

## Consultation: Proposed ESOS Legislation: IRU Response

The IRU largely supports the proposed changes to the ESOS legislation, which Christopher Pyne, Minister for Education and Training, released on 7 July 2015 as set out in the exposure drafts:

- *Education Services for Overseas Students Amendment (Streamlining Regulation) Bill 2015*
- *Education Services for Overseas Students (Registration Charges) Amendment (Streamlining Regulation) Bill 2015*

The proposed changes are largely focused at updating the ESOS Act to reflect changes in the quality assurance arrangements through the creation of TEQSA and ASQA. In themselves the proposals are useful, if essentially technical, but they avoid the critical issue about the relationship of ESOS to general quality assurance arrangements, which have been transformed since ESOS was last overhauled.

The IRU submission focuses on three areas:

1. The relationship between ESOS and general quality assurance
2. Improving the risk management associated with the Tuition Protection Service
3. Streamlining the ESOS Act to reflect changes in quality assurance arrangements and reducing unnecessary red tape

### 1. The relationship between ESOS and general quality assurance

The IRU submission to the ESOS review in 2014 (<http://www.iru.edu.au/policy/2014.aspx>) focused on the need to consider the interaction of ESOS with the recently developed national quality frameworks in higher education and vocational education and training. Our key argument is the need to target ESOS to the requirements specific to international students only. The national frameworks protect both international students and Australian students for the large number of factors relevant to all students.

The most relevant part of ESOS is the National Code, amendments to which are yet to be announced but are promised. It is disappointing that the potentially more significant changes have been kept back until after consideration of the primarily technical amendments proposed.

However, the draft legislation retains an essential parallel approach of wishing to align two frameworks rather than create a coherent, single system that includes specific provisions concerning international students, where needed, but not otherwise.

For example, it permits TEQSA to align the registration for a provider with its CRICOS approval retaining two distinct decisions but permitting them to be made at the same time.

The alignment is a step forward but the crucial question of why a distinct CRICOS approval is required remains unanswered. CRICOS ought to be a automated process that follows from a provider's registration and, where relevant, the accreditation of courses. This would remove 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*.

Hence, the IRU considers the proposed legislation should be supported for what it does do but lamented for its failure to take up the more substantial opportunity for effective, streamlined regulation of higher education.

## **2. Improving risk management associated with the Tuition Protection Service (TPS)**

The proposed amendments to the ESOS legislation reverse changes implemented in 2012 to limit financial risk to the TPS if a provider defaults or closes and cannot meet its obligations to its students, as well as to limit the requirement for international students to pay in advance.

The IRU supports the changes, which will reduce the administrative burdens on education providers without a notable increase in pressure on the TPS.

The change to allow students to pay more of their fee in advance if they request to do so leaves the decision in the hands of the student. There may need to be further elaboration of how a student can be said to have made such a request to prevent coercion.

## **3. Streamlining the ESOS Act to reflect changes in quality assurance arrangements and reducing unnecessary red tape**

The major insertion to introduce the concept of the “ESOS Agency” to cover off the various agencies depending on education sector is a useful one.

The proposed legislative changes also include a range of fairly technical follow-on amendments and legislative tidying which ensure that the legislation and operations are aligned. The majority of the proposed amendments bring the ESOS Act up to date with the stronger role of the Commonwealth in quality assurance, taking into account the creation of TEQSA and ASQA.

7 August 2015