

# *Submission to the Review of the ESOS Act*

*ISANA: International Education Association*

*October 2014*



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Mr Adam Luckhurst  
Branch Manager  
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Australian Government Department of Education

Dear Adam

Thank you for the opportunity to respond to the Department of Education's Reform of the ESOS framework Discussion Paper.

We are pleased to present our submission representing the ISANA membership and National Council.

ISANA holds interests in many areas of the ESOS framework and would appreciate the opportunity to meet in the near future to discuss this in greater detail.

Yours sincerely



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## **ISANA: International Education Association**

ISANA: International Education Association is the national professional association that represents people working with international students in Australia. It is a well-respected membership body that has provided services to international students and the professional staff who work with them since 1989. ISANA is a voluntary organisation, comprising a National Council, State and Territory branches and a general membership, with all office bearers elected by members. ISANA has a robust branch incorporated in New Zealand with whom activities, events and resources are shared. The association plays a key role in contributing to improving international student experience through policy and practice.

ISANA members work in universities, colleges and schools as well as with public and private organisations, making it unique as a cross-sectoral body engaging effectively with people working directly with students. Members are employed in administration, student support, compliance, policy, teaching and teaching support, in management and international education leadership roles.

ISANA has a dynamic relationship with groups whose responsibilities connect with international students' experience. It has a demonstrated record of collaboration with relevant organisations such as student representative organisations, government agencies, accommodation providers, police, fire, health, insurance, emergency services, community organisations and guardians. It is therefore responsive to issues that arise such as cultural adjustment, academic progress, health and wellbeing, safety and security, as well as the needs of younger students.

ISANA has always taken an active interest in the development of government and institutional policy, and the impact of policy on international students. ISANA contributed significantly to the 2004 Evaluation of the ESOS Act 2000 prior to the development of the current National Code. It has engaged with government through a number of taskforce and consultative groups, contributing to dialogue relating to international student matters. Recently, this contribution has included:

- Stronger, simpler, smarter ESOS: supporting international students, 2010 (Baird Review)
- Senate Review into the Welfare of International Students 2011, and the
- Strategic Review of the Student Visa Program 2011 (Knight Review)

ISANA also delivers current and relevant resources for professional development as part of its core business. It consults widely through the professional and student bodies when producing and delivering its publications and professional development products. These are often developed with support from the Australian Government and include the:

- Online National Code Tutorial (2007). The tutorial remains a benchmark for professional development and information across the industry.
- Student Education Project: Orientation Guidelines Template (Rainbow Guide) for institutions (2008)
- ESOS Consumer Protection Project for international students (2008)
- Education Agents Manual (2010)
- Advice for Parents/Carers of International Students Studying in Australia (2010)
- Pre-Departure Advice for International Postgraduate, Research & Students with Families (2010)
- Principles of Good Practice for Enhancing International Student Experience Outside the Classroom (2011).

## Summary

The regulatory environment impacts upon all areas of international education, and this includes the professional work of people managing, supporting and administering services for international students. While the formal regulatory structures and quality assurance provisions may not be within the direct responsibilities of many ISANA members, these individuals have an acute understanding of the way they affect international students, particularly in the area of compliance management, monitoring and reporting.

In general, ISANA's perspective and knowledge relates to the way international students experience their study in Australia, their connections and relationships with domestic students and wider community, and in the way they access services, information and advice. We suggest that ISANA as a professional association of long-standing is therefore well qualified to make the observations and proposals contained in this document.

As a voluntary, branch based organisation, ISANA commonly consults through focused meetings, with ISANA Council's oversight of the data collection process. In this way the organisation claims a representative position in making comment about current and possible impacts of policy in practice. For this document, each state and territory branch, and some individual members offered contributions using the Department of Education Discussion Paper as a stimulus and guide for discussion. The content of this submission is a reflection of those comments.

The document is structured sequentially, using the Discussion Paper themes and responding to the proposed changes. In some cases the proposed changes are of particular relevance to ISANA members and therefore some responses contain greater detail.

