduced costs as they would only be required to pay one set of fees for the service. Low-risk providers are not penalised by having to pay the same amount as higher risk providers as the fees would be scaled on a risk basis. In addition, providers accepting displaced students would be paid a placement fee to assist with the administration costs involved in accepting the placement.

The international student hubs recommended in chapter 6 could be used to assist with contacting the students, being a central contact point for students and assist with the offers and placements of the students. The hub would be able to scale its services to meet the demand at the time.

To ensure that the TPS maintains strong linkages with key stakeholders, consideration should be given to establishing a consultative mechanism, such as a national advisory committee, comprising representatives from industry peak bodies, state and territory governments and student bodies. This would provide a valuable mechanism for providing ongoing evaluation on the effectiveness of the TPS, which would be measured against the principles I have outline above.

Appendix G summaries the advantages and disadvantages of each option.

7.7 Where does this leave us?

In any change to the tuition protection framework I believe the current first tier must remain. The obligation on providers to pay refunds to students if they cease to offer a course should be maintained as a fundamental principle of consumer protection. This obligation could be strengthened if failure to meet this requirement was considered when persons associated with the providers sought to register a new provider.

The obligation on providers to refund course fees should only be for the undelivered portion of course money paid by the student. This also ensures the obligation on providers is the same for both domestic and international students.

The recommendations to strengthen providers ongoing registration in regard to financial viability should also go some way to ensuring providers are in a better position to meet this obligation.

Taking into consideration these options and looking back at the basic principles that must underpin successful tuition protection arrangements I assessed how each of the options meets these principles. The following chart shows the outcome of my assessment, indicating the best way forward is to adopt Option 4—TPS.

Table 1.2: Comparison of models against the principles

Principles	Current Arrangement	Option 1— Strengthened Current Arrangements	Option 2— Insurance	Option 3— Trust Accounts	Option 4— Tuition Protection Service
A. Seamless student placement	No	Partial	No	No	Yes
B. Placement of students first priority	Partial	Yes	Partial	No	Yes
C. Comprehensive placement	No	Partial	No	No	Yes
D. Providers' contributions risk-based	No	Partial	Yes	No	Partial
E. Scalability	Partial	Partial	Yes	Partial	Yes
F. Streamlined system	No	No	Partial	Partial	Yes

7.8 Future considerations

Option 4—the TPS, will, I believe, provide a much stronger and efficient framework for placing students. However, opportunities exist to enhance this model by exploring innovative approaches that will further benefit the interests of students, providers and the government.

Some of these approaches could include providing the TPS with the flexibility to use allocated funds, where appropriate, in innovative ways to achieve placement outcomes for students in the most efficient and effective way. A virtual taskforce of financial and legal experts could be on standby to quickly respond and assess on a case by case basis the merits of a provider continuing if this was in the best interests of the students. For example, just prior to closure there is a small window of opportunity for intervention to assess whether the best course of action would be for the TPS to fund the continuation of the college so that students could continue to be taught to the end of the teaching period or until an alternative course was found, whichever came first. Such an approach would not only provide an even more seamless TPS for students but would also go some way to addressing students being out of pocket from additional costs incurred as a result of them having to extend their stay to complete their course.

There are some international education providers in Australia that are also members of a domestic TAS arrangement. Under the *Higher Education Support Act 2003*, for a Higher Education or VET private provider to offer FEE-HELP assistance to domestic students one of the requirements is for them to be a member of an approved tuition assurance scheme or hold a guarantee or an exemption.

Consequently, providers that are required to be members of both an international and domestic tuition protection arrangement experience an additional administrative and cost burden. There is also the issue for domestic students who attend private colleges where FEE-HELP is not offered having no tuition protection provided at all. Further exploration should also be undertaken to synchronise the proposed tuition protection scheme to the domestic student market.

Recommendation

16. That ESOS be amended to establish a single Tuition Protection Service that:
 - a. provides a single mechanism to place students when a provider cannot meet its refund obligations and as a last resort provide refunds
 - b. allows placement with any appropriate provider
 - c. makes the cost of being a member of a tuition protection scheme risk based
 - d. requires providers to regularly maintain student contact details in PRISMS and other information on a risk basis
 - e. removes providers having ministerial exemptions from membership of a tuition protection scheme.
17. That ESOS be amended to:
 - a. only refund the portion of the course not delivered or assessed when the provider fails to meet their obligation
 - b. establish that where a provider does not meet their refund obligations, this would be an issue in the fit and proper test for any future registration application.
18. That ESOS regulators impose conditions on higher risk providers that only allow the collection of 'course monies' as defined in ESOS.
19. That the Australian Government explores harmonising tuition protection arrangements for domestic and international students.

8 Conclusion

Building Australia's largest services export industry is an extraordinary achievement. However, I think there can be no question that many of the challenges currently facing international education are because we failed to significantly reinvest in compliance and enforcement, in infrastructure, student services and in the educational experience. My review presents governments, providers and students with the opportunity to rethink the great contribution this sector can and does make to Australia and students' home nations. The question I have considered over the course of this review is how can we build on this success, support the sector's long-term sustainability and enhance protection in the face of changing market forces.

ESOS governs the provision of education services to international students in Australia. It is one part of the regulatory framework ensuring only quality education providers deliver courses to international students studying in Australia. To be effective, it must be implemented by properly resourced regulators that are coordinated, have the systems in place to manage risk and can take the necessary punitive action when needed.

My recommendations focus on strengthening regulation, but targeting this where it counts. They streamline regulation in recognition that the majority of good providers should not be burdened because of the bad. They simplify in an effort to make the regulation streamlined, easier to comply with and to administer.

National regulators will assist greatly with solving some of the issues associated with administering ESOS across sectors and jurisdictions. When established, they will provide consistency, transparency and jurisdiction to enforce regulation and issue sanctions. Access to integrated information management systems will support the exchange of information between providers and regulators, easing the administrative and reporting burden.

More targeted requirements and a better approach will help make sure the right providers are allowed access into the sector. However there is also a strong need for smarter monitoring of provider activity. Risk based approaches to registration and registration renewal will work to ensure a clearer picture of provider sustainability and will assist providers to aim for best practice and regulators to focus resources on higher risk operators.

Implementing these ESOS enhancements, particularly focussing on a risk management approach, will reduce unplanned closures. When closures do occur, then a single tuition protection service which provides for comprehensive membership of all CRICOS registered providers and is fully funded by industry with provider contributions assessed on a risk basis, will offer a seamless and quick placement for students.

But the sector cannot be sustainable if it does not focus on improving the quality of the student experience. International students make a considerable investment in their education when coming to Australia to study. As consumers they need the right information to make their choice of education and have the ability to make complaints about their education provider, or any other issue—without the fear of jeopardising their academic results or their visa status.

Students should be well informed consumers, supported by accurate, ethical information and marketing efforts by providers and their education agents. Students need to be better supported on arrival and throughout the course of their studies to achieve their education outcomes and to socialise and be engaged in Australian culture and communities. This includes support to improve English

competency. An independent complaints mechanism will play an important role in ensuring students have a right of appeal. It will also contribute to measuring and addressing the underlying incidents that cloud the experiences of international students in Australia.

The changes recommended in my review focus on improving the regulatory environment in order to benefit the student and ultimately to ensure international students have the best chance to receive a quality education in Australia. This will lead to a more sustainable sector.

Thank you to all who have given me their time and shared with me their thoughts and proposals. This report has indeed been a team effort, reflecting the commitment and dedication of the students, providers and governments in improving and building on the strong foundations that already exist in ESOS.

