

PUBLIC BENEFIT TEST

Education (Overseas Students) Act 1996

And

***Education (Overseas Students) Regulation
1998***

EDUCATION QUEENSLAND

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(Final Version)

PUBLIC BENEFIT TEST:
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And
Education (Overseas Students) Regulation 1998

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1.0 LEGISLATION TO BE REVIEWED

This report documents the results of a public benefit test (minor assessment) for the following legislation:

Education (Overseas Students) Act 1996

Education (Overseas Students) Regulation 1998.

2.0 OBJECTIVES OF LEGISLATION

The purpose of the *Education (Overseas Students) Act 1996* (the Act) and the *Education (Overseas Students) Regulation 1998* (the Regulation) is to provide a framework for the orderly conduct of programs of education and training for overseas students via:

- the registration of education service providers who provide education and training courses to overseas students; and
- the registration of education and training courses that are provided for overseas students.

The Act and the Regulation were introduced primarily to address problems arising from the information asymmetry that exists in the market whereby providers make representations to potential students overseas with little opportunity for persons to verify the providers' claims. This had led to an increase in unscrupulous providers and unconscionable conduct in the market, which was damaging to Australia's reputation as a quality education service provider. Thus, driving the legislation is the social objective to protect students from potentially unethical providers or the incompetence of poorly managed providers. The legislation is also aimed at achieving the economic objective of safeguarding the reputation of quality and reliability in the market: the key determinants being course approval/accreditation, financial probity and ethical conduct of providers.

3.0 BACKGROUND

3.1 NCP FRAMEWORK

The Queensland Government is undertaking this legislative review to meet its commitment under the Competition Principles Agreement (CPA). Members of the Council of Australian Governments endorsed the CPA under the National Competition Policy arrangements in April 1995. This agreement commits the Queensland Government, by the year 2000, to review and reform where necessary any legislation that restricts competition.

Clause 5(1) of the Competition Principles Agreement states that:

The guiding principle is that legislation (including Acts, enactments, Ordinances or regulation) should not restrict competition unless it can be demonstrated that:

(a) the benefits of the restriction to the community as a whole outweigh the costs;

and

(b) the objectives of the legislation can only be achieved by restricting competition.

It is to be noted that each State and Territory in Australia has enacted legislation that provides for registration of providers and courses to overseas students. Providers in each State and Territory are also part of the national registration regime regulated by the Commonwealth. The State legislation is designed to give effect to the State's participation in a joint or "co-operative" Commonwealth-State regulatory arrangement.

In these circumstances, it is generally assumed that any review that may be necessary under NCP will be co-ordinated at the national level. However, it appears that no action has been taken by any State or Territory in support of such a review. It is for this reason that Education Queensland's Legal Advisory Unit, in consultation with Queensland Treasury, has conducted this review in accordance with the Public Benefit Test Guidelines developed by Queensland Government. The review of the Act is considered a minor review based on the following characteristics:

- The restrictions contained in the legislation are relatively minor and are focused on a small market.
- The provisions do not create any significant impediment (either financially or administratively) to the entry of participants into the market;
- The impact on the stakeholders by a move to an alternative arrangement is minor; and
- The subject matter is not controversial.

An Issues Paper identifying possible alternatives to the existing regime, together with an invitation to make a written submission, were distributed for general comment to all interested organizations, including all registered providers, industry representatives, etc. A public notice was also placed in the Courier Mail and Education Views, advising that the review was in progress and inviting submissions from interested parties. In excess of 280 copies were distributed. During the course of this review ten submissions were received from a variety of organizations, both public and private.

3.2 HISTORY OF LEGISLATION

In June 1988, the Australian Education Council recommended that State and Territory Governments make arrangements for the regulation of institutions marketing Australian education and training courses overseas.

This recommendation was in response to an increasing number of reports of unfair practices, of college closures, of poor standards of service delivery, and of embezzlement of students' fees - all of which were impacting negatively on the reputation of the Australian industry, both within Australia and overseas.

All States and Territories agreed to introduce specific legislation that, while taking care not to place unnecessary restrictions on this area of export activity, provided appropriately for the regulation of the fee-paying overseas student industry.

In Queensland, a joint Ministerial Advisory Committee was established to develop appropriate guidelines and procedures. The Queensland guidelines and procedures were developed in consultation with other Australian jurisdictions, to ensure that they were consistent with agreed national minimum standards. The Queensland guidelines were endorsed by Cabinet and remained in effect until the legislation commenced in December 1998.

Around the same time, and partly in reaction to adverse international publicity stemming from institutional closures in the late 1980's, the Commonwealth Government decided to introduce its own legislation, the *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991* ("ESOS Act 1991 (Cth)"). The intention of this legislation was to regulate the export of education services and training to overseas students until such time as the States and Territories proclaimed their own Acts in accordance with the 1988 agreement. Pursuant to the provisions of this legislation, the Commonwealth maintains a register of courses available to international students and the organizations approved to provide those courses. The States and Territories advise the Commonwealth on courses and providers to be admitted to the register.

The Commonwealth Act contained a sunset clause that provided that on 1 January 1997 (later extended to 1 January 2002), it would cease to be in force, with the intention being for all States by then to have passed legislation to regulate education for overseas students.

The Queensland Act and Regulation commenced on 7 December 1998.

4.0 NATURE OF THE RESTRICTIONS ON COMPETITION

4.1 THE ACT

The Act contains provisions which:

1. impose a registration system for providers of education to overseas students and the courses provided;
2. impose a penalty for unregistered course providers/courses;
3. provide the Chief Executive of Education Queensland with the power to decide applications for registration;
4. provide a power to remove participants from the market; and
5. require tuition monies received from overseas students to be kept in trust accounts with limited access to those funds.

Specifically, **section 17** of the Act provides a barrier to entry into the market for the provision of education to overseas students by providing a penalty (200 penalty units) for unregistered course providers; unregistered courses; registered providers where there is a breach of a condition of the registration; and/or registered courses where there is a breach of a condition of the registration.

Section 5(2) of the Act also imposes a potential further barrier to entry into the market for private sector providers by stating that the Chief Executive of Education Queensland will decide applications for registration and the conditions of registration. Overseas education providers within the department, such as principals, may therefore be perceived to have a competitive advantage, as the department is responsible for determining its own applications as well as those external to the department. This potentially may lead to bias as the department is competing against private providers in the same market for education to overseas students.

Section 5(3), however, provides that the chief executive must apply the registration criteria in determining applications for registration that are prescribed under the regulation.

Sections 10-13 provide for licence suspensions or cancellations on certain grounds, which grants, in effect, a power to remove players from the market.

Section 32 of the Act provides that amounts in trust accounts are not available for the payment of the account trustee's debts to a creditor of the trustee. This section in conjunction with Section 12 of the Regulation may potentially be anti-competitive in its effect. Section 12 of the Regulation requires that a provider keep the fees paid in a trust account or similar, depending on the type of institution, with 'progress payments' being able to be withdrawn as the course progresses. This applies to all amounts that a registered provider receives for a visiting overseas student, including tuition fees.

While these are uniformly applied provisions, in practice their enforcement may cause cash flow difficulties for smaller players in the market, but will probably not be felt to the same extent by larger participants, such as the University of Queensland. As such, the provisions may technically be anti-competitive in their effect through their systematic bias against smaller players in the market.

