



## Senate Education, Employment and Workplace Relations Committee Inquiry into the Welfare of International Students

### Submission by The Independent Schools Council of Australia (ISCA)

#### **About ISCA**

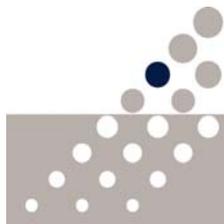
*The Independent Schools Council of Australia (ISCA) is the peak national body covering the independent schools sector. It comprises the eight State and Territory Associations of Independent Schools. Through these Associations, ISCA represents a sector with 1,100 schools and around 530,000 students, accounting for 15 per cent of Australian school enrolments.*

*Independent schools are a diverse group of non-government schools serving a range of different communities. Many independent schools provide a religious or values-based education. Others promote a particular educational philosophy or interpretation of mainstream education. Independent schools include:*

- *Schools affiliated with larger and smaller Christian denominations for example, Anglican, Catholic, Greek Orthodox, Lutheran, Uniting Church, Seventh Day Adventist and Presbyterian schools*
- *Non-denominational Christian schools*
- *Islamic schools*
- *Jewish schools*
- *Montessori schools*
- *Rudolf Steiner schools*
- *Schools constituted under specific Acts of Parliament, such as grammar schools in some states*
- *Community schools*
- *Indigenous community schools*
- *Schools that specialise in meeting the needs of students with disabilities*
- *Schools that cater for students at severe educational risk due to a range of social/emotional/behavioural and other risk factors.*

*Independent schools are not-for-profit institutions founded by religious or other groups in the community and are registered with the relevant state or territory education authority. Most independent schools are set up and governed independently on an individual school basis. However, some independent schools with common aims and educational philosophies are governed and administered as systems, for example the Lutheran systems. Systemic schools account for 16 per cent of schools in the independent sector.*

*Independent Catholic schools are a significant part of the sector, accounting for 10 per cent of the independent sector's enrolments. These schools have been included in the figures above.*



