



Australian Government

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

Reforming ESOS:

Consultations to build a stronger,
simpler, smarter framework for
international education in Australia

Contents

Introduction	1
The Baird Review	1
Purpose	2
Chapter 1 – Risk assessment and management	4
Overview of Baird Review recommendations on risk management	4
Key issues	4
Risk management	4
Assessing and managing risk	6
Chapter 2 – Tuition Protection Service	11
Overview of Baird Review recommendations for a Tuition Protection Service and refund obligations	11
Key issues	11
Chapter 3 – Improving the National Code	15
Overview of Baird Review recommendations and ISSA initiatives relating to National Code standards	15
Key Issues	15
Conclusion	21

© Commonwealth of Australia 2010

ISBN 978-0-642-77984-7

This work is copyright. You may download, display, print and reproduce this material in unaltered form only (retaining this notice) for your personal, non-commercial use or use within your organisation. Apart from any use as permitted under the *Copyright Act 1968*, all other rights are reserved. Requests and inquiries concerning reproduction and rights should be addressed to Commonwealth Copyright Administration, Attorney General's Department, Robert Garran Offices, National Circuit, Barton ACT 2600 or posted at <http://www.ag.gov.au/cca>.

Introduction

The *Education Services for Overseas Students Act 2000* (and associated legislation referred to collectively as ESOS) was introduced as a result of the rapid growth of international education in Australia. The first ESOS legislation was enacted in 1991. It established the world's first comprehensive, dedicated tuition protection framework for international students and is widely acknowledged as contributing to the strength of international education in Australia.

The main aims of ESOS are to:

- provide financial and tuition assurance to overseas students for courses they have already paid for through a consumer protection framework
- protect and enhance Australia's reputation for quality education and training services
- complement Australia's migration laws by ensuring providers collect and report on information relevant to the administration of student visas.

The Bradley Review of Australian Higher Education recommended the review of ESOS take place before 2012. The review had been planned for 2011 but was brought forward in the context of significant growth in the number of overseas students, the changing composition of the sector, the increase in private Vocational Education and Training (VET) providers, and emerging issues in the sector.

The Baird Review

In August 2009, the then Deputy Prime Minister and Minister for Education, the Hon Julia Gillard MP, asked the Hon Bruce Baird AM to review the ESOS framework and recommend changes that would ensure Australia continued to offer world-class international education (the Baird Review).

The review terms of reference sought to investigate the need for enhancements to the ESOS framework in four key areas: supporting the interests of students; delivering quality as the cornerstone of Australian education; effective regulation; and sustainability of the international education sector.

The Minister released the final report of the Baird Review—*Stronger, simpler, smarter ESOS: supporting international students* on 9 March 2010. The Minister indicated the Government's intention to implement a number of the recommendations immediately and to consult further with the international education sector on its response to the remaining recommendations.

The Baird Review was conducted in the context of a number of broader initiatives for strengthening the tertiary sector with a view to streamlining ESOS regulation with regulatory approaches for domestic quality assurance frameworks. These initiatives include: changes to the Australian Quality Training Framework (the AQTF) to introduce tougher entry requirements; risk management and improved consumer protection from July 2010; and national regulation for the higher education and VET sectors through the establishment of the Tertiary Education Quality Standards Agency (TEQSA) and National VET Regulator (NVR) in 2011.

The Council of Australian Governments (COAG) International Students Strategy for Australia (ISSA), released on 29 October 2010, also complements the Baird Review. The strategy seeks to improve the experience of international students studying and living in Australia by lifting the quality of education, enhancing international students wellbeing, strengthening tuition protection arrangements and providing better information for international students.

Purpose

The purpose of this paper is to seek feedback from stakeholders to inform the second phase of the Government's response to the Baird Review and implementation of related aspects of the ISSA.

The Government's initial response includes proposed legislative changes currently before Parliament. These seek to build on the recent amendments to the ESOS Act (which introduced two new registration criteria and requires the re-registration of all international education providers by 31 December 2010) to:

- further raise the bar for entry into the sector
- give regulators greater flexibility to manage risk effectively and enforce compliance with the legislation
- strengthen complaints and appeals processes for students through changes to the *Ombudsman Act 1976*.

The Government is seeking feedback from stakeholders to inform the second phase of its response to the review in relation to:

- the risk assessment and management approach to regulating CRICOS providers, including how assessment of risk might apply to any charges and consumer protection arrangements
- a new tuition protection service
- proposed changes to the ESOS legislative framework in response to recommendations that have not been addressed in the first phase of the Government's response, as well as related ISSA requirements
- the regulatory effect of these proposals and recommendations on providers.

The discussion questions in this paper focus on issues underpinning the broad recommendations of the Baird Review and are intended to guide feedback to inform the second phase of the Government's response.

