



Independent Schools  
Council of Australia

## Senate Education, Employment and Workplace Relations Committee Inquiry into the Education Services for Overseas Students Amendment Bill 2010 (Provisions)

### Submission by The Independent Schools Council of Australia (ISCA)

#### **About ISCA**

*The Independent Schools Council of Australia (ISCA) is the peak national body covering the independent schools sector. It comprises the eight State and Territory Associations of Independent Schools. Through these Associations, ISCA represents a sector with 1,100 schools and around 540,000 students, accounting for over 15 per cent of Australian school enrolments.*

*Independent schools are a diverse group of non-government schools serving a range of different communities. Many independent schools provide a religious or values-based education. Others promote a particular educational philosophy or interpretation of mainstream education. Independent schools include:*

- *Schools affiliated with larger and smaller Christian denominations for example, Anglican, Catholic, Greek Orthodox, Lutheran, Uniting Church, Seventh Day Adventist and Presbyterian schools*
- *Non-denominational Christian schools*
- *Islamic schools*
- *Jewish schools*
- *Montessori schools*
- *Rudolf Steiner schools*
- *Schools constituted under specific Acts of Parliament, such as grammar schools in some states*
- *Community schools*
- *Indigenous community schools*
- *Schools that specialise in meeting the needs of students with disabilities*
- *Schools that cater for students at severe educational risk due to a range of social/emotional/behavioural and other risk factors.*

*Independent schools are not-for-profit institutions founded by religious or other groups in the community and are registered with the relevant state or territory education authority. Most independent schools are set up and governed independently on an individual school basis. However, some independent schools with common aims and educational philosophies are governed and administered as systems, for example the Lutheran systems. Systemic schools account for 16 per cent of schools in the independent sector.*

*Independent Catholic schools are a significant part of the sector, accounting for 10 per cent of the independent sector's enrolments. These schools have been included in the figures above.*



## Key Points

1. ISCA appreciates the opportunity to make this submission.
2. It is important to understand sectoral differences and characteristics when drafting and implementing new legislation to avoid unintended consequences.
3. Independent schools already comply with an exhaustive range of reporting and accountability requirements; compliance costs and administrative burden for providers is already high.
4. There is already a significant amount of regulation and legislation covering the enrolment of overseas students in Australian educational institutions which independent schools generally address as individual providers.
5. It is important that there is national consistency in implementing a risk management approach to CRICOS registration and re-registration.
6. ISCA supports the “key principle” of the proposed amendments “not to add an additional layer of rules and red tape to the existing regulatory framework but rather...simplifying, streamlining and strengthening areas identified as problematic”<sup>1</sup>
7. There is a case for independent schools to be treated as **low risk** institutions that provide reliable, high quality education services to overseas students and for the streamlining of any additional regulatory burdens to the sector.
8. ISCA is concerned that an overly zealous approach to applying punitive measures for relatively minor and possibly unintentional infringements may result in unjustified reputational damage to a school.
9. ISCA is concerned that proposed amendments relating to the extension of the jurisdiction of the Commonwealth Ombudsman, by focussing only on complaints, do not adequately address the need for access to an external appeals body as required in Standard 8.
10. ISCA is concerned that any overall increase in the regulatory burden and associated costs could result in schools relinquishing their *Commonwealth Register of Courses and Institutions for Overseas Students* (CRICOS) registration, resulting in loss of diversity and diminished opportunities for international engagement in schools.

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<sup>1</sup> (House of Representatives Education Services for Overseas Students Legislation Amendment Bill 2010 Explanatory Memorandum, p.9) (Hereafter referred to as “Explanatory Memorandum”).