The rationale for these provisions is to ensure that students are still able to obtain partial or total refunds should they be required, particularly in the event that the provider defaults because of financial insolvency. This is a similar practice to the liquid asset ratios required of financial institutions, to ensure that they can endure 'runs' against their cash reserves.

4.2 THE REGULATION

The Regulation contains provisions which:

1. restrict and describe the persons who may apply for registration as a provider;
2. describe the nature of the courses and who may conduct them;
3. determine the manner in which providers must deal with funds paid by students;
- and
4. detail the fees that providers must pay for registration.

Section 4 of the Regulation represents a barrier to entry into the market for the provision of education to overseas students by limiting the types of persons who may make applications for registration under the Act. The section mirrors section 17 of

the *Education (Overseas Students) Act 1996*, which prohibits non-registered providers or courses from being involved in the education of overseas students.

The Regulation defines the positions of those responsible in the institutions most likely to enter the market, and provides a 'catch-all' provision by accepting a registration application from any institution with an accreditation certificate by the National ELICOS Accreditation Scheme¹. The NEAS accreditation ensures that institutions providing English language intensive courses for overseas students meet nationally recognised standards of quality. It therefore provides an opportunity to ensure that these 'catch-all' institutions meet standards that are imposed on the other institutions by virtue of their systemic or government ownership.

Section 13 of the Regulation also mirrors Section 17 of the Act, which restricts the conduct of such courses to registered providers. The provision reinforces the requirements of the Act that the course should provide an appropriate return to the students for their investment - a requirement that would be difficult for the market itself to enforce, given that:

- the purchasers are usually in another country, and are thus unlikely to have adequate means in regard to verifying the representations of the provider; and
- the nature of the product is such that the potential student is unlikely to purchase again, and thus benefit from the wisdom gained in the first transaction.

The criteria for registration are detailed in *Division 2* of the Regulation, and in simple terms are as follows:

1. A provider must have a policy informing potential students about entry requirements, and a process for applying those requirements.
2. A provider must have a fee refund policy that protects the financial interests of visiting students. A copy of this policy must be given to the student before a contract is entered into or an amount paid, whichever happens first.
3. A provider must have a policy for dispute resolution, which sets out various specific matters in the student's interest. Again, a copy of this policy must be given to the student before the contract or payment occurs, and again before the end of the first week of the course.
4. A provider must have a policy regarding arrangements for unaccompanied children.
5. A provider must have a policy for students applying for tuition who are, or have been, enrolled in another course in Australia.
6. A provider must have a policy that provides the registered provider is bound by the code of ethics.

¹ The Australian Association of Institutions Accredited to Teach English Language Intensive Courses to Overseas Students. The National ELICOS Accreditation Scheme ("NEAS") is the only ELICOS accrediting authority recognised by the governments of Queensland, New South Wales, Victoria, South Australia, Western Australia and the Northern Territory. NEAS will give accreditation to any entity that meets its accreditation criteria; not merely a set list of persons, institutions, or classes of persons or institutions.

7. A provider must have a policy about protecting the financial interests of overseas students and intending overseas students.

Fees

Sections 17-19 prescribes fees for:

- applications for registration as a provider;
- applications for registration of a course or courses; and
- applications for changes to the registration of a registered provider or registered course.

The fees range from \$50.00 for the registration (or renewal of registration) of up to 20 courses, to \$200.00 for the registration (or renewal) of a provider, with a fee structure for multiple courses or simultaneous registration.

The proposed State fee structure is intended to recover the costs of administering the register and the production of registration certificates. The total amount received from registration fees is approximately \$70,000.00 per annum, which it is anticipated will cover the cost of maintaining the register.²

In short, the Act and the Regulation seek to impose those provisions that are necessary to preserve the quality and reliability in the market, and to discourage unscrupulous vendors from unconscionable conduct.

5.0 FULL ANALYSIS OF CURRENT RESTRICTIVE STATE : NATURE OF MARKET AND MARKET STRUCTURE

5.1 MARKET SCOPE

The geographical scope of the market for the provision of education and training for overseas students is essentially global. Potential students in countries overseas are able to select from a variety of education and training courses provided in a range of countries. Although the degree of substitutability cannot be easily quantitatively defined, it is likely to be fairly high in most cases. That is, all other things being the same, if the price of education and training courses offered by a particular country or region increases, or if the quality decreases, potential overseas students can fairly easily turn to a similar (substitute) product provided by another country or region.

International education and training is a vital Australian export industry, which currently earns \$3.8 billion per annum. According to the UNESCO figures cited in the 1997 "Survey of International Students Studying in Australia", Australian International Education Foundation, 1998, an analysis of the higher education section shows that, in terms of overseas student numbers, Australia is ranked third in the English speaking world behind the United States and the United Kingdom and seventh worldwide behind the United States, France, Germany, the United Kingdom, the Russian Federation and Japan. There has been a dramatic increase in the number of students studying in Australia: from 21,118 in 1988 to 151,464 in 1997³. The Queensland Education Overseas Unit cites its largest competitors as Canada, the United Kingdom, the United States and New Zealand.

² Queensland Education Overseas Unit (as at 18 June 1999)

³ Commonwealth Department of Employment, Education, Training and Youth Affairs (DETYA) *Overseas Student Statistics* 1997

Thus, although this review focuses primarily on the Queensland 'sub market', it is important to note that Queensland providers operate within a much wider market for the provision of education and training services to overseas students. Therefore, reports of unfair practices, college closures, poor standards of service delivery, etc. in one State will adversely impact on all other Australian jurisdictions.

For example, the international student program was put under severe pressure in the late 1980s/early 1990s by the closure of a number of private institutions. The closures resulted from the inability of a number of private providers to refund prepaid course fees to students who were refused student visas under tightened entry measures applied by the Department of Immigration and Multicultural Affairs (DIMA) in response to evidence of non-compliance with student visa conditions by students, predominantly from the People's Republic of China. As a result of the social impact and the concern at the potential damage to the reputation of the "Australian" market as a reliable provider of quality education and training services, the Government responded by introducing the *ESOS Act 1991 (Cth)*.

A further example of the potential for damage to be caused to the reputation of the Australian market occurred in 1993 as a result of the closure of two liquidated colleges in Western Australia (with no funds held in the special accounts which were styled "trust accounts"). The Commonwealth provided \$1.3 million in assistance to 432 students from one College. These events evidenced that the special account and insurance guarantee arrangements were not sufficient to guarantee the protection of overseas students' pre-paid course money and the tuition for which they had paid. Accordingly, in consultation with States/Territories and the industry, the *ESOS Act 1991 (Cth)* was amended to require all private ("non-exempt") providers to maintain notified trust accounts and to join a Tuition Assurance Scheme or to make another approved arrangement which has the primary objective to ensure overseas students receive the education and training for which they have paid⁴.

The only comparable incident in Queensland's overseas education history occurred recently when the Queensland International Heritage College in Maryborough closed its doors on 20th April 1998. Because the Commonwealth legislation was by then in place, students' tuition fee payments were assured. Thus, although there were irregularities in the operation of the trust account, the Tuition Assurance Scheme operator provided support to students by placing them in other institutions to continue their education. The damage done to the perceptions of the Australian and Queensland markets was minimised, and the hardships placed on the students were able to be substantially reduced.