Providing your feedback

You can provide your feedback on this discussion paper using the online submission form available at www.aei.gov.au.

Submissions are to be received by no later than 21 January 2011.

This discussion paper is divided into chapters to address different aspects of the Baird Review recommendations. The questions in it are intended to serve as a guide only. You may respond to any or all of them and make general comments of up to a total of 1800 words per submission.

For any enquires please email the ESOS mailbox: esosreview@deewr.gov.au

Please note that the Department of Education, Employment and Workplace Relations (the department) reserves the right to publish any written submission received and the names of persons making written submissions in the course of this consultation.

The department will only treat information as confidential if there are sound reasons for your request for confidentiality. If you consider that information in your submission should be treated as confidential, or if you wish to remain anonymous, please clearly indicate this in your submission or in a cover note and provide reasons for your request.

In determining the confidentiality status of information the department will be guided by the Department of Finance and Deregulation's Financial Management Guidance No. 3 on confidentiality in procurement, July 2007.

<http://www2.finance.gov.au/publications/fmg-series/03-guidance-on-confidentiality-in-procurement.html>

Information relating to individuals will be protected under the *Privacy Act 1988*. Requests for access to such information will be dealt with under the provisions of the *Freedom of Information Act 1982*.

Chapter 1—Risk assessment and management

Overview of Baird Review recommendations on risk management

The final report of the Baird Review made a number of recommendations for introducing a nationally consistent risk management approach to the registration and ongoing monitoring of providers. The review's recommendations extended to the consideration of risk for charges levied on international education providers.

- Chapter 3 of the report discusses the need to ensure Australia's reputation for quality by managing risk more effectively.
- Recommendation 2 is that ESOS be amended to only allow providers to be registered and maintain registration if they have sufficient financial resources, a sustainable business model and the capacity, capability, governance structures and management to uphold Australia's reputation for providing a quality education to international students.
- Recommendation 3 is that ESOS regulators adopt a consistent, comprehensive risk management approach developed and maintained in consultation with stakeholders and experts to: profile providers at entry to determine the level of scrutiny, evidence, tests and costs that apply at registration and throughout the period of registration, with regular review of risk.
- Recommendation 4 is that ESOS be amended to support better risk management by allowing conditions on a provider's initial registration and throughout the registration period and limiting a provider's registration period based on risk.

Key issues

A risk management approach to providers' obligations under ESOS recognises the diversity of providers in the international education sector. It also recognises that risk is not static and that a one-size-fits-all approach to regulation is not appropriate.

To this end, the key objective of developing a risk management approach is to ensure that a similar approach (or risk criteria) is applied to all providers at initial registration and throughout the registration period. This will identify and manage risk and ensure a consistent assessment of risk by all regulators (noting that risks linked to the delivery of education to international students are in addition to the risks identified by underlying regulatory frameworks for education delivery in general).

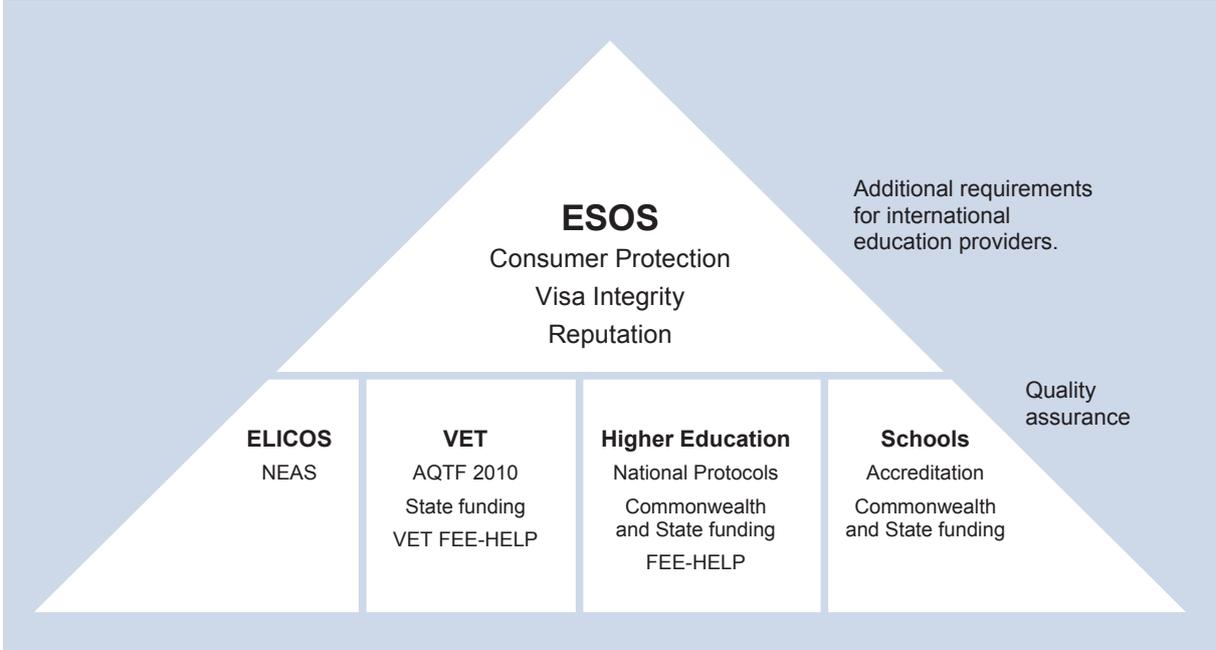
Specifically, the risk areas relevant to the delivery of international education relate to student refund obligations, the international reputation of Australian education and visa integrity matters.

