

English Australia Submission:

Review of the Genuine Temporary Entrant requirement



Sent to: The Department of Immigration and Border Protection
via email EVCC@immi.gov.au
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Executive Summary

English Australia is disappointed with the progress to date of the Department of Immigration and Border Protection (DIBP) review of the effectiveness of the Genuine Temporary Entrant (GTE) requirement.

The review is inconsistent with the Government's Deregulation Agenda in relation both to stakeholder consultation and reduction of regulatory burden.

It can be regarded only as a work in progress as it has failed to address the Chaney Report recommendation to 'Ensure that Australia's student visa settings continue to be competitive and attractive in all education sectors...'.

Because of its limited scope the review's evaluation has failed to take account of stand-alone English language training which accounts for 35% of ELICOS student enrolments as detailed in 'Section 3: English Australia comments' below.

The ELICOS sector will continue to be challenged if DIPB officers continue their failure to acknowledge stand-alone English language training as a valid course of study reflecting the student profile as outlined below in 'Section 2: Context - English Australia & the ELICOS sector'.

English Australia notes that the impact of the introduction of the GTE requirement goes beyond the 'story' told by the statistics relating to student visa applications and grant rates, and continues to impact on students' and agents' perceptions of Australia and Australia's attractiveness as a study destination.

English Australia would like to emphasise that despite improvements in the application of the GTE requirement acknowledged below, there is still considerable work to be done. This is not recognised in the DIPB review.

Rejection letters are still being sent in February 2014 stating, 'I also note that similar courses are available in your home country for a lower cost' in relation to an application for an Independent ELICOS visa.

English Australia appreciates the ongoing tensions between objectivity and flexibility in the application of the student visa regulations, however there remains particular issues in relation to areas where the criteria are more subjective ie. the value of the course to the applicant's future, including remuneration and career prospects in the applicant's home country.

English Australia believes that this is too complex an issue to codify, however inconsistent application of this criterion could be reduced by further education of DIBP staff in this area and clearer directions and guidelines provided to decision-makers, specifically from the English Australia perspective in relation to English language courses.

English Australia would like to see:

- greater weight given to a provider's track record and risk profile;
- greater education for visa processing officers regarding the validity of stand-alone English language programs and the key role that agents play in many countries in advising students on choosing an English language program;
- all GTE based visa rejections reviewed by a senior officer;
- all rejection letters checked for in appropriate statements that undermine the international education industry;
- greater sensitivity in conducting interviews where required; and
- a program of ongoing review including:
 - continued opportunities for peak bodies to refer rejection letters of concern;
 - a more responsive turnaround time on these cases;
 - identification of specific actions to be undertaken in response to patterns of poor decision-making that are identified.

Notwithstanding the above, English Australia acknowledges the importance placed by DIBP on the contribution that the GTE requirement makes to the ability to introduce other initiatives such as streamlined visa processing and post-study work arrangements.

English Australia also acknowledges the considerable effort that DIBP has applied to working through the issues experienced since the implementation of the GTE requirement and providing greater levels of support to visa processing officers.

Section 1) Background

On **23 January 2014** English Australia was sent a copy of the Department of Immigration and Border Protection review of the effectiveness of the Genuine Temporary Entrant (GTE) requirement, which has been endorsed by Assistant Minister for Immigration and Border Protection, the Hon Michaelia Cash.

The introduction to the review report states that:

*'The GTE requirement was introduced on **5 November 2011** for all student visa applicants. Under this requirement applicants are assessed on whether their individual circumstances indicate their primary aim is for a temporary stay in Australia. This requirement was introduced to reduce migration risk and maintain the integrity of the student visa programme. The GTE requirement also underpins and makes viable other reforms designed to significantly enhance the competitiveness of Australia as a destination for international students. These reforms include streamlined visa processing which commenced on 24 March 2012, and post-study work arrangements which commenced on 23 March 2013.'*

The GTE requirement has been in operation for two years and thus this review is a timely evaluation of whether it has been efficient and effective in achieving its intended outcomes. Some of the key findings of the review are:

- *Since the introduction of the GTE requirement, visa grant rates have not been negatively affected, and program integrity outcomes have continued to improve.*
- *Ongoing feedback processes are improving stakeholders' understanding and informing continuous improvement in visa decision making.*
- *Evidence demonstrates that the GTE requirement is meeting its policy objectives.'*

English Australia was extremely concerned to receive this report and to see that the report concluded that 'there are no systemic problems in how GTE requirement decisions are made' and that 'DIBP remains confident that decisions continue to be of a high standard'. This contradicts the ongoing feedback that English Australia continues to receive from education providers as exemplified by visa rejection letters which continue to display a lack of understanding of the complex nature of the international education industry.

