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Aligning ESOS with the national Quality Frameworks

Response to the ESOS Reform Discussion Paper

IRU Response: Reform of the Educational Services for Overseas Students Framework

The Educational Services for Overseas Students (ESOS) framework of Act, National Code and national register (CRICOS) was created at a time when there were few if any explicit protections for higher education students. It is a valuable assertion of the importance of ensuring students receive a quality education and receive needed supports while studying. It has provided a frame to support adherence to visa requirements for students coming to Australia.

Since its creation there has been a major transformation in the formal quality regulatory arrangements for higher education and vocational education in Australia. There is now a suite of education regulatory frameworks governing providers, the quality of student outcomes, and protections for students and agencies to oversee their operation in TEQSA for higher education and ASQA for VET. The final element is to confirm the new higher education standards.

The question is whether significant elements of ESOS are now superseded.

The IRU argues that the creation of the general Higher Education Standards Framework and other quality arrangements means that it is time to integrate the provisions for international students such that there is a common set of expectations for all students. Specific additional protections or requirements for international students should be used only where needed to meet the distinct needs of international students.

In this response the IRU explores:

1. the need to consider the interaction of ESOS with the now developed national quality frameworks in higher education and vocational education and training, targeting ESOS to the requirements specific to international students;
2. the particular proposals in the Discussion Paper to improve the operations of ESOS; and
3. other areas for improvement which the Discussion Paper does not cover.

The IRU analysis targets the position for higher education providers. The conclusions may also be valid for other sectors.

1. ESOS and the national qualify frameworks

The discussion paper offers the opportunity to consider the interaction of ESOS with the national quality frameworks driven by two major considerations:

- the Australian Government's commitment to remove unneeded regulation which hampers capacities to deliver good outcomes rather than enhancing outcomes; and
- for higher education, the development of the higher education standards providing an updated, streamlined suite of requirements governing all higher education in Australia.

It is a major weakness of the discussion paper that it does not look sufficiently outside the ESOS world to consider the changed quality regulatory environment where there are now effective higher education arrangements guiding provision and protecting students. Rather the discussion paper's take on streamlining regulation is to propose useful improvements within ESOS. It neglects to mention that the Higher Education Standards Panel has provided a useful guide to the relationship of

its proposed higher education standards framework to the requirements of the Education Services for Overseas Students Act (ESOS). The Panel's Guide demonstrates that if the Framework is approved many parts of the ESOS National Code would be redundant for application to higher education providers.

The paper also ignores the impact of streamlined visa processing on providers if students do not adhere to visa requirements. This creates additional incentives to be thoughtful in selecting students but also to ensure students are encouraged to act within visa requirements.

The discussion paper's approach is highlighted by the attempted apposition of ESOS regulation with 'domestic' regulation, which implies the latter concerns domestic Australian students only. The reality is that the new HE and VET frameworks apply across all providers, to all courses they offer, and for students whom they enrol. There are not two parallel worlds, one domestic, one Australian but one world within which international students are an important set.

As a result, the paper does not set out its rationale for holding onto a major parallel set of standards and requirements. It does not explicate the case for retaining a distinct assessment process to register a course as available for international students rather than CRICOS (Commonwealth Register of Institutions and Courses for Overseas Students) becoming a simple administrative process for registering duly accredited qualifications which providers wish to make available for international students.

The IRU recognises that ESOS applies across education at all levels for international students. The general frameworks by sector may not all be as developed as that for higher education. If that means aspects of ESOS are required for other sectors then, as occurs now in Standard 11 for VET those parts of the Code can be defined as applying to those sectors without sufficiently robust general quality arrangements.

It is also important to retain the assurance internationally that Australia has robust arrangements to ensure a quality education and fair treatment of international students. ESOS was needed initially because this was not explicit for all students; it now is.

Hence, the IRU recommends two additional areas for change beyond those outlined in the discussion paper:

- revision of section 38 of the ESOS Act detailing the requirement elements of the National Code and removal of those provisions in the National Code which will be covered by the HE Standards or a formal exclusion from those provisions for higher education providers, focusing the Code at requirements specific to international students, most of which relate to visa requirements; and
- simplify CRICOS to be a register of duly accredited courses available to international students, removing the repetitive assessment of characteristics of the provider and those courses already considered in the general higher education registration of the provider and accrediting of courses as set out in the TEQSA Act.

2. Responses to the Discussion Paper's proposals

Streamlining quality assurance agency processes

- **Simplifying administrative arrangements (proposals 1 – 6)**

The initial set of proposals is limited by the Discussion Paper's lack of engagement with the broader regulatory environment as set out in the initial section of this response. The references to 'domestic' in proposals #2, 3, and 6 are misleading. Once it is clear which requirements should remain under ESOS it then is important that the powers and processes in both ESOS Act and the TEQSA Act be consistent.

