

English Australia



Submission to  
Productivity Commission Annual Review of  
Regulatory Burdens on Business:  
Social and Economic Infrastructure Services

February 2009

## Introduction

English Australia welcomes this Productivity Commission Annual Review of Regulatory Burdens on Business. Report No. 12 of 14 August 1991 - Exports of Education Services - by the Commission's predecessor, the Industry Commission, was a milestone in the development of Australian international education.

In relation to the current Review, this submission relates specifically to Division P: Education and Training.

English Australia, formerly known as the ELICOS Association, is the national professional and industry association which represents over 100 English language training colleges specifically for overseas students. Currently international education is Australia's third largest source of export income and English language training accounts for about ten per cent, approximately \$1.5 billion per annum out of a total of more than \$15 billion for international education as a whole.

In terms of student numbers, about 30 per cent of commencing overseas students holding student visas in Australia in 2008 were undertaking English language courses (80,000 students), approximately 80 per cent at English Australia member colleges. Of the sectors which comprise the international education industry, vocational education accounts for 33 per cent of commencing students, higher education 24 per cent and schools 5 per cent. A further 60,000 overseas students undertake English language courses using other visas, primarily Visitor or Working Holiday visas. This English language training sector serves only students from overseas and has no domestic education focus.

The Australian international education industry has only been in existence for two decades. However in its submission to the House of Representatives Economics Committee 'Servicing Our Future' inquiry, the Treasury described the industry as "a success story in the Australian economy".

The Issues Paper for this Review specifically directs attention to Australian Government regulation and areas that are unnecessarily burdensome, complex or redundant. International education providers are principally regulated by the Education Services for Overseas Students (ESOS) Act. This piece of legislation has been reviewed a number of times since the 1991 Industries Commission inquiry, but, unlike this current Review, previous ESOS Act reviews have increased the regulatory burden on international education providers, particularly the provisions relating to tuition assurance schemes and compulsory insurance for private providers.

English Australia welcomes this Productivity Commission Review as an opportunity to reduce unnecessary and overlapping regulation and compliance costs. This Regulatory Burdens Review of education and training as a whole is very timely due to the following current developments. The Issues Paper directs submitters to have regard to other current or recent reviews.

## 1. Review of Australian Higher Education ('Bradley Review')

The Final Report of the above Review recommends a fundamental restructure of international education, splitting the regulatory function from industry development and promotion. Currently both are administered by Australian Education International (AEI) which is a branch of the Department of Education, Employment and Workplace Relations (DEEWR).

While English Australia supports this recommendation in principle, it asserts that international education and higher education are not synonymous, and that further consultation with other parts of the industry such as English language training, vocational education and schools should take place. These sectors should be included in the decision making process (Appendix 1: EA submission to Bradley Review).

The final report also makes a recommendation in favour of competitive neutrality, calling for the removal of regulatory distinction between public and private universities. English Australia's membership has always been evenly divided between public and private sector providers. The different treatment of the two, mostly for historical reasons, still exists in the ESOS Act, with adverse financial implications for private providers. For instance, private providers are required to belong, and to pay to belong, to a Tuition Assurance Scheme (TAS) to ensure overseas students are catered for in the event of a college closure. Public sector providers are exempt from the costs involved although they do participate in accepting students from failed colleges.

## 2. AESOC ELICOS (English Language Intensive Courses for Overseas Students) Project

The Industry Commission was both accurate at the time and prescient in the overview to its 1991 Report; Exports of Education Services:

“Major problems ... arise because of ongoing change in Australia's education system, where, in some respects, a dynamic market oriented export sector sits uneasily within the existing highly regulated education system.” (page 1)

This situation still pertains. While international education providers are regulated by Australian Government law in relation to compulsory registration (ESOS Act), visas and conditions of entry (Immigration Act), enforcement and accreditation of providers are still subject to State and Territory law. Providers that operate across different jurisdictions face costly duplications of regulatory requirements, whilst those that operate solely in one jurisdiction still face compliance requirements regulated by various state and commonwealth departments in relation to their domestic and international responsibilities.

English Australia recognises that its members are not unique in this respect. The Review of Export Policies and Programs (Mortimer Review) which reported in 2008 devoted a chapter to “Coherence and co-ordination of the national trade and investment effort”. The main point made in this chapter was:

“The interests of Australian businesses seeking to grow internationally are best served by an integrated national approach to trade and investment policies and programs ... better coordination of effort at all levels of government is essential in setting policy priorities and planning, and in the delivery of export and international business services”. (page 140)

As the only international education sector which is totally export-oriented, English language training is adversely affected by current State and Territory Government policy. A current proposal by a Commonwealth State Territory Committee of education officials is threatening to undermine national consistency by placing the accreditation and regulation of ELICOS providers in the same framework as those for domestic education providers.

ELICOS providers have been meeting national standards for both provider and course accreditation under the industry-established, self-regulating NEAS (National ELT Accreditation Scheme) since 1990.

