National Tertiary Education Union

Submission

Senate Education and Employment Legislation Committee

Inquiry into the provisions of the

Education Services for Overseas Students Amendment (Streamlining Regulation) Bill 2015

and

Education Services for Overseas Students (Registration Charges) Amendment (Streamlining Regulation) Bill 2015

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Introduction

The NTEU, which represents the professional and industrial interest of some 28,000 staff working in Australian higher education, appreciates the opportunity to comment on the provisions of the:

- Education Services for Overseas Students Amendment (Streamlining Regulation) Bill 2015, and
- Education Services for Overseas Students (Registration Charges) Amendment (Streamlining Regulation) Bill 2015.

The NTEU has no objections to the provisions in these Bills that clarify and streamline the registration and monitoring responsibilities by vesting direct power in the Tertiary Education Quality and Standards Agency (TEQSA), the Australian Skills Quality Authority (ASQA) and designated State authorities to act as ESOS Agents. To the extent that these provisions remove unnecessary duplication and confusion and reduce red tape for both providers and regulators, they should be pursued.

However, the NTEU does have major concerns over a number of provisions of the Education Services for Overseas Students Amendment (Streamlining Regulation) Bill 2015, particularly those provisions that significantly change the Tutorial Protection Service (TPS) by removing the requirement that providers:

- keep prepaid fees in a 'designated account' until the commencement of course (designated account rule), and
- not be allowed to charge more than 50% of tuition fees upfront for longer courses (50% rule)

These provisions were included in the ESOS Act in 2012 in direct response to the Baird and Chaney reviews of international education, which followed the collapse of more than 50 private tertiary education providers and left more than 13,000 overseas students in a position where they could not complete their education and/or were out of pocket. Drawing upon this experience, and noting that there is still much volatility in the private education market (which relies heavily on international enrolments) the NTEU remains strongly opposed to these amendments because they:

- weaken protections for overseas students studying in Australia, and
- threaten to undermine international reputation of Australia's tertiary education sector.

As outlined below, the NTEU does not believe that proceeding with these proposed amendments would be an improvement on existing arrangements. To the contrary, we believe that to do so, would expose international students and the reputation of our tertiary education sector to unacceptably high risks.

Our concerns in relation to these matters are not new and were explicitly addressed in our submission to Reform of the ESOS Framework in 2014. In responding to similar proposals to reduce the regulatory burden on providers, the NTEU asked:

> *While reduction of 'red tape' compliance requirements is clearly an objective of the discussion paper, the question which has to be asked is whether there is also attention given to the increased risk to students and the reputation of international education should these changes be enacted?*

This important question has not yet been addressed by the various proposals that effectively reduce the regulatory protections for international students. Given our ongoing concerns in relation to these matters, and until appropriate mechanisms are in place that address the risk to students and the reputation to our international education sector, the NTEU urges the Senate not to accept amendments to the Education Services for Overseas Students Amendment (Streamlining Regulation) Bill 2015 that:

1. removes the requirement for non-exempt providers to keep a 'designated account' into which they must deposit prepaid fees until students commence their studies.
2. removes the restriction on providers for being prohibited from charging students more than 50% of their course fees for longer courses, and
3. removes the requirement for providers to enter into an agreement with each overseas student stating the study periods for their enrolment and the tuition fees payable for each study period.

The reasons for our recommendations are outlined below.

False premise

Supporters of the proposal to remove the designated account and 50% rules as a way of reducing provider compliance costs and red tape argue that it is justified as the international sector is more stable than when the current provisions to TPS were introduced in 2012. While we acknowledge that there have certainly been improvements, supporters of the changes argue that the Regulatory Impact Statement (RIS) is premised on the assumption

that the risk of the circumstances (that is, the turmoil the sector experienced over the period 2008 to 2011) which was the catalyst for these and other changes is now very low or non-existent. However, given the recent evidence of widespread problems within the private vocational sector (summarised in a recent Senate report[1] into the sector), we are concerned that both the Government and the sector are seriously underestimating the current levels of provider risk. As such, the assumption that it is fine to pull back on regulatory protections is being made under a false premise.

Furthermore, taking a pragmatic approach, it must also be acknowledged that not enough time has elapsed since the introduction of the suite of significant changes to regulation of Australian international education in 2012 to fully understand what contribution various elements of the policy have made to the improved situation. Indeed, the RIS acknowledges this point where it says: *"it is not possible to isolate the impact of the TPS measures under the scope of this RIS on the overall risk of the sector*."(Attachment A, p64, *Overall Impacts*)

The NTEU sees the designated account and 50% rule as being 'safety net' provisions which were put in place to give international students some protection should they find themselves in the very unfortunate position where they are unable to complete their course of study because the provider has gone out of business or has ceased offering that course. That is, these two provisions act like the 'seat belts' in international education, which act to lessen the financial damage inflicted on students should their provider fail them.

From the NTEU's perspective, it seems that the approach and the analysis presented in the RIS are that the improved situation of the sector is largely a result of the *"broader package of reforms introduced under the TPS"* and/or other *"external factors such as the strengthening of student visa requirements and the establishment of national regulators"* and therefore the designated account and 50% rule are no longer necessary because they impose additional costs on providers. The analysis gives far greater weight to benefits of removing these provisions and virtually ignores the potential risks and costs should the sector find itself in the unfortunate position of providers not fulfilling their obligations.