Risk management

It is envisaged that providers will need to meet a core set of threshold risk factors to enter, or remain, in the international education sector. These risk factors will influence whether a provider can deliver high quality education, meet the financial requirements of ESOS and meet their student obligations. A set of risk factors would be used to refuse an application for registration or, where necessary, to determine the conditions to be placed on the provider's registration. Beyond this set of predetermined risk factors, it is proposed regulators should still have some flexibility to apply their own local intelligence to influence a provider's regulatory plan for compliance purposes.

In practice, a risk management approach for ESOS should complement rather than duplicate risk management approaches for domestic quality assurance purposes, such as under the AQTF for the VET sector or the National Protocols for Higher Education. Additionally, English Language Intensive Courses for Overseas Students (ELICOS) are accredited by the National English Language Teaching Accreditation Scheme (NEAS) in some states. This relationship is depicted in Figure 1.

Figure 1 Relationship of ESOS to domestic quality assurance frameworks



Ideally, this approach would enable an overall risk assessment of each provider, taking into account the relevant aspects of the provider’s profile. It will support greater efficiency and consistency; and reduce duplication and regulatory burden—all of which are key objectives of the move towards national regulation.

The questions that follow seek feedback on the practical application of the layered approach outlined in Figure 1. They are guided by:

- lessons learnt from the use of the risk management approach developed to implement the re-registration measure in the ESOS Amendment Act
- key risks and indicators in international education identified by KPMG as part of its consultancy work for the ESOS Review (a summary is available in the final ESOS Review report)
- National Guidelines for Risk Management developed for the AQTF 2010.

The questions in this chapter are intended to serve as a guide only. You may respond to any or all of them and make general comments.

Question 1: The practical application of risk management

- 1a:** *How can duplication of risk management for international education providers across the different domestic quality and regulatory frameworks and ESOS be avoided?*
- 1b:** *Should the risk assessment be based entirely on defined criteria or should regulators be given the flexibility to draw on a wide range of information and experience?*
- 1c:** *Should different risk criteria be applied depending on the sector of the provider (higher education, VET, ELICOS, schools)?*
- 1d:** *Are there different tests that should be applied at initial registration compared to continuing registration to inform a provider's risk assessment?*
- 1e:** *Are there any specific considerations arising from the sharing of information on risk among regulators?*
- 1f:** *How should the risk assessment influence a decision about the maximum number of overseas students a provider is able to enrol?*
- 1g:** *Should there be a more limited risk assessment applied to providers with an intended capacity of only a small number of overseas students (e.g. less than 50 students)?*

Assessing and managing risk

The quality of education delivery is not the only factor in considering risk. The assessment of risk may relate to several aspects of a provider's operations. Work undertaken for the Baird Review identified six categories of risk with a number of specific factors within each category that may be relevant in assessing different components of a provider's exposure to risk. These categories are explored below.

Financial viability and risk

Financial viability is a threshold risk criterion for all providers in all sectors whether they deliver solely to domestic students, international students or a combination of both. Providers must demonstrate they can meet this criterion satisfactorily in order to obtain and maintain CRICOS registration. Processes for assessing financial viability can vary by sector and include considerations of cash flow and future projections based on a limited set of information. Financial risk, on the other hand, considers the risk of failure due to financial issues arising from assumptions and business practices embedded in the business plan and model.

There is a need for a consistent national approach to financial viability and financial risk as a specific CRICOS registration requirement, given the consumer protection objectives of ESOS. Providers could submit agreed procedures or financial risk material covering a range of issues that regulators identify as indicators of medium term viability as appropriate.

