

ACPET Submission to

**Senate Education, Employment and
Workplace Relations Committee Inquiry**

into the

**Education Services for Overseas
Students Amendment Bill 2010
(Provisions)**

August 2010

ACPET welcomes the opportunity to make a submission to the *Senate Education, Employment and Workplace Relations Committee Inquiry into the Education Services for Overseas Students Amendment Bill 2010 (Provisions)*.

International education is one of Australia's greatest export success stories. It is the country's third largest export industry behind coal and iron ore, contributing more than \$15 billion to the Australian economy in 2009 and responsible for the employment of more than 120,000 Australians.

Private training providers, most notably ACPET's members, have led the industry's substantial growth in recent years, with enrolments expanding by 88.1% from 2006 to 2008. More than 660 ACPET members with an accumulated annual turnover of almost \$3 billion, provide services to more than 205,000 international students each year. The efforts of ACPET's members and their commitment to the quality of education and training being provided to international students (both on and offshore) make the development, governance and operations of international education a critical priority for ACPET.

Unfortunately, the sector's growth has not been matched by the appropriate hallmarks of a sustainably maturing industry, chief among which are:

- a consistent national regulatory system to efficiently and effectively police the ESOS legislation;
- industry-led, independent governance arrangements such as those that exist in other, more established and mature export industries;
- proper monitoring of the critical link between education and migration to prevent parts of the industry from becoming over-exposed to narrow rather than diverse student source markets or course delivery; and,
- government commitment to the continuity of tuition assurance as the industry's primary consumer protection mechanism.

During the past 18 months, the absence of these critical industry mechanisms, coupled with the onset of a global financial crisis and a long overdue but poorly planned regulatory crackdown, has culminated in a widespread crisis for the industry that is devastating good quality training providers, their students, staff and communities, and placing pressure on Australia's world leading consumer protection framework.

Despite independent benchmarking analysis indicating high to very high levels of satisfaction among students, these factors are destroying Australia's international competitive advantage, with students increasingly opting to study elsewhere in the world.

The proposed changes to the ESOS Act, as detailed in the Education Services for Overseas Students Legislation Amendment Bill 2010 (Provisions) are supported by ACPET.

Schedule 1: Amendment of the ESOS Act 2000

Introducing a risk management approach

In relation to those amendments which will enshrine in legislation the need for a risk-based approach to regulation in the sector; this is a position ACPET strongly supports and one it has long advocated. However, as other submissions to the Committee have raised, ACPET has concerns about the capacity of current regulatory agencies to develop and implement a robust and meaningful risk framework for the sector. A variety of definitions and methods for risk management currently exist across a range of different contexts including most commonly in areas such as public health and safety, actuarial assessments, financial markets, engineering, industrial processes, and the like. Regulators in the education and training sector have in recent years sought to implement a risk management approach to regulation (for example in the vocational education and training sector). These previous attempts have been undertaken with little or no input from 'outside' risk management/risk assessment experts.

Given the value of the international education and training sector to Australia's economy and international reputation it is vital that the introduction of a risk management approach to its regulation is informed by both appropriate risk assessment expertise and input from the education and training sector. Unintended consequences are almost certain if regulators make a profound shift in their regulatory approach without input from those experienced in regulating within a risk framework, and those organisations like ACPET with a detailed knowledge of those being regulated, their businesses, and business models.

Recommendation: That the risk management approach, set out within the proposed amendments to the ESOS Act, is introduced only if it is developed with independent and credible risk management expertise.

Recommendation: In developing and implementing a risk management approach for the regulation of international education, there is a commitment to detailed and meaningful consultation with the sector to test and validate the proposed framework and its operation.

Recommendation: the risk management approach provides real reductions in regulation for low-risk providers, consistent with the COAG Principles of Best Practice Regulation.

Recommendation: Additional resourcing be provided to the Department of Education, Employment and Workplace Relations to provide the professional development needed for its officers and those in designated authorities to effectively implement and administer of a risk management based regulatory approach.

