
7 Education and training

Key points:

- The education and training sector is subject to heavy regulatory burdens, including excessive reporting requirements, slow accreditation processes (Vocational Education and Training (VET) sector), jurisdictional inconsistencies and overlaps, and regulatory frameworks which do not reflect developments in the structure of the education sector.
- The education and training sector is undergoing significant regulatory reform, which provides an opportunity to reassess and reduce these burdens:
 - in the higher education and VET sectors, the Bradley Review Report was released in late 2008, and the Government has recently responded by announcing its intention to implement major reforms to the regulatory architecture of the sectors
 - in the schools sector, work is ongoing to implement a nationally consistent National Education Agreement through COAG
 - in relation to non-government schools, a new funding agreement for 2009–2012 was introduced in late 2008, and work on its implementation continues
 - a review of international education and the Educational Services for Overseas Students legislation was announced in August 2009.
- Given the Australian Government's commitment to changes to the regulatory and institutional frameworks in the education and training sector, it is not appropriate for the Commission to recommend specific actions in response to many of the concerns that have been raised with this review.
- The Commission encourages state and territory authorities to work cooperatively with the Commonwealth to progress the necessary reforms to implement the proposed Tertiary Education Quality and Standards Agency. The Agency is intended to encourage best practice, streamline and simplify current regulatory arrangements to reduce duplication, and provide for national consistency.
- Reforms to the regulatory frameworks must in particular address the excessive reporting obligations imposed on business. The common languages and definitions introduced by Standard Business Reporting should be utilised as much as practicable and a supplementary taxonomy for other data required in the education and training sector should be developed. Electronic reporting and secure online sign-on to the agencies involved should also be introduced.

7.1 Industry background

The education and training industry in Australia accounted for around 4.5 per cent of Australia's GDP (\$45 billion), 6 per cent of exports (\$14.2 billion), and 7.5 per cent of employment (808 800 persons) in 2007–08 (ABS 2009a; 2009b; DFAT 2008). The strength of the sector as an exporter is particularly striking, with educational services the third largest export industry behind coal and iron ore. The industry is made up of four diverse sectors which constitute major activities in their own right – universities, vocational education and training (VET), schools and providers of English language intensive courses for overseas students (ELICOS).

Schools

The schools sector in Australia can be divided into government and non-government schools, the latter comprising Catholic and independent schools. In 2008, there were about 9500 schools in Australia, of which 70 per cent were government schools, and 30 per cent were non-government schools, with close to 3.5 million full time school students (ABS 2009c). The schools sector is a very large employer in the economy. In 2008, there were close to 250 000 full-time equivalent employees in Australian schools — 65 per cent in government schools and 35 per cent in non-government schools. It is also a rapidly growing sector. From 1998 to 2008, there was a nearly 20 per cent increase in the number of staff (ABS 2009c).

Over the last ten years, there has been a trend in enrolment towards non-government schools, with 65 per cent of students enrolled in government schools in 2008, down from 70 per cent in 1998. While the number of students enrolled in government schools has grown only one per cent in this period, the non-government sector has experienced a 22 per cent increase (ABS 2009c).

The non-government schools sector is comprised of 40 per cent independent schools, with the Catholic sector making up the remaining 60 per cent. In 2008, there was just over 1000 independent schools, which accounted for nearly 15 per cent of Australian school enrolments (ISCA, sub. 26, p. 1).

Universities

In Australia there are 37 public and 2 private universities.¹ Australia's universities have an annual turnover of approximately \$17 billion, one million students and

¹ There is also one approved branch of an overseas university.

96 000 full-time equivalent employees (sub. 31, p. 3; DEEWR 2008c). In 2007, just over 40 per cent (\$9.3 billion) of funds for public universities came from government in the form of grants and other financial assistance. Another 13 per cent (\$2.3 billion) of funding was from HECS-HELP and FEE-HELP funds, which are generally paid by Government in the first instance, but for which students are ultimately liable (DEEWR 2008d). Universities are also the major contributor to education services exports, accounting for 34 per cent of overseas student enrolments in 2008 (180 000 persons) (table 7.1).

Universities play a vital role in determining Australia's broader economic performance through the higher productivity of university-trained workers and returns from university research and innovation (sub. 31, p. 3).

Vocational education and training

Vocational education and training (VET) comprises public and private registered training organisations (RTOs). Australia has approximately 4400 RTOs, of which 3100 are private providers (NCVER 2007a). In 2003, approximately 2.2 million students undertook training with private RTOs, compared to 1.7 million at public institutions (primarily TAFE institutes) (Harris et al. 2006). The VET sector is second behind universities in the overseas student market, and it is the fastest growing sector in terms of overseas student enrolments and commencements (table 7.1).

The Australian VET system is characterised by its flexibility, offering courses and training in a manner responsive to students' circumstances and the needs of employers. In 2007, 11 per cent of the population between 15 and 64 participated in some form of VET, with 88 per cent of students studying part-time. (NCVER, 2007b). Further, VET competencies and qualifications cover around 80 per cent of occupations in Australia (Hoeckel et al. 2008). The VET system plays a vital role in enhancing productivity, through skills acquisition including in emerging and expanding industries such as 'green collar' industries, biotechnology, childhood education and aged care services (Gillard 2009b).

English language intensive courses for overseas students

The English language training sector serves only overseas students and does not have a domestic education presence. The English language intensive courses for overseas students (ELICOS) sector has grown considerably over the last 20 years to over 240 accredited providers by 2007 (English Australia 2009). English language

education accounts for about 10 percent (\$1.5 billion) of the total education export market (sub. 14, p. 2).

In 2008, about 30 per cent of commencing overseas students holding student visas in Australia were undertaking English language courses (almost 100 000 students). A further estimated 60 000 students undertake English language courses on other visas, primarily visitor or working holiday visas (sub. 14, p. 2). The ELICOS sector ranks third behind universities and VET institutions in terms of overseas student enrolments, with about 125 000 enrolments in 2008 (table 7.1).