## **Streamlining quality assurance agency processes (proposed changes 1-6)**

- 1 Amend the current legislative arrangements to simplify decision making powers and responsibilities by directly providing rather than delegating some powers to TEQSA and ASQA. This will also simplify the registration and assessment process for ELICOS and foundation programs.

ISANA agrees with this proposal without comment.

- 2 Allow quality assurance agencies to deem compliance with ESOS standards if equivalent domestic standards are met.

ISANA agrees with this proposal and notes that under 18 students in particular need to have related detailed policy and procedures in place.

- 3 Amend the registration period in the ESOS Act to ensure it allows more flexible registration periods and extensions of registration timeframes, in line with domestic registration timeframes.

ISANA agrees with this proposal, recommending the same timeframe for registration of both domestic and international students. ISANA also suggests that ASQA and TEQSA institution re-registration requirements are aligned to include CRICOS re-registration. This will eliminate duplication in the re-registration process and result in greater efficiencies.

- 4 Provide a 'check and balance' power to the Minister responsible for ESOS to direct TEQSA and ASQA in relation to the performance of their functions and the exercise of their powers under the ESOS Act, in consultation with other relevant ministers where appropriate.

ISANA agrees with this proposal without comment.

- 5 Amend the ESOS Act and the National Code to enable quality assurance agencies to consider additional relevant material gathered through other registration processes in assessing CRICOS registration.

ISANA agrees with this proposal: refer to comment at 2.

- 6 Amend the ESOS Act to increase consistency in compliance and enforcement powers under ESOS and domestic legislative frameworks.

ISANA suggests better alignment would assist administratively with different approaches between domestic and international students in relation to attendance and course progress reporting requirements.

## **Reviews of decisions by quality assurance agencies (proposed changes 7-8)**

- 7 Amend the ESOS Act to allow an education institution to seek an internal review of decisions made by the relevant quality assurance agency prior to application to the Administrative Appeals Tribunal.

ISANA believes this provision would help reduce financial burdens of education providers in seeking review or appeals. So that students are offered security, a timeframe for review should be obligatory, and their enrolment should be maintained while the review is in progress.

- 8        Require publication of information regarding the quality assurance agency's internal review approach and process.

ISANA agrees with this proposal without comment.

- 9        Streamline the student default reporting process in PRISMS to align with the 14-day reporting timeframe, consistent with the proposed policy changes to Tuition Protection Service (TPS) to allow easier reporting of student defaults through the student course variation process.

ISANA suggests that student variation reporting should be retained, but that default and obligation reporting serves no purpose on its own and it is a duplication of tasks. This requirement should be incorporated into the Student Course Variation reporting process on PRISMS, to reduce duplication and provide additional time to education providers for timely reporting. We suggest the 14-day reporting limitation be removed to allow institutions to report as soon as practicable.

ISANA's recent submission to the Tuition Protection Scheme (TPS) Post-Implementation Review (PIR), argued that the TPS default reporting has had a major impact on our members in meeting reporting obligations. We believe that timeframes are far too short and conflict with extremely busy times. Extra pressure has been placed on limited resources with questionable benefit, particularly as only two of the approximately forty thousand reports made to the TPS Secretariat have been an issue.

- 10       Provide data upload facilities and links between PRISMS or CRICOS and other data systems to decrease manual entry and increase data quality.

ISANA members suggest using integrated financial systems, e.g. MYOB, ZERO for spreadsheet uploads. To improve student management we suggest that the ability to upload enrolment variations into PRISMS would eliminate manual entry requirements, double handling and minimise the likelihood of manual entry errors.

- 11       Standardise data elements to assist with data collection and reporting, including utilisation of information provided across different data collection systems.

ISANA would support this proposed change, on the condition that a process exists requiring institutional approval that information updated in one system is also updated in others. For example, information used for VE courses updated in SCOPE should be approved before it is updated in CRICOS.

We recommend that standardisation should also include agent information that currently allows providers to enter the names instead of selecting a name. This has led to many versions for the same agency. Compiling data on agent performance is therefore very difficult.

Also refer to comment at 10.

- 12       Remove redundant data items from PRISMS and CRICOS.

