

Chapter 4

Legislation and regulatory framework for providers

4.1 This chapter will describe the legislative, regulatory and quality framework for the provision of education and training to overseas students. The key issues raised with the committee centred on how the regulation works in practice due to the shared responsibilities of the Commonwealth and the states in regulating the VET sector. In theory, the demarcation of responsibilities is clear, and legislation at both Commonwealth and state level is probably as sound as it should be, although the committee awaits the results of the Baird inquiry with interest. As the evidence suggests, it is not so much a matter of legislating as of a lack of commitment at all levels to enforce provisions intended to ensure quality of educational delivery.

Work underway in this area

4.2 The committee notes the work underway in this area. The Education Services for Overseas Students Amendment (Re-registration of Providers and Other Measures) Bill 2009 amends the ESOS Act to improve processes ensuring the accountability of international education and training services providers. The key amendments strengthen the registration process which will reduce the number of high-risk providers currently in or seeking entry into the sector. The Legislation Committee reported on this bill on 16 October 2009.¹

4.3 The bill is an interim measure to address the regulatory issues in the industry pending a review of the ESOS Act being undertaken by former Federal MP, the Hon. Bruce Baird. The committee acknowledges the work under way by Mr Baird and looks forward to the outcomes of his review.

Legislative framework

4.4 The provision of education and training to overseas students is a responsibility shared by the Commonwealth and the state and territory governments. The regulatory framework therefore involves Commonwealth and state and territory legislation and the administrative effort of the Commonwealth Department of Education, Employment and Workplace Relations (DEEWR), the Commonwealth Department of Immigration and Citizenship (DIAC), the Department of Foreign Affairs and Trade (DFAT) and state and territory education and training authorities.²

1 Senate Education, Employment and Workplace Relations Committee, *Education Services for Overseas Students Amendment (Re-registration of Providers and Other Measures) Bill 2009*, October 2009.

2 Coral Dow and Angus Martyn, *Bills Digest*, no 126, 2006-07, 28 March 2007, Education Services for Overseas Students Legislation Amendment Bill 2007, p. 2.

4.5 The ESOS legislative framework comprises:

- *Education Services for Overseas Students Act 2000* (ESOS Act);
- Education Services for Overseas Students Regulations 2001 (ESOS Regulations); and
- The National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students (National Code).

4.6 These are supplemented by the following legislation which prescribe charges and contributions:

- *Education Services for Overseas Students (Registration Charges) Act 1997* (amended in 2007); and
- *Education Services for Overseas Students (Assurance Fund Contributions) Act 2000*.³

4.7 It should be noted that ESOS legislation interacts with the *Migration Act 1958* and its regulations which impose visa-related reporting requirements on students and providers.⁴

Responsibilities

4.8 The Commonwealth has responsibility for administering the ESOS Act and the National Code. The ESOS Act and the regulations set out the Commonwealth legislative requirements for the registration of providers, obligations of registered providers, the operation of the ESOS Assurance Fund, enforcement of the ESOS legislative framework and the establishment of the National Code.⁵

4.9 The focus of the ESOS Act is the regulation of providers to protect the interests of students as consumers and Australia's reputation as an exporter of education services. It requires approved institutions for each state to be registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS)⁶ which is a database of Australian education institutions. To be registered on CRICOS, providers must meet the quality requirements for the delivery of education services which are generally set out in state and territory legislation.⁷ Registration requires a provider to meet the standards set out in the National Code

3 DEEWR, *Submission 13 (ESOS bill)*, p. 1.

4 Carol Kempner, *Education Services for Overseas Students Amendment (Re-Registration of Providers and Other Measures) Bill 2009*, Bills Digest, 9 September 2009, No. 28, 2009–10, Parliamentary Library, Canberra, p. 8.

5 DEEWR, *Submission 13 (ESOS bill)*, p. 1.

6 CRICOS is a database of around 1 300 Australian education institutions. Any education institution that recruits, enrolls or teaches overseas students must be registered on CRICOS.

7 DEEWR, *Submission 13 (ESOS bill)*, p. 1.

which addresses areas such as marketing, recruitment and enrolment, student support, monitoring and reporting educational progress and migration requirements.⁸

Registration and quality control

4.10 Under the Shared Responsibilities Framework, agreed in 2007, the states and territories have primary responsibility for the quality control of education providers and their courses.⁹ This is captured below:

DEEWR is responsible for registration, monitoring, compliance and enforcement activities under the ESOS Act and supporting the provision of consumer protection mechanisms. Under ESOS, state and territory registration bodies are responsible for assessing applications for registering and re-registering providers on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS). States and territories may also undertake monitoring, compliance and enforcement activities under their own state legislation relating to education services to international students (where applicable). Educating providers about their ESOS obligations is undertaken by both DEEWR and state and territory agencies.¹⁰

4.11 States and territories achieve this through approving, registering and monitoring providers and their courses. There must be a recommendation from the relevant state or territory authority confirming that the provider meets the quality standards for their education sector.

4.12 DEEWR explained the division of responsibility:

State and territory governments have primary responsibility for regulating education and training in their jurisdictions. The state and territory authorities register all higher education providers other than the Australian National University, most vocational education and training (VET) institutions, schools and English Language Intensive Courses for Overseas Students (ELICOS) institutions. The National Audit and Registration Agency (NARA), which was officially launched by the Deputy Prime Minister on 10 September 2008, registers multi-jurisdictional VET providers in Queensland, Victoria, South Australia, Tasmania and the Australian Capital Territory. States and territories also have responsibility for accrediting the courses of all non-self accrediting higher education providers (universities and self accrediting higher education institutions

8 The Hon. Bruce Baird, *Review of the ESOS Act 2000, Issues paper*, September 2009, p. 6.

9 Mr Bill Burmester, *Committee Hansard*, 18 September 2009, pp 68–69.

10 The Hon. Bruce Baird, *Review of the ESOS Act 2000, Issues paper*, September 2009, p. 6. See also http://www.aei.gov.au/AEI/ESOS/NationalCodeExplanatoryGuide/PartB/Shared_Responsibility_Network_pdf.pdf accessed 23 September 2009. See also DEEWR *Submission 112*, pp 16–18.

accredit their own courses), all VET providers (except those that have applied to be registered by NARA) and all ELICOS providers.¹¹

4.13 In some jurisdictions, additional local legislative requirements on providers apply and must be met before an authority will grant registration. For example, a provider in Victoria must meet the relevant requirements of the *Education and Training Reform Act 2006* (VIC) before a recommendation can be made to DEEWR that a provider be registered on CRICOS.¹²

4.14 When state and territory registration and accreditation authorities recommend to DEEWR that a provider be registered on CRICOS, DEEWR checks to ensure that the providers have tuition assurance cover before registration is confirmed. If a state or territory advises DEEWR that a provider may not be 'fit and proper', DEEWR launches its own investigation to decide whether or not the provider should be registered. Once registered, providers must continue to comply with the requirements of the relevant quality assurance framework, administered at the state and territory level, to remain on CRICOS.¹³

4.15 TAFE Directors Australia told the committee of the failure of the regulation and registration system, particularly for the VET sector. Mr Bruce McKenzie told the committee:

...Our biggest concern is the failure of the regulation and registration regime in VET. As the Senate would be aware, the registration process is a state government responsibility. We believe that that has been inadequately understood and that the auditing and resources that have been applied to creating a registration regulation system between the states have been appalling.¹⁴

4.16 Mr Mackenzie suggested that providers offering programs only to international students should not be registered, because:

...it is not an international experience for a student who comes into an institution that only has people from their own country or other international students; they do not mix with Australian students. The starting point would be to separate them out, as they have done in other countries.¹⁵

11 DEEWR, *Submission 112*, p. 3.

12 DEEWR, *Submission 112*, p. 18.

13 DEEWR, *Submission 112*, p. 18.

14 Mr Bruce Mackenzie, *Committee Hansard*, 1 September 2009, p. 16.

15 Mr Bruce Mackenzie, *Committee Hansard*, 1 September 2009, p. 17. See also Ms Virginia Simmons, *Committee Hansard*, 1 September 2009, p. 19 and comments by Ms Sharon Smith on the benefits of international students mixing with domestic students, *Committee Hansard*, 1 September 2009, p. 35.