Table 7.1 International student enrolments and commencements by sector in 2008

Sector	Enrolments			Commencements		
	Number	% of Total	Growth on 2007 (%)	Number	% of Total	Growth on 2007 (%)
Higher Ed.	182 770	33.6	4.7	78 070	24.1	11.8
VET	175 461	32.3	46.4	106 180	32.7	46.1
ELICOS	125 727	23.1	23.4	99 312	30.6	22.8
Schools	28 798	5.3	7.1	14 537	4.5	6.6
Other	31 142	5.7	13.6	26 116	8.1	14.3
Total	543 898	100	20.7	324 215	100	24.8

Source: AEI (2009).

7.2 Overview of regulations

Independent schools

Independent schools operate in a complex regulatory environment, which encompasses educational standards, financial accountability, corporate accountability and professional accountability of teachers and administrators.

State and territory registration requirements provide the overarching regulatory framework applying to independent schools. They include operational, financial, educational and governance standards.

In addition, independent schools are subject to extensive educational and financial reporting requirements arising from schools' receipt of Commonwealth funding. These requirements are set out in the new *Schools Assistance Act 2008* ('the Act') which governs independent schools' funding relationship with the Australian Government for the 2009–2012 period. The Act includes a set of national school

performance requirements consistent with the National Education Agreement (NEA), a new funding agreement between the Australian Government and the state and territory governments, which came into effect on 1 January 2009. Under this agreement, schools are required to:

- participate in national student assessments comprising full cohort, annual literacy and numeracy testing and less frequent sample assessments
- participate in national reports on schooling outcomes, including to COAG
- provide nationally comparable individual school performance information which will be published by the Australian Curriculum, Assessment and Reporting Authority (ACARA)
- provide plain language reports to parents
- publish school annual reports for parents and the community (DEEWR, sub. DR88).

The new Act removes many of the conditions specified for Commonwealth funding under the *Schools Assistance Act (Learning Together — Achievement Through Choice and Opportunity) 2004*, for example a functioning flagpole with an Australian flag, two hours of physical activity per week for primary and junior secondary students and reporting to the Minister on expenditure on professional learning of teachers. Also, the Australian Government has provided a greater commitment to increased transparency, both in outcomes and outputs, and in school financial information. For example, the Government has committed to ranking schools by NAPLAN (National Assessment Program Literacy and Numeracy) results, and providing the background characteristics of the school and student body (Gillard 2009a).

Many independent schools are also corporate entities under the Corporations Act, and must meet the same standards of business operation and are subject to the same financial and governance accountabilities as corporations, for example, submitting financial reports to the Australian Securities and Investments Commission.

The reporting and compliance requirements may be disproportionately burdensome for independent schools, especially small independent schools, since they often do not have the support of centralised administration (such as Catholic dioceses) which are able to leverage economies of scale in managing the costs of regulation.²

² However centralised administrations may withhold some funding for administrative purposes.

Higher education

Nearly all universities have been established under state and territory legislation and must meet auditing and accountability requirements applying to public entities in their particular jurisdiction.³ However, since 1973, public funding of universities has been primarily provided by the Commonwealth, which has attached conditions on that funding, including a range of reporting and accountability requirements under the *Higher Education Support Act 2003* (the Act) and associated guidelines and funding agreements made under the Act. Quality and accountability requirements include financial viability, quality, fairness, provision of information to students, tuition assurance and contribution and fee requirements.

Australian universities accredit their own courses (subject to professional accreditation where relevant) and bear primary responsibility for the quality and standards of the degrees they award. In addition to this institutional self-regulation, universities are subject to quality audit through the Australian Universities Quality Agency (AUQA). For other types of higher education providers the main elements of external quality assurance are the Australian Qualifications Framework (AQF) and the National Protocols for Higher Education Approval Processes. The protocols require that courses accredited to other higher education providers must be comparable in requirements and learning outcomes to a course at the same level in a similar field at an Australian university. A summary of the higher education quality assurance framework is provided in box 7.1.

VET/industry skills

In the VET sector, responsibility for registering, monitoring and auditing registered training organisations (RTOs) is primarily the responsibility of the states and territories, but they operate under nationally agreed standards and operating protocols within in the Australian Quality Training Framework (AQTF). In addition to these standards, state and territory Registering Bodies have agreed to a number of national guidelines covering audits, complaints handling, risk management, industry involvement and managing non-compliance.

The National Quality Council (NQC), which is a body of the Ministerial Council for Vocational and Technical Education (MCVTE), oversees national quality arrangements such as AQTF and participates in policy development.

³ The Australian National University was established under its own Commonwealth legislation and the Australian Catholic University was established under Corporations Law.

Box 7.1 Summary of Higher Education Quality Assurance Framework

Qualifications: *Australian Qualifications Framework* (AQF) specifies qualification titles, their characteristic learning outcomes and pathways to those outcomes. Institutions refer to the AQF in developing courses. Institutions and professional bodies recognise and evaluate Australian and overseas credentials (with advice from the National Office of Overseas Skills Recognition).

Accreditation and approval: *National Protocols for Higher Education Approval Processes* set out criteria and processes for recognising universities and other types of higher education institutions. The *National Protocols for Higher Education Approval Processes* also set out procedures for the accreditation of higher education courses where the institution is not authorised for self-accreditation.

Education Services for Overseas Students Act 2000 governs the approval of courses and institutions offering courses to overseas students within Australia.

Institutions approved for Commonwealth funding and assistance must meet the requirements of the *Higher Education Support Act 2003*, undergo a regular quality audit and meet other quality requirements.

Professional bodies accredit courses on a compulsory or voluntary basis in some disciplines.

Institutional self-regulation: As bodies that are responsible for accrediting their own courses, universities and certain other institutions approve, monitor and review the courses they offer through internal peer review and quality assurance.

Other institutions apply internal quality assurance practices subject to having their courses accredited by state and territory governments under the *National Protocols*.

Institutions may follow voluntary codes of practice or collaborate to improve practice.

Independent quality audit: Australian Universities Quality Agency conducts regular quality audits of universities, some other institutions and government accreditation authorities.

Information provision: Official registers of approved institutions and courses.

- Collection of data for performance indicators, e.g. Graduate Destination Survey and Course Experience Questionnaire.
- Consumer information and websites (e.g. Study in Australia, Going to Uni) backed by requirements of the *Higher Education Support Act 2003*.

