



# English Australia Submission

October 2015

## EDUCATION SERVICES FOR OVERSEAS STUDENTS AMENDMENT (STREAMLING REGULATION) BILL 2015

### SUBMISSION TO THE SENATE EDUCATION AND EMPLOYMENT LEGISLATION COMMITTEE

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#### Executive Summary

- English Australia is the national peak body and professional association for the English Language Intensive Courses for Overseas Students (ELICOS) sector of international education.
- The proposed 2015 amendments to the ESOS legislation make minor but important changes to the major reforms of 2012.
- Since the previous amendments to the ESOS Act international education has staged a significant recovery, and has assumed even greater importance to the Australian economy.
- In its 2014 report 'Positioning for Prosperity? Catching the Next Wave' Deloitte identified international education as one of the five growth hotspots which have the potential to overtake mining and keep Australia at the top of the world's national prosperity charts.
- For international education as a whole regular review and amendment of the overarching ESOS framework especially the consumer protection provisions are vital to ongoing efficiency and effectiveness.
- English Australia supports the passing of the Bills without amendment.

#### About English Australia

English Australia is the national peak body for the English language sector of international education, and represents over 120 member colleges throughout Australia that provide quality English language programs to students and professionals from around the world. 88% of international students learning English in Australia in 2014 chose to study with an English Australia member college.

Member colleges include single campus language centres that deliver only ELICOS, multi-campus (multi-city) language centres, language centres that are part of large international groups, university based language centres, RTO based language centres and TAFE based language centres.

## Introduction

English Australia holds that the below detailed elements of the proposed bills are of great importance to streamlining the operational context of international education providers and, hence, enabling and encouraging positive business operations. English Australia also firmly believes the bills, at the same time, maintain a fair and robust regulatory environment and do so without compromising protections for international students or the industry's established quality assurance measures.

1. **Pre-paid fee limits.** The introduction of restrictions on institutions receiving more than 50% of tuition fees in the 2012 changes had several unintended and very negative consequences. On one hand, it created significant administrative and financial burden for institutions. On another, it caused difficulty by limiting choice for international students, parents and other funding bodies, such as government scholarship funds, that wished to prepay more than 50% of their tuition upfront. Meanwhile, this restriction has potentially enabled negative behaviours, such as onshore course hopping, that have negative impacts on quality providers, student outcomes, 'brand Australia', and, to a degree, the integrity of the Australian visa program.
2. **Designated accounts.** The requirement for certain educational institutions, namely private institutions, to maintain all student tuition fees untouched in a designated bank account has proved to be administratively cumbersome and costly and to be anti-competitive both for private versus public institutions as well as Australia as a whole. Meanwhile, and perhaps most importantly, it has failed to protect student tuition fees in the instances of the closures since its introduction and the introduction of the TPS.
3. **Student default reporting.** The changes to requirements introduced by the bill, simply remove an administratively burdensome requirement for reporting that delivers little or no value while actually removing from institutions the ability to sensibly support students and resolve issues.
4. **Study periods.** The introduction of the prescription of 24 weeks as a 'study period' failed to properly take into account short courses, particularly ELICOS, which offer 5-week programs. The minor change in the new Bill of the length of a 'study period' from 24 to 25 weeks will effectively lessen the administrative burden, particularly for, but not limited to, our universities. English Australia would certainly argue that even this is an unnecessary limitation, however, and that a 'study period' should be extended to a longer period of 36 or even 52 weeks to allow for more program flexibility and innovation.



## Why is the passage of this Bill important for Australia?

In February 2013, Michael Chaney AO, Chair of the International Education Advisory Council, presented the Council's final report to the then Minister for Tertiary Education, Skills, Science and Research, the Hon Chris Bowen.

The Executive Summary stated:

"Australia's world class international education, research and training sector makes a significant economic and cultural contribution to Australia nationally, to its influence in Asia and around the world and to individual communities. In particular, international students in Australia create jobs and help provide a diverse and rich education experience for Australians."