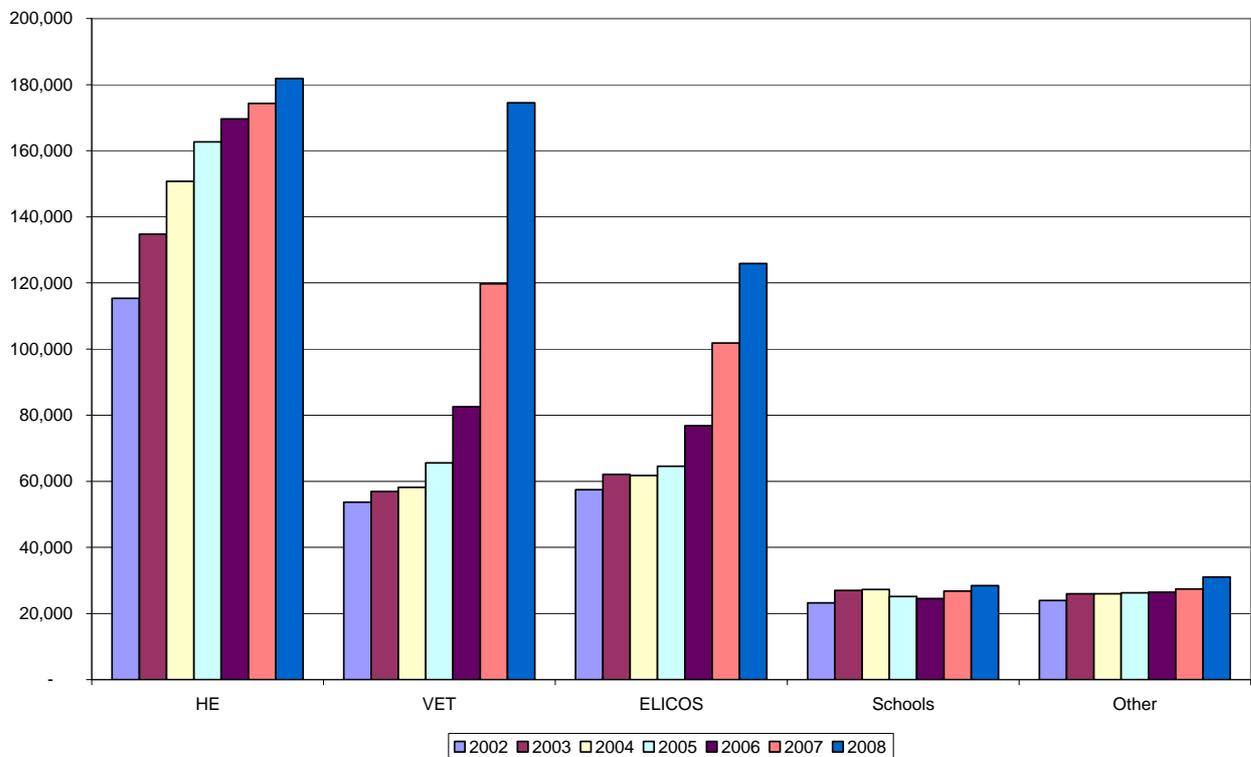
## Executive Summary

1. It has been with dismay that ISCA has noted the view being put forward in the media by some students that Australia does not have an adequate quality assurance framework or sufficient consumer protection in place for overseas students. This is not the case. In fact, the *Educational Services for Overseas Students Act 2000* (The ESOS Act) is an exhaustive and comprehensive framework which has been in place for a number of years and which the majority of providers abide by. The fact that a perception of lack of quality exists is indicative not of the quality of the majority of providers but rather of monitoring and compliance issues that are the purview of registration authorities and government.
2. While abhorring the circumstances, ISCA would argue strongly against a knee-jerk reaction to the recent incidents involving attacks against Indian students and the subsequent reporting of unethical behaviour by agents, providers and students. ISCA is concerned that education providers in all sectors, and in the independent schools sector particularly, face the prospect of being burdened with unnecessary legislation and regulation in order to address problems which should and can be addressed under the current regulatory framework.
3. Such a move could easily lead to school level providers deciding to no longer enrol overseas students due to the high compliance costs for schools in administration and staffing. Much of the good outcomes in international education programs in the schools sector could be placed in jeopardy.
4. A number of the issues raised around the welfare of students are very complicated and will require efforts across sectors and across levels of government to assess what capacity we have and what areas we need to grow.
5. This can only be achieved through a whole-of-government approach to international education and a willingness to look strategically at the way forward for the sector in Australia. This includes meaningful engagement with providers.
6. In the body of the submission ISCA also makes the following key points.
  - That there should be the facility in PRISMS to report critical incidents involving overseas students.
  - That the Department of Immigration and Citizenship (DIAC) consider counting school level studies towards eligibility for permanent residency.
  - That DEEWR use PRISMS to monitor and take action against providers who are over-enrolled.
  - That federal and state legislation relating to overseas students be synchronised.
  - That travel concessions be offered to overseas students by all states and territories.
  - That there should be an education program directed at embassies and consulates regarding the consumer protection options for overseas students.
  - That efforts be made to encourage overseas students to use approved/listed education agents.

## Background

7. Independent schools have been enrolling overseas students for many years. What began as a handful of students in a small number of schools more than twenty years ago is now an important part of our sector's diversity with overseas students enrolled at nearly 400 independent schools.
8. This represents less than half the total number of schools in the sector and enrolments in schools vary from 1 overseas student to over 400 overseas students. The median number of students at an independent school is 11 students. This profile differs quite substantially from other sectors. One reason for this is that for the vast majority of independent schools, overseas students do not determine the school's sustainability.
9. The latest enrolment data from Australian Education International (AEI) for overseas students shows that there are currently over 23,000 overseas students in Australian schools. Of these, approximately 60% are enrolled in non-government schools. Nearly all of these students are enrolled in independent schools.
10. As can be seen from Chart 1 below, overseas student enrolments in the schools sector have remained relatively steady for some years. While there was growth of 22% from 2002 to 2008, the schools sector share of total enrolments fell from 8% to 5%.
11. The greatest increases in overseas students enrolments has been in the VET and ELICOS sectors which have grown 225% and 119% respectively over the same period.