## Introduction

1. ISCA actively represents the interests of independent schools in the area of international education, and appreciates the opportunity to make this submission. Recent submissions by ISCA regarding legislative changes and issues in international education include:
  - a) *Senate Education, Employment and Workplace Relations Committee Inquiry into the Welfare of International Students* (19 August, 2009)
  - b) *Senate Education, Employment and Workplace Relations Committee Inquiry into the Education for Overseas Students Amendment (Re-registration of Providers and Other Measures) Bill 2009* (11 September, 2009)
  - c) *Review of the Education Services for Overseas Students (ESOS) Act 2000* (30 October, 2009)
  - d) Comments re proposed changes to *ESOS Regulations 2001* (in response to a letter from Tulip Chaudhury, Branch Manager, International Quality Branch, International Group, DEEWR, 30 March, 2010)
  - e) *Senate Legal and Constitutional Affairs Committee Inquiry into the Migration Amendment (Visa Capping) Bill 2010* (16 June 2010).
2. **Approximately 47% of all overseas students enrolled in the schools sector in Australia attend independent schools.** It is therefore important to understand the differences between this sector and other education sectors when drafting and implementing new legislative requirements in order to avoid unintended consequences.
  - a) The majority of independent schools are **individually** registered on CRICOS and are **individually** responsible for meeting compliance requirements. By contrast, state departments of education (enrolling approximately 46% of overseas school students overall) hold single provider registrations covering any number of state schools enrolling overseas students within a state.
  - b) In 2009 there were over 10,000 overseas students enrolled at nearly 400 independent schools<sup>2</sup>. This represents a significant proportion of the total number of schools in the sector. Overseas enrolments in schools vary from 1 overseas student to nearly 400 overseas students. The median number of students at an independent school is 11 students.
  - c) This profile differs quite substantially from other sectors. For the vast majority of independent schools, overseas students do **not** determine the school's sustainability. Rather, overseas students provide a much valued international element and diversity to school populations.
  - d) While enrolling just 2% of overseas students overall in Australia, independent schools nonetheless account for a significant percentage of institutions registered on CRICOS. Some schools also have ELICOS centres attached to their institutions which may also be separately registered on CRICOS.
  - e) Chart 1 shows that overseas student enrolments in the schools sector have remained relatively steady for some years. Between 2003 and 2009 there was net increase of 560 students in the schools sector but the schools sector share of

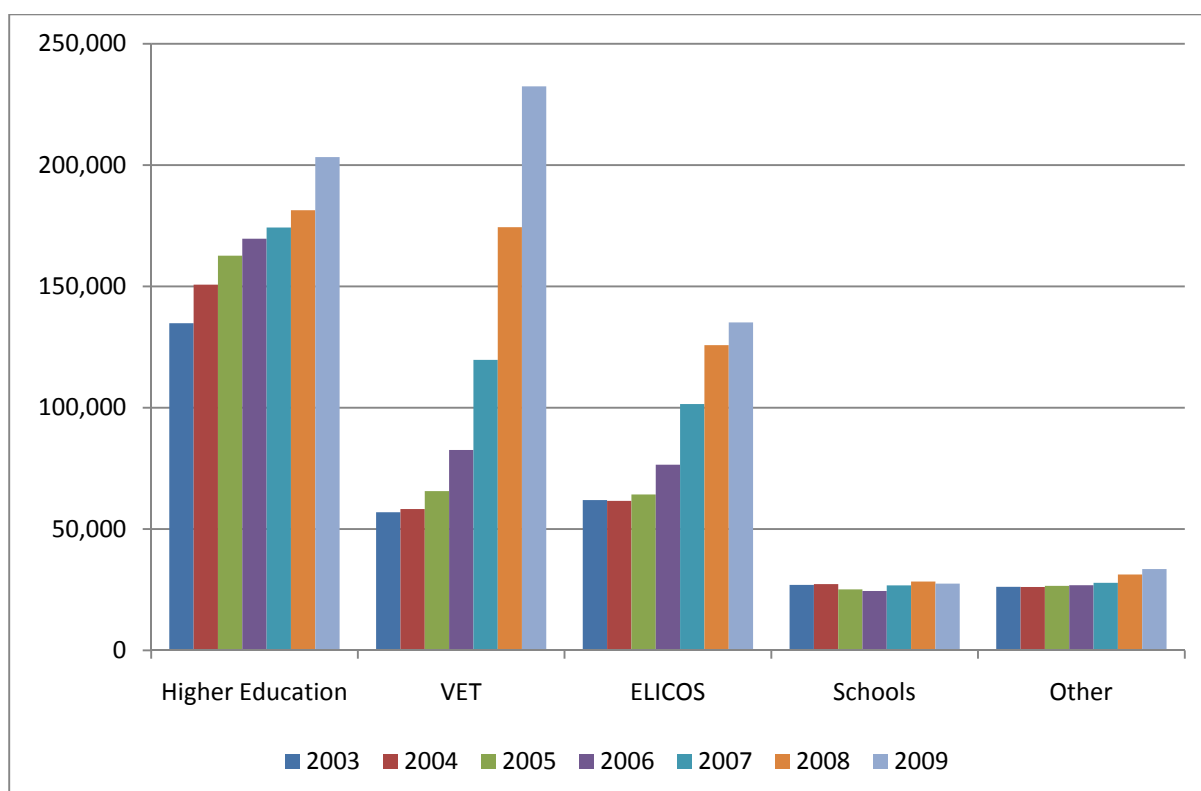
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<sup>2</sup> Based on DEEWR Non-government School Census 2009 data

total overseas student enrolments fell from 9% to 4% as other sectors grew rapidly.