External monitoring: Various monitoring and annual or other reporting requirements associated with accreditation, approval or audit.

Source: Bradley et al. (2008).

The AQTF was revised in 2007 to make it more outcome focused. The changes aimed to streamline the regulatory system by adopting a risk-based approach to managing the quality of training and assessment, an outcomes-based auditing model, and nationally agreed quality indicators. However, a recent evaluation of the implementation of the new arrangements conducted by KPMG indicated that there was still some way to go to achieve national consistency in the application of the AQTF and identified the need to strengthen the risk-management approach and outcomes auditing model to enable greater efficiency and reduce regulatory burdens (KPMG 2008).

Although each state and territory registering body accepts the registration decisions made by registering bodies in any other jurisdiction, RTOs operating in multiple jurisdictions need to comply with different jurisdiction-specific requirements that apply in addition to the AQTF standards. To avoid multiple audits in different jurisdictions, training providers operating in more than one jurisdiction have the option of having their registration and audit arrangements managed by the National Audit and Registration Agency (NARA). However, to date, three jurisdictions have not delegated responsibility to NARA (TVET Australia, sub. 39, p. 6), so the potential for multiple audits across jurisdictions remains.

The regulation of Group Training Organisations (GTOs) — which are employers of Australian apprentices — is also the responsibility of states and territories. A national quality process for registration under the National Standards for Group Training Organisations 2006 allows governments to determine the capacity of GTOs to deliver Group Training services and their eligibility for Australian Government and state and territory government funding.

The Australian Government body, Trades Recognition Australia (TRA), provides skills recognition services, including domestic skills assessments for certain trades and pre migration skills assessments for potential migrants to Australia under the *Migration Act 1958*.

International education

In addition to these regulations applying generally to universities, VET and other providers, the provision of education services to overseas students is regulated through the Education Services for Overseas Students (ESOS) legislation. The ESOS legislation provides the sole framework governing providers of English language courses for overseas students, and acts alongside other quality assurance frameworks for universities, VET and schools.

The main components of the ESOS framework are the *Education Services for Overseas Students Act 2000* (ESOS Act); the ESOS Regulations 2001; and the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007 (National Code). The ESOS Act regulates the provision of education services to overseas students including marketing and recruitment, student support and student visa management. It principally seeks to ensure that overseas students receive the tuition for which they have paid.

Providers intending to deliver courses to overseas students must obtain registration on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS). The National Code provides nationally consistent standards for the conduct of registered providers and the registration of their courses. Providers are obliged (under the *ESOS (Registration Charges) Act 2000*) to pay an annual fee to remain registered on the CRICOS and also to pay annual contributions and special levies (under the *ESOS (Assurance Fund Contribution) Act 2000*) to an Assurance Fund which provides protection for students if their provider, or a substitute provider, cannot teach the course they have paid for. Under the ESOS Act, the designated authorities of the states and territories are responsible for recommending approved providers to the Commonwealth for registration. Providers will only be recommended for registration where they comply with the requirements of the National Code. Subsequently, the Commonwealth undertakes additional compliance checks under the ESOS Act before granting ultimate approval for registration.

A review into international education and the ESOS Act was announced by the Minister for Education, Employment and Workplace Relations in August 2009 (see section 7.4).

7.3 Concerns — independent schools

Concerns are raised by the Independent Schools Council of Australia (ISCA, sub. 26) about various aspects of the regulatory arrangements for independent schools. These are:

- inconsistency and/or duplication of regulation between the Australian Government and state and territory governments
- duplicative and burdensome registration requirements and regulations governing overseas students
- redundancy of the Financial Questionnaire
- unnecessary collection of data on students' background characteristics.

Many of these concerns are not new, having been raised in ISCA's submission to the Taskforce on Reducing Regulatory Burdens on Business (Regulation Taskforce 2006).

Inconsistency and/or duplication of regulation between the Australian Government and state and territory governments

ISCA is concerned about the duplication between Australian Government reporting requirements and those of state and territory governments. This results from the states and territories introducing separate reporting and regulation regimes as a means of meeting the Commonwealth requirements under the regime which governed schools from 2005 to 2008 (sub. 26, p. 7).

Assessment

This issue was raised in the Report of the Taskforce on Reducing Regulatory Burdens on Business (Regulation Taskforce 2006), which recommended the rationalisation of Australian Government and state and territory government reporting requirements for independent schools (recommendation 4.37).

Work is underway as part of the National Education Agreement (NEA) to rationalise the reporting requirements for schools. The NEA sets out a nationally consistent performance reporting framework designed to measure achievement of objectives and outcomes. This framework is consistent with that under the Schools Assistance Act ensuring the reporting requirements apply equally to government and non-government schools.

In addition, funding and regulation across the government and non-government schooling sectors will be reviewed and bilateral agreements between the Australian Government and the state and territory governments developed.

There are also other reforms to the schools sector underway which have the potential to impact on the regulatory environment. In particular, the Australian Curriculum, Assessment and Reporting Authority (ACARA), has recently been established. ACARA is tasked with the development of national curriculum, assessment and reporting arrangements (DEEWR, sub. DR88).

These reforms should go some way to addressing duplication between the Australian, state and territory governments. It is therefore appropriate that an assessment of the regulatory burden imposed by inconsistencies between Australian

Government and state and territory regulation be left until after the new system is fully implemented.

Duplicative and burdensome regulations governing overseas students

ISCA states that the regulatory framework governing overseas students is burdensome and duplicative. In particular, ISCA submits that the requirement that providers wishing to enrol overseas students must have separate registration on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) — and comply with *The National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007* (the National Code) — is redundant, since independent schools must already comply with strict state government registration processes. Further, complying with all requirements of the *Education Services for Overseas Students Act 2000* (ESOS Act) requires a dual system of student monitoring in areas such as attendance and monitoring of student progress (sub. 26, p. 6–7).

Assessment

Overseas students are vulnerable in the education and training marketplace since they are subject to migration control, may not be able to evaluate services before enrolling, and if wronged, may not be able to pursue remedies through the Australian court system. The ESOS Act aims to protect the interests of overseas students and Australia's international reputation as a high quality, reliable education provider by ensuring that adequate consumer protection and support services exist. The ESOS Act also aims to ensure that education and training services for overseas students meet nationally consistent standards and that education and training providers behave in an appropriate manner.