Acronyms or abbreviations of titles

ACCC	Australian Competition and Consumer Commission
ACPET	Australian Council for Private Education and Training
AQTF	Australian Qualifications Training Framework
ARC	Annual Registration Charge
ASIC	Australian Securities and Investments Commission
AUQA	Australian Universities Quality Agency
COAG	Council of Australian Governments
CoE	Confirmation of Enrolment (see Glossary)
CRICOS	Commonwealth Register of Institutions and Courses for Overseas Students
CRP	Contributions Review Panel (see Glossary)
DEEWR	Department of Education, Employment and Workplace Relations
DIAC	Department of Immigration and Citizenship
DoHA	Department of Health and Ageing
EA	English Australia
ELICOS	English Language Intensive Courses for Overseas Students
ESOS	<i>Education Services for Overseas Students Act 2000</i> and its associated legislation and regulations (see Glossary)
FEE-HELP	(see Glossary)
FMA Act	<i>Financial Management and Accountability Act 1997</i>
HEIMS	Higher Education Information Management System
IELTS	International English Language Testing System
MCD	Melbourne College of Divinity
MCTEE	Ministerial Council for Tertiary Education and Employment
MODL	Migration Occupations in Demand List
NTIS	National Training Information Service (see Glossary)
OSHC	Overseas Student Health Cover
PRISMS	Provider Registration and International Students Management System
RTO	Registered Training Organisation
SCD	Sydney College of Divinity
SECSRF	Student Enrolment Contract Shared Responsibility Framework (see Glossary)
SRF	Shared Responsibility Framework (see Glossary)
TAS	Tuition Assurance Scheme
TEQSA	Tertiary Education Quality and Standards Agency (see Glossary)
TPA	<i>Trade Practices Act 1974</i>
VET	vocational education and training
VET-FEE-HELP	(see Glossary)
VRQA	Victorian Registration and Qualifications Authority
WAPETIA	Western Australian Private Education and Training Industry Association

Glossary and definitions

Confirmation of Enrolment

Document issued by an Australian education provider that is accepted evidence of enrolment for processing student visa applications.

Contributions Review Panel

The Contributions Review Panel (the Panel) is established under section 54 of ESOS to determine the criteria for each provider's annual contribution to the ESOS Assurance Fund (the Fund). The ESOS Fund Manager calculates and collects each provider's contribution based on the criteria. The Panel also hears and determines providers' appeals against determinations of their contributions.

Education quality assurance frameworks

The quality of Australian education is supported by the assurance frameworks in place for the provision of education and training services in Australia. These standards and requirements apply regardless of whether the recipient of the education and training is a domestic or international student. They consist of:

- National Protocols for Higher Education Approval Processes (National Protocols) for higher education courses, underpinned by state and territory legislation establishing universities and their self-accrediting status; currently monitored by the Australian Universities Quality Agency
- Australian Quality Training Framework (AQTF) for VET courses; monitored by state and territory governments
- school curricula developed and monitored by state and territory governments, noting that a national curriculum is currently being developed.

In addition, industry standards may apply to specific courses such as English language and foundation programs.

Education Services for Overseas Students Act 2000 and its associated legislation and regulations

Education Services for Overseas Students Act (ESOS) 2000 and its associated legislation and regulations governs the provision of education and training services to international students in Australia to study through the:

- *Education Services for Overseas Students (ESOS) Act 2000*
- ESOS Regulations 2001
- National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007 (the National Code).

These are supplemented by the *ESOS (Registration Charges) Act 1997* and *ESOS (Assurance Fund Contributions) Act 2000*, which prescribe charges and contributions.

ESOS regulator

An inclusive term for any body that might be responsible for the regulation of the international education sector.

FEE-HELP

FEE-HELP is a loan scheme that assists eligible fee paying students to pay their tuition fees. The Australian Government pays the amount of the loan direct to a student's higher education provider or to Open Universities Australia in the case of its students. Students repay their loans through the Australian taxation system once their repayment income is above the minimum repayment threshold for compulsory repayment. Voluntary repayments may be made at any time, regardless of income.

Higher education

Education involving qualifications under the Australian Qualification Framework at associate degree and above, as well as diploma and advanced diploma qualifications accredited under higher education arrangements.

Higher education providers

Refers to institutions offering accredited higher education qualifications. This includes public and private and self-accrediting and non-self-accrediting institutions.

Higher Education Loan Program (HELP)

A program to help eligible students pay their student contributions (HECS-HELP), tuition fees (FEE-HELP) and overseas study expenses (OS-HELP) through loans that are repaid through the taxation system (through either compulsory or voluntary repayments). HECS-HELP also covers the discount that Commonwealth supported students receive if they pay student contributions up front. There are bonuses for voluntary repayments.

International Student Roundtable

A meeting of 31 international students convened by the Deputy Prime Minister the Hon Julia Gillard MP, in September 2009.

International Student Strategy for Australia

A strategy being developed by the Council of Australian Governments to address a broad range of issues affecting international students.

Letter of Release

A document required under Standard 7 of the National Code where a provider wishes to enrol a student who is yet to complete six months of their principal course of study.

National Code

The National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students (the National Code) provides nationally consistent standards for the conduct of registered providers and the registration of their courses. The standards set out specifications and procedures to ensure that registered providers of education and training courses can clearly understand and comply with their obligations under the National Code. The National Code also identifies the roles and responsibilities of the Australian Government and state and territory governments in discharging their regulatory functions.

National Training Information Service

The National Training Information Service is the official national register of information on training packages, qualifications, courses, units of competency and RTOs.

National VET regulator

COAG has agreed to establish a national regulator for the VET sector. The regulator will be responsible for the registration and audit of registered training providers, and accreditation of courses, and will be established under Commonwealth legislation. On a national basis, all providers wishing to operate in more than one jurisdiction or enrol international students in post-secondary educational institutions will be registered through the national regulator. The framework for the new national regulator will be negotiated through an agreement between governments by the end of May 2010 and the regulator will be operational from 2011.

Shared Responsibility Framework

The Shared Responsibility Framework sets out the respective roles of the Australian Government and designated state and territory authorities in administering the Education Services for Overseas Students framework. In doing so, it makes clear the operating responsibilities of each jurisdiction which were originally established under the ESOS National Code in 2001.

Tertiary Education Quality and Standards Agency

The Tertiary Education Quality and Standards Agency (TEQSA) will oversee the development of strengthened quality assurance arrangements and protect the overall quality of the Australian higher education system. It will accredit providers, evaluate the performance of institutions and programs, encourage best practice, simplify current regulatory arrangements and provide greater national consistency. TEQSA will be established in 2010.

VET FEE-HELP

VET FEE-HELP is an income contingent loan scheme for the Vocational Education and Training (VET) sector that is part of the Higher Education Loan Program (HELP). It is an extension of the higher education FEE-HELP arrangements.

Vocational education and training (VET)

Vocational education and training provides skills and knowledge for work through a national system of public and private RTOs. RTOs deliver certificates I-IV, VET diplomas and advanced diplomas and VET graduate certificates.

Appendix A: Terms of Reference



Australian Government

**Department of Education, Employment
and Workplace Relations**

Terms of Reference for the review of the *Education Services for Overseas Students (ESOS) Act 2000* and associated regulatory and legislative frameworks

The Australian Government has brought forward the planned 2010–11 review of the legal framework for the provision of education services to international students in the context of significant growth in the number of overseas students, the changing composition of the international student body and emerging issues in the sector.

This Review will examine the operation of the *Education Services for Overseas Students (ESOS) Act 2000* and associated regulatory and legislative frameworks, including the National Code. It will look at the adequacy of the current ESOS legal framework to identify and address any areas for improvement to ensure Australia offers a world-class, quality international education in this changing environment.

The Review will be conducted in parallel with a number of related processes, notably the development of a National International Student Strategy under the Council of Australian Governments (COAG) and the establishment of the Tertiary Education Quality and Standards Agency (TEQSA).

The key objectives of the current ESOS Act (see s.4A) are:

- a. to provide financial and tuition assurance to overseas students for courses for which they have paid
- b. to protect and enhance Australia's reputation for quality education and training services
- c. to complement Australia's migration laws by ensuring providers collect and report information relevant to the administration of the law relating to student visas.

The Review will consider the need for enhancements to the ESOS legal framework in the following four key areas:

1) Supporting the interests of students

This will include a focus on:

- the adequacy and accuracy of information for students
- protection of students as consumers
- consistent treatment of students regardless of location or provider
- provider accountability
- broader support for students.

2) Delivering quality as the cornerstone of Australian education

This will include a focus on:

- nationally consistent quality
- quality of providers entering the market
- mechanisms for ongoing monitoring, quality assurance and quality improvement of registered providers.

3) Effective regulation

This will include a focus on:

- clarity of roles and responsibilities under the framework
- identification and management of risks
- efficient and streamlined regulatory arrangements which minimise the regulatory burden on providers
- timely and effective enforcement of compliance.

4) Sustainability of the international education sector

This will include a focus on:

- provider sustainable business strategies
- preparing for the transfer of the ESOS regulatory functions to TEQSA by 2013
- transition arrangements for any industry adjustments required in response to this Review.

Process and timeframe for the Review

The Deputy Prime Minister, the Hon Julia Gillard MP, has appointed the Hon Bruce Baird to undertake the ESOS Review under the agreed Terms of Reference, with secretariat support provided by the Australian Government Department of Education, Employment and Workplace Relations (DEEWR).