The meaning of 'redundant data items' should be clarified and detailed.



## **Minimising Tuition Protection Service Requirements (proposed changes 13-15)**

- 13      Change the requirement that all education institutions be subject to the 50 per cent limit on the collection of tuition fees prior to commencing a course.

ISANA believes there should be a specified minimum study period for this provision to apply. We need to consider situations where students are on packaged courses or begin on a short course and then don't pay fees for the next course while already having their visa granted.

Members working in the ELICOS sector report that the limit on collecting fees to 50 percent of the total has caused serious issues, in that students may not follow the agreement and either pay their second instalment late or fail to pay at all. Those who pay late cause significant problems for the ELICOS timetable, in engaging and payment of teachers as well as in allocation of classrooms. It is suggested that fees for English Language courses with a maximum of 30 weeks should be paid in full before a student commences a course, as this is not the student's primary course of study.

It is also suggested that students (including sponsored students) who choose to pay in advance should be allowed to do so.

- 14      Amend or remove the requirement to maintain a designated account for all education institutions, for instance making it a condition of registration for fewer education institutions.

Some members felt that a separate account for smaller institutions was impractical.

- 15      Remove requirements to identify study periods in the ESOS Act.

ISANA members believe students need to be aware of study period dates; to issue a COE, start and end dates are required.

## **Increasing flexibility delivery in education delivery (proposed changes 16-19)**

These proposals are dealt with together.

- 16      Amend the National Code to increase flexibility and discretion in the use and allowable amount of online and distance learning, within visa requirements.
- 17      Amend the National Code to broaden the work-based training or work-integrated learning provisions.
- 18      Amend the National Code to allow course progress to be deemed by the relevant quality assurance agency as sufficient for meeting visa compliance requirements where appropriate.
- 19      Amend the National Code to allow existing practices for monitoring attendance to be deemed to satisfy the requirements under the National Code where appropriate.

Flexible delivery is increasingly popular and explicitly promoted by many education providers. For example, work integrated learning (WIL) adds value through generating research projects relevant to industry and placement (RMIT University), develops professional work practices and networks, assists students to become a more competitive graduate (Deakin), challenges and inspires students (University of Newcastle), already has a significant presence (University of Canberra) and is recognised as a strategic priority (Flinders University). Students are not only encouraged to aim for competitive advantage and enriched learning in the workplace through these programs, but institutions position their competitiveness on the basis of flexible and innovative delivery of such programs.

In relation to ESOS requirements however, there is currently no agreed definition of online delivery and how the 25 percent limit for international students is calculated—as an amount of time online within a subject or a percentage of the total teaching delivery of an online subject.

There is a view that, with institutions growing their innovative and flexible modes of delivery, it follows that an attendance or face-to-face requirement will discriminate against international students if online delivery restrictions are regulated as a proportion of course time. Therefore, if students and employers want a more diverse and grounded acquisition of knowledge and expertise, it should not be the purview of visa integrity to dictate how this is to be managed and conducted.

There is also a case to support a requirement for international students to be physically engaged in their campus, for reasons of social and cultural interactions. International students who are studying away from their home countries benefit from being involved in on-campus activities and student groups in order to improve English language and cultural competence. With flexible delivery arrangements as an acceptable component, institutions should be encouraged to engage international students through online interactions and physical participation. Staff resources in the form of advisors and coordinators may be considered here.

Here, ISANA would like to represent the regional, rural and remote campus perspective, as some members are concerned about the implications of fully flexible delivery. In cases where an institution has a main urban campus and regional campuses, it may be possible for a student enrolled on a regional campus who is allowed full flexibility in delivery modes and selects all on-line units, to choose to live elsewhere, for example close to the main (urban) campus. They may choose to do this for various reasons including finding a job, living with a relative or just the attraction of an urban centre. This raises issues around support during a critical incident, student involvement and experience on campus, and increased vulnerability being separated from relevant campus services.

From the institution's perspective where there are regional campuses, the provision of services at a main campus may be in greater demand if regional campus students choose to live closer to the main campus. Further there are issues arising from students enrolling in regional campuses where fees and entry requirements may be lower, then choose to live in an urban centre if their course is fully flexible and online.