We note that according to 2014 data[2] from the Overseas Student Ombudsman (OSO), the main complaint that international students lodged with the OSO related to refund and fee

[1] Commonwealth, Senate Education and Employment References Committee *Getting our money's worth: the operation, regulation and funding of private vocational education and training (VET) providers in Australia.* (2015) Canberra
[2] OSO, *Presentation to Council of International Students Australia* (7 August 2014) http://www.oso.gov.au/docs/OSO_presentation_CISA_7August2014.pdf

disputes (28%)[3]. It should be noted that this was despite strong consumer protection frameworks being in place, and matters can only be referred to the OSO should the provider fail to deal with the complaint within a reasonable timeframe (or not at all).

The Senate must adopt a risk management approach to dealing with these proposed changes to the TPS. The removal of these provisions is analogous to arguing that we no longer need seat belts because reductions to the road toll are a result of other changes to things like motor vehicle technology, road design and speed limits, and that that seat belts impose additional costs on both providers and users.

There is overwhelming evidence to suggest that the risks of the sector experiencing further periods of instability are very real and the costs associated with any such volatility would far outweigh any benefits associated with removing these measures.

Risks, Benefits and Costs

Risks

The RIS is constructed on the assumption that there is no or little risk of returning to the 'bad old days' where some private for-profit providers where able to exploit international students and leave them with incomplete qualifications and/or out-of-pocket. The evidence strongly suggests that this is a false and dangerous assumption, particularly given the data provided by the OSO. Since commencing in April 2011, the OSO has received over 2000 complaints from overseas students about private providers in all education sectors in Australia and has investigated 863 of these complaints. Of all complaints lodged, 845 were about VET providers in Australia, with the OSO investigating 459 of these complaints. As already noted refund and fee disputes were the most common cause for complaint. By 2015 the OSO had made disclosures in relation to 13 providers to ASQA under section 35A of the Ombudsman Act 1976 for a range of reasons, including failure to pay a refund where a student was entitled to the refund, enrolling students in a superseded course and alleged negligence of an education agent (amongst other issues).

To understand the reasons for complaints to the OSO, one only needs to look at the overwhelming and mounting evidence of unconscionable behaviour on the part of private for-profit Registered Training Organisations (RTOs) in the provision of vocational education and training (VET) uncovered by the Senate's Education and Employment References

[3] For more information see the OSO submission to the Senate Committee Inquiry on VET Providers (2015) http://www.oso.gov.au/docs/OSO_submission_vet_providers.pdf

Committee's recently published report entitled *Getting our money's worth: the operation, regulation and funding of private vocational education and training (VET) providers in Australia.* While the terms of reference for the senate investigation focused on the operation of the VET-FEE HELP scheme in relation to domestic students, the evidence presented to the Inquiry exposed the very significant cases of widespread market, policy and regulatory failure and is a loud and timely reminder that the less than exemplary practices of many for-profit private providers is an ever present risk.

According to a story in *The Australian* of 28 October (Natasha Bita, *ACCC chases $57m from college that 'lured illiterate'*) the Australian and Consumer Commission (ACCC) is currently targeting ten training colleges for *"unconscionable'' sales tactics in the $6 billion vocational education sector."* According to reports, the ACCC has accused Unique International of *unconscionable, misleading and deceptive conduct in selling costly courses to illiterate or disabled students in some of Australia's poorest communities*. These tactics apparently included giving away *boxes of "free" laptops to lure indigenous students into $25,000 management courses*.

While the same circumstances might not apply to international students because they do not have access to VET-FEE HELP we would argue that the evidence overwhelming suggest that some for-profit providers will exploit any gap or inconsistency in regulations. We would be concerned for example that the removal of designated account provision would be invitation to unethical providers to literally take international students' money and run, even before those students set foot in Australia.

While we understand that the intent of removing the 50% rule is to only allow students to pay more than 50% of the cost of a course upfront where the student elects to do so, we are concerned that any loosening of the rules, will result in some providers exerting undue pressure on students to agree to do so through the use of highly aggressive marketing tactics. Based on the evidence from the OSO and in the Senate's *Getting our money's worth report* and other media stories it would be courageous to predict that less than ethical providers would not use inducements or other aggressive sales techniques to convince students that it would be in their best interest pay all of their fees upfront.

Benefits

The RIS defines the benefits associated with proceeding with these specific amendments as what is saved or reduced. That is, the benefits equate to the removal or reduction of costs associated with continuing with the regulatory arrangements, such as:

- administrative and compliance costs for education institutions,
- reduced choice with respect to payment arrangements for students, and
- reduced competition in the international education sector. (RIS p 29)

The Explanatory Memorandum claims that the total savings (the benefits) associated with the Bill are $74.9m, but does not explain how this figure is to be achieved. According to Table 20 on page 56 of the RIS, the removal of the designated account and 50% rule would achieve savings associated with reduced administrative compliance costs to providers in the order of $30m in 2013-14. Unexplained is another $45m in savings, which we may guess at being due to either a longer time frame or other unquantified savings from other provisions in the Bill (such as efficiencies derived from streamlining provisions), which the Explanatory Memorandum on page 69 describes as:

> *Schedule 2 to the Bill will provide for an internal review process for decisions made by delegates of ESOS agencies. Utilising an internal review process can result in considerable savings.*

The extent of these 'considerable savings' is not quantified. Alternatively, the difference could be the results of benefits from increased competition or those derived from giving students greater choice, but again these have not been quantified in either the RIS of the Explanatory Memorandum.