Secretary's conditions on provider registration

ACPET considers that the proposed changes to 14(A) and the inclusion of 14(B) will strengthen and clarify the Commonwealth's role in regulating the sector. ACPET supports the changes to allow the Commonwealth Secretary or Minister to act on his or her own initiative where they deem conditions are needed on a provider's registration, rather than as is currently the case, only on the

recommendation of a designated authority. ACPET also supports the change to Section 9 with the addition of clauses (10) and (11) providing clarity for providers and regulators.

Changes to penalties for breaches of the Act

ACPET supports the various changes proposed to strengthen enforcement of the Act and the penalties providers will incur where breaches of the Act are identified.

Publishing results of enforcement and monitoring

ACPET supports the changes detailed at 170A (1) – (4). These changes will provide the Commonwealth with powers to those held in Victoria by the designated authority, the Victorian Registration and Qualifications Authority. ACPET believes that greater transparency within the sector will be of benefit to students and to the great majority of providers of international education who deliver education and training of the highest quality.

Transitional provision – existing unlimited registrations

ACPET supports the amendments to ensure no providers continue to have registration for an unlimited period.

Schedule 2: The Overseas Students Ombudsman

ACPET supports the establishment of a Commonwealth Overseas Student Ombudsman. ACPET is also pleased to see that the proposed powers of the Overseas Students Ombudsman will recognise the role of other statutory complaint handlers or office holders, for example State officers with these responsibilities such as the South Australian Office of the Training Advocate.

ACPET is however most concerned that the proposed legislative amendments do not recognise the success of the industry's own independent complaints handling mechanism. Since April 2009 ACPET has administered an independent external complaints and appeals handling panel, which provides a fair, inexpensive complaints and appeals process for its members to meet their obligations under Section 8 of the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students¹. This scheme is recognised by designated authorities and has assisted 199 providers and students. To ignore the establishment and operation of a rigorous, industry developed appeals mechanism is a significant oversight in the changes being proposed to the Ombudsman Act. In designing an appeals mechanism, the rule of first principles would suggest that where existing mechanisms are working well they not be thrown out or substituted with a potentially unnecessary layer of government activity. ACPET believes that in the face of the success of the existing arrangements, students and providers should continue to be encouraged to resolve complaints and appeals through existing mechanisms. Only where these arrangements do not resolve the matter should they be referred to the Commonwealth Ombudsman.

Recommendation: Amendments are required to the proposed changes to the Ombudsman Act (1976) to recognise the current complaints and appeals mechanisms included in the National Code

¹ The ACPET independent appeals panel operates on a cost recovery basis for ACPET members and does not generate revenue for ACPET.

and the successful operation of existing independent appeal processes, such as that administered by ACPET for its members. An appropriate amendment might read:

19ZJ(2) is to investigate action that he or she is authorised by this Act to investigate and in respect of which a complaint or appeal has been reviewed by an independent panel, as set out in the requirements of Standard 8 of the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students, and the student is not satisfied with the outcome of the review.

ACPET would welcome the opportunity to provide more advice to the Senate Committee, on its independent panel for complaints and appeals under the National Code or any other matters raised in this submission.

About ACPET

- Established in 1992, the Australian Council for Private Education and Training (ACPET) is the national industry association for private colleges delivering post-compulsory education and training including higher education, technical and vocational education and training, English language courses and senior secondary and foundation studies.
- ACPET's mission is to enhance quality and choice in education and training to help meet Australia's skills needs by supporting our member organisations and working co-operatively with Government, industry and the community. ACPET members are bound by its Code of Ethics.
- ACPET has over 1,100 members, of these more than 600 members provide education and training to more than 120,000 students from around the world this export activity contributes \$4.2 billion to the Australian economy annually.
- The private training sector delivers over 70% of the total of vocational education that is delivered to overseas students in Australia annually.
- ACPET members respond to industry needs, by providing training programs including apprenticeships and traineeships through to professional doctorates across disciplines as diverse as business, administration, IT, design, community services, natural medicine, the creative arts and tourism and hospitality.