It is suggested that there be a minimum face to face delivery mode that is acceptable as distinct from a maximum quota. This may mean students are required to enrol in one on campus unit (or a unit that has a compulsory face-to-face component) in each teaching period, to ensure face-to-face contact and monitoring for welfare purposes.

In relation to Work Integrated Learning, international students must be protected from workplace exploitation, such as being offered inappropriate work placements such as cleaning instead of legal internships.

Finally, we believe this complex matter should be considered in an education context, and we believe should be addressed by an expert group that includes teaching staff who have experience with this form of pedagogy and with international students whose learning experience, academic outcomes, learning support and course progress are affected.

We recommend that this be resolved in relation to the needs of students in specific locations and education sectors. We recognise ELICOS and school students, for example, have different requirements in a range of programs, and these requirements should be taken into account. It is assumed here that online delivery and WIL components have appropriate course progress requirements that comply with National Code Standards 9 and 10.



## Transfer of students (proposed changes 20-25)

- 20 Amend standard 3 of the National Code to more clearly require a written agreement to include a cancellation (currently refund) policy in the event of a student cancelling an enrolment or transferring to another education institution.

ISANA members agreed that standard 3 should be amended to ensure financial commitments, agreements and cancellation policies are clear to students. It was noted that there are inconsistencies in information to students across Department of Education, Department of Immigration and some education institutions. This is a practical matter, and could be addressed in standard 3 to avoid confusion, for example, including information about the consequences for students wishing to transfer but whose fees are outstanding.

Further, we recognise it is important for education providers to protect their business interests in recruiting international students. Tightening provider cancellation/refund policies to incorporate a non-refundable deposit can do this. The cancellation/refund policy would be incorporated into the written agreement and agreed to by the student upon acceptance.

It should be noted that attempts to prevent 'course-hopping' by non-genuine students has ignored those cases where students have a legitimate need to transfer. These students should be protected by consumer rights under ESOS, and should not be financially disadvantaged if these cases are appropriately considered.

- 21 Amend the student transfer process in standard 7.

There are several issues relating to the transfer of students. Standard 7 of the National Code has been problematic in principle, and onerous to administer in practice for many education providers since 2007, as have International Student Transfer Policy requirements. There remain divergent opinions about this standard.

There is still confusion about the legal and practical definition of *six months*. Study periods vary, as do examination, results and resubmission timelines for different courses. If tested by consumer law, we are concerned the six month rule is open to challenge. Further, it is suggested that the requirements act at cross-purposes to the consumer protection mechanisms at the core of the ESOS legislation.

This issue is complicated by Streamlined Visa Processing (SVP), whereby an institution deciding to release a student within a 6 month period may put that student at risk of breaching student visa condition 8516 if their new education provider does not have Streamlined Visa Processing status or if the transfer results in a change of visa sub-class. There is evidence that a student can withdraw from an institution that rejects an application for release. Subsequently, the cancelled CoE can be used to enrol in a cheaper or less rigorous course elsewhere, sometimes in a non-SVP college; such activity is contrary to the spirit of the ESOS legislation. In this environment we suggest that the impact of Streamlined Visa Processing be properly examined. Perhaps if SVP were extended beyond universities this 'course-hopping' may be reduced.

The Discussion Paper notes that 'international education institutions indicated that their concerns about student transfer relate mostly to costs' including an ability to 'recoup their investment' in recruiting students. Some stakeholders have proposed extending the period before allowable transfer to 12 months to address this issue. ISANA does not support this proposal as it diminishes a student's choice of preferred course. Another view supports a disincentive to students seeking to transfer via a financial penalty reflected in specific institutional policies. This measure might address an institution's own conditions such as high exposure to students seeking transfer including non-genuine students. In each case, the focus is on protecting the institutions from financial loss.