"The sector has been through a well-documented period of change and uncertainty resulting in a decline in onshore student numbers. While this period has been difficult, it has paved the way for a new era of sustainable international education growth in Australia, boasting substantially improved quality assurance and student welfare arrangements. The Asian Century makes it essential for Australia to realize the potential that this new era offers".

Since Parliament last considered the ESOS legislation in 2011-12, international education has recovered from a four year downturn brought about by a perfect storm of coinciding adverse impacts from the Global Financial Crisis and a high Australian dollar externally, and problems in the vocational education sector and racially inspired attacks on Indian students internally.

English language training is always the most vulnerable part of international education both because it is at the beginning of the student experience pipeline and its courses are shorter than those of higher and vocational education and schools.

In the four years from 2009 to 2012, student visa ELICOS enrolments fell by 32 per cent. Despite this prolonged downturn there were only two college closures in the period, a large English Australia international provider in 2011 under the pre-TPS regime, and a smaller non-English Australia member this year.

In the 2011 case, all students were placed in equivalent courses with other association members and English Australia's role was praised in the previous ESOS Act review conducted by the Hon Bruce Baird. In the recent case, the TPS handled the situation with English Australia assisting in the placement of non-student visa holders in the interests of maintaining the integrity of Australia's reputation even though the college concerned was not a member of the association.

The sustainability of international education, evidenced by the recovery from the recent four year downturn, has been such that Deloitte identified international education as one of the five growth areas likely to drive Australia's next wave of prosperity in its "Positioning for prosperity? Catching the next wave" report in 2014.



“These Fantastic Five sectors are gas, agribusiness, tourism, international education and wealth management. Collectively, they have the potential to be as big as mining.”

Unquestionably, the 2012 ESOS reforms particularly the TPS and Overseas Student Ombudsman (OSO) are critical to ongoing development but, as Deloitte raised in terms of the future, reducing red tape and restrictive visa rules should be addressed.

## Why is the passage of this Bill important to international education?

In debate on the 2015 ESOS legislation, some Parliamentarians have questioned some of the proposed changes, expressing concerns regarding the possible weakening of protections for international students or compromising quality assurance measures.

English Australia has, for many years championed these two causes, having been the first body in Australia to create such a tuition protection mechanism - before it was ever legislated under the ESOS framework – and working tirelessly to raise and maintain the highest standards of education services in the ELICOS industry.

It is English Australia’s submission, however, that the 2015 Bill offers positive changes to the current context, removing extraneous provisions from the framework streamlining the operational environment for educational institutions and improving Australia’s competitive position, while also maintaining or improving protections for students.

The Department of Education and Training has conducted exemplary consultations at all stages of the Bills’ development and is to be commended for this. The views of international education stakeholders, including education institutions and peak bodies across all sectors, international students, our national quality assurance agencies, state and territory agencies, the Department of Immigration and Border Protection and the Overseas Students Ombudsman and many more bodies have been involved in the development of the changes suggested in these bills.

English Australia is very pleased with many aspects of the bills. For instance, the proposed legislation providing for resolution of multi-sector regulatory issues, and providing clarity to providers around responsibility of regulators and equity of service delivery and costs will be an enormous improvement for education institutions.

## Further comment in support of key elements of the bills

The following comments detail English Australia's stance on:

- 1. Pre-paid fee limits**
- 2. Designated bank accounts**
- 3. Study periods**
- 4. Student default reporting**

Since the ESOS TPS Bills were introduced, setting limits on pre-paid fees and introducing a requirement for pre-paid fees to be kept in a designated account, the ELICOS sector has experienced negative impacts across a range of areas:

### **i. Negative impact on students and other stakeholders**

- student families are often the source of payment and typically want to pay for their course in full before their offspring arrives so their educational outcome is assured. Fee limits mean they are also required to incur extra international funds transfer costs and/or entrust their children, some quite young, with large sums of money to make payments onshore later.
- students can't pay their fees in a single transfer and hence have to pay multiple international bank transfers, hence this actually costs them more
- With programs such as the Korean university partnership programs, where government money is provided for students under the Global Leadership Program, or the similar program offered by Vietnamese Ministry of Interior, the funds are provided in a lump sum and providers are asked to invoice all costs upfront.
- Middle Eastern scholarship and sponsoring organisations, such as the Saudi Arabian Cultural Mission (SACM), typically wish to pay one large amount at one time.

