

REVIEW OF THE 2001 STUDENT VISA REFORMS

TDA SUBMISSION IN RESPONSE TO THE DIMIA DISCUSSION PAPER

TAFE Directors Australia (TDA) is a national association representing TAFE Institutes and the TAFE Divisions of multi-sector institutions, with its members being the CEOs of those bodies. As such, TDA is the peak body for the TAFE sector and represents Australia's public providers of vocational education and training.

1. General Comments

TDA welcomes the opportunity that has been provided to comment on the issues raised in the DIMIA Discussion Paper and to make suggestions on areas where modifications may be warranted to requirements under the Student Visa Program.

TAFE Directors Australia is deeply concerned about the impact that the current arrangements have had on the international student market for TAFE Institutes. Not only are numbers markedly down in many instances but there is a concern about the longer term impact on Institutes' ability to attract international students.

Australia is potentially very well placed to increase international student numbers, particularly in the light of continued safety concerns in the USA, the expense of programs in the UK and the realisation that Australia can provide quality educational programs at competitive prices. If we are to take full advantage of this potential, it is important that student visa requirements not remain prohibitive to so many students.

TDA recognises and accepts the need to limit undesirable outcomes of the Student Visa Program such as the entry of non-genuine students, applications for protection visas, illegal work and non-attending students. But it is dismayed that the Program is operating in such a way as to preclude many genuine potential students from studying in TAFE Institutes and that it is having such a negative impact on Institutes. TDA notes in this regard that we are not aware of evidence that would demonstrate that there was previously a serious problem or a high degree of risk associated with international students in the TAFE sector. As we have emphasised before, this underlines the need to ensure that the methodology employed and the criteria used to determine eligibility are the appropriate ones for the purpose and that they do not impact negatively on bona fide students.

We are therefore disappointed that the opportunity has not been taken in this Review to re-examine the risk assessment methodology that has been employed and consider possible improvements to the risk indicators.

We recognise that there is now not sufficient time to review the methodology in advance of the proposed changes to the risk assessment levels that are to take effect in November 2002. However we strongly urge DIMIA to give early consideration to issues relating to the methodology that have been raised, not only by ourselves and other peak bodies but also by DEST, so that improvements to the indicators can be implemented in advance of the next review of assessment levels.

We have a number of reservations about the methodology. We agree that the number of visa cancellations for reasons of non-compliance and instances of fraudulent applications

are both appropriate risk indicators. But we do not agree that visa refusals is a good indicator since refusals may occur for reasons that have little to do with whether a student is bona fide or not. Similarly we do we consider that applications for residence is an appropriate indicator.

Further, we are concerned that under the current approach where countries and sectors are assessed relative to each other, an improvement in compliance will not necessarily result in an improved risk rating because compliance levels may have improved elsewhere too. We believe that the focus should be on absolute rather than relative levels of risk and that evidentiary standards should be set accordingly.

Recommendation

- TDA recommends that DIMIA take early steps to review the risk assessment methodology so that improvements to the risk indicators can be implemented in advance of the next review of assessment levels.

2. Objectives of the Student Visa Reforms

TDA supports the principles of transparency and consistency of decision making, objective criteria and the need to preserve the integrity of the Program and avoid the undesirable outcomes highlighted on page 9 of the Discussion Paper.

Improving transparency, consistency of decision making and objectivity

TDA is most concerned about the continuing lack of transparency and insufficient detail being given about the grounds for refusal.

The paper has acknowledged (paragraph 2.8) that it can be unclear to the student, the agent and the provider exactly why the student was refused a visa and also that the lack of information can hamper both the agent and the provider in their efforts to improve the quality of future applications. TAFE Institute providers are very keen to work with DIMIA to ensure that students are genuine and to take appropriate action where problems with agents are identified. We therefore support the suggestion that the transparency of decisions could be improved by including a more detailed decision record with a refusal.

We note that at the meeting with peak bodies on 9 September, DIMIA advised that privacy implications can create difficulties for the release of refusal reasons. However, this should not be the case where students have given written agreement to such information being provided. Where a student's consent has been given, we consider that DIMIA should be ready to provide further clarifying information to providers on request.