4.17 This view was supported by Mr Angelo Gavrielatos, Federal President of the Australian Education Union (AEU):

...We have to end the situation where colleges are able to deliver training only to international students. A requirement of registration must be that an organisation has a track record in delivering programs both to local students and to international students. After all, this is an Australian qualification that we are talking about, and one sure measure of testing the veracity and rigour of any Australian qualification is having it apply and operate within an Australian context. This ensures a much greater knowledge and understanding of the Australian vocational education sector and a genuinely culturally rich and diverse experience for international and local students. It also minimises against the 'ghettoisation' of education that has become apparent in some of these private, shonky providers by way of targeting international students and international students only. We say that the days of students arriving in Australia to find the college campus they were promised is no more than a two-room operation in the city must come to an end. One sure way of doing so is ensuring that the provision is available to local students and international students.¹⁶

4.18 Mr Gavrielatos argued that if colleges are allowed to cater for international students only then this '...is where these shonky providers appear in the form of two rooms in the CBD without any infrastructure ...'. He argued that this situation will not result in the broad investment in infrastructure that is needed.¹⁷

4.19 Additional information from the Queensland regulatory authority noted:

The legislation allows for any provider that can demonstrate compliance with legislative requirements to be registered on CRICOS, irrespective of their intended student cohort. There are many examples of training organisations delivering exclusively to the international student sector with a demonstrated track record of high quality educational outcomes for these students.¹⁸

4.20 ACPET argued that there are providers dealing exclusively with international students with a long history of providing quality services. It suggested authorities address this issue by taking a risk-management approach and consider such criteria as recent entry into the market and the composition of a student cohort, among others.¹⁹

4.21 The importance of the composition and transparency of the student body was mentioned by the Group of Eight:

...In choosing Australia as a study destination, it is safe to assume that international students want to study with Australian students. While some

16 Mr Angelo Gavrielatos, *Committee Hansard*, 2 September 2009, p. 60.

17 Mr Angelo Gavrielatos, *Committee Hansard*, 2 September 2009, pp 66–67.

18 Additional information, QLD Regulatory Authority, 9 October 2009.

19 Mr Andrew Smith, *Committee Hansard*, 1 September 2009, pp 45–46.

universities and VET providers rely heavily or exclusively on international student enrolments and income, enrolment of international students at Go8 universities ranges from a low of 13.8% of the student body to a high of 23.7%, ensuring that international students will experience a learning environment that is culturally varied but dominantly Australian. The level of institutional diversity needs to be transparent to potential students to assist them in making important choices about their study destination.²⁰

Committee comment

4.22 The committee makes it clear that it strongly supports private initiatives in VET. It recognises that the sector is being damaged by the loose regulation which has allowed the approval of many unsatisfactory RTOs. The committee believes that providers offering programs only to international students are at the high-risk end of the spectrum where unscrupulous operators are able to take advantage of students who may have been promised that their courses will lead to permanent residency. In addition, the committee agrees that such programs may not provide the full benefits either to the student or the community of living and studying in another country. However, the committee also heard that there are institutions which have successfully provided education and training exclusively to international students for many years. The committee believes that regulators should devise ways of eliminating providers who are not serious about their education mission. Prospective students must have information to enable them to distinguish between providers.

Increasing transparency

4.23 TAFE Directors Australia drew the committee's attention to a lack of transparency in the VET market, recognised in the OECD VET Benchmark Report on Australia.²¹ Mr Bruce Mackenzie explained that the current registration process does not distinguish between a government-owned institution such as TAFE and a private provider:

We believe that it is a ridiculous situation that occurs in Australia when a private provider for 100 students is regarded as the same risk level as a TAFE institution with 50,000 students which is backed by the state government, has resources of over \$200 million. They are regarded, as far as presentation to the consumer is concerned, as of the same level, and it is that single issue—the failure of the regulation and registration system to discriminate between providers for consumers—that we think has caused the current situation that has arisen.²²

4.24 Mr Mackenzie argued that there is clear transparency in the tertiary sector regarding what is and is not a university but providers in the VET sector are seen as

20 Group of Eight, *Submission 38*, p. 3.

21 K. Hoeckel, S. Field, T. R. Justesen and M. Kim., OECD, *Learning for Jobs: OECD Reviews of Vocational Education and Training*, November 2008.

22 Mr Bruce Mackenzie, *Committee Hansard*, 1 September 2009, p. 16.

one. He advocated providing consumers with more information on the institutions and programs on offer to assist them to choose an institution which will provide a quality service.²³

4.25 This view was supported by the Group of Eight (Go8) which suggested that the government should emphasise that all education providers are bound by law to meet a minimum standard as required under the Australian Qualifications Framework (see below). Other objective data such as student support services, learning and teaching awards and competitive research income should also be provided. The Go8 argued that such a system would lead to better informed students and less reliance on unscrupulous agents.²⁴

4.26 Mr Paul Kniest, National Policy and Research Coordinator, National Tertiary Education Union (NTEU), also advocated that more information about a provider be made available including: status, number of students, background history, courses and grievance procedures.²⁵

4.27 Mr Gavrielatos, AEU, expressed the view that in order to increase transparency in the sector, there should be a tiered registration system which recognises the services provided to students. He described this system:

Another platform or plank in any auditing process must be to look at the issue of student services. We believe that all registered organisations should be required to provide students with support services commensurate with the scale of their operation. This includes welfare and also educational support—language and literacy support, career guidance and access to libraries, study areas and appropriate technologies. They must be genuine operations offering genuine services. Consistent with our views about a real and rigorous assessment and auditing process, we believe that there should be a tiered system of registration which recognises quality outcomes and achievements and which would recognise the quality outcomes and achievements and the superior services provided by our TAFE colleges. We are comfortable and confident that our TAFE colleges nationwide can stand the scrutiny of public examination of the quality of provision of service.²⁶

4.28 ACPET also supported differentiation between providers who meet the standards and those who exceed the standards.²⁷

23 Mr Bruce Mackenzie, *Committee Hansard*, 1 September 2009, p. 17.

24 Group of Eight, *Submission 38*, pp 3–4 and 9.

25 Mr Paul Kneist, *Committee Hansard*, 18 September 2009, p. 35.

26 Mr Angelo Gavrielatos, *Committee Hansard*, 2 September 2009, pp 60–61.

27 Mr Andrew Smith, *Committee Hansard*, 1 September 2009, p. 41.

Committee comment

4.29 The committee notes that providers already need to be assessed against the standards set out in the National Code during the registration process. The committee believes that providing more transparency and more detailed information regarding the level and quality of education and services available from institutions would help the public better differentiate between providers. This should include assurances about the employment of properly qualified staff and provisions of appropriate facilities for learning. It should also include information about the student cohort, so that an institution which caters only to international students is identified as such, as well as the level of student services available. The committee believes that such a process would provide an incentive for providers to lift their standards. The committee has more to say on the National Code below.

Recommendation 10

4.30 The committee recommends that TEQSA (Tertiary Education Quality and Standards Agency) and the national body to be developed for the VET sector adapt the registration process to develop a comparative information tool on education providers. This information tool should differentiate between the capacity of providers by comparing such things as the level and quality of support services available to students. The information tool would be made available on a relevant website.

