

**Submission**  
**By**  
**GLENN JOSEPH PEREIRA**

**CEO**  
**CULINARY INSTITUTE OF AUSTRALIA**

**RICHMOND, VIC**

## INTRODUCTION

- Unless structural changes are made, registering a Private Institute is a “Licence to print money”
- The new ESOS bill will have no impact if structural changes are not made in respect of delivery of Quality Education to International students.

Sec 92 B of the new bill gives the state the “instant” powers to cancel the registrations of the Institutes that do not meet the AQTF 2007 and National Code 2007 standard.

### 92B Automatic cancellation if designated authority does not recommend re registration

*(1) The registration of a provider is cancelled for a course for a State by force of this subsection if the designated authority for the State gives the Secretary a notice stating that the designated authority does not recommend that the provider be re registered under section 9A to provide the course for the State.*

*(2) The notice must be in the form approved by the Secretary.*

*(3) The cancellation takes effect on the day of cancellation specified in the notice.*

The legislation is well drafted to empower the State and Federal Government the powers to take action against the “dodgy” providers.

The courses that tainted Vet providers as “PR Visa factories” and damaged Australia’s image are

- Community Welfare
- Pre-press printing
- Horticulture
- Motor Mechanic
- Hair Dressing
- Cookery & Patisserie

The State Regulatory Authorities, DEEWR and the delegates of the Minister of Immigration who granted the student visas, should work together and analyse what went wrong and develop cohesive laws and policies to fix the problem.

### -Fair Trading Act 1999

#### SECTIONS OF THE FAIR TRADING ACT 1999

7. Unconscionable conduct within the meaning of the unwritten law
8. Unconscionable conduct
9. Misleading or deceptive conduct
11. Misleading conduct in relation to services
12. False representations in relation to goods and services

17. Bait advertising

32C. When is a person aware of a fact, matter or circumstance?

(the Education Agent should explain the student's agreement to the students-  
Statutory requirement under the National Code 2007)

Above applies to all institutes and their Education Agents

### **RECOMMENDATION 1**

**Sections of the Trades Practices Act or the mirrored Fair Trading Act should be incorporated in the Student's agreement.**

#### **-COAG Shared Responsibility agreement**

The COAG shared responsibility agreement developed by the previous Government, has to be re-drafted. I understand that the Federal and State Governments jointly made a recent announcement regarding drafting of a new COAG shared responsibility agreement.

#### **-AQTF 2007 Essential Standards (AQTF Code)**

AQTF 2007 is flexible and designed for domestic students and is not suitable for International students (ex. Employer satisfaction, completion rates, industry consultation etc.)

### **RECOMMENDATION 2**

AQTF 2007 should be abolished for International students and the relevant standards of the AQTF 2007 applicable to International students should be incorporated in the National Code 2007.

#### **-Industry Package (Hospitality SIT07, IT ICA05 etc)**

An Industry package prescribes 3 pathways:- Institutional, Institutional/work experience & work experience/RPL.

International students can only follow one pathway Institutional

For example an International student who completes a CERT III in Motor Mechanics (40 weeks) receives the same certificate as a domestic apprentice who takes 3 years + to qualify as a Motor mechanic.

Would you give your car to an International student who has completed a 40 weeks course in Motor Mechanic or a domestic apprentice who has completed 3 years + ?

Competency in the existing package has been designed mainly for flexible learning i.e. work and study.

### **RECOMMENDATION 3**

By using the "cut & paste" procedures, the existing Industry packages could be modified within a short period of time into a new industry packages for International students so that International students could follow the Institutional pathway.

Benchmarks for hours for each unit of competency should be developed using the States Purchasing Guides as guidelines.

**Migration** : Abolish the definition of 2 academic years as 92 weeks, as 2 academic years will be 92 weeks or more once bench marks for hours in each unit are incorporated.