- f) Given the unique pattern of enrolment of overseas students in independent schools, ISCA is concerned that any increase in the regulatory burden and associated cost of compliance could result in schools relinquishing their CRICOS registration. This would result in less diversity, less internationalisation and a lessened educational experience for those schools and their students.

**Chart 1: Overseas Student Enrolments by Sector 2003 – 2009<sup>3</sup>**



## Regulation and Accountability of Independent Schools

- The schools sector differs from the other sectors because of the unique requirements of dealing almost exclusively with children under the age of 18. In addition, there are multiple registration processes and legislation relating to schools at both state and federal levels for both domestic and overseas enrolments.
- The independent schools sector provides high quality, reliable education services for overseas students. To our knowledge, there are no unethical providers in the sector. However, ISCA is concerned that the overall potential for increase in regulatory burden from some aspects of the proposed amendments, as well as the potential for increased punitive measures and compliance costs, could negatively impact on independent schools.

<sup>3</sup> AEI PRISMS Data

### ***State/territory registration***

5. Independent schools must meet the criteria established by their state or territory government for registration as a school and for their accreditation for credentialing of students. Non-government school registration is rigorous and is reviewed on an ongoing basis, which ensures that the school's curriculum complies with state or territory government requirements.
6. State and territory governments provide some funding support for independent schools, and schools must comply with any related conditions of funding as well as reporting and accountability requirements.

### ***The Schools Assistance Act 2008***

7. Additionally, independent schools that receive federal government funding are subject to the requirements of the *Schools Assistance Act 2008* which contains conditions of funding and accountability arrangements. The Act requires:
  - funding agreements to be in place with the federal government
  - national student assessments
  - national reports on the outcomes of schooling
  - reports on individual school information
  - reporting to parents
  - publication by schools of information relating to schools
  - implementation of the national curriculum
  - acquittal of grants
  - reports on programs and financial operations
  - access to accounts, records and documents for monitoring purposes
  - participation in evaluation of programs
  - completion of the annual Non-government Schools Financial Questionnaire
  - participation in the annual Non-Government Schools Census
8. Overseas students enrolled in independent schools are excluded from financial assistance provided by the federal and state/territory governments.

### ***Other legal requirements***

9. Independent schools are bound by a number of other legal requirements associated with their operations. For example, as companies limited by guarantee or as incorporated associations, independent schools are accountable to the Australian Securities and Investments Commission, or to their state or territory registrar of associations. They must submit audited annual financial statements to these bodies, which are available for public scrutiny. They are also subject to regulation by the Australian Taxation Office.
10. As employers, independent schools must comply with legislation and regulations covering such issues as equal employment opportunity, industrial awards and occupational health and safety. As educational institutions they must comply with health, safety, privacy and child protection requirements as well as regulations relating to building and fire codes.

### ***The ESOS Act 2000***

11. All providers that enrol overseas students (i.e. student visa holders) must comply with the provisions of the *Education Services for Overseas Students Act 2000* (the ESOS Act).
12. Providers must register on the *Commonwealth Register of Courses and Institutions for Overseas Students* (CRICOS) for both the course it is offering and the school itself. To obtain CRICOS registration from the relevant state or territory registration authority (designated authority), the school must comply with the ESOS Act and the *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students* (the National Code 2007) and any other state authority specific requirements.
13. The ESOS Act also includes a range of other requirements for providers including:
  - The requirement not to engage in deceptive or misleading conduct
  - The fit and proper person test
  - The payment to the federal government of the Annual Registration Charge (ARC)
  - The financial requirements of the Act including Tuition Assurance Scheme membership and the ESOS Assurance Fund
  - Conditions for refunds to students
  - Requirements for reporting to the Department of Immigration and Citizenship (DIAC) for visa related issues including notice of visa breaches
  - Record keeping.
14. For the federal government, the ESOS Act allows for a number of compliance and enforcement actions including:
  - Conditions for removal or suspension from CRICOS
  - The ability to monitor and search providers
  - The use of production and attendance notices
  - The use of monitoring and search warrants.
15. Unlike the government school sector where a state system may be registered to enrol overseas students and there are centralised registration and compliance processes, each independent school is separately registered and responsible for compliance with the ESOS Act and the National Code 2007, regardless of the number of overseas students enrolled

### ***The National Code 2007***

16. The part of the National Code 2007 which relates to providers is a standards-based code of practice which covers:
  - Marketing information and practices
  - Student engagement before enrolment
  - Formalisation of enrolment
  - Education agents
  - Younger overseas students
  - Student support services
  - Transfer between registered providers
  - Complaints and appeals
  - Completion within expected duration
  - Monitoring course progress

- Monitoring attendance
- Course credit
- Deferment, suspension or cancellation of study during enrolment
- Staff capability, educational resources and premises
- Changes to registered providers' ownership or management.