⁴ Explanatory Memorandum, Education Services for Overseas Students (Registration of Providers and Financial Regulation) Amendment Bill 1998, page 7

5.2 NATURE OF THE QUEENSLAND 'SUB MARKET'

The market for the provision of education and training for overseas students in Queensland consists of 283⁵ registered service providers providing tuition to approximately 23,000 overseas students (of a national total of approximately 150,000). As at 31st March 1998, a total of 12,485 overseas students were enrolled in courses of higher education, of which 11,479 overseas students were enrolled in public Universities⁶. In terms of numbers of providers of higher education courses, there are approximately an equal number of public and private institutions registered in Queensland. The University sector provides the largest number of courses to overseas students.

The programs of education and training are offered across the whole spectrum of providers in Queensland, from the biggest government funded operators such as universities and TAFE colleges through the subsidised non-government school sector to a diverse group of private colleges offering certificate and diploma level programs and intensive English language courses. There are a diverse range of courses offered by the providers e.g. junior secondary level and senior secondary level, English language, tertiary programs, training programs including information technology, tourism and travel, etc. While some providers offer only one specialised course to overseas students, most providers offer a range of courses from non-degree awards to Diploma and Degree courses. For example, English Language Intensive Courses for Overseas Students (ELICOS) colleges specialise in English language training and Registered Training Organizations offer Diploma and higher qualifications. These institutions operate in a "co-operatively competitive environment" in which they band together to promote the scope and quality of programs available in Queensland, while attending to their own business imperatives to attract students.

The international education programme attracts overseas students primarily from countries in the Asian region. ELICOS actively market study/tourism programmes. This programme permits holders of temporary entry permits to Australia to study in courses for up to three months. Most participants in study/tourism come from South Korea, Indonesia and Malaysia.

It has recently been reported that there has been a significant increase in the numbers of European students, particularly from Scandinavia, attending Queensland universities. The students have discovered that they can study in Australia as cheaply and easily as they have been doing in the United States or Europe. In 1998, Queensland University of Technology received \$27 million from overseas students, the highest of any Queensland universities⁷.

⁵ As at 18 June 1999 (Queensland Education Overseas Unit):

- . 162 private schools
- . 11 Universities
- . 86 Vocational Education and Training Colleges
- . 23 ELICOS Colleges
- . 38 Government schools (all registered under Department of Education as a system provider)

⁶ Office of Higher Education

⁷ Courier Mail, 24th May 1999, "More European students lured to state unis".

Overseas students contribute directly to the economy through payments for rent and accommodation, food, transport, recreation and social expenses. In 1999, overseas students are expected to contribute \$500 million⁸ towards the Queensland economy.

By increasing the economy in local areas, overseas students also contribute indirectly to the economy through the generation of employment. In addition, the participation of overseas students in our education system and the cooperation of education providers and other students in delivering these services provides important cultural, social and trade links with foreign countries, especially with our major source countries for overseas students in Asia.

5.3 EFFECT OF REGULATION

The market is regulated via a system of registration of course providers and courses, both at the Commonwealth and State levels. The current regulation of the education exports industry is a co-operative approach between the Commonwealth, State and Territory governments and industry with the universal support of stakeholders.

The Commonwealth Government has delegated responsibility for the registration of providers and courses to all States and Territories. While the Commonwealth has delegated this responsibility, it maintains a national register (the Commonwealth Register of Institutions and Courses – “CRICOS”) that is disseminated to all Australian Visa Posts and Missions to be used as the basis for issuing student visas. The Commonwealth legislation also imposes financial conditions on private education providers.

The *ESOS Act 1991 (Cth)* provides the specific prohibition on offering or providing courses to overseas students unless the provider and courses have been admitted to CRICOS. Under the *Migration Act 1958 (Cth)* and *Regulations* an applicant for a student visa must nominate a CRICOS-listed provider and course. Once in Australia, overseas students must maintain enrolment with a provider and in a course registered on CRICOS. To maintain registration on CRICOS, providers must comply with the requirements of the State authority and the *ESOS Act 1991 (Cth)*.

The Queensland legislation refers to the criteria and ongoing conditions of registration and covers most areas of day-to-day significance to providers of education and training programs for overseas students. In general, all matters to do with registration and, in particular, all matters concerned with changes to register details, addition, amendment or deletion of courses and most matters to do with provision of information in respect of providers and courses, are dealt with by the State.

⁸ Queensland Education Overseas Unit estimate, 18 June 1999.

"The National Market"

The *ESOS Act 1991 (Cth)* is the key national element and provides assurances of education quality and financial protection to international students studying in Australia. It does so by registering providers of international education and training, based on State or Territory approval and accreditation, and by imposing financial conditions on private education providers. The Act was designed to address the following three major problems that emerged in the late 1980s/early 1990s and have the potential to damage Australia's international reputation:-

- . how to ensure that the courses provided for the education and training of overseas students in Australia on student visas are of a high standard and that providers are reliable;
- . how to ensure that overseas students get the education and training for which they have paid; and
- . how to ensure that taxpayers' funds are not required to recompense international students who may have been let down by individual education and training providers.

Providers and the education and training courses they intend to offer to overseas students must be:-

- (1) firstly accredited by the relevant State accreditation authority⁹;
- (2) approved (i.e. registered) by the State authority; and
- (2) once providers and courses are accredited and approved, the State authority notifies DETYA to admit them to CRICOS.

Currently, the initial application fee for registration on CRICOS is \$303.00 (charged on a pro-rata basis) and renewal is based on the number of enrolments per year (range of \$303.00 - \$5,050.00)¹⁰.

The *ESOS Act* also contains provision for refunds to students in the circumstance where a provider or a student defaults.

Providers who are entitled to receive Commonwealth recurrent funding, or are administered by a State/Territory education authority, are required to abide by the audit requirements of their funding arrangements (which may be Commonwealth and/or State). The *ESOS Act 1991 (Cth)* exempts these providers from the financial and tuition guarantee requirements of the *ESOS Act 1991 (Cth)* (called "exempt providers").

⁹ The specific legislative provisions for accrediting and approving providers differ between authorities: the applicable accreditation processes are dependent upon the type of course offered. For example, courses of vocational education and training are generally approved by the Vocational Education, Training and Employment Commission (VETEC), and English language intensive courses at secondary and post-secondary levels are generally approved by the NEAS. It is through these bodies, rather than the State or Commonwealth registration system, that the course the institution seeks to offer, and the ability of the institution to provide it, is investigated and accreditation awarded.

¹⁰ As at May 1999.

Additional requirements for registration are placed on all other providers (called “non-exempt providers”) under the *ESOS Act*. Non-exempt providers are required to:-

- (1) place overseas students’ pre-paid course money into Notified Trust Accounts
 - withdrawals from the Notified Trust Account must only be made in accordance with Regulations made under the *ESOS Act 1991 (Cth)* and providers are required to submit annual audited returns; and
- (2) comply with Tuition Assurance Scheme requirements
 - this scheme offers alternative tuition placement to overseas students who are affected by a provider closing, defaulting or ceasing to offer a course in which they are enrolled. Providers must make tuition guarantee arrangements before they enrol students in their courses registered on CRICOS. Costs of Tuition Assurance Scheme membership are borne by the members.