As noted earlier ISANA understands the importance of the business case, but we take a student-focused and strategic position on this problem. We believe staff resources deployed managing the administration of student release and transfer arrangements are onerous, costly, unnecessary and problematic—it could be argued that administrative workload has increased since the introduction of Streamlined Visa Processing. For example, there is an increase in students seeking transfers; in one case 200 release requests were received within a recent two-week period by one institution alone.

ISANA argues that the implementation of standard 7 does not work in the best interests of students or institutions, and limited staff resources could be better used elsewhere, such as student advisory and support services to ensure students are making good choices for academic success. We suggest that more information, beyond the anecdotal, is needed to identify the motivations and intentions of students seeking release from their courses.

With clearer provisions for financial penalties under standard 3, students making informed decisions as consumers to transfer courses will be required to choose whether to forfeit their non-refundable deposit, according to an agreed cancellation/refund policy. If the changes suggested above to cancellation/refund policies are implemented under standard 3, there is no need for standard 7.

We therefore recommend that standard 7 be removed from the National Code. To support this recommendation ISANA suggests that students seeking alternative courses be properly examined in relation to the advice they are receiving, and more should be done to advise students of the consequences of poor choices.

- 22      Amend standard 4 of the National Code to require education institutions to enter into a written agreement with each education agent whose services it uses (as opposed to ‘each education agent it engages to formally represent it’).

ISANA is concerned that the discussions relating to education agents continue to be unsatisfactory. In review and stakeholder meetings, education agent behaviour, advice and information to students is commonly raised as an issue. ISANA connects this to resulting poor course choices, a rise in the number of non-genuine students and others presenting to transfer from their courses. This is consistent with stakeholder suggestions that students are subject to ‘poaching’ by agents onshore.

Collaboration and agreements between institutions and education agents should act in the students’ best interests. ISANA believes that there needs to be more data gathered to identify why students are seeking early transfers, and what advice is being offered to them, particularly by offshore and onshore agents.

ISANA understands that education agents, their sub-agents (or migration agents operating in the education space) are often engaged on an *ad hoc* basis by institutions to recruit students. We argue that all agents and institutions should be obliged and committed to a written agreement. We also believe that the sub-agents of agency companies should be identified and bound by those agreements.

- 23      Consider whether further information on the use of agents should be provided in addition to the current requirement for the publication of agent names and details on an education institution’s website and the voluntary requirement in PRISMS for education institutions to give details of an education agent for each enrolment.

ISANA would like to see greater clarity and definition in relation to ‘information on the use of agents’. We note that because students tend to use agents directly and may not access an institution’s website information about agents, additional agent information on institutional websites may not be effective. It was also noted that there should be measures to protect students (and institutions) from unethical or unscrupulous agents; this might be through de-listing or notification.

ISANA members suggest that better regulation through systems of monitoring education agent activity could be introduced in PRISMS. This might also include noting the qualifications and performance record of agents according to specified criteria, such as their participation in National Code Workshops or completion of the Education Agent Training Course (EATC), or the completion rates of students they recruit.

- 24 Support an industry driven shared set of principles or code of ethics for education agents. This may include an industry-led system for recognising formally trained, high-quality, ethical and suitably qualified or knowledgeable education agents (rather than a formal registration system).

ISANA strongly supports accreditation and/or quality assurance for agents. This must cover onshore and offshore agents working across all education sectors. We raise the issue that potential conflict of interest may exist among migration agents who also act as educational agents, in spite of many of these individuals maintaining ethical principles of practice. We are aware of the difficulties associated with regulation and suggest a body be established to consider these issues.

- 25 Support more options for training and informing education agents of their obligations to students.

The role of agents has been an issue of contention for many years, although several measures, including training and monitoring, have been supported across the industry. Despite this, we have inadequate knowledge about agent practices and the activity of non-contracted agents. ISANA recommends that agents complete training, appropriately update their knowledge of the industry and comply with a code of ethics through a form of professional accreditation. We also suggest more information is generated and analysed to assess the effectiveness of these measures.

## **Welfare of students aged under 18 (proposed changes 26-27)**

- 26 Amend the National Code to clarify requirements and responsibility for the welfare of international students aged under 18, including clearer references to supervision, accommodation as 'adequate and appropriate', health and well-being, and welfare arrangements.