17. Since the introduction of the National Code 2007, more responsibility has been devolved to education providers to ensure students' compliance with their visa requirements. This system works well with reputable providers.

### ***Other state/territory requirements***

18. Some states have additional legislative requirements regarding the accommodation of minors, child protection legislation and also legislation governing the enrolment of overseas students.

### **Issues with the current regulatory framework for independent schools**

19. In recent submissions ISCA has noted:

“The current legislation puts the onus on the providers to do what many providers would regard as the compliance work of DEEWR and DIAC. However, in return providers do not see many benefits and certainly it does not seem that this shift in responsibility has enabled DEEWR to have greater capacity to engage in targeted compliance actions.”  
(ISCA Submission to the *Senate Inquiry into the Welfare of International Students*)

“ISCA supports the objective of nationally consistent registration of education and training providers in Australia, but points out that there is no recognition of the already rigorous accreditation processes undertaken by non-government schools. Nor is there recognition of the policies and procedures already in place in schools to protect the interests of students under the age of 18 years by virtue of the accreditation process.”  
(ISCA Submission for the *Review of the Education Services for Overseas Students (ESOS) Act 2000*)

20. ISCA has consistently advocated that

- a “one-size fits all” regulatory approach does not take into account some of the special characteristics of the sector;
- there needs to be consistency across state jurisdictions in applying Commonwealth legislation and in CRICOS registration and re-registration processes, and
- compliance costs and regulatory burdens for “low risk” providers, including schools, should be kept to a minimum.

### **Education Services for Overseas Students Amendment Bill 2010**

21. The ESOS Amendment Bill 2010 contains a number of provisions which should be carefully considered with regard to the impact of implementation for independent schools.

***Recommendation 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 to registration and throughout 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.***

22. ISCA anticipates the majority of independent schools will be assessed as “low risk” providers and welcomes consultation with peak bodies with regard to development of any “risk matrix” which may be under consideration for this sector<sup>4</sup>. It is important that the nature of the sector be taken into account in development of provider profiles for risk assessment purposes.

23. ISCA is concerned about the imposition of financial viability tests<sup>5</sup> for schools **additional** to existing financial viability requirements for non-government school accreditation and on-going obligations under the *Schools Assistance Act 2008*, specifically the Financial Health Assessment Framework. This would appear to contradict the stated aim of proposed amendments: “not to add an additional layer of rules and red tape to the existing regulatory framework”.<sup>6</sup>

***Recommendation 4: That ESOS be amended to better support 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***

24. ISCA would appreciate clarification around how alignment of CRICOS registration (for a period of not more than 5 years) with existing domestic quality assurance frameworks<sup>7</sup> might be achieved in practice, given that all CRICOS registration cycles have effectively been re-set to the start of 2011, whereas existing accreditation cycles are well established for individual institutions.

25. ISCA expects that there will be a transparent process or published criteria for determining imposition of any conditions on provider registration.<sup>8</sup>

***Amendment of the Education Services for Overseas Students Act Schedule 1, Amendments Part 1, Items 9-27***

26. While ISCA does not disagree with increased powers to impose infringement penalties on non-compliant providers, there is a concern that there is the potential for overzealous application of punitive measures to adversely affect low risk providers. This is where it is important to understand the nature of the independent schools sector. For example, failure to change a course start date in PRISMS within 14 days of a student arriving late at the start of a

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<sup>4</sup> Explanatory Memorandum, p. 12

<sup>5</sup> Explanatory Memorandum, p.13; Amendment of the Education Services for Overseas Students Act Schedule 1, Amendments Part 1: 4 Subparagraph 9(2)(c)(iii)

<sup>6</sup> Explanatory Memorandum, p.9.

<sup>7</sup> Explanatory Memorandum, p.2.

<sup>8</sup> Amendment of the Education Services for Overseas Students Act Schedule 1, Amendments Part 1: 14B Secretary's conditions on provider registration.



school year is a relatively minor offence, and could easily be committed unintentionally by a staff member new to the role of international student admissions during this hectic time. Yet this nonetheless has the potential under legislation to attract not only a financial penalty for each occurrence, but to result in being publicly reported with consequential reputation damage out of all proportion to the offence committed.