The National Code

4.31 The National Code was established under the ESOS Act. To become CRICOS-registered, a provider must demonstrate that it complies with the requirements of the National Code. The National Code is a legislative instrument. It is legally enforceable and breaches of the National Code by providers can result in enforcement action under the ESOS Act. This action can include the imposition of conditions on registration and suspension or cancellation of registration.²⁸

4.32 The National Code was described by some witnesses as an 'aspirational document'.²⁹ The reason given was that the code was not clear and left much to the interpretation of the providers. Ms Wesa Chau told the committee of a particular example:

...One example would be the 'culturally appropriate orientation'. What does that mean? 'Culturally appropriate orientation' can mean anything to anyone.³⁰

28 See <http://www.aei.gov.au/AEI/ESOS/NationalCodeOfPractice2007/default.htm> accessed 25 October 2009.

29 Mr Nigel Palmer, *Committee Hansard* 1 September 2009, p. 7.

30 Ms Wesa Chau, *Committee Hansard*, 1 September 2009, p. 53.

4.33 The adequacy and clarity of the National Code is vital for proper enforcement to take place. Dr Felicity Fallon, President, ISANA International Education Association, also called attention to the lack of specificity in the National Code:

We would like to call for a number of benchmarks to be developed. The national code for education providers—that is in association with the ESOS Act—has some standards to be met. But, as was said previously, they are a bit vague; they are very much left to the education provider to interpret. Firstly—and I am putting this first because to us it is the major thing—we feel that some minimum level of staffing to provide support for international students should be defined in some way. It may need to be different for the different sectors, because it is very complicated. For instance, in schools, the teachers who are already teaching take it on. But some sort of level should be put in place. It should not be left to the education provider to decide what is ‘sufficient’—and that is the word in standard 6.6, ‘sufficient’—support for international students. We want some benchmarks about safety issues at pre-departure and at orientation. It says that information needs to be provided, but safety issues are not in there.³¹

Committee view

4.34 The committee believes that, for the National Code to contribute to more effective enforcement, it should be reviewed to provide more clarity and minimum standards. Providers who do not meet the minimum standards should not be registered. Providers which meet and those which exceed the minimum standards should be put in different categories to encourage better support services.

Recommendation 11

4.35 The committee recommends that, to improve enforcement, the National Code be reviewed by the new national regulatory authorities for higher education and the VET sector, in consultation with stakeholders, to provide clarity and specify details of minimum standards upon which registration would be dependent.

Quality assurance framework

4.36 The National Code is complemented by national quality assurance frameworks in education and training including the Australian Quality Training Framework (for registered vocational education and training providers offering these courses) and the National Protocols for Higher Education Approval Processes (for institutions offering higher education qualifications).³² The quality assurance

31 Dr Felicity Fallon, *Committee Hansard*, 1 September 2009, p. 54. See also Mr Paul Kniest, *Committee Hansard*, 18 September 2009, p. 36.

32 See <http://www.aei.gov.au/AEI/ESOS/NationalCodeOfPractice2007/default.htm> accessed 25 October 2009.

framework builds on the registration, accreditation and quality audit processes of each state and territory for each sector. DEEWR explained that ensuring providers meet the guidelines is the responsibility of the states:

There is the Australian Quality Training Framework. That sets down the guidelines for registering new training organisations. The guidelines are available on the web and you can have a look at what they are. Those have been agreed intergovernmentally. The responsibility for registering providers, as I said, lies with the states and, within the guidelines that are there, the states take their decisions on whether training providers meet the guidelines and are therefore suitable to be included on the register. The Commonwealth's role has been involvement in discussions with the states and territories on the revision of the training framework, which was last revised and completed in 2007.³³

Higher education

4.37 The Australian Universities Quality Agency (AUQA) is an independent, not-for-profit national agency that conducts quality audits and reports on quality assurance in higher education³⁴ for all higher education institutions in receipt of Australian government funding. Other higher education institutions can choose to be audited by AUQA or an approved state auditor.³⁵

VET

4.38 State and territory accreditation authorities perform quality assurance functions in relation to the activities of VET institutions (other than those quality assured by NARA), ELICOS providers and schools.³⁶

4.39 The National Training Framework is an industry-led system that sets out the requirements for quality and national consistency in terms of qualifications and the delivery of training. It comprises:

- the Australian Quality Training Framework (AQTF) 2007 which is the national set of standards for training and assessment services delivered by registered training organisations; and
- training packages which are sets of nationally endorsed standards and qualifications for recognising and assessing people's skills³⁷ (see below).

33 Mr Colin Walters, *Committee Hansard*, 18 September 2009, p. 75.

34 Information available from: <http://www.auqa.edu.au/aboutauqa/mission/> accessed 13 October 2009.

35 DEEWR, *Submission 112*, p. 17.

36 DEEWR, *Submission 112*, p. 3.

37 See http://www.transnational.deewr.gov.au/quality_assurance.htm accessed 19 October 2009.

4.40 The Australian Qualifications Framework (AQF) cuts across the higher education, VET and schools sectors and provides a national framework for qualifications in these sectors. The AQF Council is currently looking into ways to strengthen this framework.³⁸ The government is also working with states and territories to improve the quality of non-award ELICOS and Foundation Programs delivered to international students.³⁹

4.41 In addition to legislation changes to deal with the crisis of confidence over VET quality assurance, the government has announced recently that it will establish a single Tertiary Education Quality and Standards Agency (TEQSA) from 2010. TEQSA will accredit providers, evaluate the performance of institutions and programs, encourage best practice, simplify current regulatory arrangements and provide greater national consistency. The Council of Australian Governments (COAG) will consider the future of VET regulation, including a national regulator for the VET system, later in 2009. Other measures to further strengthen the quality of VET have also been taken. These include the National Quality Council's development of a strengthened approach to risk management and auditing together with the development of a set of quality indicators for registering bodies.⁴⁰

4.42 The Group of Eight supported the creation of TEQSA and noted the current unsatisfactory arrangements:

State governments have demonstrated different interpretations of legal requirements under ESOS and an overall lack of interest in enforcing the Code. Their resources should be transferred to TEQSA so a consistent regulatory approach can be applied nationally.⁴¹

4.43 The Group of Eight noted TEQSA will have a key role in ensuring minimum standards are met by institutions. It recommended that it be given a key role in ridding the system of unsatisfactory providers through tighter accreditation and closer monitoring arrangements including responsibility for a national system for management of the ESOS Act, CRICOS regime and the National Code.⁴²

Committee comment

4.44 The committee supports the establishment of TEQSA and urges the development of a national regulator for the VET system as soon as possible. The

38 See <http://www.aqf.edu.au/Projects/tabid/186/Default.aspx#strengthening> accessed 19 October 2009.

39 DEEWR, *Submission 112*, p. 17.

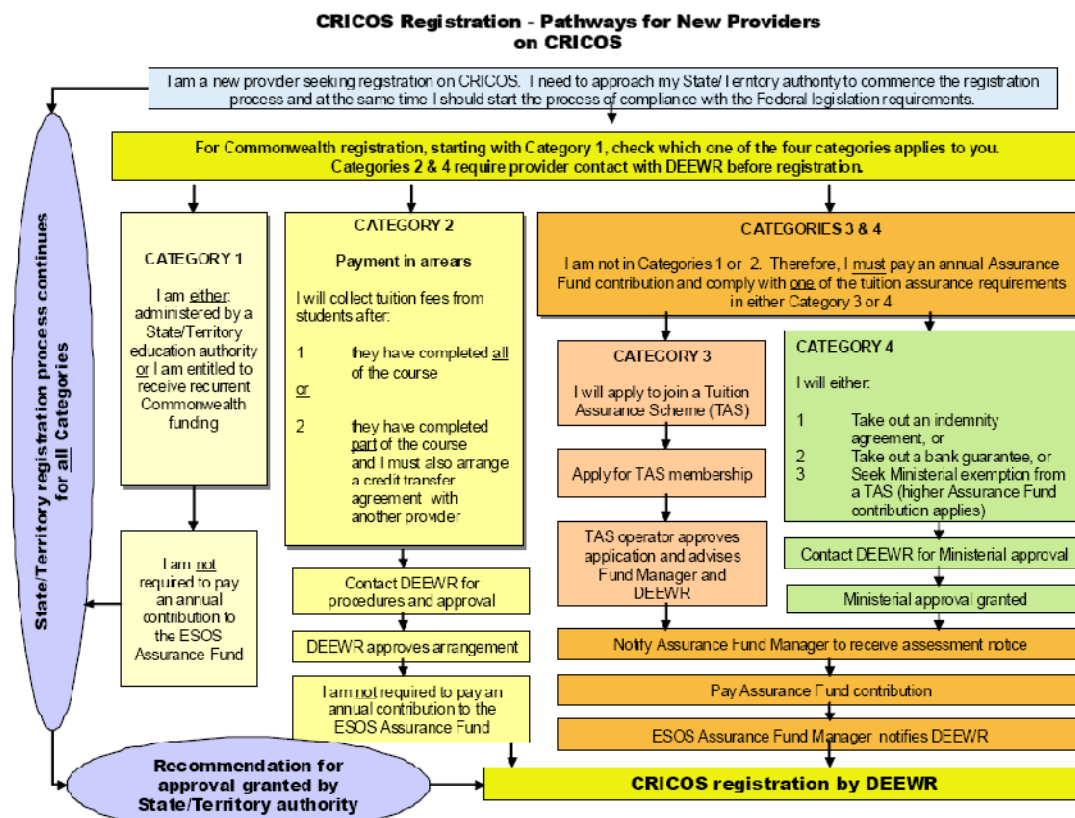
40 DEEWR, *Submission 112*, p. 3.