A number of issues emerged as the GTE requirement was initially rolled out in 2012, and the international education industry has been vocal in calling for a review of its implementation ever since.

On **30 July 2012** the Hon Christopher Pyne MP and Scott Morrison MP sent a joint letter (see Appendix A) to the then Minister for Immigration and Citizenship, the Hon Chris Bowen MP, regarding industry concerns that the implementation of the GTE requirements was having unfortunate unintended consequences.

The Chaney Report¹, providing advice to the Australian government on the challenges and opportunities facing international education, was released in **February 2013** and included the following recommendation:

E. Ensuring integrity – Australia's student visa program

Ensure that Australia's student visa settings continue to be competitive and attractive in all education sectors while preserving the integrity of Australia's international student visa program and helping to meet national skills needs.

E.1 Conduct a review of the first year of operation of the GTE criterion, identifying and addressing any unintended consequences that affect the sector, including the extent to which it may be acting as a deterrent to genuine students.

Whilst pleased that finally, after two years rather than one as recommended by Chaney, a review had been undertaken, it was extremely disappointing to learn that the review had not engaged with any key stakeholders nor included their perspectives in providing a true evaluation of the impact of the introduction of the GTE requirement.

Following representations from all of the international education peak bodies, we are pleased that we have now been formally invited to provide comment and that our input will be presented to Assistant Minister Cash for her consideration.

We note that submissions will be accepted up to and including **28 March 2014**.

¹ Australia – Educating Globally: Advice from the International Education Advisory Council (February 2013)

Section 2) Context – English Australia & the ELICOS Sector

English Australia welcomes this opportunity to provide comment on the effectiveness of the Genuine Temporary Entrant (GTE) requirement.

The international education industry is complex, encompassing a diverse range of sectors, provider types, program types and students with varying motivations for choosing to study overseas. English Australia will focus this submission on the **ELICOS sector perspective** as other submissions will no doubt offer a range of other perspectives.

English Australia, formerly known as the ELICOS Association, is the national peak body and professional association for the English Language Intensive Courses for Overseas Students (ELICOS) industry. English Australia was established in the early 1980s and incorporated in 1990.

English Australia represents over 120 member colleges across Australia. More than 80% of all overseas students who study English in Australia do so with an English Australia member college. English Australia has both public sector (eg attached to a university or TAFE) and independent language centres among its membership.

The ELICOS sector has a 100% international focus as it provides courses only to overseas students.

The ELICOS sector provides an essential 'pathway' role in assisting many international students to develop the English language skills they require to be successful in further studies.

The ELICOS sector also has an important role in delivering English language courses to students without further study goals, but who see improved English language skills as a key contributor to their future success in a world where English language skills and an overseas cross-cultural learning experience are seen to give competitive advantage in an increasingly globally connected world.

The Australian ELICOS sector operates within a highly competitive global industry. Approximately 1,500,000 people travelled to an English speaking country to learn English in 2012 – globally the English language travel industry is worth over US\$11.5 billion². *Study Travel Magazine* estimated Australia's global market share in 2012 at 8% of English language students and 13% of the number of weeks spent studying English. Australia is the 4th most popular destination for English language study after the UK, US and Canada. There is still enormous potential to grow Australia's share of this important market. International education is more than just higher education.

The ELICOS sector is influenced by two key global trends:

- as recognised by the United Nations World Tourism Council, growing wealth in former developing countries is leading more young people to enjoy the cultural experiences of travel; and
- the desire to become proficient in English for education, business, cultural and leisure purposes will continue to be a priority for young people globally.

² Study Travel Magazine (December 2013)

It is important for the DIBP staff who are applying the GTE requirement to have a genuine understanding of the ELICOS sector and its key role in contributing to the development of 'global human capital' and to note the following features of the sector:

- young people are increasingly mobile;
- study, travel and work options are becoming increasingly intertwined as young people are looking to explore different opportunities;
- English language courses are highly commoditised and students rely heavily on the recommendations of friends and agents in their choice of provider.
- whilst the youth market makes up a substantial proportion of the ELICOS student cohort, there is a trend to increasing levels of study travel in other stages of life – whilst the 'gap year' is used by young people to gain greater experience and maturity between school and university or between university and employment, increasing numbers of people are taking 'career breaks' between jobs and using this opportunity to develop new skills (including English language skills) that will help them transition to new careers;
- English language skills are increasingly important to enhance career and employability options;
- English language skills are no longer viewed in isolation from other skills – employers are looking for cross-cultural experience, communication skills, confidence and autonomy – all skills that can be gained from overseas travel;
- it is increasingly hard to profile 'genuine' international students (as DIBP tries to do) as motivations are changing constantly.