27. For this reason ISCA **strongly advocates** for

- a) PRISMS training and processes to be enhanced to warn staff, particularly new staff, when creating CoEs, of obligations under the *ESOS Act Part 3 Division 1 s19*, and the penalties for failing to observe these requirements, and
- b) a level-headed and reasonable approach to application of increased punitive measures

28. ISCA does **not agree** with The Secretary having power to publish results of enforcement and monitoring<sup>9</sup> **before** a provider has had an opportunity to appeal a decision to do this.<sup>10</sup> Subsequent publishing of results of a review that finds in favour of a provider, is, in ISCA's view, a denial of natural justice, and can not adequately compensate for possibly unjustified reputational damage suffered by a provider during this process.

### ***Amendment of the Education Services for Overseas Students Act Schedule 2, The Overseas Student Ombudsman***

29. ISCA has previously submitted:

“The creation of an ombudsman for overseas student matters is another possibility that does have some support however we believe that if this were to occur it should be funded out of monies currently collected from providers, such as CRICOS registration fees and the Overseas Students Charge. The creation of an ombudsman at national or state level would be a significant change to the regulatory environment and one which would require further discussion and consultation. However, this could be a solution which ensures consistency and expertise is used in determining student appeals arising from National Code 2007 Standards 7, 10, 11 and 13 in particular.”<sup>11</sup>

30. ISCA is concerned that the very important function of hearing student appeals arising from the structure of the *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007*, wherein Standards 7, 10, 11 and 13 are all linked to Standard 8, appears to be only marginally addressed in the *Explanatory Memorandum* and the text of the proposed amendments:

“Proposed section 19ZJ provides that the functions of the OSO are to investigate complaints or to initiate investigations about actions taken by a private registered provider in connection with an overseas student, an intending overseas student, or an accepted student, within the meaning of the ESOS Act.”<sup>12</sup>

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<sup>9</sup> *Amendment of the Education Services for Overseas Students Act Schedule 1, Amendments Part 1:170A*  
Publishing results of enforcement and monitoring

<sup>10</sup> “The appeals of providers against the enforcement action taken will be no bar to the publication of this information, with the publication corrected if the appeal is upheld.” *Explanatory Memorandum*, p.3

<sup>11</sup> *ISCA Submission for the Review of the Education Services for Overseas Students (ESOS) Act 2000*. par.27, p.6, 30<sup>th</sup> October, 2009.

<sup>12</sup> *Explanatory Memorandum*, p.32

31. ISCA is concerned that the focus of proposed changes is on “complaints” and that the very real need to have an independent body that can hear and make decisions about student appeals arising from providers exercising their obligations under the National Code of Practice will not be properly recognised and addressed. The word “appeal” is not used at all in this context in any of the documentation supporting proposed changes. This is surprising given Standard 8 in National Code of Practice is clearly designated “Complaints and appeals”.

## Conclusion

32. ISCA’s overall views of recent regulatory responses to challenges within the international education industry remain unchanged.
33. The international education industry is significant for Australia both economically and culturally. Overseas students contribute a great deal to Australia in terms of diversity, inter-cultural understanding and international linkages long into the future. It is imperative that overseas students who come to Australia to study are afforded every opportunity to achieve their educational goals. The independent schools sector is proud of its achievements in offering high quality, reliable education services for overseas students.
34. ISCA is not arguing against enforcement action aimed at shutting down unethical providers and education agents. Rather, we would encourage governments to put greater efforts into targeted approaches to enforcing the world-class regulatory system already in place. In doing so, we support less, rather than more in the way of regulatory burden and costs being imposed on low risk providers.
35. Many of the issues that have been raised over recent months are not new. The seeming inability of regulatory authorities to act against ‘dodgy’ providers, despite ample scope to do so under the existing regulatory framework, has been a source of some frustration for the industry since the inception of the ESOS Act.
36. Schools value involvement in international education programs for educational purposes and cultural diversity. These may not be sufficient reasons for continuing CRICOS registration if regulation and punitive measures continue to increase, as many schools may simply find engaging in this way to be “too hard”, and may retreat from this matter.
37. ISCA strongly disagrees with changes which act as further disincentives for school CRICOS registration, such as publishing results of enforcement and monitoring **before** a provider has had an opportunity to appeal a decision to do this.<sup>13</sup>
38. ISCA looks forward to actively participating in the further consultations about proposed ESOS changes that have been indicated in DEEWR and legislative communications.

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**ISCA**

Canberra  
8 November 2010

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<sup>13</sup> See Point 28, above