The *ESOS Act 1991 (Cth)* enables the Governor-General to suspend the financial (i.e. notified trust account) and tuition guarantee requirements of the Act in a State or Territory if the Governor-General is satisfied that arrangements in place in the State or Territory are sufficient to achieve the purposes of these sections. This is referred to as “roll-back” and was put in place to avoid non-exempt providers being forced to meet both State/Territory and Commonwealth reporting requirements which have the same objectives. To date, no State or Territory has agreed to accept “roll-back”.

As discussed previously in section 3.2, the Commonwealth Act contains a sunset clause that provided on 1 January 1997 (later extended to 1 January 2002) it would cease to be in force, with the intention being for all States and Territories to have passed legislation to regulate education for overseas students.

“The State sub-market”

In order to address the problems which had been identified i.e. reports of unfair practices, poor standards of service delivery, etc., the governments of States and Territories agreed with the Commonwealth Government to introduce legislation at State and Commonwealth levels to provide adequately for regulation of the fee-paying overseas student industry, taking care at the same time not to place unnecessarily restrictive burdens on this area of export activity. The *Education (Overseas Students) Act 1996* and *Regulation 1996* were intended to complement the existing Commonwealth legislation. The State legislation is aimed at imposing the minimum level of intervention necessary to remove unethical practices from this market, and to prevent damage to the market by the attacks of unscrupulous providers in the future.

Under the existing State legislation, all Queensland providers of overseas education are required to register not only the organization, but also the courses to be offered to overseas students, with the Chief Executive of Education Queensland. The register is held by the Chief Executive and is administered by the Queensland Education Overseas Unit. This unit is also the international and commercial arm of the

department and is regarded as an international business unit of the Queensland Government. QEOU promotes and sells the products, services, expertise and intellectual property of the department to commercial clients, both interstate and overseas.

The registration system imposes restrictions on competition in the provision of education and training to overseas students. It confers on the government certain powers, including the ability to restrict the products offered by providers and the ability to restrict providers from entering the market without appropriate qualifications, thus being barriers to entry and business conduct restrictions. However, the purpose of these restrictions is to ensure the providers are reputable and reliable, and the courses are of a high and consistent quality with recognised qualifications. In this way, the protection of students and the safeguarding of the reputation of the market are maintained.

Registration Criteria – Applicants/Applications and Courses

The criteria are primarily aimed at ensuring that only institutions that have been able to demonstrate their credentials in terms of quality, professionalism and integrity can become registered, or maintain registration, in order to permit them to recruit and bring students into Queensland.

The Act (s.17) and Regulation (s.4, s.13) limit the types of persons who may make applications for registration and also prohibit non-registered providers or courses from being involved in the education of overseas students. Although registration is not concerned with accreditation, all accreditation processes must be completed prior to applying for registration. Under the legislation, the Chief Executive of Education Queensland decides applications for registration and the conditions of registration. Penalties are also imposed for registered providers where there is a breach of a condition of the registration. Sections 10-13 of the Act provide for licence suspensions or cancellations on certain grounds. Sections 17-19 of the Regulation prescribe the fees for applications, changes and renewals: fees range from \$50.00 to \$200.00. The fee structure is intended to recover the costs of administering the register, including the production of registration certificates.

These provisions constitute barriers to entry and a power to remove players from the market. For example, a private training organization may view this registration system as an expensive and time-consuming addition to the accreditation/registration processes it is already required to comply with, depending upon the number and types of courses it wishes to offer to overseas students.

The cost of the registration criteria include that it will impose operating costs on providers which are meeting such criteria, and consequently costs on overseas students. However, the registration fees alone cannot be considered a barrier to entry into the market, as they are not significant. The fees are minimal in comparison to the Commonwealth registration charges of \$303.00 to \$5,050.00 (based on the number of enrolments).

The State registration fee was introduced on a user pay basis in order to recover the costs of maintaining the registration system and was calculated in such a manner as to provide an equitable basis upon which to apportion the cost between all providers.

For example, a small NEAS accredited institution that specialises in providing English Language Intensive Courses for overseas students may register a relatively small number of courses and pay a smaller registration fee than a large Registered Training Organization registering a much larger number of courses, including courses of vocational education, higher education, etc.

In addition, only one registration procedure is necessary despite the diversity of providers and it permits information on registration to flow to the Commonwealth government. The MCEETYA ("Ministerial Council on Education, Employment, Training and Youth Affairs") Code of Conduct, to which all States and Territories and the Commonwealth comply and the *ESOS Act 1991 (Cth)*, require not only "providers" of courses to international students in Australia to obtain registration, but also require registration of the "courses" offered on State and National registers. It is the specific course offered to overseas students that must be registered on State and National registers. This is in addition to the accreditation process that precedes registration. Accreditation relates to all courses offered to both domestic and international students, whereas registration applies only to those courses offered to overseas students. The State legislation also requires an applicant for registration as a provider to have written academic and English language entry criteria, as appropriate for all registered courses (refer to "*Entry Requirements for Registered Courses*" following on page 14).

Taking all of the above into consideration, the impact on competition may be viewed as minimal.

Since the legislation was passed, there have been three applications for registration that did not meet the registration criteria. However, each applicant was advised of the deficiencies in the application and given the opportunity to address the deficiencies before re-applying. Of these three applicants, one was subsequently registered as a provider; the second is currently making arrangements to satisfy the deficiencies and will renew the original application, whilst the third did not seek to re-apply¹¹. Thus, no application was "rejected", but rather the applicants were advised of any deficiencies in the application and given the opportunity to address the deficiencies before making a final application.

To date, there have been approximately eight registered providers who have committed a breach of the registration conditions. However, these breaches did not result in the cancellation or suspension of any of the providers' registration. In each instance, the provider received notice from the Queensland Education Overseas Unit requiring compliance with the conditions of registration and the breach was rectified. These breaches were considered to be minor and capable of being rectified.

The benefit to overseas students is that the registration criteria provide a framework to ensure the course provides an appropriate return for their investment and that the courses offered to overseas students lead to the outcomes expected by the students.

¹¹ Queensland Education Overseas Unit, 2 August 1999

Registration Criteria – Providers - Policies

The registration system contains conduct restrictions: Division 2 of the Regulation requires that providers have an established fee refund policy, an established dispute resolution process and so forth (as outlined in section 4.2 previously). The Ministerial Council on Education, Employment, Training and Youth Affairs ("MCEETYA") National Code forms the basis of the State legislative policy and administrative requirements for the approval of providers offering courses to overseas students and for industry sector codes of ethical practice.

The cost of the registration criteria include that they will impose operating costs on providers that are meeting such criteria, and consequently costs on overseas students.

The benefits include that these policies serve to demonstrate, from the very outset, that providers are part of a reputable industry and further demonstrates to potential consumers that there is a significant layer of protection of their interests and welfare.

Entry Requirements for Registered Courses

An applicant for registration as a provider must have written academic and English language entry criteria, as appropriate, for all registered courses. The criteria are required to be in such a form as to be clear to an intending overseas student. An applicant must also have policies about informing intending overseas students about the requirements, together with the processes for applying the requirements to each overseas student or intending overseas student.