The ELICOS sector will continue to be challenged if DIBP officers continue their failure to acknowledge stand-alone English language training as a valid course of study reflecting the student profile as described above.

The ELICOS sector is a highly competitive sector. The competitiveness within the sector has been recently challenged further by policy initiatives that have divided the sector into different segments with varying levels of competitive advantage, for example by the introduction of Streamlined Visa Processing for some ELICOS providers (university based and other nominated pathway providers) but not for others, and by the division of the sector between those regulated by TEQSA and those regulated by ASQA. The GTE requirement has provided further segmentation that has disadvantaged ELICOS providers delivering primarily stand-alone ELICOS courses.

The Student Visa Program is particularly important to the ELICOS sector. 61% of all ELICOS students in 2012³ were student visa holders. Appendix B provides more information regarding the profile of the ELICOS sector. It is important to note that student visa holders provide the core stability for the sector with an average course length of 16.3 weeks compared to only 4.9 weeks for a visitor visa holder. ELICOS providers are highly dependent on student visa holders to stabilise their student profile and minimise student 'churn'. It is also important to note that whilst 65% of ELICOS student visa holders will pathway through to further study in Australia⁴, there is another significant proportion (35%) who are learning English for a variety of other reasons.

³ Survey of Major Regional Markets for ELICOS Institutions 2012 (*English Australia, May 2013*)

⁴ Study Pathways of International Students in Australia, 2011–2012 (*AEI, May 2013*)

Section 3) English Australia comments

English Australia welcomes this opportunity to provide comment on the effectiveness of the Genuine Temporary Entrant (GTE) requirement.

As outlined in the introduction to this submission, ELICOS providers are highly dependent on a smooth flow of international students into their programs and anything that impacts this flow can have a significant impact on their business stability.

Evaluating the impact of the GTE

The review of the GTE requirement was intended to be an evaluation of whether it has been efficient and effective in achieving its intended outcomes.

The analysis focused on quantitative data from the first 18 months of the operation of the GTE but failed to incorporate any consideration of qualitative input from those experiencing the impact of the GTE requirement ie. students, agents and education providers.

The evaluation was limited in its scope and focused on only two criteria for determining 'effectiveness':

- improved program integrity outcomes;
- not negatively affecting visa grant rates.

English Australia would contend that including other criteria would have provided a more comprehensive evaluation of the true impact and met the intent of the Chaney Report recommendation of examining unintended consequences and the potential deterrent impact of the GTE requirement.

The Chaney Report referred to the need to achieve a balance between two key dynamics – industry competitiveness vs student visa program integrity:

*'Ensure that Australia's student visa settings continue to be **competitive and attractive in all education sectors** while **preserving the integrity of Australia's international student visa program** and helping to meet national skills needs.'*

It is English Australia's view that we have yet to achieve that balance in relation to the implementation of the GTE requirement.

The Chaney Report highlighted the importance of a review in *'identifying and addressing any unintended consequences that affect the sector, including the extent to which it may be acting as a deterrent to genuine students'*.

It is English Australia's view that the review conducted by DIBP failed to address these particular areas of focus.

The introduction of GTE & some of the challenges

Transparency is a significant issue within the current student visa program. The Assessment Level framework seems to be meaningless as DIBP officers demonstrate an inconsistent approach to applying it across different countries and over different periods of time. Australia has lost credibility in the eyes of students, their families and their agents who advise them in this complex area.

Students and their agents have lost faith in the system. Agents' professional credibility has been undermined by the seemingly random approach that DIBP staff have taken to applying the GTE requirement. An Assessment Level 1 country such as the Czech Republic suddenly found itself being treated like a high risk country with large numbers of students required to undertake interviews, being asked inappropriate personal questions and being told that a particular course is irrelevant to them. Agents have lost confidence in their ability to assess the quality of the applications they submit and worry that they will be blamed by students and families for any visa rejections.

The Assessment Level framework was originally introduced with the intention of removing the uncertainties and grey areas of the old gazetted and non-gazetted regime. However these grey areas have returned, with additional requirements being asked of Czech applicants which are never asked of other AL1 countries such as Switzerland (for example). It has to be asked whether there is any value in being assessed as an AL1 country when 80% of applicants are being treated as AL2 or even AL3.