Question 2: Financial viability and risk

- 2a:** *How should financial viability tests differ for ESOS purposes compared to domestic quality assurance and fee-help purposes (for example, in ensuring a provider has sufficient capacity to meet the provider's refund obligations to students)?*
- 2b:** *What factors should be considered relevant in assessing the financial viability and financial risk of businesses operating in the international education sector? Examples may be, but are not limited to, consideration of financial records, budget documents, financial managements systems and fee payment arrangements.*
- 2c:** *How often should a provider's exposure to risk, including a provider's financial viability, be assessed?*
- 2d:** *What can be done to guard against the risks that might arise from a change of ownership?*

Capacity of the provider to provide education of a satisfactory standard

The focus for assessing risks associated with the capacity of the provider to deliver education to overseas students to a satisfactory standard is not specifically about quality assurance as this is the role of domestic quality assurance frameworks; rather, it is about meeting the reasonable expectations of students to receive the study experience they are paying for, as well as supporting Australia's reputation for quality education and training. As discussed in the next section on governance and management, this assessment is also closely aligned with the soundness of the business model, taking into account the number of students and courses offered.

Capacity may be determined by a number of factors. For example, whether education is the provider's core business; the maximum number of students a provider is approved for; and the provider's ability to deliver its courses, including infrastructure and staff. The number of students at each location is also relevant.

Question 3: Capacity to deliver to a satisfactory standard

- 3a:** *What criteria should be used to assess a provider's capacity and capability to provide education of a satisfactory standard? How should these criteria be prioritised, if at all, in assessing a provider's risk profile?*
- 3b:** *To what extent, if any, should providers be required to have a mix of domestic and international students?*

Governance and management

The governance and management capability of the provider may be determined by examining the provider's business model and substantiated business plan, management systems and governance structures. Transparency in ownership, including any affiliated business connections and the outcomes of 'fit and proper person' tests for all managerial agents may also be considered when determining the provider's exposure to risk associated with its governance and management arrangements.

Question 4: Governance and management capability

- 4a: What criteria should be used to assess a provider's governance and management capability? How should these criteria be prioritised, if at all, in assessing a provider's risk profile?*
- 4b: To what extent should other business affiliations, overseas ownership of a provider and/or continuity of present ownership and management affect any consideration of risk?*
- 4c: Who should be included in the 'fit and proper person' test and what should this involve?*

Qualifications and courses

While ESOS mandates a nationally consistent approach to registering education providers so that the quality of the tuition and care of students remains high, it does not duplicate quality assurance frameworks at the domestic level. However, qualifications and courses will impact on the risk assessment of the provider from the perspective of their capacity to deliver quality and whether or not the courses provided pose a financial risk to the provider. Providers would need to demonstrate their curriculum meets the appropriate quality standards and the courses offered support a robust business model. This in turn helps protect the integrity of the student visa program.

Question 5: Qualifications and courses

- 5a: What criteria regarding the qualifications and courses offered should be used to assess a provider's risk? Such criteria may include the number and qualifications of staff relative to the courses offered and student numbers as well as the extent to which the course offerings are aligned with migration policy or other government policies.*
- 5b: How should these criteria be prioritised, if at all, in assessing a provider's risk profile?*
- 5c: To what extent, if any, is the course fee structure an indicator of risk?*
- 5d: To what extent, if any, is course packaging an indicator of risk?*

Past performance

The past performance of a provider could be a good indicator of future risk, although the issues are complex and need careful consideration to ensure providers are not unnecessarily penalised for past performance. It is acknowledged that there are different types of risk for new and existing providers. For example, the risk category of 'past performance' could not apply to new CRICOS providers that have no previous experience in delivering education or business links with another education provider.

Question 6: Performance as an indicator of risk

- 6a:** *What criteria of past performance should be used to assess a provider's risk? Such criteria may include: deliberate or repeated non-compliance with legislative and regulatory requirements; staff turnover; reporting patterns; rates of student completion; and a substantiated complaints history.*
- 6b:** *How should these criteria be prioritised, if at all, in assessing a provider's risk profile?*
- 6c:** *To what extent, if any, should the business associations (current or past) of the provider be taken into account?*
- 6d:** *Should there be a time limit on when a provider's previous history of non-compliance can be included in the risk assessment and how should this differ depending on the seriousness of non-compliance?*

Student profile

Student profile issues may affect a provider's financial viability. Student populations sourced from a single country may make providers vulnerable to policy and economic changes in Australia or overseas events. A low percentage of domestic students may also create a level of vulnerability.

Question 7: Student profile

- 7:** *What factors, if any, contribute to a provider's risk with regard to student profile and how can this risk be managed?*

Industry charges and levies

Chapter 7 of the final report of the Baird Review recommended that a single Tuition Protection Service (TPS) be established. The structure of the TPS is discussed in more detail in Chapter 2 of this paper. The purpose of this section is to explore the extent to which a risk management approach should determine the cost of being a member of the TPS and what student information a provider would be required to maintain, as recommended by the review.