1. *Amend the current legislative arrangements to simplify decision making powers and responsibilities by directly providing rather than delegating some powers to TEQSA and ASQA. This will also simplify the registration and assessment process for ELICOS and foundation programs.*

Where TEQSA and ASQA are to exercise powers under ESOS the Act should be updated to refer directly to them.

2. *Allow quality assurance agencies to deem compliance with ESOS standards if equivalent domestic standards are met.*

The proposal seeks to retain significant sections of the Code which are superseded by the requirements of the Higher Education and potentially VET standards. As set out above those parts of the ESOS standards should be deleted. The deeming proposal envisages having two parallel sets of requirements with the regulator left to determine the precise equivalence. The requirements for universities and other providers should be clear and single.

3. *Amend the registration period in the ESOS Act to ensure it allows more flexible registration periods and extensions of registration timeframes, in line with domestic registration timeframes.*

To the extent that a distinct higher education ESOS registration remains useful the period for it and the process to assess it should be consistent with the timeframes and process under the TEQSA Act.

4. *Provide a 'check and balance' power to the Minister responsible for ESOS to direct TEQSA and ASQA in relation to the performance of their functions and the exercise of their powers under the ESOS Act, in consultation with other relevant ministers where appropriate.*

The power to direct TEQSA should be consistent with that of the Minister under the TEQSA Act. Amendments about this are currently before the Parliament. It is important that the two Acts are kept coherent with each other as changes are made in the future. This will be much easier the more that ESOS is focussed at requirements specific to international students.

5. *Amend the ESOS Act and the National Code to enable quality assurance agencies to consider additional relevant material gathered through other registration processes in assessing CRICOS registration.*

Proposal #5 presumes an ongoing need for distinct CRICOS assessment rather than registration based on the TEQSA registration of the provider and appropriate accreditation of the qualifications.

If specific additional points need to be assessed then they should be specified. To the extent that information TEQSA holds for its TEQSA Act and HESA Act roles is relevant to distinct non-duplicative assessments for ESOS it is better that the Agency use that information rather than formally collect it again.

The proposal is ambiguously written. IRU members are concerned about what the additional relevant material and its use by regulatory agencies in assessing CRICOS registration entails. The proposal does not detail how such information would be used in assessing an institution's registration application, nor does it set out what sort of information would be used. It is important that providers know what the material is that will be used and be able respond to it should it wish. This would help avoid the use of out-dated information and potential mis-readings of information out of context.

6. *Amend the ESOS Act to increase consistency in compliance and enforcement powers under ESOS and domestic legislative frameworks*

The relevant powers between ESOS and TEQSA Act should be aligned, with ESOS existing to support those elements of legislation specific to overseas students. In addition, ESOS should be aligned with Department of Immigration and Border Protection requirements.

- **Review of decisions by quality assurance agencies (proposals 7 and 8)**

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

The IRU supports proposals #7 and #8 to allow for an internal review of decisions before involving the AAT.

Reducing the reporting burden (proposals 9 – 12)

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

It is important that the reporting systems align with the regulatory timeframes and with other data collection systems. Use of automated data upload also reduces workloads and improves data reliability.

The paper draws a link between proposal 9 and the subsequent section's discussion of the current 3 and 5 day reporting requirements for provider and student defaults respectively. It is not clear but it appears intended that those default reporting periods would be removed. This is a policy decision not just a system reporting change. Further information is required before the proposal can be supported.

Proposal #12 is to remove redundant data stated to be 'lower value items'. IRU members are concerned to know what these items are to ensure that data items of importance to providers' monitoring of their students are not removed.

Minimising Tuition Protection Service Requirements (proposals 13 – 15)

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

The IRU is supportive of these proposals to target the TPS requirements at those providers at greatest risk of calling on the service. The 50 per cent rule is a problem in particular for students who commit to a package of a diploma followed by a degree. Universities are also encouraged by the Department of Border Protection to look for students from high risk markets to pay a full year's tuition upfront especially students taking a diploma to degree package or an English preparation course prior to the degree as a means to be more confident of the student's good faith enrolment.

However, it remains important to balance giving sufficient independence to well-run providers with ensuring those at risk cannot cause additional harm to the reputation of Australian international provision overall. Universities are concerned to protect their access to streamlined visa processing and do not want any changes that would put the system at risk.

Hence proposal 13 should be implemented with judgement and proposal 14 tied to those who are exempted from the 50 per cent rule. but is concerned that no consideration is given to other frameworks that interact in this area of regulation – for example the streamlined visa process.

Increasing flexibility in education delivery (proposals 16 –19)

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

IRU welcomes the proposals to update ESOS to reflect changes in delivery over the past decade and prospectively those to come. Given the advancements in modes of delivery in education in even the last 5 years, greater flexibility is needed to ensure that the standards keep pace with the sector they are regulating whilst ensuring adequate protections to the consumer (student).

The changes need to be balanced to ensure adequate safeguards across all providers with the focus on the underlying expectation that an international student is studying full time and actively engaged with their study program.