Inconsistency of decision-making is also an issue. Some of this occurs because it appears that some officers are not sufficiently familiar with the rules and standards set under the Program. It is our experience that the advice given to students can differ from officer to officer and post to post on such matters as income levels required. We believe that there is a need to improve consistency of decision making through better staff training. TDA therefore supports the suggestion made at paragraph 2.9 .

Differences in interpretation also occur in relation to what constitutes a “genuine student” under the “other relevant matters” criterion. There have been many instances where university graduates wishing to enrol in a VET diploma have been considered not to be genuine students especially when coming from category 3 or 4 countries because this is not seen by some DIMIA officers as a useful pathway for career development. Yet this is an established pathway in the domestic student market, with very substantial numbers of university graduates undertaking TAFE courses to improve their employment or career development prospects.

It is clear to us that visa issuing officers do not have a good understanding of what may be appropriate for an individual in terms of further education and training for the purposes of career development and that this lack of understanding can lead to visa refusals for genuine students. We question whether the problem can be adequately overcome by further training since sound assessments under this criterion would require a deeper knowledge of the labour market and related skills requirements than officers might expect to acquire in a short training course. Our preference would be for this criterion to be removed.

A further area where difficulties are being experienced is DIMIA’s interpretation of what constitutes satisfactory completion of year 12 or equivalent. We consider that providers are much better placed to make a sound educational judgement on this matter, especially in the VET sector, where skills and knowledge acquired through post school study or work experience may also be relevant.

As a general observation, we favour efforts to codify subjective requirements and so improve the objectivity of the student visa criteria. In addition to our concerns noted above about the scope for subjectivity in interpreting the criterion about the usefulness of the course for employment or career development, we see benefit in clarifying what “any other relevant matter” might include (paragraph 2.14 refers). If the range of matters is large there may be advantage in codifying some of them. At this stage, on the evidence available, we are not persuaded that the flexibility claimed under this criterion operates in the favour of genuine students. (2.15)

We would also be interested to know how many visas have been refused under the “any other relevant matter” criterion and in which source country.

Recommendations

TDA recommends therefore that

- there be improved staff training for DIMIA officers
- more detailed reasons be given where visas are refused and that if necessary further information/clarification be provided to providers on the reasons for refusal where students have given their consent to such information being provided
- the recommendation of the provider be taken into account in determining the equivalent of year 12
- the criterion relating to employment or career development be removed

Quality

The paper asks whether issues of quality are relevant to the overseas student visa program and to what degree visa requirements and conditions should be used to assist with ensuring quality.

While TDA certainly supports ensuring that providers meet appropriate standards in delivering courses and it is important that the international reputation of Australian education remains high, we do not think that these matters are appropriate ones for DIMIA or the student visa program. There are already regulatory frameworks in place that have quality as their objective and these should be sufficient provided they are properly enforced.

3. Statistical Analysis

The Discussion Paper claims that overall, the introduction of the student visa reforms has supported continued growth in the Australian export education market. TDA regards it as disturbing that relatively little attention is given to the impact on particular sectors and the particularly severe impact on the VET sector. It is also most unfortunate that the analysis in the paper was based on out of date figures (to end February 2002 rather than for the full year 2001-2002) and that the many deficiencies in the data that has been collected has meant that sectoral analysis is very difficult.

As English Australia has pointed out in their submission, the overall growth in visas granted for the full year 2001-2002 was in fact low at just over 3% (compared with 23% in 2000-2001) and the growth in visa grants from China masked a significant decline in student visa grants from other countries.

The Discussion Paper acknowledges (paragraph 4.33) that the VET sector has seen a very significant decrease in total visa grants. While the impact of packaged courses is not known and we therefore do not have a comprehensive picture, feedback from our members indicates that numbers of international students at many TAFE Institutes have declined and the drop in the number of new student enrolments has been particularly marked from the Indian sub-continent. For example the following figures illustrate the huge impact that the Program has had on the numbers of students coming from the Indian sub-continent to Victorian TAFE Institutes

India	2000/2001	2079	2001/2002	508	- 76%
Sri Lanka		665		346	- 47%
Pakistan		337		97	- 71%

The Australian education sector is an important source of export income for Australia. TDA considers that it is of concern that there has been a significant drop in students from a number of countries and that we are losing market share in those countries. In addition, we do not consider it to be either in Australia's or in particular providers' interests to become overly dependent on a small number of markets.