The benefit of this criterion is that it ensures intending overseas students are provided with sufficient information to enable them to be fully informed of both the entry requirements for each registered course and the way in which they will be applied.

Arrangements for Unaccompanied Children

If an applicant for registration as a provider intends to offer courses to unaccompanied children and make arrangements for the unaccompanied child to be accommodated with an approved family, the applicant must have a policy about making the arrangements and the policy must provide for the approval of a family. If the applicant has a form of contract about providing accommodation services for the child, a copy of this contract must be included in the policy.

The benefit of this criterion is to ensure that adequate duty of care arrangements are in place for younger age students entering programs in Queensland. The regulation covers boarding and other 24 hour supervised accommodation, homestay and living with relatives or friends. The onus remains on providers to ensure that their contractual arrangements with students reflect an appropriate level of responsibility and concern for their out of study hours welfare.

Students Previously Enrolled in Relevant Courses

An applicant for registration as a provider must have a written policy in relation to overseas students who have previously completed another relevant course in Australia or who have been enrolled in such a course but have not completed it. Applications for registration must include an acknowledgement that letters of release will be provided on request, that the three matters relating to commitment to studies, attendance and financial commitments (i.e. student had demonstrated a commitment to studies in the previous course, had a good attendance record for that course, and paid all fees for that course) will be addressed and that applications for students studying in Australia already will only be considered if the provider is satisfied that the intending student had satisfied previous course requirements, including paying all fees.

The benefit of this criterion is that it provides a measure of protection for providers against students moving to another course while in debt to the provider and to safeguard the general reputation of the State's providers by ensuring that individual providers consider carefully a student's previous attitude and achievement levels before accepting a student from another course.

Code of Ethics

All providers must have a written policy that provides they are bound by the Code of Ethics. The Code of Ethics sets out guidelines for the ethical conduct of registered providers, including:—

- . all providers must adopt policies and management practices which maintain high professional standards in the delivery of education and training services, and which safeguard the educational interests and welfare of all students;
- . providers must maintain a learning environment that is conducive to the success of international students. Providers are required to have the capacity to deliver the nominated course(s), provide adequate facilities and use methods and materials appropriate to the learning needs of the students;
- . providers must obtain registration of their courses on State and National registers and providers are required to monitor and assess the performance, course attendance and progress of students enrolled in registered courses;
- . providers are to ensure that staff involved with international students are not only suitably qualified but also sensitive to the culture(s) of the students being taught and are required to provide for training of such staff as appropriate.

(This Code of Ethics binds all providers of Australian education and training services to international students.)

The benefits of this criterion are that all applicants for registration and all providers of courses for overseas students are bound by a uniform code i.e. the MCEETYA Code of Ethics, which is directed at ensuring overseas students and intending overseas students are financially protected from default by providers and otherwise protected from undesirable practices of some providers.

Dispute Resolution Process

An applicant for registration as a provider must have a written policy for dispute resolution between the provider and visiting students enrolled in courses with the provider. The policy must provide for access of overseas students to a timely and appropriate dispute resolution process, having regard especially to their status as persons only temporarily in Australia. Information about processes for resolving disputes between students and providers must be given to applicants before any enrolment is confirmed and any amounts are paid and again, in the same or similar format, upon arrival to begin a course (i.e. within seven days after the student starts attending a registered course). This information must include details of the Chief Executive Officer's power and the methods by which aggrieved students may report alleged breaches of the registration criteria and conditions. This information must be displayed in a prominent position.

Although the provision of the policy for dispute resolution more than once could be viewed as:-

- . negative, in that it is drawn to the students' attention twice and possibly has the potential to create the impression that there is a likelihood students will be involved in a dispute,
- . expensive (i.e. doubles the administrative cost of compliance), and
- . non-competitive,

in practice, the second copy is often supplied as part of the induction material and would therefore, on the other hand, serve as a reminder of the quick and low cost alternative to legal action.

Overseas students have a number of legal remedies available to them in relation to disputes that may arise from the contractual relationship between themselves and registered providers: for example, Part V of the *Trade Practices Act 1974 (Cth)* which relates to consumer protection and embodies unconscionable conduct and misleading and deceptive conduct (these provisions are also mirrored in the *Fair Trading Act*). In addition, the Australian Competition and Consumer Commission could take representative action on behalf of groups of students. However, sometimes remedies under the *Trade Practices Act 1974 (Cth)* may be difficult for overseas students to access for a number of reasons e.g. they are not in Australia, costs are prohibitive.

The benefits to both providers and overseas students therefore includes the provision of a streamlined process of litigation which reduces costs to both parties i.e. the policy allows overseas students to participate in a timely and appropriate dispute resolution process, that has regard to their status as persons outside of Australia or only temporarily in Australia. This in turn contributes to the protection of the reputation of the market.

Refunding Fees

An applicant for registration as a provider must have a written policy about the refunding of fees that protects the financial interests of overseas students or intending overseas students.

A registered provider must give a copy of the policy to intending overseas students at appropriate times before a contract is formed in relation to the student or an amount is paid for a course, whichever happens first.

This criterion ensures that applicants for courses are given clear and accurate information with regard to how any funds paid to the provider will be handled should a student not begin or complete a contracted course e.g. in all cases of refunds, the total amount of a refund due must be paid within the stipulated time by the provider, not by or to any third party unless specifically directed in writing by the person who has formed the contract. Thus, it seeks to ensure that there is proper documentation of the contractual and financial relationship between the international student and the provider.

However, it is to be noted that, at present, all providers are required to comply with the provisions of the Commonwealth legislation (i.e. the *ESOS Act 1991 (Cth)*) relating to refund requirements. The Commonwealth provisions are more detailed than the Queensland provision e.g. the Commonwealth provisions deal separately with provider defaults and student defaults, and also allow providers and students to enter into refund contracts. On the other hand, the Queensland provision does not state how any refunds are to be calculated, but merely says that the written policy is to state the way in which the amount of the refund is to be calculated.

Clearly, there are direct inconsistencies between the Commonwealth and State provisions and as such, it is likely that the State provision will remain inoperative as long as the Commonwealth legislation remains in force.

Protecting Financial Interests of Students

In addition, an applicant for registration as a provider is required to have a written policy about protecting the financial interests of overseas students and intending overseas students. The policy must provide that the registered provider has a trust account for all amounts to be received from the students and also limits the use to which trust account monies can be put while students are completing courses. A "trust account" is defined in s.32 of the *Act* as:-

- “(a) a notified trust account established under the Commonwealth Act; or
- (b) a trust account operated under a regulation made under this Act.”

If a registered provider is subject to the auditing requirements under the *Financial Administration and Audit Act 1977* (i.e. an “exempt” provider under the *ESOS Act 1991 (Cth)*), the provider must keep records that allow the provider’s auditor under that Act to be satisfied about the sources of all amounts received for providing courses to overseas students and the way in which the amounts are spent.

If a registered provider is not subject to the auditing requirements under the *Financial Administration and Audit Act 1977*, the provider must have established a trust account at a financial institution to be operated only in relation to amounts paid by overseas students or intending overseas students. These “private” providers must comply with the provisions of the *ESOS Act 1991 (Cth)* requiring the establishment of a Notified Trust Account and submission of annual audited returns of the Notified Trust Account. The *ESOS Act 1991 (Cth)* and *Regulations* lay down an extremely detailed set of circumstances in which providers may withdraw student monies from trust accounts.

