

Senate Standing Committee for Education and Employment Inquiry: Proposed ESOS Legislation: IRU Response

The IRU is supportive of the proposed changes to the *Education Services for Overseas Students Act* (ESOS), which Christopher Pyne, then Minister for Education and Training, introduced into the Parliament on 17 September 2015:

- *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 focused at updating the ESOS Act to reflect changes in the quality assurance arrangements through the creation of TEQSA and ASQA and to reduce the regulatory and administrative burden placed on education providers.

These measures are welcome as good steps in red-tape reduction through removal of unnecessary regulation. However, while the proposals are useful, if essentially technical, 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

Recommendation:

The IRU recommends the legislation be passed.

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 of policy makers to consider the interaction of ESOS with the new *Higher Education Standards Framework (Threshold Standards) 2015* as the 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 Higher Education Threshold Standards protect both international students and Australian students for the large number of factors relevant to all students.

The current legislation retains a parallel approach of wishing to align two frameworks rather than creating a coherent, single system that includes specific provisions concerning international students, where needed, but not otherwise. In the IRU's view, this is an opportunity lost.

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 an 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*.



In this context, the full measure of whether the Government has seriously embraced removal of duplication in ESOS regulation awaits release of changes to the National Code created under Part 4 of the ESOS Act, amendments to which are yet to be announced but are promised. For clarity of purpose changes to the National Code should target it at the distinctive requirements concerning international students rather than maintaining two parallel regulatory frameworks.

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 potential for international students to pay fees in advance.

The proposed reversal of the 2012 changes reflects the advancements the industry and its regulators have put in place in terms of quality assurance ultimately to protect students. The IRU considers the level of risk associated with the reversal as they apply to universities is not significant.

Hence the IRU supports the changes, which will reduce the administrative burdens on education providers without a notable increase in pressure on the TPS. Universities in particular have better strategies in place now to manage financial risk than they did 3 years ago and TEQSA and the Department of Immigration and Border Protection also have improved quality assurance policies to protect students.

The proposed 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.

Recommendation

The IRU recommends that the legislation be passed.

30 October 2015