

NEW SOUTH WALES
DEPARTMENT OF EDUCATION AND TRAINING

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

2009

RECOMMENDATIONS:

The NSW Department of Education and Training proposes that the Review recommend:

Schools

1. The Commonwealth ensure bilateral agreements for the schools National Partnerships are consistent with the conditions in the multilateral agreement.

Vocational Education and Training

2. The Department of Immigration and Citizenship to examine ways to reduce regulatory burden associated with the increasing quality assurance requirements of tendered contracts.
3. The Commonwealth ensure the reporting burden under the Indigenous Reform Agreement does not duplicate existing reporting requirements.

Higher Education

4. Continued work between the Commonwealth, States and Territories for the implementation of further efficiency and effectiveness in university financial regulation and reporting.
5. Continued work between the Commonwealth, States and Territories for efficiency and effectiveness in regulation of the non-self accrediting sector.
6. The Commonwealth extend the accountability requirements applying to universities to publicly funded education and training providers.
7. The Commonwealth provide greater parity for vocational education and training providers under the *Higher Education Support Act 2003*.

International Students

8. The Commonwealth continue working with States and Territories for implementation of further efficiency and effectiveness in regulation of provision for international students onshore and offshore.
9. The Commonwealth increase the consistency in implementation of the *Education Services for Overseas Students Act* framework across State and Territory bodies.
10. The Commonwealth work with States and Territories towards minimising costs associated with student/consumer rights to transfers within an initial six months of their enrolment.

1. INTRODUCTION

The NSW Department of Education and Training is the largest single organisation, public or private, in Australia. With a recurrent budget of \$11.8 billion, the Department is responsible for around one quarter of the State's total budget.

The NSW Department of Education and Training delivers high quality, internationally competitive public education and training from early childhood through to the compulsory years of schooling and senior secondary education.

It provides TAFE NSW courses, adult and community education courses, migrant English programs and post-secondary art courses. The Department is particularly focused on addressing the training needs of industry and trades.

The Department is also responsible for regulating higher education and the vocational education and training sectors in New South Wales.

As the largest provider of social infrastructure services in Australia, the Department welcomes the opportunity to contribute to the Productivity Commission's *Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services*.

The Department has long been committed to developing more effective and efficient regulatory arrangements in schools, vocational education and training and higher education. In 2006, the Department led an Australian Education Systems Officials Committee (AESOC) process into the issue of increasing regulatory burdens in the Australian education and training sector. During the process NSW was successful in having AESOC adopt a set of principles to guide the discharge of regulatory responsibilities and agree to a more fundamental review of national reporting requirements that would encompass all schools.

Throughout 2007, the Department continued to work with other States, Territories and the Commonwealth to reduce red tape and compliance burden through the Ministerial Council on Education Employment, Training and Youth Affairs' Schools Resourcing Taskforce.

Most recently, the Department has been working closely with the Commonwealth to develop new funding arrangements for schools and skills and workforce development through the Council of Australian Governments (COAG). One of the key principles advocated by New South Wales has been a principle of devolving and reducing administrative and regulatory burdens in schools and vocational education and training. The Department welcomes the recent COAG decisions in these areas.

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2. SCHOOLS

In 2008, the Commonwealth Government substantially revised the funding framework for education and training. The changes were carried out as part of the Council of Australian Governments' reform agenda and a key part of this process was to rationalise the number of intergovernmental agreements and provide clearer roles and responsibilities for all levels of governments. For government schools, this policy has seen the roll-in of targeted Commonwealth programs under one umbrella National Education Agreement with a greater outcomes focus and reduced reporting burden.

The schools National Partnership Agreements

Over the next few months States and Territories will be working closely with the Commonwealth to develop bilateral agreements and implementation plans for the new National Partnership Agreements. It will be through these negotiations that more specific details of regulatory processes accompanying the new agreements will fully emerge. It will become important for the Commonwealth to ensure that the bilateral agreements are consistent with the conditions in the multilateral agreement and prevent regulatory creep.