The review also suggests that the provider's risk profile should guide providers' entry to the market—for which an Initial Registration Charge (IRC) is imposed—and that the existing Annual Registration Charge (ARC) should be influenced by that risk assessment.

Question 8: Industry charges and levies

- 8:** *Which of the risk factors outlined above should influence any charges that may be levied on a provider?*

Question 9: Risk assessment and management

9a: *Are there any learnings from the approach to re-registration that could usefully inform ongoing risk assessment and management of all CRICOS registrations?*

9b: *How should risk be applied to a multijurisdictional provider?*

9c: *What factors do you consider to be multipliers of risk?*

9d: *How often should the risk assessment criteria be reviewed?*

9e: *What types of conditions on a provider's registration would be useful in managing risk?*

9f: *What, if any, are the resource implications arising from a risk-managed approach—for providers? For regulators?*

Please provide any additional general comments.

Chapter 2—Tuition Protection Service

Overview of Baird Review recommendations for a Tuition Protection Service and refund obligations

The final report of the Baird Review made a number of recommendations about the establishment of a single Tuition Protection Service (TPS) to provide a more flexible and streamlined approach to student placement and refund arrangements in the case of provider default.

The questions in this chapter are intended to serve as a guide only. You are invited to respond to any or all of them and make general comments of up to a total of 1800 words per submission.

Recommendation 16 of the Baird Review suggests the establishment of a single TPS that:

- provides a single mechanism to place students when a provider cannot meet its refund obligations and provides refunds as a last resort
- enables placement with any appropriate provider
- makes the cost of being a member of the TPS risk-based
- requires providers to regularly maintain student contact details in Provider Registration and International Students Management System (PRISMS) and other information on a risk basis
- removes provisions for ministerial exemptions from membership of a tuition protection scheme.

To ensure defaulting providers bear primary responsibility for meeting fair and reasonable refund obligations, Recommendation 17 suggests that ESOS be amended to:

- refund only the portion of the course not delivered or assessed when the provider fails to meet its obligation
- establish that where a provider does not meet its refund obligations, this would be considered in the ‘fit and proper’ test for any future registration application.

Key issues

Throughout the Baird Review consultation, stakeholders raised a number of concerns and perspectives about tuition protection for international students. The review’s final report includes the following principles to underpin future tuition protection:

- **Seamless placement of students**—the focus should be on the student experience. Closures are a stressful time for students and from a student’s perspective the placement process should be simple and quick.
- **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. When placement is not possible students should only be refunded the portion of the course for which the student has paid but which has not been delivered and assessed.
- **All registered providers share the burden of placing students**—Australia’s reputation is put at risk whenever a closure results in displaced students. This will provide a greater pool of courses to draw on in the event of a closure, making finding a suitable alternative course easier and quicker.
- **The cost of tuition protection needs to be risk based**—low risk providers should not bear the cost of subsidising providers with a higher exposure to risk. Pricing entry based on the risk the provider poses to the industry would also act as another entry check.

- **Scalability**—given the current challenges in the international education sector and the likelihood that it will continue to change over time, there should be flexibility to scale tuition protection arrangements up or down as the need arises.
- **Streamlined tuition protection**—tuition protection should be as simple as possible, cost-effective and sustainable into the future.

Defaulting provider obligations

The Baird Review found that 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. The following questions seek to inform the Government’s response to this recommendation.

Question 10: Defaulting provider obligations

- 10a:** *Should the TPS become involved as soon as the provider declares itself unable to deliver courses to overseas students?*
- 10b:** *Should there be a legislated limit on the length of time that providers should be given before it is determined that they will not meet their obligations?*
- 10c:** *Are there any risks to students or the industry more generally in maintaining the current obligations for defaulting providers? If so, how might these be mitigated? Should other steps be taken to ensure that new owners of failed providers meet the former provider’s obligations?*

Student information

The Baird report recommends that providers be required to maintain student contact details in PRISMS and other information on a risk basis (Recommendation 16.d).

Student placement and refund assessment relies heavily on accurate information about students’ contact details, academic records and financial records. Recent experience shows that for students and regulators there is potential for difficulty in locating reliable student records.

The majority of providers do not currently use PRISMS as their primary student contact database. Moreover, PRISMS, as currently configured, does not include some of the ‘contact details’ fields associated with newer communication technologies. The following questions seek to explore how best to regularly maintain required ‘contact detail’ fields on PRISMS without undue administrative and financial burden upon providers.