An issues paper will be released on the Australian Education International website in September 2009, outlining the key issues for the international education sector and inviting written submissions from interested stakeholders on specific consultation questions by the end of November 2009.

At the same time, the Reviewer will hold targeted forums with key stakeholders, including state and territory government officials, regulatory bodies, education providers, student bodies and diplomatic missions.

Feedback from the scheduled roundtable with international student representatives in Canberra in early September 2009 will also inform the Review.

An interim report from the Review will be available for consideration by COAG in November 2009 with a final report expected in early 2010.

Appendix B: ESOS review process and personnel

Review of the *Education Services for Overseas Students Act 2000 (ESOS)*

On 8 August 2009, the Minister for Education, the Hon Julia Gillard MP, asked the Hon Bruce Baird to review the *Education Services for Overseas Students (ESOS) Act 2000* its associated legislation and regulations and report back to the Government with changes designed to ensure Australia continues to offer world class quality international education.

The review considered the need for enhancements to the ESOS legal framework in four key areas set out in the Terms of Reference: supporting the interests of students; delivering quality as the cornerstone of Australian education; effective regulation; and the sustainability of the international education sector.

On 23 September 2009, Mr Baird released an issues paper and called for written submissions before 30 October 2009 via email or through an online discussion forum. The issues paper is available online at www.aei.gov.au.

From September through to November 2009, Mr Bruce Baird hosted student and provider forums in major capital cities and attended targeted meetings with key stakeholders.

Feedback from the International Student Roundtable held in Canberra in September 2009 also informed the review.

On 3 December 2009 Mr Baird released the ESOS review interim report containing his initial observations. This interim report is available online at www.aei.gov.au.

Mr Baird held a briefing with key stakeholders in early December 2009 to discuss his preliminary findings.

Student and provider consultation forums

Mr Baird held consultation forums with students and education providers in major capital cities between 20 October 2009 and 16 November 2009. Eighty international students from more than 15 countries and more than 100 providers from the VET, ELICOS and school sectors attended the forums.

Date	City	Forum type
20 October 2009	Melbourne	2 x student forums
23 October 2009	Sydney	2 x student forums & provider forum
4 November 2009	Brisbane	Student forum & provider forum
5 November 2009	Adelaide	Joint student/provider forum
6 November 2009	Perth	Joint student/provider forum
9 November 2009	Melbourne	Provider forum
16 November 2009	Canberra	Joint student/provider forum

Meetings with key stakeholders

Throughout the review Mr Baird met with Ministers, state and territory government officials, regulatory bodies, peak bodies, students and student organisations, education unions, and diplomatic missions and other stakeholders.

Below is a list of organisations Mr Baird had meetings with as part of the consultation process. In addition, Mr Baird met with a number of individuals with specific expertise and experience in the area of international education.

Federal Government ministers and departments

- Minister for Education, Employment and Workplace Relations, the Hon Julia Gillard
- Minister for Immigration and Citizenship, Senator the Hon Chris Evans
- Chair of Senate Inquiry into International Student Welfare, Senator Gary Humphries
- Commonwealth Ombudsman
- Department of Education, Employment and Workplace Relations
- Department of Immigration and Citizenship
- Office of the Migration Agents Registration Authority

State and territory government departments

- Department of Education and Training, QLD
- Department of Education and Training, NSW
- Department of Education Services, WA
- Department of Education and Children's Services, SA
- Department of Further Education, Employment, Science and Technology, SA and Training SA

Regulatory bodies

- Victorian Registration and Qualifications Authority
- Vocational Education and Training Accreditation Board, NSW
- Office of the Training Advocate, SA

Committees, working groups, taskforces

- Council of Australian Governments Senior Officials Working Group
- Joint Committee on International Education
- South Australian Ministerial Taskforce on International Education

Industry stakeholders

- Australian Council for Private Education and Training
- Council of Private Higher Education
- English Australia
- IDP Australia
- International Education Association of Australia
- ISANA: International Education Association Inc.
- Independent Schools Council of Australia
- Migration Institute of Australia
- National English Language Training Accreditation Scheme
- National Quality Council
- Perth Education City

- Skills Australia
- TAFE Directors Australia
- Australian Qualifications Framework Council
- Technical and Vocational Education and Training
- Universities Australia (Vice Chancellors and Deputy Vice Chancellors International)
- Western Australian Private Education and Training Industry Association

Students and student organisations

- National Union of Students
- Council of Postgraduate Associations
- Representatives from the International Student Roundtable: Thera Bakunawa, Parth Raval, Margrate Susairaj, Ratna Fitriani, Rosario Pineda Amaro
- 15 Indian students nominated by the Indian High Commission, Melbourne, and the Federation of Indian Students, Melbourne

Diplomatic missions

- His Excellency Mr Zhang Junsai Ambassador Extraordinary and Plenipotentiary to China
- Her Excellency Mrs Sujatha Singh High Commissioner of India

Online forum

An online forum was available on the Australian Education International website throughout the submission period for anonymous informal discussion.

The online forum had more than 300 registered users including more than 100 international students and staff working within the education sector, including education and migration agents. Sixty-five separate comments were posted to the forum.

Written submissions

Following the release of the *ESOS review issues paper* on 23 September 2009 Mr Baird called for written submissions by 30 October 2009.

Approximately 150 submissions were received via email. The submissions are listed in Appendix C and are available online at: www.aei.gov.au

Personnel

Mr Baird led the review and was supported by a secretariat within the International Students Taskforce, Department of Education, Employment and Workplace Relations.

The Hon Bruce Baird AM



In August 2009 the Hon Bruce Baird was appointed by Deputy Prime Minister, the Hon Julia Gillard MP, to lead the review into the *Education Services for Overseas Student Act 2000*.

Mr Baird was appointed a Member of the Order of Australia in the 2010 Australia Day honours for service to the Parliament of Australia, and to the community of New South Wales through a range of business, tourism and welfare organisations.

As the former Federal Member for Cook in NSW from October 1998 to November 2007 Mr Baird chaired a number of Federal Government committees including: the House Standing Committee on Economics, Finance and Public Administration; the National Retail Inquiry; the Joint Standing Committee on Trade; the Joint Standing Committee on the Australian Crime Commission; and the Government Committee on Small Business, Tourism, Sports and the Arts.

Mr Baird was Attaché to the Indian Olympic Team for the 2000 Sydney Olympic Games.

He was a member of the New South Wales Legislative Assembly where he was Minister for Transport from 1988–95. From 1995 Mr Baird was Managing Director of industry lobby group, The Tourism Council of Australia, Chairman of the National Rail Corporation and has been a member of several private sector boards including ABN-AMRO Hoare Govett, the International School of Hospitality and the Hotel Management, and Tourism Training Australia.

His other professional achievements include executive positions at Alcoa and Esso. Early in his career, he was an Assistant Trade Commissioner at the Australian Embassy in Bonn, Germany and Trade Commissioner at the Australian Consulate-General in New York.

He holds a Bachelor of Arts degree from the University of Sydney, an MBA from the University of Melbourne and an honorary PhD from the University of Newcastle.

Mr Baird holds the positions of Chair of the Australian Government's Refugee Resettlement Advisory Council, the Tourism and Transport Forum and McCabe Terrill law firm.

Secretariat

- Linda Laker, Branch Manager
- Elizabeth De Luca, Director Consultation and Engagement
- Marie Grealy, Director Policy and Research
- Erica Lewis, Assistant Director Policy and Research
- Rachelle MacDonald, Assistant Director Policy and Research
- Mercia Smith, Assistant Director Consultation and Engagement
- Natalie Yates, Consultation and Engagement Officer
- Tanya Taylor, Policy and Research Officer
- Elizabeth Lynch, Executive Assistant
- Susan Wood, Executive Assistant

Consultants

The review engaged the services of Taylor & Fry Consulting Actuaries to conduct a cost analysis of tuition protection schemes.

The review engaged the services of KPMG to consider the risk management practices employed to assist with the administration of ESOS and to identify possible improvements, including mitigation strategies and risk indicators.

Appendix C: ESOS review submissions list

Note: The public submissions are listed in alphabetical order. The submissions below can be found at www.aei.gov.au/esosreview.