41 Group of Eight, *Submission 38*, p. 8. See also Ms Virginia Simmons, *Committee Hansard*, 1 September 2009, p. 23.

42 Group of Eight, *Submission 38*, p. 8.

committee urges a commitment by all governments to ensure consistent enforcement of standards across all jurisdictions.

4.45 The complexity of the regulatory system and processes is already evident in the areas of registration, quality control and assurance. It is illustrated by the following diagram covering registration and will be further discussed below.



Source: DEEWR *Submission 112*, p. 18.

Ensuring quality of training in the VET sector

4.46 It is understood that the problem area in delivering proper qualifications to students lies in the quality of training provided by RTOs. Service Skills Australia told the committee that one of their main roles is to develop training packages which set out the standards and requirements that need to be delivered to students. The quality of this training is the responsibility of state training authorities which police standards. The level of auditing of RTOs has been questioned. Mr Ian Blandthorn, Chairman, Service Skills Australia, told the committee his views on the quality of auditing:

...Of course, at the other end we have a huge problem in that a number of state training authorities do not, I think, properly police the delivery. It is a state responsibility by and large, but I think at least some states have abrogated their responsibilities partially or wholly in this area...⁴³

We find a wide variance. I am not sure that they are understaffed or under resourced. I think it is more to do with their commitment or willingness to audit rigorously. Too often we are concerned that the audit is something that you just do and move on from without a whole lot of rigour to it. That is the perception that we often have.⁴⁴

4.47 Ms Catherine McMahon, General Manager and Acting Chief Executive Officer, Service Skills Australia, admitted that the situation is so serious that industry and the skills councils are becoming more involved in auditing and assisting to deliver quality outcomes.⁴⁵ Ms McMahon emphasised that the key concern for industry is that industry requirements for workers appear to be one of the last considerations after all other requirements have been fulfilled.⁴⁶ The result is qualifications that are not valued either by students or by the industry they may wish to enter. This is contrary to the intention of reformers in the 1980s and 1990s who tried to ensure that industry standards would set the quality benchmarks for training. This has failed because RTOs have been permitted to break free from the role of serving industry requirements.

4.48 Concerns about training lacking a workplace focus and resulting in employers lacking confidence in the quality of outcomes of that training were supported by Ms Michelle Bissett, Senior Industrial Officer, ACTU, who told the committee:

Many of the courses that are now being delivered are on a fully institutionalised basis, so vocational education and training, particularly being delivered to international students, is losing the critical link that it has always had to the workplace. By fully delivering training on an institutional basis there is no workplace relationship for those people undertaking the training. The ACTU has long held concerns about institutionalised delivery of vocational training both for domestic students and now for international students.⁴⁷

4.49 A key component of training delivery is the quality of the staff. Mr Angelo Gavrielatos, AEU, raised questions over the staffing of RTOs:

We believe that lifting educational quality means imposing tougher standards. Those standards must be seen in the area, first and foremost, of the staffing of these institutions. We believe that teachers who work in the vocational education sector, both domestic and international, should have teaching qualifications. They must be properly trained. It is unacceptable that a vocational education system which delivers qualifications and establishes standards across the country and internationally sets such low standards of its own workforce. Additionally, consistent with that rationale of teachers being qualified—as novel as that may sound!—managers of training colleges should also be required to hold appropriate educational

44 Mr Ian Blandthorn, *Committee Hansard*, 2 September 2009, p. 44.

45 Ms Catherine McMahon, *Committee Hansard*, 2 September 2009, p. 42.

46 Ms Catherine McMahon, *Committee Hansard*, 2 September 2009, p. 44.

47 Ms Michelle Bissett, *Committee Hansard*, 18 September 2009, p. 2.

qualifications to be able to exhibit necessary educational leadership in the delivery of programs.⁴⁸

4.50 Concerns regarding the job readiness of students were supported by Mr William Healey, Chief Executive officer, Australian Hotels Association. He described the background to the current situation:

...A training organisation should be licensed to give out that industry's credential, and it should be up to the industry to determine whether that training organisation satisfies the requirements to endorse that that individual has the competence linked to that credential.

We were told around 2000 that that was not appropriate, that the states would come up with their own RTO regulatory processes and that they would bring in quality control arrangements. This has been a constant bugbear for me. I left and went and did a few other things, but it has been evident that the quality control both in tourism and hospitality and in retail has not been sufficient. The growth of private provider markets and paid funding has undermined the integrity of the credential systems we have built, to the point where funding has been withdrawn for our lower-level certificates in some states. And as I say in my paper, you have the emergence of a whole host of players out there who are certified training, but no-one is looking over their shoulders.

We are trying to shut the gate after the horse has bolted with things like assessors, auditing processes and things like that. But it is the industry that has to maintain the integrity of its training system, not TAFE and not a state jurisdiction. I am particularly annoyed about this. The problems we were having were pointed out to a senior DEEWR official 18 months ago, and I was told that there was no evidence of that. But we had a whole host of RTOs bringing in students who were not, in our view, getting the necessary education that (1) justified their expenditure and (2) met our standards.⁴⁹

4.51 Mr Healey argued for industry to retain ownership of nominating which institutions can give out their credentials because under the current system students receive qualifications which have little relevance to industry as they are not judged by the people who know the industry.⁵⁰ He stated:

...If it is a VET program, my personal view is that a training package is an industry credential, where the industry has said, 'These are the skills and competencies that you require to be competent.' Notwithstanding that the courses are developed with funding from government, the industry should license an RTO to have the right to deliver those sorts of courses...⁵¹

48 Mr Angelo Gavrielatos, *Committee Hansard*, 2 September 2009, p. 60. See also Mr Christopher Evason, *Committee Hansard*, 18 September 2009, p. 42.

49 Mr William Healey, *Committee Hansard*, 2 September 2009, pp 47–48.

50 Mr William Healey, *Committee Hansard*, 2 September 2009, p. 51.

51 Mr William Healey, *Committee Hansard*, 2 September 2009, p. 55.

4.52 Witnesses also raised the issue of vocational students being required to undertake 900 hours of work experience. The committee heard that some students have been exploited by having to pay to do 900 hours' work experience but were paid only \$5 per day.⁵² Ms Bissett explained that the cause is the institutionalised training and suggested restructuring the training so that work experience is built into the training at an appropriate salary level such as the national training wage award.⁵³

Committee comment

4.53 The committee understands the frustration of industries seeking graduates ready to work with qualifications that reflect the acquisition of skills and knowledge. It notes the introduction of a Job Ready test by the government from 1 January 2010 which will go some way to addressing this issue. The test is currently being developed in consultation with industry and unions and will initially be applied to trade occupations. The test will ensure a consistent standard of skills and competencies across trade occupations.⁵⁴ The committee is pleased that these issues are being reviewed by Mr Baird, but laments the fact that it is necessary to catch up on policies and processes that were once agreed but which have been allowed to lapse.