### **ii. Negative impact on providers – administrative burden**

- required to utilise specialised financial and administrative systems/databases/procedures that enable part payment of fees
- additional resources applied to processing, tracking and chasing late or unpaid fees;
- additional resources applied to returning fees that were paid in breach of the requirements
- increased levels of student default reporting
- additional resources applied to the process of planning and resourcing programs;

### **iii. Negative impact on providers – financial burden**



- additional financial burden related to increased transfer fees incurred due to multiple payments for courses
- additional financial and operational burden due to maintaining large cash reserves of prepaid fees which are not available for investment in business growth or improvement

**iv. Negative impact on competitiveness of Australia**

- most providers have been unable to pay full commission payments to agents as they can't support the cash flow burden of prepaying their offshore 'suppliers' while waiting up to another six months to receive the tuition fees, thus making Australia a less desirable option for agents to work with compared with competitor countries
- increased onshore 'course-hopping' by students has led to increased usage of onshore agents with the result that offshore agents lose the second half of their commission, again making Australia less competitive

**v. Negative impact on 'Brand Australia' & student visa program integrity**

- students' financial commitment to courses and providers has been significantly reduced, compromising the ability of providers and DIBP to assess a student's capacity to pay; o increased poaching and discounting by colleges and agents is damaging Australia's reputation
- onshore 'course-hopping' has been made far easier because of the limited financial commitment, and this has facilitated the growth of low-fee, low quality providers who recruit international students primarily onshore and do not invest in offshore marketing;

## **The particular impact of these factors on the ELICOS sector?**

### **Difference between ELICOS and courses that award qualifications**

It is common practice for sectors delivering long(er) award courses to accept payments on a per semester or term basis, however, the ELICOS sector operates differently.

In the secondary education, higher education and vocational education sectors, students commit to a program of study that will deliver a qualification at the end. Usually these programs of study are longer than one year. The number of students who switch between courses/providers is relatively low as a proportion of the whole cohort. There are breaks between semesters (holidays for students and time for providers to undertake administrative tasks during these breaks).



ELICOS students can only study a maximum of 50 weeks on a 570 Independent ELICOS student visa. ELICOS fees are charged per week of tuition. The differentiation between a 'course' and a 'study period' is nebulous and confusing for ELICOS, and very often dictated by the regulator. The ELICOS sector is split between two regulators, ASQA and TEQSA. Both regulators have different policies for registering ELICOS 'courses' on CRICOS, with resulting inconsistencies regarding the scope for providers to define periods of study.

The ELICOS sector delivers short courses. A student who enrolls in a 26 week ELICOS course is only allowed to pay for 13 weeks. The limit on pre-paid fees has reduced the student's financial commitment to a provider to a minimal amount, at which point they can leave with no risk of penalty since the provider is holding no more of their fees, although the provider may have been holding a place for them in a course for well over 6 months.

### **ELICOS industry impacts**

Limiting pre-paid fees has encouraged students who may already be inclined to 'shop around' for cheaper providers after arrival to be able to do so more easily because they do not have a financial commitment to the provider they originally enrolled with.

This has created a market for local agents who specialise in helping such students change colleges and for ELICOS providers who no longer have to invest in offshore marketing because they can poach students onshore at no cost instead of allocating funds to promoting Australia and recruiting students offshore. This has had the double impact of making Australia less appealing to offshore agents who increasingly risk losing 50% of their commission on tuition fees and of reducing the return on investment for those colleges that actively promote Australia as a study destination offshore.

Further, all ELICOS providers operate within certain fixed parameters, such as paying teachers at award rates, having a maximum of 18 students in a class, and delivering a minimum 20 hours per week of face-to-face teaching. These are the key factor in an ELICOS operation's cost base. ELICOS providers that recruit a large proportion of their students onshore are often only able to offer the low prices they do by finding ways to circumvent the ELICOS Standards and other regulations or by lowering quality standards. This latter is achieved, for example, by not investing in curriculum development or resources and only employing inexperienced staff.