Transfer of students (proposals 20 – 25)

20. *Amend standard 3 of the National Code to more clearly require a written agreement to include a cancellation (currently refund) policy in the event of a student cancelling an enrolment or transferring to another education institution.*
21. *Amend the student transfer process in standard 7.*
22. *Amend standard 4 of the National Code to require education institutions to enter into a written agreement with each education agent whose services it uses (as opposed to 'each education agent it engages to formally represent it').*
23. *Consider whether further information on the use of agents should be provided in addition to the current requirement for the publication of agent names and details on an education institution's website and the voluntary requirement in PRISMS for education institutions to give details of an education agent for each enrolment.*
24. *Support an industry driven shared set of principles or code of ethics for education agents. This may include an industry-led system for recognising formally trained, high-quality, ethical and suitably qualified or knowledgeable education agents (rather than a formal registration system).*
25. *Support more options for training and informing education agents of their obligations to students.*

It remains a considerable challenge to define the arrangements by which students can move to another provider to balance the need for providers to recoup the recruitment costs for the student with students' capacity to act should their course not prove adequate or otherwise not meet their preferences. The proposals (20-21) to give providers more scope to release students is a useful step as long as the Code preserves the current minimum cases so that providers are not required to be more lenient.

The IRU supports the concern about agents and providers encouraging transfers where there is little legitimate need for the student to change. Under the streamlined visa processing arrangements the 'home' Provider carries the visa risk even after a student has transferred with or without a letter of release. This gives providers a need to ensure that the transfer process is not abused.

The proposals relating to Agents are unlikely to alter bad practices where they exist. Enforcement of penalties against receiving providers who accept transferring students without a letter of release is more relevant to accompany freeing up providers to release students in a wider array of cases.

There is some scope for interpretation of the particular proposals. Proposal 22 for institutions to enter into a written agreement with each education agent whose services it uses would result in significant administrative burden if it means that universities need to manage agreements with a network of agents effectively sub-contracted to an institutions' primary contracted agent or agents that are contracted to pathway providers without being contracted to the institution. If a university were as a consequence to not allow contracted agents to use their own network of agents; this would result in a significantly greater level of agent management for the Institution. Ultimately providers need to be aware of the risks involved through their use of agents and decide how to operate to ensure that streamlined visa processing standing is not harmed.

For proposal 23, universities need clarification about the further information to be provided on an institutions website. This could become an additional action for no real benefit.

Welfare of students under age 18 (proposals 26 and 27)

26. *Amend the National Code to clarify requirements and responsibility for the welfare of international students aged under 18, including clearer references to supervision, accommodation as 'adequate and appropriate', health and well-being, and welfare arrangements.*
27. *Clarify that responsibility for ensuring appropriate welfare arrangements for a student remains with a provider until the student commences a course with another provider, regardless of the date from which the transfer is accepted.*

The proposals are appropriate to ensure the protection of potentially vulnerable young international students.

IRU members do not enrol many students who are under 18 years of age for more than a few months. However, the universities often work with pathway providers who enrol a greater number making them aware of the need to manage effectively the period between enrolments at the two institutions for these younger students.

Working with stakeholders to produce a practical and accessible National Code and explanatory guide for ESOS (proposals 28 – 30)

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

Once it is clear which requirements remain necessary for enforcement through ESOS rather than the national quality frameworks this needs to be reflected through an overhaul of the ESOS Act and an associated rewrite of the National Code with suitable information resources to support the Code developed. The checklists TEQSA uses may be a guide. There are also various redundant elements of the Code reflecting previous State and Commonwealth arrangements.

Registration changes (proposal 31)

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

The intent of the proposal to focus on the true status of the provider is supported.

The entry to market charge is one barrier that helps exclude the underprepared from entry to the provision of education to international students. Hence in acting on this proposal it remains essential that it does not increase the risk of inappropriate providers entering the market with ramifications across all providers.

3. Other areas for improvement

In addition to the proposals put forward in the Discussion Paper IRU members have identified other improvements to ESOS.

32. PRISMs could include additional fields for providers to record circumstances of a COE cancellation. A drop down menu of reasons would introduce greater transparency to the current course hopping phenomenon, would enhance the capacity of the national regulators to monitor and enforce compliance with “letter of release” provisions and allow DIBP to refine its calculation of provider risk rating based on COE cancellations.
33. PRISMS should be updated by Government Agencies such as the DIBP in a more timely manner to enable providers to obtain accurate information on the status of a student visa. Currently, there are lengthy delays for example to record if a visa has been granted or refused, or cancelled, or whether a student is still studying.
34. The potential to change ESOS requirements to allow international students to enrol in ‘partnership degrees’ which incorporate vocational education and training qualifications with a Bachelor award through a single combined process rather than through two distinct sector based processes.
35. Removal of the requirement that international students be permitted to remain enrolled during the appeals process against a student dismissal decision. The appeal process can take a long period during which the student is to remain an active student despite the university having reached the considered decision that they should not be. Where the student’s appeal is successful they could then re-enrol.

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