Enforcement

4.54 The responsibilities of the states and territories include the exercising of enforcement powers which extend to the suspension and deregistration of providers. The Bills Digest for the ESOS bill pointed out that both the Commonwealth and the states and territories have responsibility for enforcement. Part B of the National Code states that:

...while DEST [DEEWR] is primarily responsible for investigating and instigating enforcement action for breaches of both the ESOS Act and the National Code, state and territory governments often have enforcement mechanisms available through their legislation. Pursuing enforcement action through these mechanisms may be more appropriate given the nature of the breach, particularly if the state or territory government has specific legislation related to ESOS matters.⁵⁵

52 See also Nick O'Malley, Heath Gilmore and Erik Jensen, 'Foreign students 'slave trade', *The Age*, 15 July 2009, p. 6.

53 Ms Michelle Bissett, *Committee Hansard*, 18 September 2009, pp 6–7.

54 See <http://www.immi.gov.au/skilled/general-skilled-migration/gsm-reforms.htm> accessed 26 October 2009.

55 Carol Kempner, Education Services for Overseas Students Amendment (Re-Registration of Providers and Other Measures) Bill 2009, *Bills Digest*, 9 September 2009, No. 28, 2009-10, Parliamentary Library, Canberra, p. 9. See also *The National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007*, p. 4.

Adequacy of the legislation and regulatory framework

4.55 There is general agreement that the current legislative and regulatory structures are adequate. However, there is clear evidence of regulatory failure, particularly in the VET sector where a small number of unscrupulous agents and providers have been allowed to operate. This has been compounded by an apparent lack of monitoring and effective enforcement at the state level. The failure of regulatory processes was also raised by the Federation of Indian Students of Australia (FISA):

We think that the failure was with the auditing process of DEEWR. It is unlikely that DIAC and DEEWR knew nothing about what is happening. Institutions which were authorised to carry only a few hundred students were carrying about a thousand or more than a thousand students, so how is it possible that those were issued visas and DEEWR did not check it out with the institution? There is a legislative framework but it has not been acted upon. There has to be a cost associated if some private institution is doing it just for the sake of money or providing migration outcomes. There have to be increased the costs associated with it, because failure to address the issues will impact broader society. International students are going to live in Australia for two years and if they have really bad experiences they are not going to share good experiences back home.⁵⁶

4.56 Ms Christine Bundesen of English Australia indicated that:

[g]enerally, whether in relation to agents or other aspects of regulations, English Australia's message is that this issue is mainly one of enforcement and better coordination of existing regulation rather than the imposition of new regulation. I am sure that the committee will hear plenty of evidence about lack of enforcement and the problems of responsibility being split between different levels of government. The government started to address this by accepting the Bradley review recommendation to create a tertiary education quality and standards agency, TEQSA, for national quality assurance and regulation. English Australia's reservations about TEQSA are to ensure that it adequately covers those sectors of international education which are outside higher education...We already have detailed standards in our legislation through the national code for most aspects of the student experience. But what we have a need for is greater attention and more timely monitoring and effective enforcement of those regulations and the clauses under the national code...It seems to be an issue of the power to enforce the regulation...If there is an issue with a particular provider institution, it needs to be dealt with very effectively, very efficiently and very quickly to protect the students in the first place, to protect their education experience and then to protect Australia as an international education-provider nation.⁵⁷

56 Mr Neeraj Shokeen, *Committee Hansard*, 2 September 2009, pp. 28-29.

57 Ms Christine Bundesen, *Committee Hansard*, 2 September 2009, pp 2-3.

4.57 Mr Sumit Purdani from FISA added:

You have got laws for even lifts working, even fans over here, so there would be rules and regulations about how an institution or a college has to work. Why is it not acted upon? You have got kitchens for five people and 1,200 people are engaged in a particular course. Obviously it is a failure of the regulation body.⁵⁸

4.58 The Independent Schools Council of Australia also noted the lapse in enforcement:

...The growth in numbers of non-genuine students and unethical providers created by the existence of what was seen as an 'easy' pathway to permanent residency would not have been possible had the legislation been vigorously enforced.⁵⁹

4.59 Mr Gavrielatos, AEU, called attention to the regulatory failure and the lack of accountability:

That the existing so-called regulatory regime framework has failed is self-evident. Of greatest concern is that the fact that neither the states and territories nor the federal government appear willing to accept responsibility for the failure or to take the sort of action required to rid the industry of the shonky operators who continue to plague it.⁶⁰

4.60 The pace of enforcement was also raised by Ms Bundesen, English Australia:

Some of it is taking place but it is taking place at a very, very slow pace. When perceived breaches or concerns are reported, the timeline can sometimes be in excess of a year for a response by the compliance branches, particularly of DEEWR and also at the state level, because we have this dichotomy of regulatory responsibility where we have a national framework of regulation and then we have a state and territory framework of regulation and that is often through legislation both at the national and state levels. The fit between the state and territory legislation and the national legislation is not always a good one. There are, in fact, at times conflicts between the state and territory legislation and the national legislation. It seems to be an issue of the power to enforce the regulation, which seems to be the principal factor which creates these lags in time. If there is an issue with a particular provider institution, it needs to be dealt with very effectively, very efficiently and very quickly to protect the students in the first place, to protect their education experience and then to protect Australia as an international education-provider nation.⁶¹

58 Mr Sumit Purdani, *Committee Hansard*, 2 September 2009, p. 29.

59 ISCA, *Submission 72*, p. 8.

60 Mr Angelo Gavrielatos, *Committee Hansard*, 2 September 2009, pp 59–60.

61 Ms Christine Bundesen, *Committee Hansard*, 2 September 2009, p. 3.

4.61 A number of reasons have been offered regarding the cause of this regulatory failure. These issues were raised briefly in the Senate Education, Employment and Workplace Relations Legislation Committee's report on the Education Services for Overseas Students Amendment (Re-registration of Providers and Other Measures) Bill 2009 and will be repeated here.

4.62 Some have attributed the regulatory failure to a lack of clarity about responsibilities and a lack of resources:

...it is not through lack of regulation but due to a lack of enforcement, as a result of under-resourcing of agencies by state and federal governments, and a lack of jurisdictional clarity about enforcing compliance.⁶²

4.63 The NTEU agreed that there is a lack of clarity and division of responsibility 'regarding the relevant government agency responsible for monitoring and enforcing compliance of education providers listed on CRICOS'.⁶³ It detailed how this lack of clarity affects accountability:

The State-Federal division of responsibility for maintaining ESOS standards diminishes system accountability overall. This is significant with regards to the delivery of education programs and training by non-self accrediting private providers who are neither subject to periodic audits by bodies such as the Australian University Quality Agency (AQUA) nor VET providers whose teaching and learning performance is benchmarked according to standards set by the Australian Qualification Framework (AQF).⁶⁴

4.64 Navitas explained the complexity they have to deal with:

In addition, regulatory and quality assurance frameworks urgently need streamlining, simplifying and coordinating. The framework in which educational institutions operate is complex and spans both Commonwealth and State-based legislation. While the aims of the framework are laudable and desirable, the reality for a large number of institutions is that the current regulatory structure creates duplication, inconsistency and inefficiency and does not achieve optimal outcomes for students, providers or governments.⁶⁵

4.65 A lack of clarity and level of complexity was a finding in the position paper of Skills Australia. This was informed by stakeholder feedback:

...on the desirability of simplifying, providing clearer accountability and rationalising the multiplicity of authorities involved in industry advice on regulation and quality matters at both state and national levels. There is

62 Professor Ian Young, 'Time to act is now', *Campus Review*, 18 August 2009, p. 8.

63 NTEU, *Submission 12 (ESOS bill)*, p. 2.

64 NTEU, *Submission 56*, p. 10.

65 Navitas, *Submission 39*, p. 7.

considerable complexity in the current governance of regulatory and quality apparatus with auditing arrangements in place for the AQTF [Australian Quality Training Framework], international students and for user choice purchasing arrangements. This is further complicated for providers operating in both the VET and higher education sectors.⁶⁶