We agree with the comment at paragraph 4.17 that an analysis of how the new program has affected each sector is important to determine the impact the program has had on the

Australian export education industry. For this purpose it is important that more accurate data be provided on enrolments in the various sectors.

Recommendation

- TDA recommends that DEST and DIMIA give greater priority to
 - identifying and implementing ways of recording international student enrolments and visa grants which would give a better picture of the trends in enrolments by sector
 - producing data in a more timely way

4. English Language Requirements

Onshore IELTS exemptions

Currently there is an exemption available (for AL 3 or 4 applicants) if the applicant has in the two years preceding application either successfully completed a senior secondary school certificate in Australia in a course studied in English or studied *towards* a qualification at the Certificate IV level or higher.

The argument is put in the Discussion Paper that the latter exemption is too liberal and DIMIA has sought views on more restrictive options.

TDA has considered the options suggested and proposes that the following would provide evidence of sufficient English proficiency to warrant exemption.

Recommendation

TDA recommends that onshore IELTS exemption be given on

- either satisfactory completion of a Certificate IV level course or higher if at least six months duration, or
- the student has studied a Certificate IV level course or higher over a period of one year and demonstrated satisfactory progress

IELTS exemption for prior learning in English

We consider that IELTS exemption for prior learning in English should be given in the following circumstances: if the student has completed year 12, or equivalent in English, or completed a post year 12 diploma or undergraduate degree in English. The Diploma should be 12 months in length.

Recommendation

- TDA recommends that IELTS exemption be given where the student has completed year 12, or equivalent in English, or completed a post year 12 diploma or undergraduate degree in English. The Diploma should be 12 months in length.

Minimum IELTS requirements

‘Package’ Higher Education Courses

TDA would support the proposal in paragraph 5.49 to allow an IELTS score of 5.5 IELTS for AL 3 and 4 Higher Education applicants who seek to undertake Foundation, a Diploma or Advanced Diploma of at least one year’s duration as a preliminary course. We consider that it is reasonable to expect students to progress from 5.5 to 6.0 over the period of one year’s study in the English medium in an English speaking environment.

IELTS Requirements for other courses

We agree with arguments that have been put that the IELTS requirements are too high for stand alone ELICOS and package ELICOS/VET courses for AL 3 and 4 countries. Reducing the minimum requirements would allow students to undertake 30-40 weeks study to achieve the required entry level of 5.5

Recommendation

TDA recommends that

- the minimum IELTS requirements for package ELICOS/VET courses for AL 4 countries be 4.5
- the minimum IELTS requirements for package ELICOS/VET courses for AL 3 countries be 4.0
- the minimum IELTS requirement for AL 3 and 4 Higher Education applicants who seek to undertake Foundation, a Diploma or Advanced Diploma of at least one year’s duration as a preliminary course be 5.5

Availability of IELTS Testing Centres

TDA members consider that there is an increased need for IELTS centres in Mexico, South America, India and South Korea

5. Financial Requirements

We are strongly of the view that the current financial requirements are too restrictive and unnecessarily onerous. We also consider that as a general principle the financial requirements should be consistent across sectors at the same assessment level. This is not the case at the moment with more restrictive conditions applying to the VET sector compared with other sectors.

Source of funds

We have indicated previously that the concept of family that is reflected in current rules is unduly narrow and that we favour it being broadened to include other close family such as siblings, aunts and uncles.

We therefore welcome the advice given at the meeting on 9 September that with effect from 1 November 2002, the family members from whom AL 3 and 4 applicants in the ELICOS and VET sectors may receive financial support will be expanded to include the brothers and sisters of the applicant.

At the same time we also strongly believe that the approach taken with AL 3 applicants in the Schools, Higher Education and Masters and Doctorate sectors should apply equally to the VET and ELICOS sectors (paragraph 6.17 refers). This would mean that it would be open to any individual to provide financial support for AL 3 applicants. No justification has been given by DIMIA for not having a consistent approach across sectors.