Recommendations:

1. The Commonwealth ensure bilateral agreements for the schools National Partnerships are consistent with the multilateral agreement.

3. VOCATIONAL EDUCATION AND TRAINING

Training organisations (public and private) are subject to a number of pieces of legislation and regulation which can impact on their activities, through the volume of compliance activities required. Some of these reporting and auditing requirements duplicate work and processes already carried out on a jurisdictional level.

The National Agreement for Skills and Workforce Development (2009 -2012)

Commonwealth funding agreements require Registered Training Organisations (RTOs) to comply with various auditing and reporting requirements. Under the new Agreement and associated partnerships, RTOs, including TAFE Institutes, must provide “the necessary information and data to enable the production of the Annual National Report.” In addition States and Territories will:

- provide preliminary Australian Vocational Education and Training Management Information Statistical Standard (AVETMISS) data on publicly funded training delivery. This is to be provided each month within seven days of the completion of that month.
- provide biannual reports demonstrating progress against output targets and advise of any barriers/ achievements.
- report on arrangements for gathering a 10 per cent individual/employer contribution towards the costs of training.
- establish and maintain separate financial reporting arrangements, potentially including a separate account, for Commonwealth contributions made as part of the Agreement.

This reporting is not funded by the Commonwealth and is additional to existing Commonwealth, Departmental and State reporting. NSW Department of Education and Training currently estimates that the cost of an additional position to re-run validation data as well as the extra exception reports to check data will cost TAFE Institutes approximately \$270 000 per year.

The reporting requirements will also have significant costs and time issues for Registered Training Organisations (RTOs). If RTOs are to report monthly on the full range of data identified by the Commonwealth, RTOs will be required to update their student management systems and implement new reporting mechanisms. This translates to extra cost of approximately \$500 – \$1000 for each of the 500 RTOs in contract.

NSW Department of Education and Training support services for RTOs would also bear additional costs, including costs associated with:

- running a communications strategy and education program for RTOs
- ongoing monitoring of compliance
- compilation and dispatch of a monthly report.

Total costs for NSW Department of Education and Training if additional data is required is currently estimated at \$112, 800 per year.

National Centre for Vocational Education and Research (NCVER)

TAFEs are subject to annual audits by their state Auditors-General on their financial and operational performance, systems and processes. The Commonwealth also requires training providers to provide their delivery/enrolment data to the NCVER for review and analysis on an annual basis. A component of this review is that the NCVER perform an audit of a sample of enrolments to ensure the integrity of the data.

There are areas of significant duplication in these reporting requirements.

Privacy Act 1998

Commonwealth privacy legislation specifies that State/Territory legislation takes precedence where it exists. However, the *Higher Education Support Act 2003* reverses this for VET FEE-HELP records management and access to personal information, requiring providers to develop two parallel records management systems to comply with both Commonwealth and State privacy legislation.

Indigenous Education Funding

While the Indigenous Education Agreement ended in 2008, the COAG National Indigenous Reform Agreement includes three VET targets, performance measures and benchmarks. However, it is not yet clear what reporting will be required. Two other National Partnerships (Indigenous Economic Development and Indigenous Remote Service Delivery) may also have reporting requirements although the details are not yet known.

The Immigration (Education) Act 1971

The Immigration (Education) Act 1971 legislates for the provision of English language tuition and related services to newly arrived migrants and refugees under the Adult Migrant English Program (AMEP). This service is managed by the Commonwealth Department of Immigration and Citizenship (DIAC) through tendered contracts.

The current contracts were for five years, 2003-2008, but have been extended to June 2010. These contracts provide for CPI annual price increases but do not allow for any further adjustment in payment to cover any costs incurred as a result of additional contract compliance required by DIAC during the course of the contract.