1. ACT Department of Education and Training and ACT Accreditation and Registration Council
2. AIEC QUEST Bt. Australian International Education Centre
3. AIESEC
4. Anonymous
5. ANU College
6. Asfandyar Khalid
7. Association of Brazilian Education Agents
8. Austrade
9. Australia Network
10. Australian Council for Private Education and Training
11. Australian Dental Association Victorian Branch
12. Australian Education Union
13. Australian Federation of International Students
14. Australian Government Schools International
15. Australian Homestay Network
16. Australian Hotels Association
17. Australia India Business Council NSW Branch
18. Australian International College of Language (1)
19. Australian International College of Language (2)
20. Australian Medical Council
21. Australian National University
22. Australian New Zealand Association of Theological Schools
23. Australian Pacific College
24. Axial Training
25. Beifen Huang
26. Bond University
27. Carrick Education Group
28. Central Queensland University
29. Charles Darwin University
30. Chinese Australian Services Society Cooperative Ltd
31. City of Sydney
32. Committee for Melbourne Higher Education Taskforce
33. Commonwealth Ombudsman
34. Community Relations Commission NSW
35. Construction, Forestry, Mining and Energy Union of Australia
36. Council of Australian Postgraduate Associations
37. Council of Private Higher Education
38. Curtin University of Technology
39. Deakin University
40. Department of Education Services WA
41. Department of Immigration and Citizenship
42. Edith Cowan University Student Guild
43. edlink + conneX International Education Consultancy
44. EF International Language School

45. English Australia
46. Federation of Indian Students of Australia
47. Felicity Fallon
48. Gavin Moodie
49. Gold Coast Institute of TAFE
50. Government Education and Training International Tasmania
51. Government of Victoria
52. Griffith University
53. Group of Eight
54. High Commission of India
55. Holmes Institute
56. Holmes Institute NSW
57. IDP
58. Independent Schools Council of Australia
59. Innovative Research Universities
60. Intern staff of the Australia Taiwan Business Council
61. International College of Management Sydney
62. International Education Association of Australia
63. International Education Services Ltd
64. International Student Legal Advice Clinic
65. ITC Education
66. James Cook University
67. Jeanne Rini Poespoprodjo
68. Joint submission on behalf of Cambridge International College, Education Access Australia, Ozford, Carrick Institute
69. Kelvin Thomson MP
70. Law Institute of Victoria
71. Lusitania dacosta Cornelia Lopes
72. Mairead Dempsey
73. Medibank Private
74. Medical Deans Australia and New Zealand
75. MEGT Institute
76. Migration Institute of Australia
77. Minister for Employment Training and Further Education, South Australia, the Hon Michael O'Brien
78. Monash College
79. Motor Trades Association of Australia
80. National ELT Accreditation Scheme Limited
81. National Quality Council
82. National Tertiary Education Industry Union
83. National Union of Students
84. Navitas Limited
85. NSW Ombudsman
86. NSW Teachers Federation
87. Ombudsman Western Australia
88. Our HR Company
89. Phoenix Academy
90. Pivot Point International Academy
91. Queensland Department of Education and Training
92. Raymond Howes
93. RMIT

94. Rohani Mohamad
95. Sarah Templeton
96. Satyaki Chanda
97. Southern Cross College of Vocational Education
98. Southern Cross University
99. St James College Brisbane
100. Student Representative Council University of Sydney
101. Student support advisors team at UOW
102. Study Front
103. Study Group Australia
104. Sunshine Coast TAFE
105. Susan Briggs Consulting
106. Swinburne University
107. Sydney College of English
108. Sydney Institute of Tertiary Education
109. Sydney Medical School, University of Sydney
110. Sydney University Postgraduate Representative Association
111. TAFE Directors Australia
112. TAFE NSW Northern Sydney Institute
113. TAFE NSW Sydney Institute
114. TAFE SA
115. TAFE SA English Language Centre
116. TVET Australia
117. Universities Australia
118. University of Canberra College
119. University of Melbourne
120. University of New England
121. University of New South Wales
122. University of Notre Dame
123. University of South Australia
124. University of Sydney
125. University of Technology, Sydney
126. University of Western Australia
127. Victoria University
128. Victorian Automobile Chamber of Commerce
129. Victorian International Directors' Committee
130. WA ESOS Reference Group
131. Warren Milner

Appendix D: Better managing risk in international education

A key issue for the review was considering how ESOS can be better regulated through managing risk. To assist the review, KPMG was engaged to identify the key risks to the international education sector and indicators of those risks. This work drew heavily on the expertise of ESOS regulators, analysis of registration and compliance monitoring processes, including current risk management strategies, as well as provider closures and compliance cases. It also considered risk management practices employed for other government regulatory functions.

Summary of key risks

The following key risks were identified from an analysis of the possible risks and barriers to achieving the principal objects of ESOS.

1. To provide financial and tuition assurance to overseas students for courses for which they have paid

- 1A: provider collapse and a resultant failure of an international student receiving either the course they paid for or a refund (i.e. failure in first tier of tuition protection)
- 1B: assurance mechanisms do not provide a safety net when a provider collapses (i.e. failure in the first—provider refund obligations, second—TAS, and third—ESOS Assurance Fund tiers of tuition protection)

2. To protect and enhance Australia’s reputation for quality education and training services

- 2A: education and training experience for the international student is poor
- 2B: promotion of courses is unclear or misleading, including through education agents acting in a dishonest or fraudulent manner
- 2C: limited capacity or commitment by the international student

3. To complement Australia’s migration laws by ensuring providers collect and report information relevant to the administration of the law relating to student visas

- 3A: providers (or regulators) fail to collect and report information, including that relating to the administration of student visas
- 3B: type of information collected/reported is poor and not relevant
- 3C: failure to report or share knowledge/information between stakeholders (i.e. DEEWR, states and territories and DIAC) in a timely manner
- 3D: providers use their student visa reporting requirements to exploit international students

Key risks in international education, their causes and risk indicators

KPMG also identified the likely causes of the key risks and indicators that could assist to determine the level of risk a provider represents.

Risk	How the risk can arise/its causes
1A: provider collapse and a resultant failure of an international student receiving either the course they paid for or a refund	<ul style="list-style-type: none"> • financially unviable/insolvent • unsustainable/poor business model • poor business planning, management and/or governance arrangements
1B: assurance mechanisms do not provide a safety net when a provider collapses (i.e. failure in the first—provider refund obligations, second—TAS, and third—ESOS Assurance Fund tiers of tuition protection)	<ul style="list-style-type: none"> • provider unable to meet refund obligations • no comparable provider within the provider's TAS • comparable providers within TAS do not have capacity or refuse to accept students • providers not part of a TAS collapse and they don't have the capacity to refund student fees
2A: education and training experience for the international student is poor	<ul style="list-style-type: none"> • failure to attract/retain appropriately skilled workforce • lack of commitment to the provision of quality education and training by a provider and its directors • provider is not performing at a level that would be expected of them • lack of adequate infrastructure to complete course • poor business planning, management and/or governance arrangements • fraudulent and/or dishonest behaviour by providers, their directors and agents
2B: promotion of courses is unclear or misleading, including through education agents acting in a dishonest or fraudulent manner	<ul style="list-style-type: none"> • fraudulent and/or dishonest behaviour by providers and/or their directors • poor promotional materials and/or processes • commissions and other incentives for education agents promote inappropriate behaviour • regulations within the countries education agents work do not protect the rights of consumers to the same standard as ESOS
2C: limited capacity or commitment by the international student	<ul style="list-style-type: none"> • fraudulent and dishonest behaviour by students • financial or lifestyle factors determined a students choice of course, rather than the course itself • promotion of courses is unclear or misleading, particularly through education agents acting in a dishonest or fraudulent manner

Risk	How the risk can arise/its causes
3A: providers (or regulators) fail to collect and accurately report information, including that relating to the administration of student visas	<ul style="list-style-type: none"> • providers do not record/update information into PRISMS • fraudulent and/or dishonest behaviour by providers and their directors
3B: type of information collected/ reported is poor and not relevant	<ul style="list-style-type: none"> • analysis of PRISMS information doesn't provide insight or is usable by regulators
3C: failure to report or share knowledge/information between stakeholders (i.e. DEEWR, states and territories and DIAC) in a timely manner	<ul style="list-style-type: none"> • confidentiality and privacy restrictions between stakeholders (e.g. jurisdictional regulators and DIAC) • knowledge/information not collected or obtained in a timely manner • stakeholders not aware of the application of knowledge/information to other stakeholders
3D: providers use their student visa reporting requirements to exploit international students	<ul style="list-style-type: none"> • providers threaten students re visa reporting requirements for commercial gain • providers do not understand visa reporting requirements to the detriment of the student

Indicators of risk

Financial viability

- financial viability assessment (e.g. current ratios, debt ratios, stress tests)
- future enrolments and visa grants
- extent of course coverage under TAS or other assurance arrangements if exempt