Recommendation

TDA recommends that:

- the source of funds be broadened to include other family members especially siblings and Australian relatives
- it be open to any individual to provide financial support to AL 3 applicants in the ELICOS and VET sectors to provide consistency of treatment with the Schools, Higher Education and Masters/Doctorate sectors

Range of acceptable sources of funds

Currently, commercial and government loans are not regarded by DIMIA as acceptable for AL 3 and 4 applicants in the VET sector. This is severely impacting the TAFE market especially students from India. TDA considers the exclusion is unreasonable especially given that commercial and government loans are acceptable for meeting financial requirements for Higher Education and Schools. Further, as pointed out in the Discussion Paper, allowing loans as an acceptable source of funds would help mitigate the difficulties being experienced as a result of the length of the savings period requirement by providing students with an alternative avenue of finance.

We also consider that the range of acceptable funds in AL 3 should be extended to include non-cash assets as is the case in some other sectors. However, given the reservations expressed by DIMIA in the Discussion Paper, we note our view that allowing loans as an acceptable source of funds is the higher priority since non-cash assets can often be used as collateral for a loan.

Recommendation

- TDA recommends that commercial and government loans and non-cash assets be allowed as acceptable sources of funds for VET applicants from AL3 and AL4 countries providing equity of treatment between sectors.

Level of funds required

The current rules which require AL 3 and AL 4 students to provide evidence that they have, up-front, the total amount of funds required for the planned study program are unreasonable given that the period of study involved is often in excess of 12 months. Many students would be in a situation where they are funded by the ongoing earnings of their families. We suggest that a better approach would be to require students to provide evidence of funds for the first 12 months and *evidence of access to funds* for the remaining period.

Recommendation

TDA recommends that

- AL3 requirements be amended to allow applicants to provide evidence of funds for the first 12 months of study and evidence of access to funds for the remainder of their period of stay.
- AL3 and AL4 requirements be amended to allow applicants applying for a further visa within Australia to provide evidence of funds for the first 12 months and evidence of access to funds for the remaining period.

Provider scholarships

Provider scholarships are currently permitted as a source of funding. As noted in the Discussion Paper, provider scholarships have been used by universities for some years and the TAFE sector also offers a small number of scholarships. TAFE Institutes would be concerned if limitations were placed on their ability to offer scholarships since they offer a widely recognised means of attracting high quality students and also of promoting internationally what Australian education and training has to offer. TDA has, however, in response to DIMIA concerns about possible future abuse of the current provisions by unscrupulous providers, suggested characteristics which might define an acceptable scholarship. These are as follows:

- eligible courses are Certificate III or above
- a minimum course length of six months
- the scholarships are advertised for application
- they are open to applications from any eligible student in the target country or countries (or from sister institutions where such relationships exist)
- students must study full-time and meet all the admission requirements of the course

- scholarships are awarded on merit with the criteria clearly specified; the criteria must include academic results but may also include work experience, and personal qualities and attributes

To these it may be desirable to add one further requirement to overcome the issue identified in paragraph 6.85; this might be along the following lines:

- there must be no requirement for the student to repay the financial assistance provided under the scholarship

We are confident that introducing the above conditions would overcome any potential for abuse and ensure that only genuine scholarships were offered.

In the paper, DIMIA has stated its view that it is inappropriate for provider scholarships to be awarded to AL 3 and 4 students undertaking a certificate course but has not provided any justification for this statement other than to note that, currently, there are restrictions in respect of AL 4 countries on certificate level studies.

We have questioned many times the appropriateness of the exclusion of Certificate IV courses for AL 4. No hard evidence of unacceptable levels of risk attaching to this group of courses has been advanced by DIMIA in support of the exclusion. We regard it as most unfortunate that DIMIA appears not yet to have recognised the value of Certificate IV courses and note that they are regarded as a valuable and appropriate qualification for hundreds of thousands of Australian students every year. As noted below we consider that the present provision should be changed and Certificate IV courses be allowed for AL 4 countries.

We do not favour target figures for the number of scholarship to be offered, believing that this is most appropriately a matter for the provider.