All of these factors, obviously, lead to a significant negative impact on the future of the ELICOS industry in Australia.

### **ELICOS business impacts**

Whilst there has been a return to growth in the overall figures for ELICOS commencements, it is important to note that this growth is primarily being experienced by providers who specialise in



offering pathways to further study in Australia and these students are less likely to be ‘poached’ by cheaper offerings elsewhere that divert them from their main educational goal. Stand-alone ELICOS providers have experienced far lower rates of growth, and have been more significantly impacted by the limits on pre-paid fees.

There has been a considerable increase in administrative costs for ELICOS providers due to the limits on pre-paid fees. Changes have been required to databases to provide reports, invoicing, to monitor payments and to chase late or unpaid fees. In addition, both students and schools have incurred further bank fees for payments from overseas.

Offshore agents have to wait for payment of the commission until the student has commenced their course. This has impacted on agent business models and has made Australia less competitive for an agent looking at sending students to a range of destination countries. This has been exacerbated by the increase in lost commissions due to course, provider and agent hopping mentioned above.

Fee limits and the increased course hopping or course shortening that has come with it have caused considerable problems for planning and resourcing courses due to providers’ significantly reduced ability to forecast student numbers. As student numbers per class is one of the most important factors in profitability this has caused significant increases in the administrative challenges of managing operations and an equally significant and negative impact on students in the form of increasingly regular disruption to classes and courses. It has also affected the reliability of teacher employment.

### **Impacts on other stakeholders**

There are many instances where providers need to be able to accept more than 50% of course fees.

There are sponsors who may wish to or indeed must use up their professional development funds for the given year – e.g. the Vietnam Ministry of Interior sends one provider 10-11 students at least once per year for 30 weeks and must allocate their funds for this purpose in one ‘go’ for a particular year. The provider is generally asked to invoice them for all aspects of the program up front. The same applies to many Korean university partnership programs where there is government money provided for students under the Global Leadership Program. Middle Eastern sponsors may wish to pay a large amount at one time and with recent issues accessing ongoing funding for Libyan students, it would be preferable to be able to access full funding as and when this is available.

Students’ families are very often the source of the payments for courses and it is often parents who choose a student’s course and provider. Many families wish to ensure that their children’s courses are paid in full before they arrive so funds are allocated and the students’ educational outcomes are assured. Fee limits mean they are required to incur extra international funds transfer costs and/or entrust their children with large sums of money to make the later payments while onshore.





### Visa and compliance impacts

The limit on pre-paid fees has compromised the ability of ELICOS providers to assess the 'genuineness' of students. Without any requirement for a specific educational background, capacity to pay has been one factor that ELICOS providers have always used to assess the 'genuineness' of a potential student.

ELICOS providers used to always assess a student's capacity to pay (and therefore one aspect of their 'genuineness') by requiring them to pay their full tuition fees upfront. DIBP itself states that "When assessing a student for a visa, the Department of Immigration and Citizenship considers the amount of pre-paid course fees as an indicator of the student's commitment to studying in Australia."

The current requirements only allow providers to receive subsequent fees 2 weeks before the next study period commences. This has unnecessarily complicated a provider's responsibilities under ESOS, particularly in relation to student default reporting and attendance monitoring. This has also compromised the quality of learning outcomes.

## Conclusion

English Australia believes that, after the long, very thorough and effective period of consultation by this government and the many stakeholders involved, the bills presented, offer a very positive step forward.

As stated by the Honorable Mr Luke Harksuyker MP:

"These bills deliver on the government's commitment to cut red tape and free up education institutions to invest in their own growth and future success, while maintaining Australia's stringent student protections. The bills are an important element of the National Strategy for International Education currently being finalised by the government. They will further strengthen the fundamentals of our education system by ensuring Australia maintains the highest standards through best practice quality assurance."

"By reducing complexity in a number of areas, the changes in the bills will support continued growth and enhance the competitiveness and reputation of this significant industry."

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### **ENGLISH AUSTRALIA CONTACT**

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