Capacity and capability of provider

- core business/sector of provider
- number of students (capacity)
- number of students enrolled relative to the approved capacity
- significant or rapid change to scope
- capacity and capability (e.g. infrastructure and staffing) to deliver approved courses
- capacity by location

Governance and management

- business model
- ownership and management structure, including any affiliated business connections
- directors are considered 'fit and proper'
- level of planning and market research undertaken, and how it is used to inform the direction of the business
- changes in governance structure and management
- commitment to staff development
- evidence of complying with ESOS Act reporting requirements

Indicators of risk

Qualifications and courses

- types of courses and qualifications being delivered
- courses linked to migration outcomes
- mode of delivery and course design
- number of courses offered (in comparison to provider capability)
- cost of course

Past performance

- complaints history
- age of provider (or start-up organisation)
- significant change in key people, ownership or structure of organisation
- audit results/history

Student profile

- proportion of student cohort from one source country
- proportion of overseas to domestic students
- onshore versus offshore recruitment/enrolments
- existence and use of student record management systems
- English language entry requirements
- provider student visa applications refused by DIAC

Appendix E: Summary of Taylor Fry cost analysis

1. Scope of report

DEEWR appointed Taylor Fry Consulting Actuaries (Taylor Fry) to undertake analysis to inform the ESOS review's findings and recommendations by:

- providing an objective estimate of the total cost of the current tuition protection arrangements, and an assessment of where that cost is currently borne, based on a number of assumptions
- estimating the total cost of potential, alternative, consumer protection arrangements that aim to provide an efficient and effective mechanism for placing eligible students in suitable alternative courses (where a provider is unable to provide a refund) and, failing that, make refund payments to eligible students.

2. Approach

Taylor Fry's general approach to providing an objective assessment of the cost of the current tuition protection arrangements and the cost of the three alternative frameworks is set out in this section.

2.1 General

The assessments have been considered in two parts. In particular, costs associated with displacements arising from:

- systemic causes that will act over short terms from time to time. 'Systemic' refers to factors that increase the likelihood of provider defaults across a range of providers simultaneously. In this report the term 'short-term costs' is sometimes used to refer to costs that stem from such causes.
- costs associated with 'normal' operation of the assurance framework in the absence of systemic shocks. In this report the term 'long-run costs' is sometimes used to refer to costs that stem from such causes.

Each of these assessments has been performed under the existing arrangements and under each alternative model.

Providers currently face substantial environmental challenges that generate significant risks to their ability to continue to operate and provide courses to their students. 'Systemic risks' is the term that has been adopted to refer to these challenges, emphasising that they apply across a wide range of providers simultaneously. Examples of systemic risks include:

- Changes with the potential to reduce demand, including but not limited to:
 - changes to migration policies
 - media coverage alleging corruption and exploitation in the international student industry
 - concern about student safety, predominantly Indian students in Victoria.
- Heightened regulatory activity:
 - intensified audit programs by state accreditation authorities
 - requiring providers to reapply for registration under more stringent criteria.

In work done for the ESOS Assurance Fund Manager during 2009, Taylor Fry made the point that it is not possible to objectively estimate the cost associated with placements or tuition fee refunds where the cause of provider default relates to systemic factors acting over the short term. Costs that will be realised from systemic risks are dependant on the nature, timing and severity of their outcomes,

along with the unknowable resilience of providers to them (for instance, it is not possible to know, in advance of the state accreditation authority audits, how the targeted providers are likely to fare against the audit criteria, or what form any imposed sanctions might take).

A unifying feature of systemic risks is that historical review of previous provider defaults provides no real guidance about costs the risks are likely to generate in the future. However, recent experience and general reasoning indicates that, in the short term, they may be substantial. The approach taken to illustrate possible outcomes was to consider potential scenarios associated with a variety of systemic shocks and to estimate cost outcomes under existing arrangements and the three alternative frameworks.

In relation to long-run costs, the results from work done for the ESOS Assurance Fund was taken as a guide to the costs of 'normal' operation of tuition protection arrangements. There was no reason to anticipate the long-run costs will be different from those assessed for the Assurance Fund under existing arrangements. However, Taylor Fry drew attention to uncertainty associated with that assessment. Examples of uncertainty sources include:

- the relatively small number of provider defaults that are available to use as a basis for cost estimates, and the possibility that they do not reflect experience that should be regarded as likely to apply in the long run
- the possibility that risk profile and dynamics may have altered over time, and may continue to alter in the future in ways that cannot be accurately predicted
- the possibility that the effectiveness of the assurance mechanisms in placing students may alter with time (for example, as more is learned about factors that improve the likelihood of positive outcomes following the recent increase in number of mid-size provider defaults).

Taylor Fry noted that estimates are based on assumptions that appear reasonable at the current time, but it is not possible to know with certainty whether those assumptions truly reflect an underlying reality. Consequently, a high degree of uncertainty exists about the extent to which estimates of average cost might be different to estimates that would be calculated if the true, 'unknowable' risk profile could be determined.

2.2 Short-term costs—future systemic risks

The current situation provides one example of the type of systemic risks that any tuition protection arrangement must deal with. Various scenarios for future systemic risks were examined but it should be noted this does not indicate that any of these scenarios represent a likely outcome. The purpose of presenting each scenario is to review how alternative, tuition protection arrangements might respond to highly adverse, but unpredictable, circumstances.

The five scenarios were:

1. Reduction in enrolments from changing demand, resulting from immigration policy changes
2. Substantial decline in enrolments from a key source country
3. An epidemic (such as SARS) affecting several source countries
4. Provider defaults arising from re-registration and rapid audit processes
5. A combination of 1, 2 and 4.

2.3 Long-run costs

Long-run costs are those which might be expected to emerge in the normal course of the operation of providers, TASs, the Assurance Fund and DEEWR. Defaults in the normal course of events can occur due to a number of factors, broadly characterised as being the everyday risks of running a business.

This can include poor management, low sales, expenses not covered by revenue, insufficient capital, inadequate return on capital, credit risks and so on. Risks leading to such provider defaults are termed 'non-systemic' to differentiate them from systemic risks which are much more likely to result in a concentration of provider defaults in a short period of time such as a few months.

Estimates of the long-run cost of some of these items are contained in advice Taylor Fry prepared for the ESOS Assurance Fund Manager to accompany his report to the Contributions Review Panel in which he recommends contributions criteria to apply for the coming year. Those results have been incorporated in these cost estimates. These estimates are subject to a high degree of uncertainty and caveats that are included in Taylor Fry's advice to the Fund Manager.

A summary of the bases and assumptions adopted for illustrating the costs under the existing and alternative arrangements is at Attachment A.

3. Results

3.1 Current scheme costs

Table 1.1 summarises the total costs of the current scheme of tuition protection under various scenarios, based on the assumptions at Attachment A. In particular, the table displays the estimate of the average annual costs over a ten-year period consisting of nine years of long-run cost and one year of costs emerging from the relevant scenario. Costs are presented assuming 2010 industry size persists throughout the projection period and are shown as 2010 values.

The cost assessment is premised on the net cost of alternative tuition to a provider that accepts a displaced student through a TAS arrangement, for courses of more than one year's duration, being nil (in effect, the profit margin in subsequent years is treated as offsetting the cost of providing those components of tuition for which the new provider cannot charge a fee). Subsequent sections consider the effects of changing some of the assumptions to which the results are sensitive, and the results in the following tables should be recognised as relating to only one of a number of possible outcomes.

Table 1.1: Estimated annual costs of current scheme¹

Scenario	Providers affected ²		
	10%	25%	50%
	\$m	\$m	\$m
1	10.5	15.2	23.1
2	11.5	17.8	28.3
3	15.6	28.0	48.6
4	8.8	11.1	14.8
5	12.7	20.8	34.2

Note:

- Total current costs include provider expenses (which capture costs associated with the Assurance Fund, TAS arrangements, and absorbing displaced students), DEEWR expenses and costs borne directly by students.
- Proportion of exposed providers who default during the year of systemic shock considered under each scenario. For this purpose, an exposed provider is one that falls under the criteria described in Section 2 for each scenario:
 Scenario 1—providers where more than 50 per cent of course fees paid to date relate to MODL courses
 Scenario 2—providers with more than 20 students where at least 50 per cent of students are from the country for which a sharp decline in enrolments is contemplated
 Scenario 3—providers with more than 20 students where, in aggregate, at least 50 per cent of students are from either China, India, Korea, Thailand or Nepal
 Scenario 4—the 100 providers identified as potentially higher risk of closure due to the re-registration or rapid audit process
 Scenario 5—the union of providers captured as an exposed provider in any or all of scenarios 1, 2 and 4
- Annual costs are presented based on 2010 industry size.