The National Code and state and territory school registration requirements have different policy objectives and therefore contain different requirements. In particular, the National Code plays a consumer protection role for international students, stipulating dispute resolution and appeals processes, regulating advertising to overseas students, as well as supporting Commonwealth Government migration laws. These would not be adequately addressed by the state and territory schools registration process. The Commission considers that it is necessary to have a separate registration system for providers of education to international students due to overseas students' higher level of vulnerability as compared to local students.

Under the National Code, providers must systematically monitor students' course progress and attendance, and be proactive in notifying and counselling students who

are at risk of failing to meet 80 per cent attendance, or not making satisfactory course progress. These systems are in place to support the integrity of the Commonwealth Government's migration laws by ensuring students complete their course within its expected duration.

One method of addressing duplication that arises from the ESOS Act would be to bring National Code requirements for monitoring student attendance and course progress in line with state and territory requirements for domestic students. However, the state and territory attendance and course progress monitoring requirements for domestic students may not meet the standard needed to maintain the integrity of migration laws. Moreover, the Commission believes this would not be feasible in the short term due to the inconsistency in requirements across jurisdictions.

Nevertheless, much of the data collected for domestic purposes should go at least some way to meeting the needs for data in relation to overseas students. As part of its NEA forward work agenda, DEEWR should investigate streamlining the attendance reporting requirements between different jurisdictions, and between domestic and overseas students. In line with recommendation 7.1, this process should be consistent with the methodology and principles of the SBR initiative. The recently announced review into international education and the ESOS Act (see section 7.4) may be another forum through which these concerns can be addressed.

Redundant Financial Questionnaire

ISCA raises the concern that the Financial Questionnaire independent schools are required to complete is redundant, since the questionnaire is not required to prove a school's financial standing, or to account for the spending of government school funds on the agreed purpose (sub. 26).

Assessment

The Financial Questionnaire was introduced to collect school financial data for non-government schools with the purpose of determining the allocation of funding under a resources-based model, which took into account school income. Since 2001, the funding model has been 'needs-based', using socio-economic data from the ABS national census. From 2001–2008 therefore, the financial questionnaire was redundant — it was not used to determine funding for independent schools or for any other discernible purpose. The Regulation Taskforce (2006) could not find a sound basis for retaining the Financial Questionnaire and recommended that it be abolished (recommendation 4.39).

However under the *Schools Assistance Act 2008*, the Financial Questionnaire will be used to determine the financial health of schools. This is part of a newly introduced requirement which requires that schools be ‘financially viable’ to receive Government funding. DEEWR is currently reviewing and amending the Financial Questionnaire to include fields necessary to obtain the data required for the financial health assessment (box 7.2), as well as to streamline and reduce other reporting requirements.

In the draft report, the Commission questioned the efficacy of using the Financial Questionnaire to ensure that schools are financially viable, and recommended that the Financial Questionnaire be abolished.

However, in response to the draft report, Christian Schools Australia presented a differing view with that of ISCA, which supported the abolition of the financial questionnaire. Christian Schools Australia states (sub. DR76, pp. 3–4):

Although most schools are required to prepare and lodge an annual audited financial statement this is by no means a requirement for all schools ... [and there] can be significant differences in the presentation of these reports as a result of differing disclosure regimes ... Despite the administrative burden that is imposed by the completion of the Financial Questionnaire we do not support its abolition at this time ...

Moreover, DEEWR submits in response to the draft report (sub. DR88, section 7.1):

The Financial Questionnaire is essential to enable the financial health assessments to be undertaken ... There is currently no other source from which the data required for assessing the financial performance of schools, using the financial indicators noted in the review’s draft report [box 7.2], can be obtained.

The Commission accepts that the current policy requires the collection of such financial information from schools, but urges DEEWR to use the data that are already reported by schools as much as possible, including the census of non-government schools.

In particular, DEEWR should ensure that any data already reported by schools should not be duplicated in the Financial Questionnaire and unnecessary items should be removed. Further, DEEWR should ensure that the reporting process is consistent with recommendation 7.1, namely that any data collection should be undertaken consistent with the principles and methodologies of Standard Business Reporting (SBR).

Box 7.2 Financial health assessment indicators

A new 'financial viability' requirement for independent schools was introduced with the *Schools Assistance Act 2008*. From 2011, independent schools will be assessed on the following financial health indicators:

1. Student–teacher ratio
2. Enrolment change on previous year
3. Percentage change in recurrent income compared to percentage change in Average Government School Recurrent Cost
4. Change in net tuition income per student
5. Salaries as a percentage of recurrent income
6. Total borrowings as a percentage of recurrent income
7. Interest cover – earnings before interest depreciation and amortisation as a percentage of interest expense
8. Principal and interest as a percentage of recurrent income
9. Cash surplus as a percentage of recurrent income
10. Recurrent income less recurrent expenditure as a percentage of recurrent income
11. Current assets as a percentage of current liabilities
12. Government grants as a percentage of recurrent income
13. Bad and doubtful debts as a percentage of gross fees

Source: DEEWR (2008b).

Collection of students' background characteristics

ISCA also raises an ongoing concern regarding the heavy burden of collecting data on student background characteristics, which they describe as 'unnecessary' (sub. 26). These data are collected for the Ministerial Council on Education, Employment, Training and Youth Affairs to enable nationally comparable reporting of the progress of students with particular background characteristics, on the achievement of national goals and targets at various points of schooling. These data consist of:

- gender
- indigenous status
- socioeconomic background
- language background
- geographic location
- disability.

The Commission's draft report noted that the issue was canvassed in the Report of the Taskforce on Reducing Regulatory Burdens on Business (Regulation Taskforce 2006), which recommended that DEEWR should implement sampling or better target data collections within the school system (recommendation 4.38 in Regulation Taskforce, 2006). The Commission therefore urged DEEWR to act on the Taskforce's recommendation or clearly explain to the stakeholders the reasons for not doing so.