Recommendation

- TDA recommends that provider scholarships be retained as an acceptable source of funds with the characteristics previously suggested (see paragraph 6.81), but also making it clear that there be no requirement for the student to repay the financial assistance being extended under the scholarship

Financial assessment of family members

The paper canvasses the possibility of exempting certain applicants including those studying short courses (since they are not allowed to bring family unit members to Australia) from the requirement of providing evidence of funds for family members. We see merit in this suggestion. Applicants could be required in these cases to sign a declaration that family members will not be coming to Australia.

6. No Further Stay Condition 8534

TDA has previously expressed concerns about the No Further Stay provisions.

The Discussion Paper refers to some of the problems that have been experienced in paragraph 7.6 and canvasses the option of exempting an applicant from AL 3 from the condition if they provide evidence of having sufficient funds to cover a further 12 months' study and stay beyond their first period of study. TDA welcomes the advice given at the meeting on 9 September that from 1 November 2002 the proposal canvassed in paragraph 7.11 will be implemented

Recommendation

- TDA supports the proposal to allow AL 3 applicants to be exempted from the provision if they provide evidence of having sufficient funds to cover a further 12 months' study and stay

7. Inclusion of ELICOS Courses Leading to the Award of a Certificate in the VET Sector (subclass 572)

The paper has drawn attention to a number of anomalies between non-award ELICOS course and those that lead to a certificate. It has suggested that ELICOS courses leading to the award of a certificate of a Certificate I-IV be gazetted against subclass 570 (ELICOS sector) as non-award ELICOS courses are.

We are aware of these anomalies which have caused difficulties for some TAFE Institutes. We support the proposal.

Recommendation

TDA recommends that ELICOS courses leading to the award of a certificate or a Certificate I-IV be gazetted against subclass 570 (ELICOS sector), as for non-award ELICOS courses.

8. Appropriateness of Continuing to Regard Public and Private VET Providers as One Sector

As acknowledged in the Discussion Paper (paragraph 7.31), TDA considers that it is inappropriate to continue to regard public and private VET providers as one sector, given that the degree of risk associated with public and private providers differs significantly. We are confident that examination would demonstrate that the TAFE sector, ie the public provider, has a good record in visa compliance

The main objective of the Student Visa Program should be to ensure that abuse of student visas is minimised, while not penalising or deterring genuine students. Therefore the primary consideration for DIMIA in designing the key elements of the program should be the assessment of risk that is attached to certain classes of students. In the case of the current VET sector there are two subsectors, the public and the private sectors, that are easily distinguishable. It should not be difficult to collect data for these two subsectors separately with a view to assessing separately their performance against the risk indicators. Data is already available through the CRICOS system. It is neither equitable

nor in the interests of ensuring the growth of a sound education export industry to apply one broad measure to all in cases where the level of compliance, and therefore the risk, is different and separate measures could readily be developed and applied.

The Discussion Paper states that to treat students undertaking similar level courses differently depending on the sector (public or private) of the education provider is contrary to the universal framework of the student visa program. However, other government legislation addressing the export of education services, the ESOS Act, does treat providers differently depending on whether they are government funded or not. Providers that are government funded are exempt from the financial requirements of the ESOS Act. TDA notes as well that the Discussion Paper does not always take a universal approach. It canvasses, for example, exemptions for students from the ELICOS requirements if they come to undertake religious courses.

Recommendation

- TDA recommends that action be taken to distinguish between the public and private subsectors in the VET sector.

9. Inclusion of Certificate IV Course for AL 4 in the VET Sector

TDA continues to be most concerned about the exclusion of Certificate IV courses for AL 4 in the VET sector. There are a broad range of courses at the Certificate IV level that are suitable and of interest to international students. Arguably, courses at this level offering recognised qualifications with sound, applied skills are more relevant for the needs of many international students, especially those from developing countries, than higher level qualifications.

We have previously suggested that Certificate IV courses be allowed if these are at least 40 weeks in duration. We believe that this requirement would do much to remove any potential for abuse.

Recommendation

- TDA recommends that Certificate IV courses in the VET sector be allowed for students from AL 4 countries provided the courses are a minimum of 40 weeks