3.2 Option 1: estimated scheme costs

Table 1.2 summarises the total costs of Option 1—Enhanced current arrangements—under various scenarios, based on the assumptions at Attachment A.

Table 1.2: Estimated annual costs of Option 1—Enhanced current arrangements¹

Scenario	Providers affected ²		
	10%	25%	50%
	\$m	\$m	\$m
1	9.7	13.5	19.9
2	10.6	15.8	24.5
3	13.9	24.0	40.9
4	8.3	10.1	13.1
5	11.5	18.2	29.2

Note:

1. Total current costs include provider expenses (which capture costs associated with the Assurance Fund, TAS arrangements, and absorbing displaced students), DEEWR expenses and costs borne directly by students.
2. Proportion of exposed providers who default as a result of the scenario. See notes under Table 1.1 for a description of exposed providers under each scenario.

3.3 Option 2: estimated scheme costs

Table 1.3 summarises the total costs of Option 2—Tuition insurance scheme—under various scenarios, based on the assumptions at Attachment A. Note that allowance for membership fees of entities that arrange membership of TASs over and above those that relate directly to membership of the TAS have been excluded from the estimated costs of this alternative option. Under all scenarios, the amount excluded is \$2.4m per annum.

Table 1.3: Estimated annual costs of Option 2—Tuition insurance scheme¹

Scenario	Providers affected ²		
	10%	25%	50%
	\$m	\$m	\$m
1	8.5	13.8	22.6
2	9.4	16.2	27.4
3	13.8	27.0	49.0
4	6.8	9.6	14.2
5	10.8	19.5	34.0

Note:

1. Total current costs include provider expenses (which capture costs associated with the insurance premiums, TAS arrangements), DEEWR expenses and costs borne directly by students.
2. Proportion of exposed providers who default as a result of the scenario. See notes under Table 1.1 for a description of exposed providers under each scenario.

3.4 Option 4: estimated scheme costs

Table 1.4 summarises the total costs of Option 4—Tuition Protection Service—under various scenarios, based on the assumptions at Attachment A. Note that allowance for membership fees of entities that arrange membership of TASs over and above those that relate directly to membership of the TAS have been excluded from the estimated costs of this alternative option. Under all scenarios, the amount excluded is \$2.4m per annum.

Table 1.4: Estimated annual costs of Option 4—Tuition Protection Service¹

Scenario	Providers affected ²		
	10%	25%	50%
	\$m	\$m	\$m
1	6.7	10.3	16.3
2	7.6	12.5	20.7
3	10.7	20.3	36.3
4	5.4	7.1	9.9
5	8.5	14.7	25.2

Note:

1. Total current costs include provider expenses (which capture costs associated with the new entity responsible for combined TAS and Assurance Fund functions, TAS arrangements and absorbing displaced students), DEEWR expenses and costs borne directly by students.
2. Proportion of exposed providers who default as a result of the scenario. See notes under Table 1.1 for a description of exposed providers under each scenario.

3.5 Comparison of estimated scheme costs

Table 1.5 compares the total estimated costs of the current scheme with estimates for the alternative frameworks under various scenarios, based on the assumptions at Attachment A. The comparison has been made assuming 25 per cent of exposed providers default in the systemic shock contemplated as a one-in-ten-year event under each scenario (the middle column of Tables 1.1 to 1.4).

It is possible that some providers would cease membership of organisations that currently arrange TASs under Options 2 and 4. Such membership is currently required as a pre-requisite for inclusion in TAS arrangements and this has also been assumed to be the case for Option 1. This will not be the case under Options 2 and 4.

TAS membership costs are included as a necessary part of the current scheme under current arrangements and under Option 1. These are not included in total costs under Option 4, due to the uncertainty regarding future TAS membership. TAS membership costs are separately identified for Option 4. Under Option 2, there is no proposed TAS role in tuition assurance and hence there are no TAS associated expenses included in Taylor Fry's cost illustrations.

The inclusion of TAS membership costs in current arrangements and Option 1, and the exclusion of TAS membership costs under Options 2 and 4, means that direct comparisons of the costs shown in Table 1.5 does not provide a complete picture of the estimated effects of changes to tuition protection arrangements. Rather, the comparisons provide a picture of the combined effects of changes to tuition protection arrangements and TAS membership requirements.

Table 1.5: Comparison of estimated annual costs¹

Scenario	Model			
	Current	Option 1 Enhanced Current Arrangements	Option 2 ² Insurance	Option 4 ² Tuition Protection Service
	\$m	\$m	\$m	\$m
1	15.2	13.5	13.8	10.3
2	17.8	15.8	16.2	12.5
3	28.0	24.0	27.0	20.3
4	11.1	10.1	9.6	7.1
5	20.8	18.2	19.5	14.7

Note:

1. Total costs include provider expenses (which capture costs associated with the Assurance Fund, TAS arrangements, insurance premiums, the new entity that would be associated with Option 4 responsible for combined TAS and Assurance Fund functions, and absorbing displaced students), DEEWR expenses and costs borne directly by students.
2. Excludes \$2.4 million of annual TAS membership costs.

Table 1.5 shows that the estimated costs of Option 1 are close to, but lower than, the estimated cost under current arrangements. The estimated costs of Options 2 and 4 displayed in the table are also lower than the costs under current arrangements. However, it should be recognised that, consistent with the discussion in Section 3.3 and 3.4, \$2.4 million of this difference relates to the elimination of expenses associated with services provided by the bodies that organise TAS schemes, but which are not directly related to the provision of TAS services. One can argue that such costs should not be regarded as part of the cost of the current assurance framework either, but rather relate to other services. Whether, in practice, they would be eliminated in the event of Option 2 or 4 being implemented would depend on whether there was a continued demand by providers for the services covered by that cost.

Once the \$2.4 million amount described in the previous paragraph is taken into account, the difference in cost estimates for the current tuition assurance arrangements and the estimates for Options 1 and 4, while different, are not different by very large amounts.

The most significant contributors to the differences are:

- Current arrangements incorporate a potential entitlement to refunds that is greater than that proposed under each alternative (the fee component relating to those elements of the course that have been delivered).
- An expectation that placement rates should be higher under Option 1 than under current arrangements, and even greater under Option 4. This is in line with Taylor Fry’s understanding of the policy objectives of tuition-assurance (placements being a more desirable outcome than refunds) it is not a large contributor to cost differences. This is because costs of placement and costs of refunds will be similar under each option. In the case of a placement any cost will fall upon the accepting provider, while in the case of a refund it will fall on whatever funding arrangement the refund is sourced from. While there is a more significant difference in where those costs fall, as the estimates in Table 1.5 include all stakeholders’ costs total costs are similar for Options 1 and 4. The assessment of which costs are likely to be distributed to different stakeholders is considered in a subsequent sub-section.

The second observation is that, on a cost basis, Option 4 is the lowest cost, compared to Option 1 and current arrangements. A large contributor to these relativities is assumptions about the proportion of displaced students that would be placed rather than refunded.

Costings for Option 1 assume higher rates of placement than current arrangements. Under this option, the Assurance Fund may be able to claim some recovery from any TAS unable to place students. This factor, together with improved prospects for placing students with public sector providers, is likely to lead to higher rates of placement. Costings for Option 4 assume that, if in addition to the factors associated with Option 1, the tuition protection mechanisms can be made simpler by collapsing the second and third tiers of protection into a single structure, it is even more likely that placements can be achieved, and that those placements are less likely to have agent involvement. While one might debate whether the placement-level assumptions should be at the levels incorporated in the projections, the conjecture about the relative likelihood of placements under each option seems less open to challenge.

The results indicate that Option 2 is slightly less costly than current arrangements. The main reason for this is that the TAS membership costs have not been included in Option 2 costs. If all providers incurred costs under Option 2 in order to replicate the services currently provided by TASs, the total costs would be higher than current arrangements. The reason for this is that, in addition to covering the expected cost of refunds, the insurer's premium would also need to provide for profit. The level of profit loading will, in practice, be determined by the insurer based on its assessment of the risk associated with writing the policy. Taylor Fry's projections allow for a profit margin of 30 per cent of the risk premium before administration costs. This is a higher cost impost than the administrative costs that would be eliminated if TASs and the ESOS Assurance Fund were to be replaced. Though a commercial insurer may have a different opinion about the required level of loading than allowed for, it seems clear that, at the current time, the risk that cost outcomes for the insurer could be adverse and very different to predicted would be regarded as high. Consistent with this, profit loading can be expected to be high.

