

# English Australia Submission

## Review of the Tuition Protection Service (TPS)



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### Section 1) About English Australia

English Australia is the national peak body for the English language sector of international education, and represents over 120 member colleges throughout Australia that provide quality English language programs to students and professionals from around the world. 88% of international students learning English in Australia in 2014 chose to study with an English Australia member college.

Member colleges include single campus language centres that deliver only ELICOS, multi-campus (multi-city) language centres, language centres that are part of large international groups, university based language centres, RTO based language centres and TAFE based language centres.

The English Australia Survey of Regional Markets for ELICOS Institutions in 2014 (supported by the Australian Government Department of Education and Training) revealed that 163,542 international students commenced English language programs in Australia in 2014. 66% of these students held student visas.

English Australia operates a Tuition Assurance Scheme that provides tuition assurance to over 55,000<sup>1</sup> international students who study with ELICOS providers on visas other than student visas and are therefore not covered by the consumer protections of the ESOS legislative framework.

### Section 2) Background to the review

On 1 June 2015 English Australia was contacted by the Australian Government Department of Education and Training and invited to provide input to a Government initiated review of the Tuition Protection Service (TPS) - Governance and Administration Arrangements.

Terms of reference for the review were provided and feedback invited before 23 June 2015.

#### **Terms of Reference**

1. *Assess the effectiveness and efficiency of the current legislative and governance arrangements including:*
  - a. *the structure, function and operation of the Tuition Protection Service Advisory Board;*
  - b. *the position, role and functions of the Tuition Protection Service Director;*
  - c. *the administrative arrangements for the Tuition Protection Service, including the current Tuition Protection Service Administrator contract which provides case management of students affected by provider defaults; and*
  - d. *the management of the Overseas Students Tuition Fund – special account under the Public Governance, Performance and Accountability Act 2013;*

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<sup>1</sup> The English Australia Survey of Regional Markets for ELICOS Institutions in 2014

2. *Undertake a cost / benefit analysis of the current governance and administration arrangements of the Tuition Protection Service, including the efficiency and effectiveness in delivering the Tuition Protection Service policy objectives as set out in the ESOS Act;*
3. *Assess whether the experience of the Tuition Protection Service can inform the provision of tuition protection for domestic students in Australia;*
4. *Recommend practical improvements that could be made and savings that could be achieved with potential streamlining of the current governance and administration arrangements.*

## Section 3) Executive Summary

English Australia welcomes the opportunity to provide input to this review.

It is important to state upfront that English Australia believes very strongly in the importance of Australia having a tuition protection mechanism in place to protect international students and to protect Australia's reputation and brand.

While it is important for Australia's reputation in the international education industry to have a tuition protection mechanism, however, English Australia questions whether the current model is delivering as it should.

Key issues include:

- Ongoing costs to education providers

The industry is held financially accountable for colleges that close without the funds available to issue student refunds as they are obliged to under the ESOS Act, and yet the industry has no responsibility for these providers being approved to operate nor for the ongoing monitoring of their activities. The government should share the financial responsibility for allowing these providers to operate without meeting their obligations under the ESOS Act.

- Inefficient use of funds collected

Significant funds are spent on ongoing administrative costs even in years where there is little TPS activity. Interest is not earned on the significant amount of money held in the OSTF.

- Focus on refunds rather than placement

Under the original recommendations of the Baird report in relation to the establishment of the TPS, refunds were intended to be a "last resort" rather than the primary option available. Refunds necessitate greater expense than placements and yet seem to be the only option utilised by the TPS to date.

- Lack of industry oversight regarding the collection and use of funds

The TPS Advisory Board no longer includes members who are representatives of the industry which provides 100% of the funds in the OSTF.

English Australia recommends that:

- 1) Meaningful penalties be built into the ESOS framework to act as a real deterrent to colleges failing to meet their financial obligations to students under the ESOS Act.
- 2) The government match industry funding contributions to the OSTF.
- 3) The TPS Advisory Board include industry nominated representatives.
- 4) The current roles of the TPS Director be absorbed into another ongoing position within the Department of Education and Training, with the facility for this position to be expanded as and when required by increased college closure activity.
- 5) The functions of the TPS be brought into another existing organisation so that additional resources can be deployed as required but where ongoing infrastructure capability can be maintained at a minimal cost.
- 6) The TPS model be reviewed to focus on placements rather than refunds.
- 7) The OSTF be allowed to earn interest.