These contracts require extensive auditing and performance monitoring processes, including:

- requirement that providers be Registered Training Organisations and comply with the Australian Quality Training Framework Essential Standards for Registration.
- condition that DIAC monitors contracts through quarterly contract management meetings and by quarterly and annual reports on Key Performance Indicators.
- condition that AMEP providers undertake regular audits to ensure data integrity and data reconciliation for the DIAC national database, the Adult Migrant English Program Reporting and Management System (ARMS).
- requirement that providers “cooperate with, and provide all reasonable assistance to, any agency contracted to the Commonwealth to provide quality assurance accreditation”.

In addition, over the last 12 months DIAC has increased data verification and quality assurance requirements which has significantly increased costs and workload. For instance in May 2008 DIAC introduced the annual requirement that the NSW Department of Education and Training Consortia provide records and supporting documentation for over 80 student enrolments for data verification. This was imposed with short notice, without negotiation about timeframes and was not part of the original contract. This exercise duplicates reporting of data already provided as part of audits and existing RTO compliance requirements.

In 2009 DIAC is introducing additional quality assurance processes that will involve additional data verification and site visits. These are in addition to the range of systems already in place and again duplicates requirements already in place as part of existing State and Commonwealth regulation.

Recommendations:

2. The Department of Immigration and Citizenship to examine ways to reduce regulatory burden associated with the increasing quality assurance requirements of tendered contracts
3. The Commonwealth ensure the reporting burden under the Indigenous Reform Agreement does not duplicate existing reporting requirements.

4. HIGHER EDUCATION

Current regulatory arrangements across the higher education sector are complex. Once mainly State-based operations, many universities and non self-accrediting institutions now operate campuses across the nation and are increasingly subject to multiple regulators assessing their institutional status, their provision for international students and their courses.

There is room for closer cooperative regulation with the Commonwealth around university financial regulation and annual reporting, given the Commonwealth's funding role and its capacity for intervention in university financial matters. The relevant Commonwealth legislation is the *Higher Education Support Act 2003*; relevant NSW legislation is the *Public Finance and Audit Act 1983* and the Acts for each individual university. The NSW *Public Authorities (Financial Arrangements) Act 1987* applies in a limited way regarding investment powers of some universities.

A number of these issues about regulatory burden were raised during the recent Bradley Review into Higher Education. The Commonwealth has recently indicated that it will be establishing a national regulatory and quality agency for higher education. This regulator will accredit providers, carry out audits of standards and performance, protect and quality assure international education, streamline current regulatory arrangements to reduce duplication and provide for national consistency.

New South Wales supports the establishment of a national approach to higher education regulation and control. Consistency in regulation and quality assurance is critical for long term quality and credibility in the higher education sector.

Higher Education Support Act 2003 - FEE-HELP

While there have been significant efforts made to better harmonise and streamline existing arrangements nationally, these are still impeded by overlapping jurisdictional responsibilities and requirements.

The introduction of FEE-HELP to the non self-accrediting higher education sector, while welcome, has introduced a new set of requirements and accountabilities into areas already covered by State and Territory registration. For instance, institutions are required to meet the governance, financial accountability and annual reporting requirements of the Commonwealth *Higher Education Support Act 2003* which are similar to the re-registration requirements of State accrediting agencies. In NSW these are the *Higher Education Act 2001* and associated Guidelines. Pressure from businesses has forced NSW to consider how to modify some of its requirements to avoid unnecessary duplication.

Higher Education Support Act 2003 – VET FEE-HELP Guidelines

The introduction of VET FEE-HELP to the VET sector has introduced a new set of requirements and accountabilities. *Schedule 1A of the Higher Education Support Act 2003* outlines a range of regulations including governance, financial accountability and annual reporting requirements which VET providers must meet in order to offer VET FEE HELP to students. This legislation requires the same regulatory standards of publicly owned providers, such as TAFE, as it does of private providers. Publicly funded VET providers:

- need to demonstrate their financial viability even when they are funded by government.
- must join tuition assurance schemes or offer government backed guarantees despite having the backing of the State/Territory governments and are highly unlikely to go bankrupt.
- need to be a single body corporate which does not take account of unique State arrangements such as in NSW where TAFE NSW has multiple RTO registrations, but is a single body corporate.