Question 11: Student information

- 11a:** *What obligations should be put on the provider to hand over student records in the case of a provider closure? How might this be effectively enforced? Should the records become government property as trustee for the students?*
- 11b:** *How else might the TPS effectively assist students in locating proof of courses successfully completed? What role, if any, should the student have in ensuring and maintaining up-to-date records regarding the proportion of the course they have received?*
- 11c:** *Is it reasonable to require that all providers maintain student contact details, including phone numbers and email addresses, in electronic database format (e.g. spreadsheets) that may be uploaded onto PRISMS? If not, how may these contact details be maintained so they are readily accessible?*

Student placement

Under current arrangements, the decision as to what constitutes a suitable alternative course for displaced students is made by the relevant Tuition Assurance Scheme (TAS) and/or the ESOS Assurance Fund. However, during the Baird Review consultation, students reported their frustration at not being able to have direct input in where they were placed. From a tuition protection perspective it is impossible to be able to correctly anticipate the preferences and individual circumstances of all affected students when locating an alternative placement. What may appear to be a suitable alternative course on the basis of factors such as cost and duration may not be suitable to a student for various reasons.

Question 12: Student placement and refund arrangements

- 12a:** *What identifiable cohorts of students may require a higher level of support (for example, students under the age of 18)?*
- 12b:** *Should there be any scope for a simple refund arrangement for displaced students, or certain cohorts of displaced students, thereby bypassing the placement process altogether (for example, in financial hardship)?*

Student refund entitlements

One of the main objectives of the ESOS Act is to provide financial and tuition assurance to overseas students for courses for which they have paid. The final report of the Baird Review notes that it is far better that students are placed and supported to receive the education for which they came to Australia, with refunds payable only where placement is not possible.

Question 13: Student refund entitlements

- 13a:** *Is it reasonable to require students, wherever possible, to enrol in a similar course to the default course before refund entitlements become payable?*
- 13b:** *Are there circumstances in which it is not reasonable to expect students to enrol in a similar course (e.g. where there are no available places in similar courses) in order to have access to their refund entitlements?*
- 13c:** *What role or responsibility should students have in ensuring that they are appropriately placed or refunded?*
- 13d:** *If a student fails to make any contact with the TPS within a defined timeframe, should they be deemed to have relinquished any claims?*
- 13e:** *What level of evidence would be necessary to assess the proportion of the pre-paid course not yet delivered?*

Information for students

Student feedback to the Baird Review highlighted a number of communication issues surrounding consumer protection, including lack of clarity about their rights and failure to receive adequate updates on the status of their placements.

General information about students' consumer protection rights and responsibilities is currently available for all students and a student information portal has been developed as an initiative under the ISSA. More specific information is also provided to students in response to provider closures, although this is a time during which students may be particularly vulnerable to misinformation and exploitation.

The following questions seek to explore how students can be effectively informed of their rights and responsibilities under a future consumer protection framework.

Question 14: Student consumer protection

14a: *When and how should students be provided with general information about their ESOS consumer protection rights and responsibilities?*

14b: *What mechanisms would be most appropriate for disseminating such information?*

Please provide any additional general comments

Chapter 3 – Improving the National Code

Overview of Baird Review recommendations and ISSA initiatives relating to National Code standards

The *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007* (the National Code) plays a crucial role in regulating ESOS effectively. Enforcing and monitoring regulatory compliance depend upon the existence of clear, easily understood and applied standards.

While there was positive feedback about the National Code during the Baird Review consultations, there was also some concern about the level of prescription in some of the standards. Recommendation 7b of the review is that the level of prescription in ESOS standards only be what is required to achieve the standard's intent. At the same time, the review report recommends the need to ensure the standards are objective and enforceable (Recommendation 5b).

Given the diversity of the sector, a critical issue is achieving a balance between prescription and flexibility to foster both innovation and compliance. The standards should be readily understood without the need for extensive supporting documentation so that students, providers and regulators have a common understanding of what is required. The National Code should encourage provider best practice and self-regulation without restricting a provider's ability to operate efficiently and effectively to deliver quality education outcomes for overseas students.

In 2009, the Senate Committee on Education, Employment and Workplace Relations Reference Committee conducted an inquiry into the welfare of international students. Its report, released in November 2009, canvassed the importance of making accurate information about studying and living in Australia accessible to international students.

COAG's ISSA, released on 29 October 2010, also highlighted the need to provide accurate, comprehensive and up-to-date information to international students about their options for studying, living and working in Australia.

The Baird Review, the ISSA and the Senate Committee's Report made a number of recommendations relevant to particular National Code standards. These will be examined in the sections below.

Key Issues

This chapter is not intended to reassess the entire range of provisions set out in the National Code. Overall, the current National Code has functioned well. The purpose of this chapter is to investigate issues arising from the Baird Review, the implementation of the National Code since its introduction in July 2007 and new requirements under the ISSA in order to identify ways in which the legislation can be clarified and simplified. The objective is to develop a set of enforceable standards that maintain the integrity and the reputation of the international education sector.

Stakeholders are asked to consider and respond to the questions that are set out in each of the key areas of consultation. All the standards referred to are those in Part D of the National Code.