**Chart 1: Overseas Student Enrolments by Sector 2002 – 2008**



Source: AEI PRISMS Data

## The schools sector and international education

12. The schools sector differs from the other sectors because of the unique requirements of dealing almost exclusively with children under the age of 18. For this reason, the schools sector has a duty of care towards its students that is quite different to that of other sectors. In addition, there are multiple registration processes and legislation relating to schools at multiple levels (state and federal) for both domestic and overseas enrolments, particularly with regard to child protection.
13. Each school must first be registered as a non-government school by the state or territory registration authorities in order to operate as a school. In order to enrol overseas students, the school must then apply for *Commonwealth Register of Courses and Institutions for Overseas Students* (CRCIOS) registration for both the course it is offering and the school itself. To obtain CRICOS registration from the relevant state or territory registration authority, the school must comply with the ESOS Act and the *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students* (the National Code 2007).
14. The part of the National Code 2007 which relates to providers is a standards-based code of practice which covers
  - Marketing Information and Practices
  - Student Engagement Before Enrolment
  - Formalisation of Enrolment
  - Education Agents
  - Younger Overseas Students
  - Student Support Services
  - Transfer Between Registered Providers
  - Complaints and Appeals
  - Completion Within Expected Duration
  - Monitoring Course Progress
  - Monitoring Attendance
  - Course Credit
  - Deferral, Suspension or Cancellation of Study During Enrolment
  - Staff Capability, Educational Resources and Premises
  - Changes to Registered Providers' Ownership or Management
15. Under Section 5 of the National Code 2007 schools must approve the accommodation and welfare arrangements of students who are not accompanied by a parent or in the care of a suitable nominated relative (as defined by DIAC). These are generally either boarding house or homestay arrangements. continue to meet as a group of peak bodies concerned with international education
16. Unlike the government sector where a state system is registered to enrol overseas students and there are centralised registration and compliance processes, each independent school is separately registered and responsible for compliance with the ESOS Act and the National Code 2007.

### ***Student safety***

17. As noted above, the duty of care schools have towards their students is something all schools take very seriously given the age of the children enrolled with them. Unlike domestic students

for whom schools would normally have responsibility during school hours and/or while on school grounds, where a school has approved the welfare and accommodation requirements for an under 18 year old overseas student, this responsibility may extend further as required. For example students in boarding schools will have much closer supervision and students in homestay will have their arrangements monitored by the school.

18. It has become clear over the past few months that while the ESOS Act requires that providers have critical incident policies in place, there is no central monitoring of critical incidents that occur involving overseas students. Perhaps the Department of Education, Employment and Workplace Relations (DEEWR) could look at making this possible through the *Provider Registration and International Student Management System (PRISMS)*.

### ***Adequate and affordable accommodation***

19. Independent schools either offer boarding facilities, homestay programs or they have other arrangements in place which comply with the requirements of looking after under 18 year olds under Standard 5 of the National Code 2007. Some states have additional legislative requirements regarding the accommodation of minors.

### ***Social inclusion***

20. Social inclusion issues tend to be less significant at the school level given that generally the proportion of overseas students in a school is far less than in other sectors. Three out of four independent schools with overseas students have less than 30 overseas students. Given that the average size of these schools is approximately 750 students, the proportion of overseas students in these schools will be generally 4% or less.
21. However, this does not mean that schools can be complacent about the issue of social inclusion. The results of the 2006 AEI International Student Survey showed that while overall, secondary school students were satisfied or very satisfied with their experience in Australia<sup>1</sup>, 87% indicated that they would like to have more Australians as friends.
22. Efforts are also underway within Australia to raise awareness of globalisation and what that entails. AusAID is seeking tenders for a global education project in Victoria, New South Wales, Queensland, West Australia and South Australia which aims to raise awareness and understanding among Australian primary and secondary school students of international issues, development and poverty and to prepare them to live in an increasingly globalised world and to be active citizens shaping better futures.
23. The project will provide training for student teachers in Australian universities and professional learning for classroom teachers in global education and development issues across government, Catholic and independent schools.