ISANA members continue to be concerned for the welfare of younger students as part of their roles. People working with these students have complex responsibilities that involve managing a range of stakeholders including guardians, accommodation providers, parents and government agencies. They are responsible for assisting students to settle into Australia with specific information and age related matters such as driving, drinking and social protocols. ISANA members are commonly experienced in managing critical incidents.

One of the persistent issues is guardianship arrangements and guardian suitability. Some guardians include agencies, faculty members, real estate agents and other carers. In some of these circumstances guardians are not suitable or do not meet the standards ISANA members and their institutions expect. Some leave Australia without notifying the education institution.

There is serious concern that some students—younger students and others who may be subject to poor advice—must be well counselled and supported (for example by guardians) in making appropriate choices for their study programs.

There are several provisions ISANA members would like to see reflected in standard 5; these are a reflection of our history of professional experience. We recommend that standard 5 be strengthened to ensure that:

- Guardianship agencies are approved by a government-endorsed body, including the education provider, after it is clear they have specific and direct responsibility for student welfare.

- To ensure quality and consistency, an agreed set of standards for guardianship, cross referenced to Child Protection legislation, is developed and implemented.
- Business Visa holders accompanying younger students are included under standard 5 provisions.
- Arrangements for the care of students are clear and explicit as they transition from one institution to another, or during term breaks.
- Nominated guardians have an appropriate skill level and have undergone appropriate training prior to being approved as a guardian.
- A Guardian Visa holder must ensure alternative care arrangements are approved before they may leave Australia without their student.
- Under 18 students must not leave Australia without formal approval from their guardian or caregiver.
- A formal letter of approval is presented to DIBP before the guardian leaves Australia.

Administratively, it is argued that double handling of attendance records is unnecessarily onerous and that schools and other providers who already gather attendance data should have autonomy in keeping these records. Further, ISANA argues that greater guidance in what is deemed suitable accommodation is needed. Similarly, in updating CAAW information, it suggested the timeframes be rationalised and less prescriptive.

- 27      Clarify that responsibility for ensuring appropriate welfare arrangements for a student remains with a provider until the student commences a course with another provider, regardless of the date from which the transfer is accepted.

There is some uncertainty relating to care arrangements as students leave one provider and enrol with another. For younger students this is not only a duty of care issue, it is also relevant to child protection. ISANA believes it is imperative there is clarity about who is responsible for the student in this period of transition. If a new provider is to be responsible for a student as he/she leaves a former provider, documentation with clearly stated dates of handover is essential, to confirm that the two providers are communicating and understand their obligations, and the student is clear about arrangements.

In cases where a COE is cancelled and subsequently invalidates the CAAW, clarification is needed about the consequences, especially in a case of welfare arrangements breaking down or provider default.

## **Working with stakeholders to produce a practical and accessible National Code and explanatory guide for ESOS**

ISANA acknowledges the ‘diversity of the international education community and that the provisions in ESOS had to take account of the difference of our education institutions’ (ESOS Discussion Paper, p. 14). We strongly support the following proposed changes (28-31).

- 28 Remove redundant provisions in the National Code.
- 29 Develop a simpler and clearer explanatory guide and other supporting material for ESOS, in collaboration with stakeholders, with sector-specific examples.
- 30 Amend the ESOS Act to better reflect the purpose of the National Code, its contents and the changes proposed in this discussion paper.

## **Registration charges**

- 31 Amend the Registration Charges Regulations to include a provision that allows for an exemption from the Entry to Market Charge for a class of education institutions with an appropriate history of education provision and CRICOS registration, and no adverse compliance record.

ISANA agrees with this proposal without comment.

## **Conclusion**

ISANA provides comment and offers suggestions for this review in good faith. We urge the review committee to consider some of the particularities of the impacts of ESOS legislation on student experience and administrative processes. We are mindful that many of the ideas and issues raised in the Discussion Paper and in this submission have been unresolved for many years; urgent clarification and better implementation procedures are urgently needed.

We value the opportunity to be involved in the review process and welcome any questions or requests for further information.

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