In response to the Commission's draft report, DEEWR states (sub. DR88, pp. 4–5):

This information is *more* important, not less, than under the previous funding arrangements [Commission's emphasis]. Student background information together with student attainment information provides the rich data which is needed for the government to target funding programs appropriately and assess the impact of these programs on particular groups of students ... sampling is not an acceptable alternative, as this data is required for both individual diagnostic reporting and broader level reporting on literacy and numeracy outcomes of the full cohort of students.

The collection of individual-level student background characteristics is indeed consistent with the Government's commitment to increased transparency, including providing relevant data about school context (Gillard 2009a). However, the Commission cautions that such a rich level of data will be difficult to obtain and the integrity of the data difficult to verify without ensuring the efficiency and suitability of the systems in place for the collection of the data. For example, problems are likely to arise both in terms of response rates and data quality for data that are collected by a paper survey via forms taken home, to be answered by parents, and returned by students. The likelihood of problems in consistency of interpretation of questions, and reliability of responses on personal matters by parents appear to be significant. Errors in compiling and collating data from such a vast number of individual paper forms also seem very likely.

The Commission urges DEEWR to use existing sources of data wherever possible, for example socio-economic data from the ABS, and to prioritise the implementation of systems and processes which will facilitate the efficient collection of the data, for example by following the principles and practices of the SBR financial reporting taxonomy.

Other concerns

ISCA (sub. 26, pp. 4–5) also raise other concerns relating to new provisions in the *Schools Assistance Act 2008*:

- the new provision requiring non-government schools to be ‘financially viable’ in order to receive government funding inadvertently places excessive reporting and corrective actions⁴ on the schools which can least afford it
- the unspecified reporting requirements relating to the ‘funding sources’ of non-government schools may lead to added administrative burden.

The Commission considers that since these provisions of the NEA have not yet been fully implemented, and work is still progressing on these issues by DEEWR, an assessment of these issues is best left for a later date.

7.4 Concerns — higher education, VET and international education

Submissions raise a large number of concerns about aspects of the regulation of higher education, VET and international education. A summary of concerns relating to these three broad areas is set out below. These individual concerns have not been assessed in this report because of the recent Bradley Review of Higher Education and major reforms being implemented by the Australian Government in response to that review (see below).

Higher education

Specific concerns include:

- overlap between Commonwealth and state/territory responsibilities and requirements, including quality assurance activities, and a lack of coordination by regulators across jurisdictions (Universities Australia, sub. 31; NSW Department of Education and Training, sub. 48)
- within jurisdictions there is a lack of coordination across different portfolios (Universities Australia, sub. 31)
- duplicative, inconsistent or unnecessary reporting obligations and a lack of standardisation in information requests (Universities Australia, sub. 31)

⁴ Schools which are not able to show sufficient financial viability are required to engage the services of an independent auditor or certified practising accountant to conduct an assessment of the school’s finances, governance structure and practices and develop a management plan, at the school’s own cost.

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- a lack of accountability of (non-university) publicly funded education providers (NSW Department of Education and Training, sub. 48)
 - national protocol rules for use of the ‘university’ title are barriers to entry and some entities already granted the title may not meet the tests if being assessed as a new entrant (ACPET, sub. 32)
 - a blurring of boundaries between higher level vocational qualifications and traditional bachelor degrees and the need for clearer and more flexible pathways between higher education and VET (Universities Australia, sub. 31; ACPET, sub. 32)
 - new regulations that have major compliance cost implications have been introduced with little or no consultation (Universities Australia, sub. 31)
 - concerns that the Bradley Review recommendations may increase the net compliance burden on universities (Universities Australia, sub. 31).

VET sector

Specific concerns include:

- complexity and a lack of transparency of regulatory requirements and clarity of responsibilities (TVET Australia, sub. 39; ACPET, sub. 32)
- regulations are not applied in an equitable and consistent way — public universities and TAFEs are exempt from having to comply with several areas of regulation, providing a competitive advantage relative to private providers (ACPET, sub. 32). On the other hand, the NSW Department of Education and Training (sub. 48) submits that the current requirement that publicly owned VET providers meet the same financial accountability and annual reporting requirements as private providers is unnecessary
- excessive prescriptiveness in rules and the way they are administered. For example, VET rules stop innovative providers from developing courses to meet changing needs and private providers, in particular, are slowed by training package strictures and accreditation rules (ACPET, sub. 32)
- multiplicity of audit and supervision requirements (ACPET, sub. 32)
- duplicative and increasing reporting obligations (NSW Department of Education and Training, sub. 48) and some data collections are of little benefit (ACPET, sub. 32)
- insufficient sharing of information between registering bodies (TVET Australia, sub. 39)

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- inconsistencies and duplication across jurisdictions in requirements, including for registration, auditing and monitoring of provider performance (TVET Australia, sub. 39; NSW Department of Education and Training, sub. 48; ACPET, sub. 32; Service Skills Australia, sub. 21)
 - lack of integration of auditing activities is resulting in duplication between AQTF audits and other VET-related audits and audit systems are too input focused (rather than focusing on performance/outcomes) (TVET Australia, sub. 39; ACPET, sub. 32)
 - inefficiencies in administration of requirements, including lack of timeliness, inadequate staffing, inconsistent decision making, and a lack of technical expertise (ACPET, sub. 32)
 - some types of entities do not have fair opportunities or representation in consultations (ACPET, sub. 32).

International education

Specific concerns include:

- lack of consistency in the implementation of the ESOS Act Framework across state and territory bodies and a lack of clarity in the shared responsibilities between the Commonwealth and states and territories (NSW Department of Education and Training, sub. 48)
- duplication and inconsistency between ESOS Act, Immigration Act and state and territory legislation (TVET Australia, sub. 39; English Australia, sub. 14; NSW Department of Education and Training, sub. 48)
- prescriptive regulations supporting the ESOS Act are undermining the outcomes focus that the AQTF Standards are trying to achieve (TVET Australia, sub. 39)
- some provisions of the ESOS Act are anti-competitive and contrary to the principle of competitive neutrality — universities and other public institutions are exempt from certain requirements that apply to private institutions (English Australia, sub. 14)
- compliance burden relating to assessing/reporting the visa status of international students and the management of appeals processes (Universities Australia, sub. 31)
- insufficient recognition and reward (by way of reduced regulatory obligations) for lower risk, quality providers, at the same time as there is insufficient targeting or enforcement in relation to high risk providers (South Australian Government, sub. 49; ACPET, sub. 32).