Whilst “public/State” providers are exempted from the Commonwealth legislative requirements of operating a Notified Trust Account, the operating and reporting requirements of these statutory providers are significant. Thus, although not required to comply with the provisions of the *ESOS Act 1991 (Cth)* relating to the operation of a Notified Trust Account and the associated audit requirements, public providers will have already met these requirements, or are compelled by other legislation applicable to the institution, to meet the minimum requirements as prescribed to private providers. Therefore, although there are different trust account and reporting requirements that apply to a State provider as against a private provider, they may be viewed as comparable.

The restrictions on withdrawal of funds from the trust account may make it more difficult for smaller providers. However, these restrictions are uniformly applied and are considered necessary in order to safeguard students’ money. Although this provision offers limited protection against unscrupulous providers, for example, almost half of the fees (i.e. up to 45%) can be withdrawn on the day the course starts, it does seek to ensure that students are still able to obtain partial or total refunds should they be required, particularly in the event that the provider defaults because of financial insolvency.

Once again, however, it is to be noted that there are inconsistencies between the Commonwealth and State legislation, particularly in relation to percentage limits and timelines within which providers may withdraw money from trust accounts. Therefore, *section 12* of the *State Regulation* will most likely remain inoperative as long as the Commonwealth legislation remains in force.

Tuition Assurance Scheme Membership – a Commonwealth requirement

The *ESOS Act 1991 (Cth)* also requires non-exempt providers to become members of a Tuition Assurance Scheme, the costs of which are borne by the providers. These costs represent a cost that is not incurred by State providers. This advantage translates into significant savings of cost as a result of the exemption. However, it is to be noted that as this is a Commonwealth legislative requirement, this issue falls outside the ambit of this review.

It is important to note that prior to the introduction of the *ESOS Act 1991 (Cth)* and its amendment to include provisions relating to Notified Trust Accounts and Tuition Assurance Schemes, the Commonwealth government found it necessary to reimburse the students of those providers who became bankrupt or insolvent (i.e. payments totalling \$66.279 million through a refund program established in 1990 for

international students who had pre-paid fees but were not given visas, and a further payment totalling \$1.3 million in 1993 after the closure of two liquidated colleges in Western Australia¹²). There has been no further assistance by the Commonwealth since the introduction of these provisions. Certainly in Queensland, with respect to the closure of the Queensland International Heritage College in Maryborough, students received appropriate refunds and were placed in other institutions to continue their education. Clearly then, the social objective of protecting students' fees from potentially unethical providers, or the incompetence of poorly managed providers, is being met through the Commonwealth legislative provisions. Thus, there is a benefit in retaining this level of protection of students' fees.

SUMMARY

The costs of the registration criteria are that providers complying with the criteria may have additional operating costs, and thus fees charged to students will be higher.

The benefits include that providers are required to maintain an adequate standard of education and/or training while they operate. Such criteria ensure that there is a level playing field between newly established and existing providers, as all providers are required to meet the criteria at all times.

In addition, the registration criteria ensure that information given to prospective overseas students concerning courses and the conditions attached to enrolment in the courses is appropriate to allow the prospective overseas students to make informed decisions about enrolling in the courses and is given at appropriate stages of the application and enrolment process.

Therefore, overseas students will be assured that they are receiving a high standard of education and/or training through recognised programs of high quality, and consequently will be more likely to attend Queensland institutions. This assists in protecting the reputation of the market and therefore the export earnings from education provided to overseas students.

In summary, the public benefits of regulating the market for the provision of education and training services to overseas students include:

- supply of better information to consumers (eg: registration system helps to overcome the problems associated with information asymmetry)
- economic development (eg: fostering of trade links, money overseas students bring into the country)
- business efficiency (eg: providers can devote resources to providing services, rather than having to expend large amounts of funds on marketing the quality of their product and counteracting the behaviour of unscrupulous providers)
- improvement in the quality of goods and services (eg: having a registration system ensures that services are at least at a certain level of quality)

¹² Explanatory Memorandum, Education Services for Overseas Students (Registration of Providers and Financial Regulation) Amendment Bill 1998

- promotion of equitable dealing (eg: students have recourse to fees, and are being delivered a service which is required to meet certain standards)
- industrial harmony (eg: less incidence of reputable providers at odds with unscrupulous providers who enter the market and spoil the market's reputation)
- growth in export markets (eg: fostering of trade links with important trade countries)
- cost effective and better risk management (i.e. to have regulation of industry rather than government providing compensation/refunds).

5.4 PRICE DETERMINATION

Providers must price on at least a cost recovery basis. Market forces determine prices above this level.

5.5 DETERMINANTS OF DEMAND

Demand is fairly elastic and is influenced by a variety of factors. These include:

- Price.

For example, an increase in price level may lead to a decrease in demand as consumers substitute their source of supply and purchase from competitors outside the Queensland market (i.e. in another geographic area where the price of the good is lower).

- Extent and effectiveness of overseas marketing.

The more extensive and effective the overseas marketing, the higher the perceived quality and reputation of Queensland's education and training courses, the higher the level of consumer awareness, and thus the higher the level of demand.

- Federal and State budget.

Cuts in funding may lead to a decrease in demand if the effect is to decrease the quality of educational services.

- Quality and reputation of the product in comparison to substitute products.

The higher the quality and reputation of Queensland products compared to substitute products, the higher the demand.

- Economic state of target countries (including exchange rates).
- Regulation in other markets, and other government policies.

For example, immigration entry conditions.

- Political factors both in Australia and overseas.

5.6 SUPPLY

The number of registered providers is fairly stable; that is, there are no seasonal fluctuations in supply.

Over the last year, an additional 7-8 providers were registered in Queensland, representing a slight increase in the total number of registered providers.

5.7 SUBSTITUTE PRODUCTS

Substitutes for education and training for overseas students delivered by Queensland registered providers include education and training that is delivered by providers in other Australian states, education and training that is delivered by providers in the individual's home country, and education and training that is delivered by providers in other countries.

There are no substitute products for education and training delivered *within* Queensland, as the Act requires that all providers of education and training services to overseas students be registered.

5.8 DISTRIBUTION OF MARKET POWER

The market is characterised by information asymmetry. Providers make representations to potential students in countries overseas and hence the prospective student has little opportunity to verify the provider's claims. The market is also characterised by a product that few purchasers buy more than once, regardless of the perceived quality. Thus it is unlikely that a potential student will have the benefit of hindsight when making a purchasing decision.

6.0 FULL ANALYSIS OF ALTERNATE LESS-RESTRICTIVE ARRANGEMENTS

6.1 OTHER LESS-RESTRICTIVE ALTERNATIVES

Other alternatives were considered during deliberations. These included the non-legislative alternatives of free market, voluntary code of conduct, and the legislative alternatives of voluntary registration and accreditation. These alternatives are documented in the Public Benefit Test Plan. They have not been fully explored in this review as they are considered unrealistic for the following reasons:

- The Queensland government (along with all Australian States and Territories) made a commitment to have in place its own State legislation for the registration of institutions marketing education and training courses overseas, together with registration of their courses. This commitment needs to be honoured.