The NTEU is not disputing that providers incur costs in complying with the designated account and 50% rules. According to the RIS the average administrative time and cost in complying with these regulations are:

- 1.52 hours at $73 per enrolment for 'designated account' rule (Table 3 p 13)
- 1.0 hour at $43 per enrolment for '50% rule' (Table 4 p 15).

While these are necessary costs of doing business, we would argue that they are relatively modest given that student fees will be in thousands, if not tens of thousands of dollars for any given period of study.

However, we would suggest that if providers find the administrative costs associated with doing business unbearable, that the government or TPS director should consider setting up a special account into which overseas student fees would be paid and released to providers as they become due. Providers could be charged $50 per transaction (a considerable savings compared to their current claimed costs) which would provide the government with in excess of $20m in charges to cover the costs of establishing and running a dedicated system to deal with these payments. The government would also derive the benefits of any interest paid on prepaid fees.

Another aspect of the claimed benefits of proceeding to remove the designated account and 50% rules also deserves comment. The RIS claims that the 50% rule imposes a cost on overseas students by limiting their choice. That is, it is claimed that because it is illegal for providers to collect more than half of the fee for longer courses, then anyone who may want pay all of their fees upfront is incurring a cost because of limited choice. There is also a less convincing argument about students wanting to take advantage of favourable exchange rates.

While there might be some limited circumstances where the scholarship conditions of overseas students require that fees be paid up front, we would encourage the government to deal with this exception by having these monies paid into a special account controlled by the government or the TPS director (as discussed above) and forwarded to providers as payments fall due.

For all other cases the NTEU is suggesting that best way to overcome the perceived problem of lack of choice is for the students to be given advice about setting up an $A bank account into which they could deposit their monies and pay the fees when they the fall due. This would not only provide students (as opposed to providers) with the benefit of any interest earned, it would also overcome any exposure to exchange rate fluctuations.

In regards to consumer choice, however, it would appear that the ‘consumers’ themselves (that is, the international students) do not agree with such changes. Following a preliminary comparison of practices in the US and UK, the Council of International Students Australia (CISA) said that:

> *It would seem that the 50% practice is not unusual and therefore CISA does not support a change at this time.(*RIS p 25).

If the organisation representing international students studying in Australia does not see the 50% rule as a problem then the case for its removal is purely predicated on the additional costs it imposes on providers.

Costs

The RIS does not even attempt to quantify the costs associated with the removal of the designated account or 50% rule. As discussed above, the RIS is premised on the assumption that stronger regulatory arrangements mean that the circumstances which occurred between 2008 and 2011 will not be repeated. Therefore, the paper does not attempt to undertake any risk assessment or to quantify any of the costs associated with any such turmoil or volatility. This is a major flaw in the analysis, given the recent track record of private providers and the clear case of regulatory failure.

While the direct costs of any such market or regulation failure, including their impact on the TPS pool, are important, we would contend that this only represents a small fraction of the real cost associated with such failures. The more significant cost associated with weak regulation and exploitation of overseas students is the damage caused to the reputation of Australia's international education sector, which is currently earns the Australian economy $17billion a year. This puts the claimed $74.9m in benefits attributed to these changes into context. That is, if weakening of these protections resulted in as little as a 1% decrease in overseas student enrolments, the costs ($170m) would far exceed the benefits.

Taking these omissions into account, the clear conclusion to draw is that RIS gives an unbalanced assessment of the relative risk and associated cost compared to benefits of the proposed removal of the designated account and 50% rules.

Written agreements with students

According to the Explanatory Memorandum, the Education Services for Overseas Students Amendment (Streamlining Regulation) Bill 2015, will remove from legislation the requirement for providers to enter into an agreement with each overseas student setting out the study periods for their enrolment and the tuition fees payable for each study period. Removing the requirement of providers entering into an individual agreements setting out study periods and tuition fees would be the equivalent of not requiring banks to have mortgage contracts that do not specify interest rates or repayment schedules. Therefore if (as we assume and hope) the government has no intention of proceeding down such a path, we see no need to proceed with this amendment.

The rationale for removing this requirement from the legislation is that it is already set out in the *National Code of Practice for Providers of Education and Training to Overseas Students.* The National Code is a legislative instrument made by the Minister and can be changed without the need to amend the ESOS Act. It is also true that providers' registration is contingent on them being compliant with the code.

To the extent that the current requirements in the Act and in the regulations (National Code) are consistent and do not impose any additional costs on providers or regulators, the NTEU does not see any rationale for proceeding with these proposed changes.