#### **-National Code 2007**

The National code 2007 is a legal Instrument and hence DEEWR policy guidelines cannot override definitions in the National Code 2007

For example Enrolment is defined in the National code 2007 , yet under policy DEEWR has given it a new "twist"

#### **Enrolment**

*Where the student has been issued with a CoE to confirm acceptance by the registered provider and is occupying a place in the CRICOS registered course for which the student was accepted and is progressing towards the completion of the course requirements. The period of enrolment includes scheduled breaks between study periods.*

Providers exclude the students from study during the internal and external review process. The decision to exclude a student during the review process is in breach of the National Code 2007.

#### **OTHERS :**

- Student's agreement fails to incorporate the specific sections of the Trades Practices Act and the mirrored States Fair Trading Act
- There are breaches by Education Agents of the Trades Practices Act and the mirrored State Fair Trading Act both overseas and locally that promote the Institutes as "permanent residency visa factories"
- Education Agents are paid Commissions upto 45 percent
- Absence of standardised Student Agreement
- Absence of standardised Education Agent Agreement
- Most VET Institutes adopt the DIAC-DEST course progress policy which imply "no attendance"
- Absence of standardised Policy & Procedures which leaves Auditors to apply their own interpretation when they audit an Insitute

### **RECOMMENDATION 4:**

- Sections of the Trades Practices Act or the mirrored State Fair Trading Act should be incorporated in the Student's agreement

- Education Agents Commission be declared in the Student's agreement and the National Code should be amended accordingly
- Standardised Policies & Procedures for managing & operating an Institute based on the National Code 2007 should be drafted and implemented as soon as possible. ACPET had developed standardised policy and procedures in consultation with DEEWR . However the same was abandoned in mid 2008 because auditors were using their own interpretations despite the fact that both the AQTF 2007 & National Code 2007 are legal Instrument.
- Standardised Education Agent agreement incorporating the sections of the Trades Practices Act or the mirrored State Fair Trading Act
- A new registration body be created for registering Education Agents should be created for registering Education Agents on-shore and off-shore-for example Education Agents Registration Authority (EARA) –similar to Migration Agents (OMARA) and have a Code of conduct. EARA should be managed by DEEWR.
- Education Agents should only be given access to student visa e-lodgement
- Education Agents should not be permitted to represent students on Internal and external reviews
- Review the DIAC-DEST course progress policy as it is too difficult to monitor

#### -Auditors

A number of State Auditors and NARA auditors perform dual role viz. Auditors & Consultants in registering new Institutes

#### **RECOMMENDATION 5:**

Individuals and the company, auditors are associated with, should be permitted to either perform a role as Auditor or Consultant; not both.

#### -Student Visas Schedule 5A Migration Regulations 1994

Probably impossible for a delegate to assess and monitor whether the funds are genuine

#### **MAIN ISSUES**

##### **STUDENTS**

- A student has to comply with 3 main criteria from Level 3 and level 4 countries
  - Equivalent Australian year 12
  - IELTS (5.5. average)
  - Finance Approx. A \$ 45000-50000 for a 2 year course
- In most cases the entire money is only used as evidence and not remitted to Australia.
- At the DIAC/DEEWR seminar on the 28<sup>th</sup>. And 29<sup>th</sup>. Jan 09 , Victoria Police (Superintendent Inghard Ehrenberg) stated that based on anecdotal evidence the money remitted to Australia by a student in a number of cases is remitted backed to India once the visa is granted and the person arrives in Australia. The funds are then re-cycled for the next visa.