Though expected total cost (including the costs of replicating the services currently provided by TASs) is higher under Option 2, it is still possible that it might be regarded more favourably than the others. This depends on the value stakeholders place on the likelihood that under an insurance arrangement:

- Genuine protection is more likely (that is, the capacity of the insurer to withstand adverse experience and still make good on the promised protection is likely to be greater than the capacity for the other frameworks).
- Costs to providers (and hence students if one assumes that tuition assurance expenses are ultimately passed on) are likely to have greater stability than alternative frameworks, where there would be a greater imperative to responding very promptly if costs turn out to be greater than amounts that have been prefunded.

The third observation is that the annual costs in Table 1.5 are based on nine years of long-run or 'normal' costs and one year of short-term or 'shock' costs. The differences between the options are greater for short-term than long-run costs. The split is considered in a subsequent sub-section.

The next sub-section shows the split of these costs sub-divided by the group on which the costs fall.

3.6 Sub-division of costs

Table 1.6 attributes the total costs of the options to each of the groups that meet those costs in the first instance. As for Table 1.5, the comparison has been made assuming 25 per cent of providers are affected under each scenario (the middle column of Tables 1.1 to 1.4). Note that under the current arrangements, all TAS costs and all Assurance Fund costs are eventually met by providers via TAS membership, TAS coverage or Assurance Fund contributions. The costs of Options 2 and 4 exclude TAS membership costs (currently \$2.4m per annum).

Table 1.6: Estimated annual costs¹ for each stakeholder

Scenario	Group	Current \$m	Option 1 Enhanced current arrangements \$m	Option 2 Insurance \$m	Option 4 Tuition Protection Service \$m
1	Providers				
	TAS ²	4.1	4.9	0.0	0.0
	Assurance Fund	6.3	3.4	0.0	0.0
	Insurance Cost	0.0	0.0	11.8	0.0
	New Entity	0.0	0.0	0.0	4.9
	Absorbing students	1.3	2.6	0.0	2.8
	Sub-total—Providers	11.7	11.0	11.8	7.8
	DEEWR	1.0	1.1	0.5	1.1
	Students	2.6	1.5	1.5	1.5
	Total	15.2	13.5	13.8	10.3
2	Providers				
	TAS ²	4.4	5.3	0.0	0.0
	Assurance Fund	7.2	3.7	0.0	0.0
	Insurance Cost	0.0	0.0	13.8	0.0
	New Entity	0.0	0.0	0.0	5.7
	Absorbing students	1.7	3.4	0.0	3.6
	Sub-total—Providers	13.3	12.5	13.8	9.2
	DEEWR	1.2	1.4	0.5	1.4
	Students	3.3	1.9	1.9	1.9
	Total	17.8	15.8	16.2	12.5
3	Providers				
	TAS ²	5.0	6.2	0.0	0.0
	Assurance Fund	11.4	5.3	0.0	0.0
	Insurance Cost	0.0	0.0	22.7	0.0
	New Entity	0.0	0.0	0.0	7.3
	Absorbing students	3.3	6.7	0.0	7.1
	Sub-total—Providers	19.6	18.2	22.7	14.5
	DEEWR	1.8	2.1	0.5	2.1
	Students	6.6	3.8	3.8	3.8
	Total	28.0	24.0	27.0	20.3

Scenario	Group	Current \$m	Option 1 Enhanced current arrangements \$m	Option 2 Insurance \$m	Option 4 Tuition Protection Service \$m
4	Providers				
	TAS ²	3.9	4.6	0.0	0.0
	Assurance Fund	4.6	2.8	0.0	0.0
	Insurance Cost	0.0	0.0	8.4	0.0
	New Entity	0.0	0.0	0.0	4.3
	Absorbing students	0.6	1.3	0.0	1.3
	Sub-total—Providers	9.1	8.6	8.4	5.6
	DEEWR	0.7	0.8	0.5	0.8
	Students	1.2	0.7	0.7	0.7
	Total	11.1	10.1	9.6	7.1
5	Providers				
	TAS ²	4.6	5.6	0.0	0.0
	Assurance Fund	8.4	4.2	0.0	0.0
	Insurance Cost	0.0	0.0	16.6	0.0
	New Entity	0.0	0.0	0.0	6.1
	Absorbing students	2.2	4.4	0.0	4.6
	Sub-total—Providers	15.2	14.2	16.6	10.7
	DEEWR	1.4	1.6	0.5	1.6
	Students	4.2	2.4	2.4	2.4
	Total	20.8	18.2	19.5	14.7

Note:

1. The total annual costs relate to expected costs based on 2010 industry size, and assume that nine years in 10, expected costs will relate to non-systemic risks only (in the report text, referred to as long-run costs), and one year in 10, a systemic event will replace non-systemic risks, with an expected size equal to that relating to each scenario.
2. Under Options 2 and 4, TAS entities would not have a role in tuition assurance. Currently TAS entities offer other services to their members also, and tabulated values allow for continued delivery of those services.

The total annual costs relate to expected costs based on 2010 industry size, and assume that nine years in 10, expected costs will relate to non-systemic risks only (in the report text, referred to as long-run costs), and one year in 10 a systemic event will replace non-systemic risks, with an expected size equal to that relating to each scenario.

3.7 Short-term and long-run costs

Table 1.7 shows the short-term and long-run costs for each option. As for Table 1.5, the comparison has been made assuming 25 per cent of providers are affected under each scenario.

Table 1.7: Estimated short term and long run costs¹

	Scenario	Short Term	Long Run	Annual average
		\$m	\$m	\$m
Current				
	1	81.1	7.9	15.2
	2	107.7	7.9	17.8
	3	208.8	7.9	28.0
	4	39.9	7.9	11.1
	5	137.0	7.9	20.8
Option 1—Strengthened current arrangements				
	1	66.8	7.6	13.5
	2	90.3	7.5	15.8
	3	172.2	7.6	24.0
	4	33.4	7.5	10.1
	5	113.8	7.5	18.2
Option 2—Insurance				
	1	88.5	5.5	13.8
	2	113.0	5.4	16.2
	3	220.5	5.5	27.0
	4	46.7	5.4	9.6
	5	145.8	5.4	19.5
Option 4—Tuition Protection Service				
	1	60.1	4.8	10.3
	2	82.6	4.7	12.5
	3	160.1	4.8	20.3
	4	28.3	4.7	7.1
	5	104.6	4.7	14.7

Table 1.7 illustrates starkly the very high costs that would be associated with provider defaults in respect of 25 per cent of providers with the exposures contemplated for each scenario.

One can review differences in average annual costs associated with each 'shock' scenario, contemplating an average frequency of occurrence of one year in 10. However, in addition, it is worthwhile considering whether, in reality, the tuition-assurance structure would withstand a cost impost associated with the figures shown in the short-term column. A strong case could be made that, in practice, none of the options would survive such an event.

3.8 Commentary on costs

There is a wide range of costs in Section 3, corresponding to the sensitivity of estimates to the assumptions. Prior experience provides little guidance to the selection of these assumptions. They do indicate that, on a cost basis, Option 4 appears to be the lowest cost, followed by Option 1 and Option 2.

Current expectations are that 2010 and 2011 will experience provider defaults arising from the effect of the systemic factors that have applied to the industry to date. It is not possible to objectively estimate what the outcome of those defaults will be. Scenario analysis has been applied to illustrate the range of outcomes that are possible. However, the funding of these arrangements was not within scope of the Taylor Fry report. The results above may inform the various funding options which will be considered.

4. Reliances and limitations

4.1 Data

This analysis relied on the accuracy and completeness of the PRISMS and other data provided. It was checked for internal consistency and there was no reason to doubt its accuracy and completeness.

4.2 Estimated costs

Short-term costs will be the outcome from systemic events which, by their nature, are not able to be estimated. Instead, the scenarios described above were tested for the range of potential costs.

The scenarios above deal with average percentages of providers defaulting, or with average percentages of students not enrolling. The reality is that particular providers will default, and the effects may be very different from 'average'. The effects of the largest provider defaulting will be very different from the effect of a small provider defaulting. The normal response to a situation where there is a wide range of outcomes dependent on individual cases is to undertake simulations, based on random defaults of individual providers, or based on probabilities of defaults derived from prior expectations. In the current situation, this is not considered appropriate, since the scenarios are extremely uncertain, and this uncertainty is not reduced by the information available from simulations.