The National Code

The ESOS Act and the ESOS Regulations set out the rules and regulations for the registration of providers, obligations on registered providers, the operation of the ESOS Assurance Fund, enforcement of the ESOS legislative framework and the establishment of the National Code. The ESOS Charges Act specifies the registration charges applying to CRICOS registered providers. The National Code gives these rules and regulations a practical application by providing nationally consistent standards for the registration and conduct of registered providers and the conduct of persons who deliver educational services on behalf of registered providers.

The National Code is a legislative instrument. It is legally enforceable and breaches of the National Code by registered providers can result in sanctions being imposed on providers' registration under the ESOS Act.

The ESOS framework is also supported by state and territory legislation that regulates the approval of education and training providers in accordance with relevant domestic quality assurance protocols.

The National Code is supplemented by the National Code Explanatory Guide and a range of fact sheets for both providers and students. While particular requirements may need extra explanatory materials, one objective of amending the National Code is to minimise the amount of explanatory material required. Another issue to consider is the extent to which student responsibilities could be clarified.

In this section, feedback is being sought on the content of the National Code in relation to the legislative framework as a whole and the extent to which stakeholders feel that explanatory materials are needed.

The questions in this chapter are intended to serve as a guide only. You may respond to any or all of them and make general comments.

Marketing information to prospective students—Standard 1

Recommendation 10 of the Baird Review suggests that ESOS be amended to ensure students are able to compare potential study choices accurately. An intended outcome of Standard 2 is that students are provided with the information that will help them make an informed decision about studying in Australia. However, consultation feedback during the review suggested that some students are not being provided with the relevant information at a sufficiently early stage to properly inform their study choices.

The 2009 Senate Standing Committee Report on the Welfare of International Students also included a recommendation that education providers should be required to provide up to date information on their website regarding accommodation in Australia, including tenancy rights and responsibilities.

The Study in Australia information portal, recently implemented, provides authoritative, comprehensive, accurate and up-to-date information for current and prospective students on studying and living in Australia in 12 languages.

Question 15: Provider marketing material

15a: *How can the requirement for providers' marketing material be strengthened to give students a clearer understanding of their study options?*

15b: *What additional information related to living in Australia should providers be required to make readily available to prospective international students, for example, on accommodation?*

English entry requirements—Standard 2

Recommendation 1b of the Baird Review is that English language entry levels and support are appropriate for the course and, where relevant, for the expected professional outcomes. This recommendation follows reports of students either failing to complete their courses satisfactorily for lack of proficiency in English or completing courses without the language skills needed for the profession for which they have trained. Currently under Standard 2 of the National Code, the provider sets the requirements for acceptance into a course, including the minimum level of English language proficiency required.

Question 16: English language requirements

16a: *How can ESOS support a consistent approach to English language requirements appropriate for different qualifications?*

16b: *What additional support would be appropriate for a student enrolled in a course with less than the recommended English language levels? How should this be regulated?*

Clarity of obligations relating to written agreements and refunds—Standard 3

The current standard relating to written agreements is intended to ensure that providers have the flexibility to manage their student contracts. However, legal questions often arise and it appears that there is insufficient guidance for providers in managing the students' consumer rights in accordance with the ESOS legislation, particularly in relation to student refunds.

Recommendation 12d of the Baird Review is to expand the requirements of written agreements to describe the course, the cost of the course and the refund provisions more completely.

Question 17: Written agreements

17a: *What detail should be included as standard clauses in a provider/student written agreement with respect to the course, costs and refunds? What degree of flexibility is still appropriate?*

17b: *Are there other things that should be included in the written agreement, for example, conditions on student transfer?*

17c: *How might the written agreement be strengthened to ensure students are clear about their rights and obligations with respect to ESOS and visa conditions, for example, attendance, transfers, and keeping contact details up to date?*

Management of younger students—Standard 5

Student welfare for younger students is a matter of concern, particularly in the case of emergencies or unexpected changes in provider or student circumstances. For example, there have been instances of uncertainty about ongoing approved welfare and accommodation arrangements for the care for students under the age of 18 following recent provider closures. Standard 5 therefore may need to be clarified so that it is objective and enforceable.

Question 18: Younger students

18a: *Should existing requirements be clarified and strengthened to meet the welfare needs of underage students and, if so, in what way?*

18b: *Should there be any requirements on providers for involving parents and legal guardians in these arrangements?*

18c: *How can provider obligations for the welfare of younger students be better enforced in the event of provider closure?*

Orientation and student support—Standard 6

In addition to the provision of marketing and pre-departure information, Recommendation 14 of the Baird Review is that ESOS be amended to require providers to demonstrate that they deliver a comprehensive induction program and ongoing access to information on matters such as safety, student rights and where to seek support in making complaints. Orientation programs are essential in assisting overseas students in becoming familiar with their study program and social and welfare arrangements. Standard 6 requires that a culturally appropriate orientation program, including a specified range of information, is provided to students. However, there is evidence that students do not always have easy access to either the information or ongoing support they need.