## **RECOMMENDATION 6**

### **STUDENT VISAS:**

- A Commonwealth Student fund should be created wherein students remit 2 years course fees into that Fund.
- A mechanism be put in place to distribute the funds to the VET provider once the student has been granted the visa and arrives in the country
- Vet providers to set up TRUST Accounts
- A restriction of maximum 3 years student visa for a VET courses if a student comes in for a 2 year course, plus further 6 months if they come in for an ELICOS course.
- For a Trade course a restriction of maximum 4 years if a student has to complete a 3 year Trade course which includes a 1 year apprenticeship
- A schedule 8 condition of "No further stay" be evidence on the visa with an exception that a student can apply
  - a) For a further student visa to complete a Bachelor's course or
  - b) For a sub-class 457 (WORK VISA) or
  - c) An on-shore GSM (TEMPORARY OR PERMANENT VISA)
- A student will be able to apply on-shore for another student visa to complete an existing VET course for a maximum 1 year beyond the existing period approved on arrival based on compelling and/or compassionate circumstances.
- 3 years visa for TRADE courses should include a 1 year industrial apprenticeship i.e.
  - 1<sup>st</sup> Yr Certificate III
  - 2<sup>nd</sup> Yr Industrial apprenticeship
  - 3<sup>rd</sup> Yr Diploma

(for trades such as Motor mechanics, Fitters, Turners etc. A further 1 year Apprenticeship Post 2years qualifications )

### **OTHER RECOMMENDATIONS :**

- Abolish the TRA 900 hours work experience (understand abolished from 1<sup>st</sup> Jan 10)
- Introduce Criminal sanction against employers if they issue "bogus" work experience certificates.
- Re-registration must be applied for within 30 days from the passing of the Bill otherwise "Dodgy Providers" will lodge their application on 31<sup>st</sup> Dec 2010

**PROPOSED NEW GSM**

## **INTRODUCTORY**

- In order to maintain the revenue of International Students, radical changes must be made to the GSM
- Students will not come to Australia if we do not offer at least a temporary work visa to work in the nominated occupation they qualify in after completion of the course and which has a pathway to permanent visa
- Re-Registration under the ESOS Act will clean up the Industry

I propose the following immediate changes to Student visas, on-shore GSM & off-shore GSM.

## **STUDENTS**

-Schedule 5A Financials must be amended

-Student fund to be created wherein fees for 2 years should be deposited prior to grant of visas

## **ON-SHORE STUDENT RESIDENCY**

-on-shore permanent residency visas should be abolished

-Introduce post-qualification (2 academic years) 2 years temporary visas for VET courses (Trade, Accounts & IT-Network Security & E-Security)

-Introduce 2 years temporary visas for Bachelor and Master Degree

## **-VET**

IT & Accounting students must complete 2 years post qualifications experience (min 30 hrs per weeks) in the nominated occupation

Trades students must complete 1 year work experience (min 30 hrs per week) between Cert III & Diploma or Advanced Diploma and 1 year work experience post 2 academic years course

## **-Degree**

Student must complete 1 year (min 30 hrs per week) post qualification experience in the nominated occupation

\*Training in VET institute in IT & Accounting is hands on, compared to training in Bachelor's Degree. NIA recognises the Advanced Diploma in Accounting.

## **OFFSHORE INDEPENDENT GSM**

-Abolish permanent visas

-Introduce 3 years temporary visas FOR 50/60 POINT OCCUPATIONS ON MODL

-After approval of the visa, the applicant must demonstrate 2 YEARS work experience in a



nominated occupation or any other MODL Occupations in order to be eligible for an on-shore permanent residency.

**OFFSHORE INDEPENDENT EMPLOYER SPONSORSHIP**

-3 years Employer sponsored temporary visa which has a pathway to an independent permanent visa if the applicant has demonstrated 2 years work experience in the nominated occupation

**OFFSHORE INDEPENDENT MODL FAST TRACK PERMANENT RESIDENCE**

Introduce an Independent MODL Fast Track permanent visas  
Qualifications in the MODL Occupation  
Minimum 3 year post qualifications experience in the MODL Occupation

**PERMANENT RESIDENCE FOR THOSE ON CRITICAL LIST**

Fast Track approval for those on the Critical List

**OTHER RECOMMENDATIONS:**

5 years ban if a visa applicant has lodged an application with bogus education and/or employment documents