Because the VET FEE-HELP arrangements do not distinguish between the governance arrangements of private and public RTOs, public RTOs face additional and unnecessary compliance costs. This stands in contrast to the way publicly funded higher education providers are treated in relation to FEE-HELP for higher education students.

Recommendations:

4. Continued work between the Commonwealth, States and Territories for the implementation of further efficiency and effectiveness in university financial regulation and reporting.
5. Continued work between the Commonwealth, States and Territories for efficiency and effectiveness in regulation of the non-self accrediting sector.
6. The Commonwealth extend the accountability requirements applying to universities to publicly funded education and training providers.
7. The Commonwealth provide greater parity for vocational education and training providers under the *Higher Education Support Act 2003*.

5. INTERNATIONAL STUDENTS

The regulation of international education and training provision both onshore and offshore by Australian institutions needs further attention. High compliance costs in the provision of education to overseas students are acting as a business/investment disincentive.

Vocational Education and Training

Education Services for Overseas Students (ESOS) Act 2000, Education Services for Overseas Students Regulations 2001

The ESOS framework regulates the provision of education services to overseas students including marketing and recruitment, student support and student visa management. The cost of compliance for both the Schools sector and VET is high and has increased since the review of the ESOS Act and subsequent revision of National Code in July 2007. TAFE NSW Institute staff engaged in compliance with the ESOS framework has increased by a third since 2006. The additional compliance requirements include:

- providing appeal mechanisms to students not making course progress
- monitoring recruitment agents' actions
- new welfare requirements regarding students under 18 years of age
- requirements to document student support in the case of extension, suspension or cancellation of enrolment.

National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students (The National Code).

The National Code is a set of nationally consistent standards that governs the protection of overseas students and delivery of courses to those students by providers registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS). Following an independent evaluation of the ESOS legislation in 2005, a substantially revised Code was introduced in July 2007 to give students more flexible study options and a stronger appeals and complaints process.

Whilst the new Code aims to give Education providers more autonomy to manage a student's enrolment and monitor their progress, in some instances, such as with a student's ability to transfer between providers after less than 6 months enrolment, the costs are high and may act as a business/investment disincentive. For example, under the Code, most student transfer requests would be approved. Where requests are approved and the student receives a refund of most of the fees, the initial provider has borne the cost of recruitment of that student and then must bear the cost of filling the vacancy created, if possible.

A further example is the complex and onerous appeals process for situations where students have made “unsatisfactory progress” in their studies. Because terminating a student’s enrolment can impact a student’s migration status, Clause 8 of the National Code ensures that all international students have a fair, inexpensive complaints and appeals process that includes access to an independent external body if necessary. If a termination is still upheld, the student also has the additional right of appeal to the Migration Review Tribunal. Where a student does appeal to the Migration Review Tribunal, providers are then asked to provide the Tribunal with details of the entire case and a new appeal process starts. The time taken to complete the appeals can effectively require a provider to re-enrol a student.

Higher Education

Education Services for Overseas Students Act 2000

Universities are increasingly engaging in profit-making ventures and establishing private entities under the aegis of the parent institution. With the continuing growth of private higher education institution and numbers of overseas students studying in Australia, or with Australian providers operating offshore, it is timely to assess the efficiency and effectiveness of the current regulatory framework.

There is still a lack of clarity in the shared responsibilities between the Commonwealth and States and Territories under the ESOS Act. Institutions are being concurrently regulated by States and Territories and the Commonwealth in relation to the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students.

Recommendations:

8. The Commonwealth continue working with States and Territories for implementation of further efficiency and effectiveness in regulation of provision for international students onshore and offshore.
9. The Commonwealth increase the consistency in implementation of the *Education Services for Overseas Students Act* framework across State and Territory bodies.
10. The Commonwealth work with States and Territories towards minimising costs associated with student/consumer rights to transfers within an initial six months of their enrolment.