The 2009 Report of the Senate Education, Employment and Workplace Relations References Committee, following its inquiry into the welfare of international students, recommended that students be provided with personal safety information including reporting arrangements prior to coming to Australia and that this be reinforced at orientations sessions.

An initiative under the ISSA will require education providers to have student safety plans in place for international students which detail arrangements for safety on and around campuses and facilities, and explain how providers will increase student awareness of safety and ways in which to minimise safety risks.

The ISSA indicates that, depending upon the particular circumstances of the provider, a plan might include details about:

- campus security and security monitoring
- security escort services
- emergency telephones
- how to contact police
- data collection and monitoring
- specific information for students under the age of 18
- safety committees
- public transport options
- support services in the event of a crime taking place.

Question 19: Student support

- 19a:** *How can existing requirements be strengthened to ensure that students have ongoing access to the information recommended in the Baird Review?*
- 19b:** *What detail should be included in student safety plans? What requirements for community consultation, including with police, in the development of student safety plans should there be?*
- 19c:** *What should the scope of these plans in terms of on campus and off campus student safety?*
- 19d:** *How should student safety plans for overseas students differ and/or be integrated into student safety plans in place for domestic students?*

Restrictions on transfer of provider—Standard 7

The Baird Review notes that students and providers are concerned about the current restrictions on student transfers prescribed in Standard 7 of the National Code. Some students believe restricting their ability to transfer providers without a letter of release before completing six months of their principal course is unjustified. Some providers are concerned that the restrictions have not been enforced, the requirements to consider requests for letters of release are onerous and students are transferring to lower quality providers for reasons unrelated to education.

A key issue in the current restrictions on student transfers is that the requirement to complete six months of study applies to the student's 'principal course' which, in practice, means that students enrolled in a study package may not be able to transfer for long periods of time if they are unable to obtain an exemption. This creates a considerable amount of administrative work through the assessment of requests and granting of release letters, as well as complaints and appeals processes where release letters are not provided. Occasionally, students take the drastic measure of returning to their home country to obtain a new visa to avoid or circumvent release requirements. Negative feedback received from students on this restriction has the potential to reflect badly on the reputation of the sector.

In response to these problems, the Baird Review recommends placing a prohibition on providers enrolling a student currently studying with another provider before the student has completed the first study period of their initial course only.

Question 20: Transfer requirements

- 20:** *What are the practical implications of and key considerations for the proposed changes to the existing transfer requirements?*

Flexibility in course delivery requirements—Standard 9

Recommendation 1a of the Baird Review is that ESOS be amended to require providers to demonstrate that the delivery arrangements for each course do not undermine the integrity of the student visa program. The level of prescription for course delivery arrangements needs to be carefully balanced with the flexibility and innovation appropriate for different sectors and qualifications.

Related to this is the current restriction on the proportion of the student's course that can be taken online. This restriction is intended to ensure that students experience a real-life education experience in Australia, including contact with lecturers and classmates.

Question 21: Flexibility in course delivery

- 21a:** *How much flexibility is appropriate for face-to-face, online and distance learning, while ensuring that educational quality and student visa integrity are supported? How should these requirements be regulated?*
- 22b:** *Should providers be prohibited from delivering courses in long blocks which are clearly intended to facilitate part-time employment of students?*

Supporting visa integrity: monitoring attendances and course progress—Standards 10 and 11

Chapter 4 of the Baird Review notes the difficulty of enforcing the attendance and course progress aspects of the National Code, which are designed to support visa integrity. Neither the provider nor the Department of Immigration and Citizenship (DIAC) has the discretion to support a student who may have been absent from class on reasonable grounds, or has struggled with their course. Once a student is reported for failure to maintain satisfactory attendance or course progress, they are subject to visa cancellation and a three-year exclusion from Australia. This makes providers reluctant to report students and results in international students pursuing multiple complaints avenues.

Question 22: Monitoring attendance

- 22a:** *What aspects, if any, of the requirements on monitoring attendance could be simplified?*
- 22b:** *What level of flexibility is appropriate for monitoring attendance and course progress across sectors?*

Please provide any additional general comments (maximum 1800 words in total per submission).

Conclusion

Thank you for considering the issues raised in this discussion paper.

Feedback from this consultation will be used to inform the second phase of the Australian Government's response to the Baird Review and legislative changes to the ESOS Act, regulations and National Code and implementation of the ISSA.

We look forward to your response to the questions and policy proposals in this paper.