## Section 4) English Australia comments

English Australia welcomes the opportunity to provide input to this review, noting that input was also provided to the TPS Post Implementation Review (PIR) conducted in September 2014. Further information regarding any outcomes of this prior review has not been circulated so it is not clear to industry stakeholders whether the issues identified in this review have been considered or should be reiterated in this subsequent review.

English Australia notes that the terms of reference acknowledge the changes in the external environment since the introduction of the TPS including the advent of national quality assurance agencies through the establishment of the Tertiary Education Quality and Standards Agency (TEQSA) and the Australian Skills Quality Authority (ASQA).

English Australia also notes that over this period, there has only been a small number of provider closures.

It is important to state upfront that English Australia believes very strongly in the importance of Australia having a tuition protection mechanism in place to protect international students and to protect Australia's reputation and brand.

English Australia was the first body in Australia to create such a tuition protection mechanism before it was ever legislated under the ESOS framework. English Australia's Tuition Assurance Scheme (which still exists to provide protection for English language students within member colleges who do not have a student visa and are not covered by ESOS or the TPS) was based on a placement model that did not require fees from education providers but relied on a 'mutual assurance' commitment whereby other colleges took in students displaced by a college closure and absorbed them into their student body with no accompanying fees. This was sufficient for the needs of the ELICOS sector.

English Australia recognises that this model was not sufficient to handle the breakdown of the VET sector between 2008 and 2011, and that there was an urgent need for a more sustainable model to be developed that would work across all sectors.

As an alternative to the previous model, the TPS is a significant improvement. Operationally, it seems to be managing the default process in a much more timely and effective manner than occurred under the previous arrangements.

English Australia also views the inclusive nature of the TPS very positively as under the previous regime the burden was not shared equally across all sectors of international education. Whilst it is acknowledged that publicly funded institutions such as universities and TAFEs are highly unlikely to require the services of the TPS, it is also true to say that the majority of private providers would also never make a claim on the Fund. If the intent is to ensure that the financial burden of protecting Australia's reputation is spread equitably across all providers, then the current model achieves this goal.

There are significant benefits to 'brand Australia' from the assurance that Australia can offer to students and their families. This gives a degree of competitive advantage in some countries and to some sectors in particular. It is worth noting that for the ELICOS sector, however, approximately 40% of students are not covered by the TPS so English Australia has to offer an alternative approach to consumer protection for these students (on tourist and working holiday visas).

From data provided by the TPS Director, it appears that the financial costs to private sector English Australia member colleges are lower than under the previous consumer protection arrangements.

Regardless of the fact that costs are claimed to be lower than previously, ELICOS providers continue to view them as high, particularly for private colleges who pay the extra risk levy. The current risk model for determining fees does not offer any recognition for providers that have shown previous commercial 'robustness', having been open for decades in the face of varying market conditions.

The current model does not provide any penalties to be applied to education providers that do not meet their obligations under the ESOS Act to provide students with refunds. No criminal charges have ever been laid against a college owner for not meeting their obligations under ESOS, unlike in New Zealand where this has happened and is seen as a real deterrent. This has resulted in the majority of education providers paying for the bad practice of a few, with no incentive for providers to meet their obligations. Unless there are real consequences for not providing refunds, colleges will continue to rely on the rest of the industry to pay for their failure.

**English Australia would recommend that meaningful penalties be built into the ESOS framework to act as a real deterrent to colleges failing to meet their financial obligations to students under the ESOS Act.**

Our final concern with regards to cost is the fact that the TPS was introduced 'to provide a more sustainable and responsive framework that could be fully funded by international education institutions'.

Australia as a nation benefits from international education. It is the government (via the regulators) that determines which providers are registered on CRICOS and can enrol international students. Education providers have no control over the monitoring of other providers who may default on their compliance

responsibilities under the ESOS and TPS legislation. It seems unfair therefore that those education providers alone should bear the full financial burden.