4.66 Mr Kniest, NTEU, also pointed to a lack of clarity in terms of responsibilities:

...our submissions highlight the lack of clarity of the responsibility between the Commonwealth and the states in terms of regulation and who is responsible for monitoring and enforcing breaches of regulations within the ESOS code and the national code of practice associated with the ESOS code.⁶⁷

4.67 Mr Baird has also pointed to the complexity in his issues paper:

...the intersection of ESOS with these underpinning quality assurance frameworks can be complex, cause confusion about roles and responsibilities and raise concerns about consistency and duplication. For example, a VET provider may be audited twice in close succession: by DEEWR for its ESOS Act obligations and certain standards of the National Code. Then by the state regulator for the AQTF, state legislation and the National Code as well. The provider can also be audited by the Australian Government Department of Immigration and Citizenship and other agencies.⁶⁸

4.68 The Commonwealth Ombudsman also noted the difficulty for international students resulting from the lack of clarity regarding the regulatory environment:

The confusion and uncertainty that can bedevil international students has drawn attention to a lack of clarity about who is responsible for the regulatory environment relating to international students.⁶⁹

4.69 On this issue of complexity and divided responsibilities, the committee notes the evidence provided by DEEWR to this inquiry when asked about how responsibilities are agreed and dealt with between the Commonwealth and the states and territories:

Firstly, it is a very complex area—there is no question about that—and lots of witnesses have told you that and we do not disagree. Frequently if you get complaints or issues arising they do cross the state responsibilities under the Shared Responsibility Framework and those powers. Most of the issues tend to revolve around quality and that is a state responsibility so they tend

66 Skills Australia Position paper, *Foundations for the Future: Draft Proposals for Future Governance, Architecture and Market Design for the National Training System*, April 2009, p. 32.

67 Mr Paul Kniest, *Committee Hansard*, 18 September 2009, p. 34, 40.

68 The Hon. Bruce Baird, *Review of the ESOS Act 2000, Issues paper*, September 2009, p. 11.

69 Commonwealth Ombudsman, *Submission 106*, p. 1.

to have the lead role in many cases. But that does not mean that we cannot stimulate activity if the complaint or the issue arises on our side.

In many cases if they involve issues which are our responsibility under the Shared Responsibility Framework then we will get involved and we will send a team. For example, under the Victorian rapid audit process, which I think you have heard about, that has been conducted by Victorian officers but our officers have also spent a lot of time with them so that issues arising under our part of the Shared Responsibility Framework can be dealt with at the same time.

Similarly, DIAC have contributed officers and time to that exercise, and the same applies in New South Wales. How is it dealt with? I think it is dealt with on a common-sense basis where we try and sit down and deal with the cases as they arise and come along. So it is a complex area of regulation. We try to deal with it on a common-sense basis. We have that the Shared Responsibility Framework to refer to and that says what we do and what the states do. We try to interpret that on a common-sense basis and take it forward as you would expect us to do in the best interests of the public.⁷⁰

4.70 Others submit that the regulatory failure is due to a lack of resolve or commitment of the regulatory authorities to engage in effective enforcement because they fear destabilising providers and the subsequent effect on their students.⁷¹ David Phillips, an adviser to the Bradley review, told the HES [Higher Education Supplement]:

...the states already possessed a “big stick”. Their powers included deregistration of providers. “It may be worth examining whether a lower level of sanctions could be introduced to avoid the problem of states being reluctant to intervene because of the impact of deregistration on students”.⁷²

Resources

4.71 The committee heard from witnesses about the lack of resources by the states to undertake the auditing regime. For example, the committee heard from Ms Patricia Forward, Federal TAFE Secretary, AEU:

Our anecdotal information around that is that the state authorities are incredibly under-resourced. For example, you may be aware that in Victoria, one of the first actions as a result of this current crisis, if you like, has been a push to do a rapid audit on 17 colleges immediately. I think the Victorian department is trying to get 17 additional rapid audits by the end

70 Colin Walters, DEEWR, *Committee Hansard*, 18 September 2009, p. 79.

71 Carol Kempner, *Education Services for Overseas Students Amendment (Re-Registration of Providers and Other Measures) Bill 2009, Bills Digest*, 9 September 2009, No. 28, 2009–10, Parliamentary Library, Canberra, p. 13.

72 Guy Healy and Andrew Trounson, 'Crackdown on student recruitment', *The Australian*, 12 August 2009, <http://www.theaustralian.news.com.au/story/0,25197,25916022-12149,00.html> accessed 16 September 2009.

of the year. That has required the department to increase its staffing immediately to try to get through that by the end of the year. It is a serious crisis in the states around the resourcing of the auditing process.⁷³

4.72 The committee received no clear information about whether the resources dedicated to monitoring and enforcement have been adequate from either the Commonwealth⁷⁴ or the states. However, DEEWR told the committee that the growth in student numbers has been extraordinary and difficult to predict:

...I do not think anyone predicting 10 or perhaps even five years ago would have thought that we would have the number of half a million students in the country that we have now. It is a difficult game.⁷⁵

4.73 The committee wrote to state regulatory agencies to find out the level of resources they were committing to accreditation and auditing of RTOs, but such information is of little use without the opportunity to question officials. State regulatory agencies made no submissions to this inquiry.

Committee comment

4.74 The committee was told that Australia has a world-class legislative framework. However, a world-class legislative framework is of no use if it is not enforced. There needs to be a more serious commitment made to timely monitoring and effective enforcement of regulations. The relevant questions here relate to whether there is too much complexity, sufficient commitment and appropriate resources to carry out these tasks.

4.75 The committee understands the increase in the numbers of international students in the VET sector may have hindered the effective regulation by states and territories. The committee understands that the CRICOS fee or annual registration fee goes towards regulation.⁷⁶ With the influx of international students, the collection of that fee would have increased and yet there have been regulatory failures. The Legislation committee raised concerns about the level of resourcing to carry out regulatory activities in its report on the ESOS bill. The committee notes that adequate resourcing will be addressed in the review of the ESOS Act being undertaken by Mr Baird. The committee notes the importance of adequate and targeted resourcing and commitment from all stakeholders. To this end, the committee is pleased to note the commitment in the Joint Communiqué of the Ministerial Council on Education, Employment, Training and Youth Affairs & Ministerial Council for Vocational &

73 Mr Patricia Forward, *Committee Hansard*, 2 September 2009, p. 63.

74 Mr Colin Walters, *Committee Hansard*, 18 September 2009, pp 81-82.

75 Mr Colin Walters, *Committee Hansard*, 18 September 2009, p. 86.

76 See *Committee Hansard*, 18 September 2009, pp 75-76.

Technical Education to enhancing the quality of the education and training system and the targeted audits of providers underway in states and territories.⁷⁷

4.76 The committee agrees that the divided control of regulation in the system covering the areas of registration, quality assurance and enforcement has been well demonstrated and acknowledged during the inquiry. The committee is concerned about blurred lines of accountability and the potential for issues to fall between these blurred lines. The committee believes there is scope for further clarification of responsibilities and accountability and encourages simplification. The committee notes that clarification of responsibilities will be addressed in the review of the ESOS Act being undertaken by Mr Baird and looks forward to reviewing his findings and recommendations.