### ***Student visa requirements***

24. Since the introduction of the National Code 2007, more responsibility has devolved onto education providers to ensure students' compliance with their visa requirements.
25. From an immigration perspective, this system works with reputable providers but does provide an opportunity for unscrupulous providers to behave unethically. It is only possible to have a system where the provider is an integral part of the compliance process if constant efforts are being made to prevent unethical providers from offering services.

---

<sup>1</sup> AEI (2007), 2006 International Student Survey, Final Year Secondary School Summary Report.

26. Processes, such as the complaints and appeals procedures required by the National Code 2007, impose considerable burdens on providers and can take months to conclude. However, despite having put the burden on the provider, these processes may still end with the Department of Immigration and Citizenship (DIAC) making a visa decision which is contrary to the actions taken by the provider.
27. Some of these difficulties have been noted by DEEWR and it is hoped that they can be addressed in a manner that is beneficial to providers in the review of the ESOS Act to be undertaken later this year.
28. The cost of compliance to providers is generally not calculated into the estimates of export earnings from industry. Some consideration should be given to costs of compliance when formulating regulatory requirements. For systems, often the costs can be spread across a number of schools but as most independent schools are not systemic, that means they bear all the cost themselves, often for a relatively small number of students.

#### ***Adequate international student supports and advocacy***

29. As noted above, schools' duty of care and the services in place for domestic students are equally available to overseas students, as well as the additional requirements under Standard 5 of the National Code 2007 and under state child protection laws. Furthermore, schools must comply with the student support services requirements of the National Code which are exhaustive.
30. Schools provide services and support to all students, domestic or overseas, such as
  - Careers advice and counselling
  - Academic advice and counselling
  - Pastoral Care Programs and Personal Counselling
  - Accommodation services
  - Opportunities to participate in an extensive range of extra-curricular activities, including schools camps, social activities and excursions
31. Schools also engage in regular monitoring of progress and report on student progress via school reports to parents. There are also regular attendance checks and follow up with students. In some schools this happens after each lesson.

#### ***Employment rights and protections from exploitation***

32. The issue of employment rights is not particularly relevant for the schools sector. Many school students will take on part time jobs as permitted under their visa conditions to have the same "experience" as their Australian friends. They do not generally need additional income to support their studies. Also, many school students will undertake some form of work experience as part of their school studies programs.

#### ***Appropriate pathways to permanency***

33. Currently, school level studies do not count towards permanent residency although it might be worth considering in the future as school level students often go on to tertiary level studies in Australia. It is also likely that a student who has completed both secondary and tertiary studies in Australia would be well-integrated with good English skills and a student with these attributes would be a good candidate for permanent residency.

## **The Regulatory Framework**

### ***Federal government***

34. The federal government has an over-arching regulatory role through the ESOS Act and associated instruments. While the ESOS Act and the National Code 2007 delegate some tasks to the states and territories, such as CRICOS registration, the burden of responsibility for investigating compliance with the ESOS Act lies with DEEWR.
35. Responsibility for the implementation and monitoring of the Student Visa Program lies with DIAC through the Migration Act. DIAC is also responsible for the Migration Program, including setting the criteria for the pathway to permanent residency for overseas students.
36. ISCA has a number of concerns regarding the level of compliance action undertaken by DEEWR against unethical providers. As noted earlier in this submission, the current legislation puts the onus on the providers to do what many providers would regard as the compliance work of DEEWR and DIAC. However, in return providers do not see many benefits and certainly it does not seem that this shift in responsibility has enabled DEEWR to have greater capacity to engage in targeted compliance actions.
37. A glaring example of this issue is that of over-enrolment which occurs in some sectors (but not in the schools sector). Through PRISMS, DEEWR and DIAC should be able to ascertain when a provider is over-enrolled and take action accordingly. Given that each provider is only registered to enrol a certain number of students under CRICOS and that chronic over-enrolment appears to be a feature shared by a number of unethical providers, this would appear to be an area that would be relatively easy to address from a compliance perspective.
38. ISCA is also concerned that nearly 10 years since the introduction of the ESOS Act 2000, the Federal and State governments still have not been able to synchronise their respective legislative requirements on a number of issues.