- The Commonwealth *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991*, the purpose of which is to regulate the export of education and training services to overseas students via a system of registration, is effectively to remain in force until all States and Territories have in place their own State legislation. Thus, even if the Act and the Regulation were repealed, the Queensland market would still be regulated via the Commonwealth legislation. A non-regulated free market would not in fact exist.
- The alternatives are not able to achieve the purpose and policy objectives of the legislation i.e. to provide a framework for the orderly conduct of programs of education and training for overseas students via a system of registration in order to address problems arising from the information asymmetry that exists in the market.

In particular, the non-legislative alternatives of "Free Market" and "Voluntary Code of Conduct" are considered unrealistic as their ability to achieve the policy objectives of the legislation is low and the level of risk associated with the implementation, maintenance and enforcement of these alternatives is high. Taking the approach of allowing unfettered competition in this market would save costs both for the State, who would avoid administration costs, and for the providers, who would be spared the costs of complying with the legislation.

However, although industry has a high level of understanding of the issues that affect international students and the delivery of education and training services, it can be argued that these alternatives bring with them a heightened risk of a return to the heavy costs for industry and governments which existed prior to the introduction of the *ESOS Act 1991 (Cth)* and the State legislation. These risks include the financial collapse of providers, consequent damage to Australia's international reputation and the potential cost to Australian taxpayers to refund prepaid course fees.

These alternatives would allow for the entry of unscrupulous providers, as it would be difficult to control the minority of providers who might not comply with codes of conduct, causing problems for the rest of the industry. There is also the possibility that industry could be controlled by a small number of providers who could promote anti-competitive practices. Unscrupulous commercial practices have the probable consequence of lowering general standards and thus Queensland's reputation overseas. In order to preserve the market for all concerned, some minimal intervention is necessary to ensure the quality of the product and in order to maintain some element of equity in the market.

"Voluntary registration" carries with it the same disadvantages as the non-legislative alternatives. In particular, the reputation of the market as a whole could be adversely affected by unscrupulous practices of non-registered providers, and the State's reputation as a quality course provider may decline.

The option of "Accreditation" reintroduces the same procedures that were in place prior to the commencement of the State Act. In order to achieve the objectives of the legislation, the additional criteria regarding, for example, the protection of financial interests of students, dispute resolution process, etc. would need to be incorporated into the legislation governing the accreditation processes. Although existing

structures could be utilised, this option would raise the potential for lack of uniformity in applying the relevant criteria and the possibility of duplication in the work to be performed by each accreditation authority. This may lead to an inefficient allocation of resources. The benefit of the introduction of one registration procedure would be lost i.e. the provision of a framework for the orderly conduct of education and training for international students, including the flow on of information on registration to the Commonwealth government.

If current restrictions are removed or weakened through the implementation of any of the abovementioned (other) alternatives, the objectives of ensuring that a process is put into place which will instil confidence in the minds of prospective students that they are enrolling in a course of quality and rigor, and that has recognised outcomes either by way of formal qualifications or by way of demonstrated competency, or both, together with providing a protective device for those providers who are already registered, will not be met. It is imperative for the protection of the growing international reputation of the State and its institutions to maintain the highest standards of quality.

6.2 INDEPENDENT REGISTRATION BODY/REGISTRAR

The final alternative identified in the Issues Paper distributed to all stakeholders for comment was to maintain a registration system but remove the power to determine applications from the Chief Executive of Education Queensland and transfer it to either:

- (i) an independent statutory body; or
- (ii) an independent registrar.

Under the current legislative provisions, the Chief Executive of Education Queensland decides applications for registration and the conditions of registration. The Chief Executive of Education Queensland has given a delegated responsibility for the administration of the Act to the Manager, Queensland Education Overseas Unit ("QEOU"). Thus, overseas education providers within the department may be perceived to have a competitive advantage as the department is effectively applying to itself for a favourable exercise of such discretion. This also places Education Queensland in a potential conflict of interest.

Registration incorporates both initial applications for inclusion in the Queensland register and all changes in register details. In both instances, the Chief Executive Officer has a responsibility for ensuring that all applicants meet the criteria for registration and, following the inclusion of an institution in the register, that the institution adheres to the continuing conditions of registration. In order to discharge these responsibilities, the legislation permits the Chief Executive Officer, or officers who are authorised to act on behalf of the Chief Executive Officer, to have access to any appropriate information that bears upon the application criteria or the continuing conditions. One of the criteria and conditions is that applicants and registered providers will co-operate with the Chief Executive Officer by providing access to any such information and failure to co-operate is a ground for the Chief Executive Officer to take action.

Therefore, some schools may argue that the QEOU does not represent their interests and may be biased against them. For example, private providers may perceive that the QEOU may favour certain schools, providing them with preferential treatment. Some non-state schools may argue that Education Queensland competes directly with them by offering State schooling, and thus is not independent, and will not favourably assess non-state schools' applications for registration.

The QEOU currently performs two roles:-

1. regulatory (i.e. maintaining the State register); and
2. marketing.

QEOU is a commercial education provider and provides advice to the Director-General in the provisions of the Act, together with advice to the Minister. It does not have an ongoing responsibility to promote the provisions of the Act. The regulatory role of the QEOU does not extend beyond that of maintenance of the State register.

The QEOU receives no government allocated funds – it operates on revenue generated from commercial sources. Services to Education Queensland are charged out at full cost. At present, revenue generated is approximately \$4.5 million per year as against \$70,000.00 from registration income. The main activity of the Unit is clearly commercial activity.

As discussed above, the legislation permits the Chief Executive Officer, or officers who are authorised to act on behalf of the Chief Executive Officer, to have access to any appropriate information that bears upon the application criteria or the continuing conditions. However, at present, the QEOU advises that the Unit is unable to ensure compliance with the legislation (e.g. by conducting regular compliance audits) due to a lack of resources.

Clearly the disadvantage of the current system stems from the fact that the QEOU is required to perform two functions (i.e. regulatory and commercial) and is not equipped to perform both. It is therefore difficult for both functions to co-exist within the one unit. An independent registrar/body would be better able to focus on the regulatory/compliance role, as there would be no competing interest or function.

Registration by an independent body/registrar would remove the power to determine applications from the Chief Executive of Education Queensland. This would in turn negate any perception of bias in relation to the registration decision, and avoid any breach of anti-competitive provisions. Therefore, this alternative may be justified on the basis that the independent body/registrar would ensure the registration process:-

- . is applied uniformly to all marketplace participants;
- . is applied community-wide and represents a genuine community standard; and
- . is set at an appropriate level.

However, on the other hand, it is to be noted that the legislation requires the Chief Executive to apply the registration criteria prescribed under the Regulation in determining applications for registration. It can therefore be argued that it would be difficult for the criteria not to be applied in a uniform way, thereby removing any

element of potential bias. Moreover, the appeal provisions contained in the Act add further accountability.

INDEPENDENT REGISTRATION BODY

It may be considered more appropriate that the registration function, involving a diverse range of industry participants (e.g. Universities, non-State Schools, private training organizations), is carried out by a small self-funding, specialist body established for that purpose, rather than attaching the registration function to an existing statutory body e.g. Vocational Education, Training and Employment Commission. This would allow informed decision-making and remove any potential perception of bias, such as that which exists at present. However, the appointment of an independent body consisting of industry and Government representatives would give rise to issues of conflict and confidentiality when dealing with matters pursuant to the legislation.