4.77 The committee also notes the position of the Commonwealth Ombudsman that the creation of a national regulatory framework for both tertiary education and the training and vocational education sectors will:

...reduce the level of systemic complexity and provide an opportunity to markedly improve the handling of complaints in these sectors.⁷⁸

The option of self-regulatory accreditation

4.78 English Australia told the committee about their national accreditation scheme called the National ELT Accreditation Scheme established in 1990 after this sector experienced difficulty in the late 1980s with an explosion of Chinese student numbers. Similar schemes are now used in the UK, Canada and Ireland. Ms Christine Bundesen, English Australia, told the committee of how this has improved the sector:

It was an industry based self-regulatory accreditation scheme, but the majority of state and territory governments then authorised that scheme to carry out accreditation of public and private colleges delivering English-language training in Australia. Part of that scheme requirement is for an annual audit. Every college goes through an annual audit, and any changes to information from the previous year are incorporated into that audit. That audit can be a desk audit, it can be an on-site visit audit, and there can also be on-the-spot visits at any time during the year. So our accreditation basically runs for one year and then it is renewed through an audit process. Any changes are then notified to the registration authorities in the state, who then notify any changes to CRICOS registration. For example, a registered training organisation in the VET sector, the accreditation there is a five-year cycle and so it is basically five years until a re-accreditation.⁷⁹

77 See <http://www.premier.vic.gov.au/minister-for-skills-workforce-participation/government-blitz-on-international-education-providers.html> accessed 15 September 2009; See also *Joint Communiqué - Ministerial Council on Education, Employment, Training and Youth Affairs & Ministerial Council for Vocational & Technical Education*, 12 June 2009.

78 Commonwealth Ombudsman, *Submission 106*, p. 1.

79 Ms Christine Bundesen, *Committee Hansard*, 2 September 2009, p. 5.

4.79 However, Ms Bundesen also clarified that they have been waiting four years on the outcomes of a review of standards in the sector. This means that the new standards have not been implemented.⁸⁰ English Australia also mentioned that, in addition to the accreditation scheme, there are best practice standards, but they are not enforced.⁸¹

4.80 In the view of Mr Angelo Gavrielatos, AEU, the time for self regulation has passed as...'[t]he notion of light-touch auditing and self-regulation in this sector has demonstrably failed'.⁸² This view was supported by Ms Patricia Forward, Federal TAFE Secretary, AEU, who stated:

The whole notion of light-touch regulation, of self-regulation, in an area which has the potential to give private providers such great profits, I think has left the sector open to unscrupulous behaviour, and this is what has happened.⁸³

4.81 When asked directly about the regulatory failures, DEEWR told the committee that work has been underway:

The Commonwealth recognised that there had been huge growth in international education a couple of years ago and proposed the setting up of the committee with the states. That was working through issues last year, the point at which the Victorian government decided to set up a review of the student experience and that, in turn, led to the rapid audit process which has been taking place there and which is still unfolding. New South Wales decided to come in behind that—and if you look at the student numbers it is very much a New South Wales and Victoria issue, by and large. Earlier in the year the Deputy Prime Minister said she supported the other states doing that. So there has been a stream of activity around that and looking at issues such as student safety which goes back for quite some time.

Secondly, the ESOS Act and that framework was reviewed in 2005—I do not know if the senators have had a chance to look at that—and the national code was reviewed after that. My understanding is that, in the knowledge that that had been looked at fairly recently, the Bradley committee recommended that the ESOS legislation did not need to be reviewed before 2011-12. The Deputy Prime Minister came in earlier this year in response to Bradley and said it should be done sooner. So there has been quite a stream of activity. Obviously, with hindsight, it is up to people to judge whether that was enough.⁸⁴

80 Ms Christine Bundesen, *Committee Hansard*, 2 September 2009, p. 6.

81 Ms Christine Bundesen, *Committee Hansard*, 2 September 2009, p. 9.

82 Mr Angelo Gavrielatos, *Committee Hansard*, 2 September 2009, p. 63.

83 Ms Patricia Forward, *Committee Hansard*, 2 September 2009, p. 65.

84 Mr Colin Walters, *Committee Hansard*, 18 September 2009, p. 80.

Committee view

4.82 The committee believes that the time for further self regulation has passed. The potential for profits has left the sector open to unscrupulous behaviour. As covered in chapter three, there was general support for an independent body to review not only student complaints but also to monitor the regulatory environment.

Other issues

Protection for students in the event of an RTO collapse

4.83 A Tuition Assurance Scheme (TAS) ensures that overseas students receive the course they have paid for. If a provider is unable to meet its teaching obligations to a student, one of the other providers in the scheme will take over teaching the student. With some exceptions, all providers are required to be in a TAS.⁸⁵

4.84 The ESOS Assurance Fund was established in 2001 under section 46 of the ESOS Act to protect the interests of current and intending overseas students of registered providers. It does this by ensuring that a student is provided with a suitable alternative course, or has course monies refunded, if the provider cannot provide the course that the student has paid for.⁸⁶ New providers are not registered on CRICOS until their first contributions have been paid.

4.85 For private providers, ACPET offers the Overseas Student Tuition Assurance Scheme (OSTAS).⁸⁷ The scheme complies with the requirements of the ESOS Act. Mr Andrew Smith, Chief Executive Officer, ACPET, told the committee that ACPET underwrites the student experience for approximately 170 000 students through ACPET's tuition assurance scheme which it operates on behalf of private providers and their international students.⁸⁸ Mr Smith explained how the schemes interact:

The way it works is that the Tuition Assurance Scheme is a requirement for private providers. Public providers are not required by the ESOS Act to be part of the consumer protection arrangements that are required of private providers. Private providers have a choice as to whether they use a tuition assurance scheme as their primary mechanism—there are other options under the legislation—but those who use a tuition assurance scheme as their primary mechanism choose which scheme they join. Ours is the largest, so most providers are part of ours.⁸⁹

85 Providers are required to be in a TAS unless they are exempt from the requirement to pay annual fund contributions, have an approved indemnity agreement, have an approved bank guarantee, or have obtained a ministerial exemption.

86 See <http://esosassurancefund.com.au/> accessed 19 October 2009.

87 See http://www.acpet.edu.au/index.php?option=com_content&task=view&id=158&Itemid=70 accessed 19 October 2009.

88 Mr Andrew Smith, *Committee Hansard*, 1 September 2009, p. 39.

89 Mr Andrew Smith, *Committee Hansard*, 1 September 2009, p. 43.

The Tuition Assurance Scheme is the second level of consumer protection for international students. The first level under the ESOS Act is that an individual institution has a responsibility to provide an alternative place or a refund to a student if they are unable to continue to offer the course. Failing that, our Tuition Assurance Scheme kicks in, and our guarantee is that we will find a student an alternative place in order that they can continue their education with one of our ASTAS [Australian Student Tuition Assurance Scheme] or overseas Tuition Assurance Scheme members. Should we not be able to meet that obligation, a student is entitled to a refund or placement by the ESOS Assurance Fund, which forms the third level.⁹⁰

...Under the Tuition Assurance Scheme, you take on a responsibility if students are displaced. Provided it is within the regulated numbers and other things that you are required to do under the regulations, you are required to take those students, to honour the tuition they have paid for but not received and to deliver the course that they were studying. So the students are able to complete the course they came to study and to do so at no financial disadvantage. For example, if a student had paid for a full semester and only received half of the semester, the receiving college would need to honour the half a semester that was paid for but not received, without charging fees. Then, once that was done, they would charge fees, as the student would have had to pay at their original provider.⁹¹

4.86 Mr Smith explained how the fund affects student choice:

...You asked about the students and what sort of choice they get. The choice is limited because, for starters, it is only private institutions who have the obligation to take students, and only those who are members of our tuition assurance scheme. From time to time students will ask us if they can attend a particular institution. Sometimes they will ask us if they can change courses. Where possible we accommodate that. We are not required to accommodate that, but wherever possible we do. Our obligation is to ensure the student is able to complete the course they came to study, with minimal disruption and no financial disadvantage.⁹²

4.87 Mr Smith explained that, when a provider closes, they have a requirement to find students a suitable alternative course within 28 days but occasionally they require a little extra time due to particular student circumstances.⁹³ Mr Smith further explained that TAFE colleges are not required to be part of the consumer protection arrangements, so they are not obliged to take the students.⁹⁴

90 Mr Andrew Smith, *Committee Hansard*, 1 September 2009, p. 40.

91 Mr Andrew Smith, *Committee Hansard*, 1 September 2009, p. 43.

92 Mr Andrew Smith, *Committee Hansard*, 1 September 2009, p. 43.

93 Mr Andrew Smith, *Committee Hansard*, 1 September 2009, pp 43–44.

94 Mr Andrew Smith, *Committee Hansard*, 1 September 2009, p. 44.

4.88 The committee heard evidence of confusion for students when providers have closed. The types of issues were described by Mr Menghani from the Federation of Indian Students of Australia in the following exchange:

Mr Menghani—The students are basically going through a lot of problems. For example, one of the students at the college shut down in Melbourne was guaranteed a place in the next 28 days in one of the other universities which has a similar course. He also got the course in the other university but the system of education quality was not there. He had to repay to do the same course again in the other—

Senator HANSON-YOUNG—He had to repay?