Recent reviews and current reform activity

There have been several reviews in recent years that have considered aspects of the regulatory arrangements for higher education, VET and international education, including the scope to streamline requirements and reduce red tape. Of most significance is the Bradley Review of Higher Education conducted in 2008. Other reviews have included, for example:

- an evaluation of the implementation of the Australian Quality Training Framework by KPMG (2008)
- the 2006 Regulation Taskforce Report
- the 2006 review of university reporting requirements by PhillipsKPA and Lifelong Learning Associates, commissioned by the Australian Vice-Chancellor's Committee
- an independent evaluation of the ESOS Act, including consideration of the effectiveness and efficiency of the regulatory framework, conducted in 2004 (a report was released in June 2005) (PhillipsKPA and Lifelong Learning Associates 2005).

A review into international education and the ESOS Act was announced by the Minister for Education, Employment and Workplace Relations in August 2009. The Review, to be headed by The Hon Bruce Baird, will consider the need for enhancements to the ESOS legal framework in four key areas:

- Supporting the interests of students
- Delivering quality as the cornerstone of Australian education
- Effective regulation
- Sustainability of the international education sector. (Gillard 2009e)

After consulting with stakeholder groups, including inviting submissions in response to an issues paper, an interim report will be presented to COAG in November 2009, with a final report expected in early 2010. In parallel with this review, COAG is developing a comprehensive national International Student Strategy (COAG 2009b).

The Department of Education, Employment and Workplace Relations (DEEWR) is currently undertaking the project *Future Directions for Quality Oversight of Tertiary Education Services in Australia*. This project is considering the impact on quality assurance arrangements of proposed reforms in VET directed at student and business centred funding and to develop models for national regulation of VET providers and national accreditation of VET qualifications and courses. A review of

existing VET provider approval processes (for those providers applying for VET FEE-HELP⁵) is also currently being undertaken.

The recommendations of another recently completed review — *Review of the Currency and Effectiveness of the National Standards for Group Training Organisations 2006* — were presented to the National Senior Officials Committee in May 2009 and are the subject of further consideration as part of broader consultations on national regulatory arrangements for VET (COAG 2009b). Amongst other matters, this review considered the need for the National Standards for Group Training Organisations (GTOs) to be brought into line with the current focus on outcomes-based quality frameworks and concerns that GTOs that also operated as registered training organisations were subject to unnecessary duplication of auditing requirements.

Bradley Review of Higher Education

In March 2008, the Minister for Education, Employment, Workplace Relations and Social Inclusion initiated a Review of Australian Higher Education. The Review was led by an expert panel chaired by Emeritus Professor Denise Bradley. The Review Panel was asked to examine and report on the future direction of the higher education sector, its fitness for purpose in meeting the needs of the Australian community and economy and the options for reform, including changes to regulation.

One of the terms of reference for the review was to establish the place of higher education in the broader tertiary education system, especially in building an integrated relationship with VET. The definition of ‘higher education’ (as used by the Review) is based on levels of qualification and historically has essentially applied to universities. But increasingly there has been a blurring of boundaries, for example, between higher level qualifications offered by VET and bachelor degrees offered by universities. The Review recognised this and the need for closer links between VET and higher education. A key recommendation (see below) is to consolidate responsibility for regulation of the whole tertiary system at a national level to ensure that it is dealt with in a more integrated and streamlined way.

With the exception of English Australia (sub. 14), all the participants that made submissions to this review commenting on regulation of the higher education and VET sectors, also participated in the Bradley Review’s consultation process.

⁵ VET FEE-HELP is a Government loan scheme that assists eligible students undertaking certain VET courses of study with an approved VET provider, to pay for all or part of their tuition costs.

The Review Panel's Final Report was released in December 2008. The Government has accepted most of the Report's recommendations and, if fully implemented, these decisions will result in major changes to the regulatory and institutional framework impacting on tertiary education and training providers (see below).

Key findings and recommendations relating to institutional and regulatory reform

The Review Panel found the current regulatory arrangements for higher education to be complex, fragmented and inefficient (Bradley et al. 2008, p. 115). In particular:

- the quality assurance framework is too focused on inputs and processes and does not give sufficient weight to assuring and demonstrating outcomes and standards
- different and overlapping frameworks regulate the quality and accreditation of higher education institutions, the operation of VET providers, consumer protections for overseas students studying in Australia and institutional approval for the purposes of student loan assistance
- responsibility is divided between the Commonwealth and the states and territories, with different units of government responsible for various regulatory frameworks in each. Arrangements for mutual recognition of providers and courses operating across state and territory boundaries are inefficient and do not operate effectively
- within higher education the framework is applied unevenly so that not all providers are reaccredited on a regular basis
- reliable comparative information to underpin student choice of courses and institutions is limited.

The Review Panel recommended that the Australian Government, after consultation with the states and territories, assume full responsibility for the regulation of tertiary education and training in Australia by 2010 (recommendation 43) and adopt a framework for higher education accreditation, quality assurance and regulation featuring (recommendations 19, 20, 21, 23):

- accreditation of all providers (including universities) based on their capacity to deliver on core requirements including:
 - an Australian Qualifications Framework (AQF) with enhanced architecture and updated and more coherent descriptors of learning outcomes
 - strengthened requirements for universities to carry out research in the fields in which they teach

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- new quality assurance arrangements involving the development of standards and implementation of a transparent process for assuring the quality of learning outcomes across all providers of higher education (work on the development of the new arrangements to be commissioned and appropriately funded by the Australian Government)
 - an independent national regulatory and quality assurance agency responsible for regulating all types of tertiary education (including VET and higher education).

In the higher education sector the regulatory agency would:

- accredit new providers, including new universities
- accredit courses where the provider is not authorised to do so
- periodically reaccredit all providers including the existing universities on a cycle of up to 10 years depending on an assessment of risk (with authority to impose conditions, require follow-up action or to remove a provider's right to operate)
- carry out shorter-cycle quality audits of all providers, focused on the institution's academic standards and the processes for setting, monitoring and maintaining them. This would include auditing the adoption of outcomes and standards-based arrangements for assuring the quality of higher education
- register and audit providers for the purpose of the *Education Services for Overseas Students (ESOS) Act 2000* protecting overseas students studying in Australia and assuring the quality of their education
- provide advice to government on quality, effectiveness and efficiency and higher education issues referred to it or on its own initiative
- supervise price capping arrangements in courses offered only on a full-fee basis where public subsidies do not apply.