**English Australia would recommend that the government match industry funding contributions to the OSTF.**

## **The structure, function and operation of the Tuition Protection Service Advisory Board**

*The TPS Advisory Board provides advice and makes recommendations to the TPS Director in relation to the TPS Levy under Subsections 9(3) and 10(2) of the Education Services for Overseas Students (TPS Levies), Act 2011, and any other matters that the Board considers relevant to the preparation of its advice and recommendations to the Director. The Board comprises:*

- *a representative from each of the following agencies:*
  - *The Department of Education and Training;*
  - *The Department of Finance and Deregulation;*
  - *The Department of Immigration and Border Protection;*
  - *The Australian Government Actuary;*
  - *The Australian Prudential Regulation Authority;*
- *up to seven other members appointed by the Minister on the basis of qualifications or experience that the Minister considers relevant to the performance of the Board's functions.*

Contributions to the Overseas Students Tuition Fund (OSTF) are sourced solely from education providers.

The previous mechanism for appointing the “up to seven other members” was to ask industry peak bodies to nominate appropriate representatives from the industry itself.

The TPS Annual Report 2013/2014 stated that “The board members include representatives from all areas of the international education sector—higher education, vocational education and training, schools, English language intensive courses and TAFE colleges.” This is no longer the case.

In 2015, this practice was changed when the Minister appointed members of the Advisory Board without going through the process of asking for nominations from the industry.

As a result, the industry has lost confidence that the current Advisory Board includes appropriate representation from education providers – those who actually contribute all the funds to the OSTF. This loss of a ‘connection’ to the industry means a missed opportunity for industry representatives to act as advocates for the decisions of the Advisory Board as well as a missed opportunity to gain insights into the real impact of any decisions that may be made.

**English Australia would recommend that the TPS Advisory Board include industry nominated representatives.**

## The position, role and functions of the Tuition Protection Service Director

The primary functions of the TPS Director are:

- to place and/or provide refunds to international students in accordance with the ESOS Act requirements;
- report to the Minister on the operations of the TPS and Overseas Students Tuition Fund;
- manage the TPS to ensure it meets its liabilities; and
- make a TPS levy legislative instrument each year.

Significant ongoing costs are incurred even when there is no activity, including the salary of the TPS Director.

**English Australia would recommend that the current roles of the TPS Director be absorbed into another ongoing position within the Department of Education and Training, with the facility for this position to be expanded as and when required by increased college closure activity.**

## The administrative arrangements for the Tuition Protection Service; and The management of the Overseas Students Tuition Fund

The TPS Director is assisted in his role of placing and providing refunds to students by the TPS Administrator.

PricewaterhouseCoopers is currently engaged to provide the TPS Administrator services; it is contracted to case manage provider defaults and student claims.

According to the Annual Report 2013/2014, over the 12 months to 30 June 2014 there was just one provider closure, which displaced 161 students and required the activation of the TPS. During this same period 82 calls were made on the OSTF and 94 assessments of the calls were completed, at a cost of \$187,266 (a number of these assessments relate to calls made in previous years).

This expenditure contrasts with the collection of large amounts of fees from education providers. In 2013, \$5.98 million was collected; in 2014 the amount collected was \$6.52 million.

It is acknowledged that the ongoing collection of fees has the aim of ensuring a strategic reserve in the OSTF in preparation for the sector experiencing more difficult and challenging circumstances.

Over this period, however, a significant amount of the fees collected has gone to fund the maintenance of administrative infrastructure that has not been utilised.

**English Australia recommends that the functions of the TPS should be brought into another existing organisation so that additional resources can be deployed as required but where ongoing infrastructure capability can be maintained at a minimal cost.**

Under the old Tuition Assurance Scheme model, the priority was for students to be placed into another course, with refunds the last resort. Under the new TPS model, the intent was the same.

The Annual Report 2013/2014 reveals that whilst 82 calls were made on the PSTF, no placements were made.

**English Australia would recommend that the TPS model be reviewed to focus on placements rather than refunds.**

The TPS Annual Report 2013/2014 states that:

*“Currently, due to a relatively benign environment (few closures and only small numbers of students affected), and proactive and prudent management of potential claims, some \$12 million has been accumulated in the Overseas Students Tuition Fund. This is a significant way towards the short- to medium-term target set by the board to reach a reserve of \$20 million by the end of 2016. Until an adequate reserve of between \$20 million and \$50 million has been accumulated, the TPS remains vulnerable to a sudden and unexpected increase in claims.”*

It is understood that the OSTF does not currently earn interest. It would seem to be in the best interests of all stakeholders for the OSTF to earn interest so that target of \$20 million can be achieved as early as possible and provider contributions reduced to a more reasonable and sustainable level.

**English Australia would recommend that the OSTF be allowed to earn interest.**

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