English Australia has received feedback from agents that their perceptions are that visa applications are being rejected because the DIBP officer does not believe they are a genuine student 'because they want to study English when they are already competent in English'. This reveals that DIBP officers appear to have little understanding of the varying motivations for studying English nor the various course offerings that are available and their appropriacy for different learners.

The global importance of English language proficiency is widely acknowledged and the levels of English language proficiency across countries vary considerably both across countries and over time (see Appendix C – EF English Proficiency Index).

Motivations for learning English overseas, however, seem to be difficult for DIBP staff to grapple with – they seem to find it hard to apply the GTE requirement to courses that are not formal qualifications and don't fit neatly into a 'career plan'. How does a student demonstrate the value of an English language course? Their proposed course may not be linked to a concrete career plan – English language skills are valuable for social reasons as well as career and employment reasons. Just having better language skills is going to provide better opportunities regardless of whether a student knows exactly what they want to do or not. Many students travel overseas to learn English and then decide what they want to do. For many students, a period of time overseas learning a language is a rite of passage in their country rather than a conscious component of a coherent plan that they can explain over the phone in response to an interrogation from an Australian immigration officer.

DIBP statements made in rejection letters that the applicant could study English in their own country are highly frustrating for a sector where our very existence depends on the value placed on learning English in an English speaking country.

DIBP statements made in rejection letters that the applicant should study English in the UK rather than Australia because it is nearer and cheaper are also highly frustrating for a sector which invests significant marketing dollars in persuading students that Australia should be a preferred destination, not to mention the investment made by the Australian government in sending the same messages through the work undertaken by Austrade.

The impact on the ELICOS sector

What does the data show?

The report contends that the *'grant rate and program integrity findings hold not only when examining the overall Student Visa Program outcomes, but also when considering specific education sectors (visa subclasses) and key source countries'*.

It is important when considering the impact of the GTE requirement on the ELICOS sector to undertake this analysis from the perspectives of both pathway ELICOS programs that are packaged within other subclasses of student visas and stand-alone ELICOS programs within the 570 subclass.

Application of the GTE requirement is seen by ELICOS providers as favouring packaged ELICOS programs, particularly those packaged with university courses, as this motivation for studying English is easy to understand by the DIBP staff who are making the visa decisions.

Pathway providers are already seen to be favoured by SVP and also benefit from lower compliance costs associated with having TEQSA as their regulator rather than ASQA.

The problems experienced with GTE seem to be mainly experienced for Independent ELICOS (570) visa applications – for some providers since the introduction of SVP, now their only source of student visa holders.

The DIBP report looked at total lodgements and visa grants in 2012/2013, noting that both had increased compared with 2010/2011. What this analysis fails to take account of was that numbers had declined so badly since 2008/2009 that an upswing had to eventually be experienced. It also fails to examine the different subclasses of visa. Whilst the total number of applications has increased, it is clear from the table below that the number of applications lodged for Independent ELICOS visas continues to decline.

Offshore visa applications lodged - ELICOS (570)			
2007/2008	27,239		
2008/2009	33,086	5,847	21%
2009/2010	27,598	-5,488	-17%
2010/2011	23,467	-4,131	-15%
2011/2012	22,279	-1,188	-5%
2012/2013	21,695	-584	-3%

DIBP focused their analysis on grant rates because 'it records the ultimate outcome of an application'. In their report, DIBP claim that a lower level of applications would be seen as a good thing because this shows that 'prospective students who are not genuine temporary entrants are deterred from applying'. The industry would counter this contention by quoting numerous agents who stated that they stopped making applications to Australia because they risked rejections that they hadn't experienced previously and therefore also risked severe reputation damage. DIBP acknowledge that poor decisions were made more frequently in the early days of implementation and this would have deterred a number of agents from trying again even if they were advised that improvements had been made.

Agents in some countries saw that whilst Independent ELICOS visas were being rejected, packaged ELICOS visas were not. They shifted their recruitment practice to advising students that they should apply for a packaged program because they had a better chance of getting a visa. This distorted the market to the extent that in some countries stand-alone ELICOS providers are excluded from the market because they don't offer other programs that could be packaged with their ELICOS. The GTE requirement has achieved the opposite of its intent by actually encouraging students to lie about their intentions because they believe DIBP won't understand why they would want to study 'only' English. These students arrive in Australia,

undertake their English program and then go home without moving on to their second further study course because they only ever wanted to study English but know that if they had been honest, they would not have obtained a visa.

The ELICOS sector needs DIBP to not automatically look to reject stand-alone English courses as being somehow intrinsically suspicious.