Other specific recommendations relating to the regulatory framework, included:

- that more rigorous criteria be developed for accrediting universities and other higher education providers based around strengthening the link between teaching and research as a defining characteristic of university accreditation and reaccreditation (recommendation 22)
- that the AQF be reviewed to improve and clarify its structure and qualifications descriptors and the ongoing responsibility for a revised framework should rest with the national regulatory body (recommendation 24)
- a single ministerial council be established with responsibility for all tertiary education and training (recommendation 46)

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- all accredited higher education providers be required to administer the Graduate Destination Survey, Course Experience Questionnaire and the Australasian Survey of Student Engagement from 2009 and report annually on the findings (recommendation 7)
 - the regulatory and other functions of Australian Education International (AEI) be separated, with the regulatory functions becoming the responsibility of the independent national regulatory body (recommendation 11) and that the industry development responsibilities of AEI be revised and be undertaken by an independent agency which is accountable to Commonwealth and state and territory governments and education providers (recommendation 12).

The Review Panel also suggested that:

- higher education providers should be required to provide annual data on student numbers and characteristics as a condition of their accreditation
- VET and higher education providers should continue to enhance pathways for students through the development and implementation of common terminology and graded assessment in the upper levels of vocational education and training
- the Australian Government should commission, by 2012, an independent review of the implementation of the amendments made in 2007 to the *Education Services for Overseas Students Act 2000*.

In the regulatory and institutional model proposed by the Bradley Review, Commonwealth Government departments would remain responsible for direct policy advice on funding, program, quality and regulation issues. This would include advice to Minister(s) on legislation, allocation of funds, the performance of the regulatory body and appointments to it and guidelines within which the regulatory body would operate. The states and territories would continue to have a considerable role in the tertiary sector, including by way of their continuing legislative responsibility for almost all universities, and as the owners of TAFE and other public VET providers. They would also play a major role in the coordination and setting of broad policy directions for the tertiary education and training system, through COAG and relevant ministerial councils.

Australian Government's response to Bradley Review

The Australian Government has announced a number of high level responses to the Bradley Review, firstly in a series of speeches in March by the Minister for Education, Employment and Workplace Relations (Gillard 2009b, 2009c, 2009d) and subsequently, and more fully, in the 2009 Federal Budget in May (Australian Government 2009b). The Government has largely supported the recommendations

of the Review Panel. The reforms, or broad policy intentions, announced by the Government that are of particular relevance to regulation and institutional frameworks are outlined in box 7.3.

Assessment

In its response to the Bradley Review the Government has acknowledged a number of the regulatory concerns raised with this review. The Commission welcomes the Government's stated intention that the new Tertiary Education Quality and Standards Agency (TEQSA) will encourage best practice, and streamline and simplify current regulatory arrangements to reduce duplication and provide for national consistency.

The Government has indicated that it will:

... be consulting extensively with states and territories and the sector to ensure that TEQSA is able to cut through some of the regulatory complexity and red tape that currently exists. (Australian Government 2009b, p. 32)

The Commission is encouraged by the commitment to the establishment of TEQSA by 2010 and urges state and territory authorities to work cooperatively with the Commonwealth to progress the necessary reforms. In regard to regulation of the VET sector, the Commission notes that COAG has endorsed the need for stronger and more cohesive national regulatory arrangements for VET, 'including in-principle support for a national regulatory body to oversee registration of providers and accreditation of VET qualifications and courses' (COAG 2009a, p. 6). A report on operational models, including for a national regulatory body, is to be provided to COAG by September 2009.

Whilst the Government has clearly stated its intention to reduce the regulatory burden associated with some existing arrangements, the Commission is concerned that some of the announced reforms and the increased focus on quality assurance have the potential to add to regulatory burdens, if not designed and implemented in an efficient manner. There would appear to be particular risks associated with:

- more rigorous criteria for accrediting/reaccrediting higher education providers, including universities
- new qualification standards
- increased reporting obligations
 - mission-based compacts could create new obligations for universities

Box 7.3 The Government's response to the Bradley Review

A new standards-based quality assurance framework will establish minimum standards that higher education providers are required to meet in order to be registered and accredited, as well as academic standards.

A national regulatory body, to be called the Tertiary Education Quality and Standards Agency (TEQSA), is to be established in 2010. In line with the recommendations of the Bradley Review Panel, this body will accredit providers, carry out audits of standards and performance of institutions and programs, and protect and quality assure international education. TEQSA will focus initially on regulation and quality assurance for higher education and from 2013 its role will expand to encompass VET organisations.

TEQSA will evaluate the performance of universities and other higher education providers every five years, or whenever there is evidence that standards are not being met or an evaluation is considered necessary to address an unacceptably high level of risk to quality or viability. A range of sanctions, proportionate to identified deficiencies, will be available for higher education providers that do not measure up against standards. As well as institution-specific audits, the new agency will also carry out audits that focus on particular areas of risk for the higher education system.

The Australian Qualifications Framework Council has commenced work on reviewing the Australian Qualifications Framework to improve and clarify its structure and qualifications descriptions. The Government announced that further work is to be progressed through TEQSA. The Australian Qualifications Framework Council will be commissioned to improve the articulation and connectivity between higher education and VET.

The Government agreed that the regulatory and other functions of Australian Education International should be separated. This is to be progressed in conjunction with arrangements for TEQSA. A response on the recommendation that the industry development responsibilities of Australian Education International be revised and be undertaken by an independent agency has been deferred pending further consideration.

Mission-based compacts will be introduced that outline the relationship between the Commonwealth and each university. Compacts will be used to define clear and consistent performance targets for each institution in relation to quality, attainment and participation by students from under-represented groups. Achievement of targets will trigger reward payments.

A new Ministerial Council for Tertiary Education and Employment will be established, with responsibility for higher education, VET, international education, adult and community education, the Australian Qualifications Framework, employment and broader youth policy.