For this reason, the percentages applied may be thought of as representative of small, medium or large providers defaulting, as well as low, medium or high rates of default.

Similarly, the effects of an epidemic or travel restriction in India would be much more severe than the effects of the same issues in Thailand. The percentages applied may be thought of as representative of small, medium or large source countries being affected as well as low, medium or high levels of effect of epidemic or travel restriction in all countries.

It may be expected that following the current process of audits and re-registration, together with the financial effects of lower enrolments as a result of recent publicity, the remaining providers may be more secure than those previously operating (the weaker ones having been weeded out). The historical information may provide a guide to the operation of the tuition assurance model in a 'normal' or relatively stable environment.

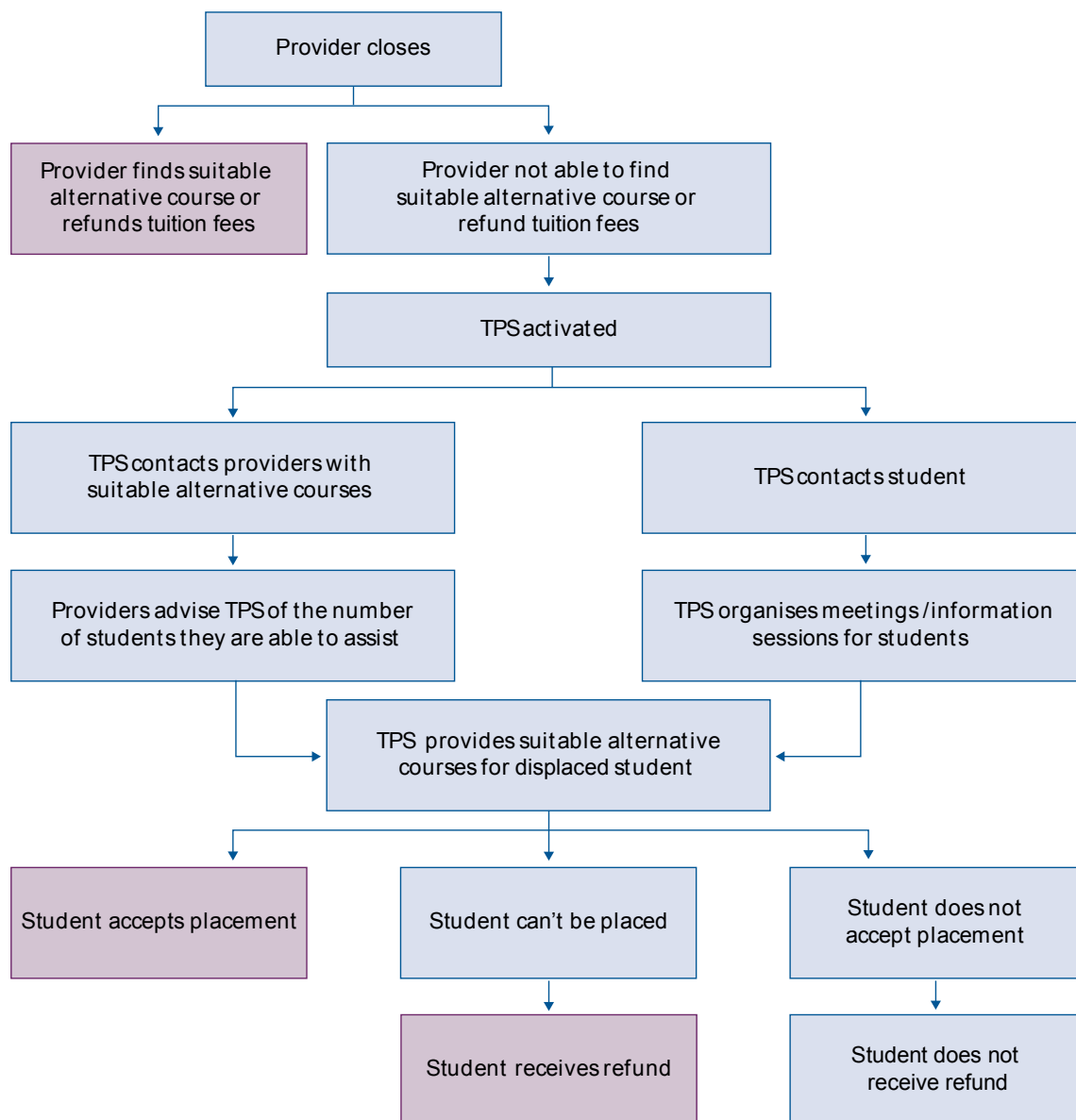
The scenarios outline various reasonable occurrences—it is important to note that the actual outcome will differ from these scenarios, and may be significantly higher or lower cost. The purpose of generating the scenarios is to indicate the range of costs that the various models may have to cope with in future, and to test their response to those scenarios so as to rank them in order of financial preference.

Attachment A: Assumptions

Item	Description	Fixed Assumption	Variable Assumptions	Scenarios				
				1	2	3	4	5
Exposure	Refund exposure		618,749,358	790,505,630	1,532,757,644	334,199,936	1,019,250,024	
	Tuition exposure		453,471,771	582,797,447	1,194,343,913	199,514,430	760,117,610	
	Student number exposure		93,909	152,788	263,122	49,696	182,095	
					Sensitivities			
			Sensitivity 1	Base	Sensitivity 2			
Semester completed	Proportion of semester completed when default occurs		25%	50%	—			
Providers affected	DEEWR suggest 10%, 25% or 50%		10%	25%	50%			
% of net to gross costs from longer term courses	Sensitivity test (0% or 50%)		—	0%	50%			
Refund as a % of semester's fees			—	75%	100%			
Frequency	Frequency of short term shocks		—	10%	20%			
					Models			
			Current	Option 1	Option 2	Option 4		
% of students refunded	% of students receiving refund		40%	20%	80%	4%		
% students found alternative courses	% of students where alternative course is found		25%	60%	0%	76%		
% students not refunded or found alternative courses	% of students who make their own arrangements		35%	20%	20%	20%		

Item	Description	Fixed Assumption	Variable Assumptions			
Proportion of refund exposure from:	Approved	10%				
	Visa granted	8%				
	Studying	82%				
Proportion of tuition exposure from:	Approved	13%				
	Visa granted	10%				
	Studying	77%				
% of alternative course fees for durations up to 1 year	no margin in future fees	65%				
% of alternative provider course costs = net cost	margin in future fees offsets cost of tuition	35%				
Marginal cost of providing tuition (% of fees)	Assume some contribution to overheads from normal course fees	75%				
Assurance fund admin expenses as % of refunds		34%				

Appendix F: Tuition Protection Service Diagram



Appendix G: Tuition protection options: advantages and disadvantages

Options	Advantages	Disadvantages
1. Strengthen current arrangements	<ul style="list-style-type: none"> • students placed more promptly by TASs • greater pool of suitable alternative courses and providers to choose from • Assurance fund operates within FMA Act • fairer system as high risk providers bear the greater cost burden 	<ul style="list-style-type: none"> • still complex and confusing for students • delayed student placement where TAS fails • providers have to pay twice—TAS & Fund • doubling up of administrative costs • limited ability of TASs to deal with large number of closures or large number of students • difficulty in assessing risk of providers
2. Insurance model	<ul style="list-style-type: none"> • high risk providers bear the greatest cost burden for tuition protection • capacity of insurer to withstand adverse experience and still make good on promised protection • premium costs to provider likely to be more stable 	<ul style="list-style-type: none"> • difficulty finding insurers to underwrite scheme in current environment • would not be universal as insurer not likely to provide coverage to high risk providers • not timely—as could take time for claims to be investigated/processed • may be difficult to obtain binding commitment from insurer over many years
3. Trust accounts	<ul style="list-style-type: none"> • trust accounts used elsewhere as an option under fee protection schemes for private providers in both NZ (70%) and Singapore (50%) 	<ul style="list-style-type: none"> • no placement service • trust accounts previously used unsuccessfully in Australia • potentially high administrative and cost burden for providers
4. Tuition Protection Service	<ul style="list-style-type: none"> • less complex for students • student placed more promptly • all providers required to place students • providers compensated to some degree to meet costs of absorbing students • reduced administration and costs for providers as only one fee required • greater costs paid by high risk providers • funding arrangement in line with FMA Act allows flexibility for funds to be available to meet demand 	<ul style="list-style-type: none"> • difficulty in assessing risk of providers • reduced industry involvement

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