The following tables show the offshore grant rates for some selected countries by visa subclass in 2011/2012 and 2012/2013. The countries were chosen as they provide a good illustration of the different grant rates for specific sectors and how the grant rates for Independent ELICOS visas are consistently lower than all other sectors. English Australia can see no rationale for why ELICOS visas should consistently have these lower grant rates unless it is true that DIBP staff see stand-alone English language course as somehow not a genuine course of study.

Whilst 96.5% of higher education visas in China are granted, only 42.3% of Independent ELICOS visas are granted – a level lower than pre-GTE. Whilst 89.3% of higher education visas in Vietnam are granted, only 48.8% of Independent ELICOS visas are granted – a level lower than pre-GTE.

Grant rate for student visa applications decided between 1 July 2011 and 30 June 2012 by client location, citizenship country and visa subclass

Location	Citizenship Country	570 ELICOS	571 Schools	572 VET	573 Higher Ed	574 PGR	575 Non-Award
offshore	China	48.2%	85.7%	68.0%	97.0%	99.8%	95.2%
offshore	HKSAR of the PRC	94.5%	100.0%	93.7%	99.0%	100.0%	100.0%
offshore	India	14.8%	26.0%	42.6%	50.8%	99.6%	86.1%
offshore	Peru	75.5%	100.0%	61.4%	96.5%	100.0%	90.9%
offshore	Philippines	66.3%	91.2%	72.6%	89.8%	100.0%	100.0%
offshore	Turkey	64.5%	100.0%	82.6%	87.4%	100.0%	96.7%
offshore	Vietnam	54.0%	80.3%	68.4%	86.9%	100.0%	98.8%

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Location	Citizenship Country	570 ELICOS	571 Schools	572 VET	573 Higher Ed	574 PGR	575 Non-Award
offshore	China	42.3%	91.4%	65.6%	96.5%	100.0%	98.6%
offshore	HKSAR of the PRC	86.1%	98.8%	96.8%	99.4%	100.0%	99.5%
offshore	India	11.0%	58.5%	58.2%	86.7%	99.1%	96.1%
offshore	Peru	72.7%	100.0%	79.3%	95.1%	100.0%	100.0%
offshore	Philippines	59.7%	94.1%	71.4%	93.6%	100.0%	100.0%
offshore	Turkey	65.9%	66.7%	71.5%	82.8%	100.0%	100.0%
offshore	Vietnam	48.8%	88.2%	72.3%	89.3%	100.0%	98.9%

Data provided in the report shows that the program integrity benchmarks for the Independent ELICOS subclass in are lower than the overall figures:

- 1% rate of unlawful non-citizens in 2012/2013 compared with 1.7% overall;
- 0.3% rate of visa cancellations in 2012/2013 compared with 0.5% overall.

Rates for these two integrity indicators are already low, with ELICOS even lower. It seems that the GTE requirement is causing more issues for Australia's reputation overseas that can surely be warranted in terms of the impact on the integrity of the student visa program.

Section 4) Next steps

English Australia acknowledges the importance placed by DIBP on the contribution that the GTE requirement makes to the ability to introduce other initiatives such as streamlined visa processing and post-study work arrangements.

English Australia also acknowledges the considerable effort that DIBP has applied to working through the issues experienced since the implementation of the GTE requirement and providing greater levels of support to visa processing officers.

English Australia would like to note that the impact of the introduction of the GTE requirement goes beyond the 'story' told by the statistics relating to student visa applications and grant rates and continues to impact on students' and agents' perceptions of Australia and Australia's attractiveness as a study destination.

English Australia would like to emphasise that despite improvements in the application of the GTE requirement, there is still considerable work to be done. Rejection letters are still being sent in February 2014 stating 'I also note that similar courses are available in your home country for a lower cost' in relation to an application for an Independent ELICOS visa.

English Australia appreciates the ongoing tensions between objectivity and flexibility in the application of the student visa regulations, however there remain particular issues in relation to areas where the criteria are more subjective ie. the value of the course to the applicant's future, including remuneration and career prospects in the applicant's home country.

English Australia believes that this is too complex an issue to codify, however that the inconsistent application of this criterion could be reduced by further education of DIBP staff in this area and clearer directions and guidelines provided to decision-makers, specifically from the English Australia perspective in relation to English language courses.

English Australia would like to see:

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Appendices

- Appendix A** Letter from the Hon Christopher Pyne MP and Scott Morrison MP to the Hon Chris Bowen MP (30 July 2012)
- Appendix B** English Australia Fact Sheet: *ELICOS Industry Statistics 2012*
- Appendix C** *EF English Proficiency Index*

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[submission authorised by the Board of English Australia]