### ***State/territory governments***

39. CRICOS registration authorities are generally associated with state or territory Departments of Education or another state education authority. ISCA is concerned at what appears to be the registration of unsuitable providers in some instances and we would question whether registration authorities are using adequate risk-based audit procedures to target unethical providers.
40. Some states and territories also have their own legislation governing the provision of education to overseas students. As noted above, the federal and state legislation do not always agree. This issue has been raised by ISCA through multiple submissions to ESOS reviews over the years.

## **Other Issues**

### ***Travel concessions***

41. The issue of travel concessions for overseas students and the fact they are not uniformly available across states and territories is an issue that is often brought up and one in which a common approach would be welcome. Overseas students contribute a great deal to state and territory economies and the withholding of these concessions is viewed as discriminatory given that the concessions are freely available to domestic students.

### ***Embassies and consulates***

42. There needs to be a communication/education program put in place for embassies and consulates so that staff are familiar with the Australian education system and the consumer protection mechanisms in place for overseas students and are able to advise their nationals accordingly.

### ***Education agents***

43. In discussing the issues around the role and responsibilities of education agents, it is important to acknowledge that most providers rely heavily on education agents to enrol students. Many independent schools have built up relationships over many years with off-shore education agents and comply with the requirements of the National Code 2007 with regard to education agents. That is, they have agreements in place with each education agent which they actively monitor.
44. DEEWR's education agent training program is also helping to ensure that agents receive further training in the Australian education system and the requirements of the ESOS Act. The published list on the PIER website of those agents who have completed the training is an important resource for the entire sector.
45. The sector is concerned at DEEWR's decision to introduce an amendment to the ESOS Act which will require providers to publically list the education agents they use. This was introduced with no sectoral consultation and ISCA is concerned that it will disadvantage smaller providers in requiring them to disclose information that could be regarded as commercial-in-confidence.
46. It does seem clear that there needs to be more effort put into educating students to use approved/listed agents. However it would appear that the majority of students who use unethical education agents are not bona fide students; that is those students who are here for the purposes of gaining permanent residency rather than to gain an Australian qualification. The nexus between permanent residency, non-bona fide students and unethical providers and education agents is the one that needs to be broken.
47. This can only be done if the regulatory authorities take a more active approach to enforcing the ESOS Act and the National Code 2007.

### **Conclusion**

48. It is ISCA's view that the current regulatory framework is more than sufficient for regulating the sector were it properly implemented and enforced. 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.
49. ISCA would not support moves to impose further regulation on the international education industry. Not only would it be unnecessary but it could easily lead to school level providers deciding to no longer enrol overseas students due to the high compliance costs for schools in administration and staffing. Many of the good outcomes in international education programs in the schools sector could be placed in jeopardy.

50. A number of the issues raised around the welfare of students are very complicated. The availability and affordability of student housing is an issue across sectors and one which affects both domestic and overseas students. There needs to be efforts across sectors and across levels of government to assess what capacity we have and what areas we need to grow.
51. This can only be achieved through a whole-of-government approach to international education and a willingness to look strategically at the way forward for the sector in Australia. This includes meaningful engagement and timely consultation with providers, particularly with regard to compliance and operational issues.

Bill Daniels  
**Executive Director**  
**ISCA**

Canberra  
19 August 2009