EA asserts that it is contrary to the thrust of the COAG reference of which this Review is a part, to replace a national self-regulatory system with a State and Territory framework for an international export-oriented industry catering solely for students from overseas.

## Regulator Burdens

In submissions to this Review organisations are asked to identify reforms that will enhance regulatory consistency across jurisdictions or reduce duplication and overlap in regulation and in the role of regulatory bodies. As noted earlier, the Commission is also to have regard to any other current or recent reviews commissioned by Australian governments affecting the regulatory burdens faced by businesses.

International education providers are regulated principally by the ESOS framework which is administered by Australian Education International (AEI), a branch of the Department of Education, Employment and Workplace Relations (DEEWR).

The ESOS Acts and Regulations set out the legal framework for the delivery of education to overseas students. It governs:

- Which providers may be registered
- The CRICOS registration process
- Obligations of providers
- Tuition assurance and consumer protection mechanisms
- Enforcement and compliance powers
- Charges providers pay to enrol overseas students.

Overall, the ESOS regulatory framework has been successful. Australia is generally regarded as having a well run international education regime and the industry would not have grown as it has and gained this respect had the regulatory structure been inadequate.

The problems that currently exist are largely systemic. Hence the importance of this review, which is part of the COAG process, and the Bradley Review, both of which give an opportunity to consider the regulation of international education in the context of education and training as a whole.

There are some issues common to all providers:

- Divided responsibility between jurisdictions. The ESOS Act is national legislation administered by a department of the Australian Government but enforcement is the responsibility of State and Territory Governments; and

- Some provisions of the legislation are contrary to the principle of competitive neutrality which is a central plank of National Competition Policy. Public universities and other education institutions are exempt from certain requirements, mainly membership of a Tuition Assurance Scheme, by virtue of their government ownership. This discriminates against private institutions and is anti-competitive.

Other issues affect mainly English language training providers. Teaching English is an essential part of international education. Other sectors depend on EA member colleges to provide a pathway to further study for those students who do not have adequate English. From a consumer perspective, English language students are the most vulnerable because of their lack of English and knowledge of the host culture, and they are likely to be at the start of their interface with Australia and Australian education.

Because at all levels of Government – Commonwealth, State and Territory – international education is administered by education departments and agencies, EA finds an unconscious but persistent bias towards the purely education institutions for which they are responsible; universities in the case of the Commonwealth, and vocational education and schools in the case of states and territories.

Recent examples of this bias are:

- At all levels of Government failure to recognise that tourism is an integral part of international education. In 2005 and 2006, 51% of those coming to Australia to study English came on non-student visas, mainly on tourist or working holiday visas. The lack of coordination between government agencies responsible for education and for tourism has been highlighted in Parliamentary Committee recommendations but there has been little follow up (Servicing Our Future, Report of the House of Representatives Economics Committee 2007);
- As detailed earlier the state departments of education working through a sub-committee of the Australian Education Systems Officials Committee (AESOC) is attempting to replace the national self-regulatory framework for accrediting English language colleges with a non-uniform state and territory based framework more suited to domestic education under the ELICOS Project;
- Invitations to AEI's international education round table in March 2009 were extended to the Vice Chancellors of all 37 universities but initially only to two representatives of English Australia.

The above need to be considered in the context of the two international education recommendations of the Bradley Review:

Recommendation 11 – That the regulatory and other functions of AEI be separated, with the regulatory functions becoming the responsibility of an independent national regulatory body.

Recommendation 12 – That the industry development responsibilities of AEI be revised and be undertaken by an independent agency which is accountable to commonwealth and state and territory governments and education providers.

The Productivity Commission in general and this Review on Regulatory Burdens in particular would not be predisposed to recommend in favour of two regulators in place of one unless the outcome was clearly in the public interest. It is therefore, with considerable reservations that EA supports in principle the two recommendations.

In favour of the proposition:

- There is undoubtedly a conflict between promoting an industry on one hand and restricting its development by regulation on the other;
- As noted earlier, a national regulator separated from the education focussed bureaucracies would be an advantage; and
- In relation to promotion, experience of other industries suggests that a body independent from departmental control with direct industry representation would be an appropriate reform for international education as a whole, particularly the English language sector. It would guarantee industry consultation and give due recognition to tourism as well as education aspects.

EA's reservations are:

- The Bradley Review made its recommendations solely in relation to higher education although other sectors of international education would be vitally affected. EA suggests a round table or reference group of all international education stakeholders to progress the relevant recommendations; and
- EA would be concerned if the costs to businesses increased as a result of the establishment of two new agencies.

At this crucial time in the development of new structures for Australian international education, EA recommends that the Productivity Commission ensures the regulatory burdens to business are kept to a minimum.

## English Australia's position

English Australia submits that there needs to be a separate investigation into the regulatory framework for the international education export industry that will work towards developing an appropriate national model that will work fairly across sectors and provider 'types' and that will reduce the current regulatory and financial burdens placed on providers.

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