INDEPENDENT REGISTRAR

Whilst the option of an independent Registrar does not establish a registration regime with "representative characteristics", it does have similar benefits as that of the independent body. An added advantage may be that the costs might be less than that of a board.

Whilst this alternative may not be considered "less" restrictive, it may be considered as an alternative capable of removing the "perceived" advantage accruing to the Department by virtue of its position as both a provider and the registration authority within the same market. This alternative ensures that the registration criteria are applied uniformly to all market participants and separates the roles of registration authority and provider, thus removing the potential conflict of interest and issues of bias - that is, this alternative is capable of achieving the objectives of the legislation and enables the same net public benefits to accrue as under the current legislation.

The likely establishment and running costs associated with the formation of an independent Registrar are detailed below¹³:-

¹³ Compiled by the Manager, Queensland Education Overseas Unit, 6 September 1999

OPTION 1

Retain the registration function within the Department of Education and within State Government premises, but have it administratively separated from the Queensland Education Overseas Unit.

Estimated cost

| | |
|---|-----------------------|
| Floor space – 100 square metres (including office, administration area and meeting room for 8 people) | \$25,000.00 per annum |
| Fit out and furnishing | \$15,000.00 |
| Outgoings – electricity, cleaning, etc | \$10,000.00 per annum |
| Registrar – AO8 level @ 3 days per week | \$54,600.00 per annum |
| Administration Officer – AO4 level full time Position | \$57,200.00 per annum |
| Office equipment – photocopier, computers, Printer, facsimile | \$21,000.00 |
| Administration costs | \$15,000.00 per annum |
| Cost for first year | \$197,800.00 |
| Annual cost | \$161,800.00 |
| Projected revenue | \$ 70,000.00 |
| Net Annual Cost | \$ 91,800.00 |

OPTION 2

To establish the Office of the Registrar in premises external to the Department of Education and government facilities.

This option will increase the rental cost by \$5,000.00 per year, the fit out by a one off \$5,000.00 and increased outgoings by \$5,000.00.

Estimated cost

| | |
|----------------------------|---------------------|
| Cost for first year | \$212,800.00 |
| Annual cost | \$171,800.00 |
| Projected revenue | \$ 70,000.00 |
| Net annual cost | \$101,800.00 |

When viewed against the costs of retaining the existing arrangements of incorporating the registration function within the structures of the Queensland

Education Overseas Unit (i.e. approximately \$70,000.00 per year), it is clear that the alternative arrangement **would result in increased costs** (i.e. approximately \$91,800.00 - \$101,800.00 per annum) for maintaining the registration system. These costs would be passed on to consumers and would have the effect of increasing the price level.

In addition, there may be some degree of change to the supply side of the market^{if}, under the current arrangements, there is a competitive advantage accruing to those overseas education providers within Education Queensland. The implementation of an independent registrar would remove this competitive bias and may lead to lower barriers to entry for some providers - thus resulting in a greater variety of providers in the market.

However, it is unlikely that there would be any other major changes to the market structure if the alternative option were adopted. That is, no significant differences are expected in terms of the product type and product promotion, number of consumers, or industry structure (in terms of market boundaries and how demand is determined).

6.3 INTERSTATE COMPARISONS

The Commonwealth Department of Employment, Training and Youth Affairs maintains the national register of providers and courses for overseas students ("CRICOS"). The legislation is not scheduled for an NCP review.

In the Northern Territory, Western Australia and Tasmania there are single registration systems in place. The Northern Territory is not aware of any NCP review. Western Australia and Tasmania are presently conducting NCP reviews on the relevant legislation. The reviews are not expected to be completed until later this year.

The Australian Capital Territory also has a registration system in place and is yet to determine the timing for the NCP review as this State is awaiting the outcome of a review by the Commonwealth (which is being undertaken as a result of recommendations made by the Senate Employment, Education and Training Legislation Committee after a consideration of the *ESOS Act Amendment Bill 1998*). The ACT will then conduct an NCP review of the legislation.

South Australia, Victoria and New South Wales have a multiple registration system in place e.g. in South Australia providers in post-secondary level courses are required to register with the Department of Education, Training and Employment, whilst non-Government school providers register with the Non-Government Schools Registration Board, and Government school providers register with the Director, International Education, Department for Education, Training and Employment. An NCP review is presently being conducted on the South Australian and Victorian legislation. The New South Wales legislation was not identified for review.

In summary, all States and Territories have a registration system in place, either through a single authority or across a number of authorities, that requires registration of both providers and courses.

7.0 KEY GROUPS (STAKEHOLDERS) AFFECTED

- Overseas students undertaking registered education courses in Queensland and their parents
- (Queensland based) Overseas student education course providers (Education Queensland, institutes of TAFE, agricultural colleges, other registered providers)
- Government.

8.0 IDENTIFICATION OF ALL IMPACTS ON STAKEHOLDERS OF MOVING FROM THE RESTRICTIVE STATE TO LESS RESTRICTIVE STATE

There were no less-restrictive alternatives identified that will meet the objectives of the legislation.

9.0 NET IMPACT ASSESSMENT

Not applicable.

10.0 NET BENEFIT

The restrictive provisions contained in the legislation are necessary to the achievement of the objectives of the legislation. The Act and the Regulation are together aimed at imposing the minimum level of intervention necessary to hinder unethical practices and thus to prevent damage to the quality and reputation of the market.

The less restrictive alternatives identified in the review are not capable of meeting the objectives of the legislation, and will not satisfy the terms and obligations of the agreement entered into between the Commonwealth and the States and Territories. Removing or weakening the current registration system will remove the protective device currently in place for the benefit of both providers and overseas students. Thus, the objective of safeguarding Queensland's reputation of quality and reliability in the market is not able to be met by any of the less restrictive alternatives identified.

The alternative option of removing the power to determine applications from the Chief Executive of Education Queensland and transferring it to an independent registrar is capable of achieving the objectives of the legislation and removing the "perceived" advantage accruing to Education Queensland by virtue of its position. However, the establishment costs and running costs associated with this option would result in a substantial increase in price level, which would be passed on to consumers. Therefore, as the same benefits result from this option as those currently resulting from the existing registration regime, there is arguably no benefit in establishing an independent registrar.

Therefore, although the current legislation technically restricts the entry and manner of competition in the market, the legislation is clearly of net public benefit. That is, the review indicates that there is a strong need for some form of regulation of the market. Regulation of the market provides both social and economic benefits to students and providers, and also to the rest of society by ensuring efficient service provision (and thereby fostering economic development, growth in export markets, less tax monies going towards paying for the students of unscrupulous providers and so forth). It ensures the standards for professional practice and ethics are preserved. Clearly the objectives can only be achieved under the existing regime, and this regime also meets the national agreement entered into by all States and Territories.

It is therefore recommended that the existing regulatory environment be retained as the benefits of the restrictions to the community as a whole, as detailed above, outweigh the costs, i.e. the restrictive provisions in the regulation impart minimal impacts on competition in the market and are not considered onerous. Furthermore, the objectives of the legislation can only be achieved by restricting competition.