Mr Menghani—Yes, he had to repay the same course whereas APTEC told us very clearly that if students will be granted a place in 28 days, they will not have to pay for the duration. For example, if they have paid fees in advance, they will not have to pay additional on top. But right now that student is forced to pay that amount again.

Senator HANSON-YOUNG—Who does that student go to to complain that that was not what was meant to happen?

Mr Menghani—Right now, he is going back to APTEC and talking about his problem saying, ‘This is the problem I am going through. Please help me out.’ At the end of the day, they guaranteed him a place. They did not even guarantee the quality of course that he will be enrolled into. For example, if a person is doing a cookery course in one college which shuts down and he goes to another college which provides cookery, they may not have resources. You are talking about a huge number of students are not here.

Senator HANSON-YOUNG—There have been concerns raised from students who attended the Sterling College in Sydney that they could not access their academic records, those who were almost upon completion of their courses, as well as other information held by the colleges as part of the visa requirements. Are these the types of things that have happened here in Melbourne as well?

Mr Menghani—Yes, they have. They have been happening for such a long time and I think it is a big issue. One of the students does not even know that the university has a kitchen when he can go for hands-on practice for his cookery course. After six months he gets to know that there is a place where he can go for hands-on experience but there are no resources, there are no tools sitting in the university itself. They do not have libraries, they do not have computers where students can go to practice, they do not have anything but they are running a college which meets the certain criteria of the ESOS Act at the end of the day.⁹⁵

4.89 Mr Paul Kniest, NTEU, said that trying to understand how TAS and the ESOS Fund work together was challenging. He noted that this would be even more difficult

for an international student with English as a second language.⁹⁶ The committee notes the following explanation from Mr David Riordan, Chief Executive Officer, Department of Education and Training International and TAFE NSW National Business, Department of Education and Training, regarding the closure of Sterling College:

What I can do is confirm a few things about the closure of Sterling College. I have seen the transcripts from previous meetings, and the committee would be aware that TAFE New South Wales is not required to be a part of the ACPET TAS scheme. The ACPET TAS scheme requires that if a college, for whatever reason, is unable to continue with a particular program or course then students can be transferred to another college within that scheme that runs the same program in a similar geographical area. If there are no colleges available or no places available, the student then has access to the ESOS assurance scheme that is managed by PricewaterhouseCoopers. They can get a refund of the tuition they have paid for up until that date or they can be transferred to another college that has that program. That is exactly what is happening with Sterling College at the moment. We have just made about 80 students an offer to TAFE New South Wales and, all going well, they will be transferred to TAFE New South Wales programs. The student will get a refund for the tuition they have already paid for and then, yes, they will pay the fees for the TAFE New South Wales program because they are an international student. We have at very short notice done an analysis of our capacity and capability across the state in community welfare. We found that we had vacancies and that is where it is at at the moment. I might point out that there was another private provider that came on at the last moment, and they have picked up the bulk of those students.⁹⁷

Committee comment

4.90 For an international student, the closure of their provider would be a distressing and stressful situation compounded by a lack of certainty and knowledge of relevant processes. The committee notes that the Minister for Immigration and Citizenship announced that, from 1 January 2010, overseas students who require a new visa to complete their studies at another school or college will be exempt from paying the \$540 student visa application charge.⁹⁸ Students should be quickly reassured and briefed about the mechanisms in place to protect their interests and the interaction between the TAS and ESOS Assurance funds. They should be provided with contacts for further questions and for any complaints which may arise.

96 Mr Paul Kniest, *Committee Hansard*, 18 September 2009, p. 39.

97 Mr David Riordan, *Committee Hansard*, 18 September 2009, pp 59–60.

98 Senator the Hon Chris Evens, Minister for Immigration and Citizenship, *media release*, 'new visa measures to assist international students', 9 November 2009.

Recommendation 12

4.91 The committee recommends that clear and timely mechanisms must be developed by the regulatory authorities and peak bodies to ensure that, if a provider closes, students are informed of their rights and of either getting their money back or transferring to a new course. Students also need to be made aware of the avenues they can use to ask questions or lodge complaints.

Adequacy of the funds

4.92 Concerns have been raised about the ability of the ESOS Assurance Fund to meet increased demand. DEEWR advised that while it is not possible at this stage to predict the need for the ESOS Assurance Fund, these arrangements will be considered by the review underway by Mr Baird.⁹⁹ The committee notes an amendment to the ESOS Act has been proposed to increase transparency for the fund. It requires the fund manager to provide a report to the Minister within 60 days which details information about the default¹⁰⁰ and that this amendment has been accepted by the government.¹⁰¹ It also notes the work underway by ACPET on assessing the financial obligations of the TAS.¹⁰² Given recent media reporting of further college closures,¹⁰³ the committee notes reports that the manager of the ESOS Assurance fund will raise the general levy for providers next year 'to support the solvency of the fund over the next six months'.¹⁰⁴

Conclusion

4.93 The quality of the education and training provided to international students is just as important as their welfare. There is no doubt that the small number of unscrupulous agents and providers which have been allowed to operate in the system have damaged Australia's reputation as a provider of high quality education and training. The committee acknowledges that work is underway to address the deficiencies identified in the regulatory system by the ESOS bill and the review of the ESOS Act being undertaken by Mr Baird. However, it is clear more must be done to restore confidence.

4.94 The source of the regulatory problems is clear. They are concentrated in the private VET providers and result from inadequate monitoring and enforcement

99 DEEWR, *Submission 13* (ESOS bill), p. 6.

100 Dr Andrew Southcott MP, *House of Representatives Hansard*, 19 October 2009, p. 3, pp 60-61.

101 Hon Julia Gillard, *House of Representatives Hansard*, 19 October 2009, p. 61.

102 ACPET, *Submission 9* (ESOS bill), p. 6, 10.

103 Andrew Trounson, 'Foreign students in limbo after college owner folds', *The Australian*, 6 November 2009, p. 2.

104 Andrew Trounson and Guy Healy, 'Levies rise to cover college collapses', *The Australian*, 4 November 2009, p. 5.

activities by the states and territories. They have been remiss in allowing opportunistic institutions to commence and to continue. While the committee does not wish to tar all providers with the same brush, it is clear that this is where remediation efforts must be targeted. Those long established and well run providers in that sector should have nothing to fear from the processes underway to rid the sector of the unscrupulous operators.

4.95 The key change which needs to occur is adequate enforcement of the existing regulations. The committee acknowledges steps taken in this area with the audits of high risk providers underway in states and territories. It is disappointed though that this emergency action is necessary. As the committee received little useful information from the states and territories regarding reasons for the regulatory failures, it is imperative that all the factors which contributed to the regulatory failures are understood and addressed. The committee notes the importance of adequate and targeted resourcing and commitment from all stakeholders.

4.96 The committee received evidence that the regulatory problems which have emerged were not new and various groups had been calling attention to them for some time. DEEWR attempted to reassure the committee about the cooperative relationship it has with the states and territories and that decisions cutting across responsibilities are made based on common sense. The committee believes that this has proved inadequate to ensure action on complaints, and on emerging and systemic issues regarding the regulatory environment and hence the recommendation put forward by the committee in chapter three of an independent body able to appropriately refer issues for quick action.

4.97 The committee believes that a number of other factors and work underway will also assist to clean up this sector. It is pleased to note the statements regarding the decoupling of permanent residency from study. This will be a big step in cleaning out those agents and providers which take advantage of people with the lure of permanent residency.