Source: Australian Government (2009b).

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- TEQSA will collect ‘richer data’ to monitor performance in areas such as student selection, retention and exit standards, and graduate employment. Institutions will be required to demonstrate students’ academic performance and ‘document what students learn, know and can do’ (Australian Government 2009b, p. 31)
 - the Government’s in principle support (currently the subject of further consideration) for a requirement that all accredited higher education providers administer the Graduate Destination Survey, Course Experience Questionnaire and the Australasian Survey of Student Engagement and report annually on findings.

The Government has specifically recognised ‘the anxiety some will have of more red tape and managerial control’ and expressly stated ‘that is not the intention and it will not be the effect’ (Gillard 2009b). Further, the Government has signalled its intention to consult extensively with the institutions and other experts in the sector, including, for example, in relation to mission-based compacts and appropriate tools and indicators to measure performance at an institutional level.

It is understandable, given the track-record of regulatory burdens in this sector, that higher education institutions remain sceptical of assurances around controls on the regulatory burden emanating from recent review activity. Universities Australia submits:

... it is likely that a side-effect of the macro-level Bradley Review reforms (and related reforms to research policy) will be even further increases in micro-level compliance obligations. (sub. DR87, p. 1)

Universities are worried that a new propensity not to consider the regulatory or administrative burden resulting from reform initiatives is appearing. Three recent examples include:

- Broad-ranging standard provisions in Government contracts that place the onus of proof on those who would seek to vary these provisions (e.g. on denial of moral rights for authors). The onus should be reversed, which is to say basic rights should only be waived where a case can be made by the relevant Government agency.
- In the Students Services and Amenities Bill currently before Parliament, a new HECS-style arrangement is proposed to implement a \$250 student fee. No public case has been made as to why the fee could not be incorporated into existing HECS arrangements, resulting in the saving of extensive separate handling costs.
- Under the Education Investment Fund, various cumbersome regulatory provisions such as Government approval of sub-contractors were to have been required of grant recipients. Fortunately, in this instance, representations by Universities Australia were able to see the worst instances of micro-regulation removed. (sub. DR87, p. 2)

The Commission considers that it is not appropriate at this time to recommend actions in response to the concerns that have been raised given the recent major review and the Government's intention to implement substantial reforms to the regulatory and framework for higher education and training. Reforms to address inconsistency, duplication, overlap and unnecessary red tape are best considered in conjunction with the development and implementation of the new regulatory arrangements and the creation of the TEQSA. While the Bradley Review has informed the Government's determinations on the broad architecture for regulation of higher education and VET, a series of in-depth examinations will now need to be carried out to resolve detailed aspects of the new arrangements. The current DEEWR project on Future Directions for Quality Oversight of Tertiary Education Services in Australia and the review of the qualifications framework are just two such examples.

In addition to taking account of all the specific concerns that have been raised with this review, the Government and the new national agency must ensure that any regulatory reforms:

- are subjected to best practice regulatory process, including wide consultation and rigorous regulatory impact analysis
- are consistent with national competition policy and competitive neutrality principles, including ensuring that requirements are applied equivalently across providers, whether public or independent
- do not discriminate between institutions on the basis of the type of courses/qualifications offered, rather any differentiation in obligations should reflect actual differences in risks or performance.

The Commission notes that the sector's concerns in relation to reporting obligations are taking far too long to address. The Report of the Taskforce on Reducing Regulatory Burdens on Business (Regulation Taskforce 2006) recommended that the relevant agencies '... should work with the Australian Vice-Chancellors' Committee to address issues identified in the PhillipsKPA and Lifelong Learning Associates (2006) report to reduce red tape for universities' (recommendation 4.36). The Government agreed in principle to the recommendation and supported 'measures that reduce unnecessary reporting or regulation where they are of an administrative nature' (Australian Government, 2006).

It is vital that the development of specific reforms to streamline reporting obligations is undertaken as soon as possible and in a manner consistent with the implementation of the standard business reporting (SBR) initiative, which will be available from 31 March 2010 (appendix B). All existing and proposed reporting obligations must be examined, taking into account the following principles:

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- data requests from all levels of government should use the SBR financial reporting taxonomy wherever possible
 - additional data requests should begin by looking at data the business already collects, so that existing business data can be utilised wherever possible
 - where additional data is required, common language and definitions must be used to prevent any duplication and overlap. The data requirements should then be developed as a taxonomy to supplement to the existing SBR taxonomy
 - electronic reporting and secure on-line sign-on to the agencies involved should be introduced
 - the benefits derived from the data collected should always outweigh the total costs, including business compliance and government administration costs, of generating and processing that data.

In response to the Commission's draft report, DEEWR drew out the practical implications and benefits, in relation to VET programs, of streamlining reporting, consistent with SBR (box 7.4)

Box 7.4 Some benefits of adopting SBR for VET programs

With respect to DEEWR's VET programs, [the Commission's draft recommendation 7.2] will mean, as required, the ongoing adoption and implementation of common data definitions and standards in DEEWR systems that comply with the Standard Business Reporting initiative and the Australian Vocational Education and Training Management Information Statistical Standard (AVETMISS).

Rationalising the training information collected from business organisations may reduce duplication, and the number of forms and interfaces to DEEWR's VET systems that VET providers and business partners are required to manage.

Payments to contracted providers vary across programs and rely on multiple factors that include registrations, commencements, claims, milestone payments, quarterly estimates and reconciliation processes. Consistent claims and payment processing across DEEWR's VET programs may reduce the administrative burden on those businesses engaged in multiple contracted arrangements.

A number of DEEWR's VET programs process and verify the documentation provided from providers as part the provider approval and review process. Increased use of data standards in the collection and processing of this information may facilitate online verification of these documents by the issuing authorities (eg banks, local governments and insurance companies).

Source: DEEWR (sub. DR 90, pp. 8-9).

The Department of Education, Employment and Workplace Relations, in consultation with state and territory authorities, should ensure that reforms to streamline reporting obligations in the education sector, including for schools and in response to recommendations from the Bradley Report, are undertaken consistent with the methodology and principles of the Standard Business Reporting initiative. Electronic reporting and secure on-line sign-on to the agencies involved should be introduced.