

# THE REGULATION OF INTERNATIONAL STUDENT WELFARE IN AUSTRALIA

**Gaby Ramia, Simon Marginson  
and Erlenawati Sawir**

When students travel across national borders to pursue education they participate in a global market. On the latest available statistics, the education market grew 77 percent worldwide in the decade beginning in the year 2000<sup>1</sup>. Australia is engaged in an ongoing race for the maximisation of its share. Currently it ranks third, equal with Germany at seven percent share of the total number of international students worldwide. The US and the UK are first and second respectively, at 18 percent and 9.9 percent (OECD 2011: 320, 322). France is after Germany and Australia and has 6.3 percent, while Canada has 4.7 percent.

Some countries directly regulate the welfare of international students during the overseas stay. Australia is one of them. New Zealand, which has the world's tenth largest share at 1.7 percent, has an extensive programme in its *Code for the Pastoral Care of International Students*. No other competitor nation has taken the direct regulation approach, though most countries have a variety of laws covering educational institutions and life on campus (Farrington and Palfreyman 2006; Kaplan and Lee 2006; Lewis 2005; OECD 2011).

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1 The OECD provides an annual global *Education at a Glance* report and it distinguishes between 'international students', referring to those who cross borders for educational purposes and are thus part of the global market, and 'foreign students', which includes resident non-citizens (eg: OECD 2011: 322). Residents can have been long-term non-citizens who live in a particular country and are counted among the latter definition. International student data are preferable but some nations only collect data on foreign students.

In Australia the main instruments of regulation are contained within the Education Services for Overseas Students (ESOS) Framework, which incorporates the *ESOS Act* of 2000 and the accompanying guidelines for education providers in the *National Code of Practice for Registration Authorities and Training to Overseas Students* of 2001 (or the 'National Code'). Despite detailed formal provisions in ESOS, however, in recent years a vigorous public debate on student life in Australia has emerged, with participants asking questions on whether international students' human rights are being respected (Jakubowicz with Monani 2010).

This controversy was intensified by a series of violent attacks in Melbourne and Sydney on students mainly from India, though other Asian students have also fallen victim, and not only in the larger cities (Graycar 2010; Nyland, Forbes-Mewett and Marginson 2010). Yet ESOS has little to do with racism or personal safety. More avid followers of international education point to issues stemming from students migrating permanently upon the completion of their studies (Knight 2011). Other matters include the protection of student tuition fees, public transport concessions and problems for students in accessing adequate housing and health care (State of NSW 2012; State of Victoria 2008). Some observers point to student administrative rights and the creation of an International Student Ombudsman (ISO), a specialist agency located within the office of the Commonwealth Ombudsman (Jackson, Fleming, Kamvounias and Varnham 2009). The ISO provides independent grievance handling and advice for students in the vocational education and training (VET) sector who have complained to their college but whose grievance has not been handled to their satisfaction at college level. University students have access to their State level Ombudsman but there is no education-specific agency within State jurisdictions. Effectively they have little ready access to an independent complaints body.

International education provides a case study in political economy, with a vibrant global market and vulnerable trans-national buyers who most often must adjust to a different culture during the overseas stay. In this political economic context the current article analyses the regulation of international students' welfare in the social, administrative and service rights domains in Australia. Specifically the goal is to assess the effectiveness of the regulatory regime as a forum providing for student welfare. The ESOS Framework is positioned as the main component within a broader regime, given that the ESOS Act and the National Code constitute the primary formal instruments shaping the rights domain. The

broader welfare debates and the informal aspects of regulation are also discussed.

We argue that at its heart ESOS is a top-down, nation-bound regime providing for the rights of students as education consumers but falling short of constituting the welfare instrument that it promises to be. Contemporary regulation theory<sup>2</sup>, which invokes the trans-national as well as the informal dimensions of regulation, is invoked to point to this central shortcoming. The article also makes an associated argument, that international education in Australia is pursued by government as part of the broader strategic program of the 'competition state' (Cerny 1997; Lewis 2005). Within such a program public policies prioritise the maximisation of global market share over the welfare of market subjects. Regulation emphasises economic opportunism above all other goals and welfare is only addressed where and to the extent that national market share may be endangered without formal regulation. We propose a substantive re-regulation which requires the integration of support structures, attention to informal regulation, and the streamlining of international education's national and global dimensions.

In pursuit of its argument the article first reviews relevant innovations in regulation theory in order to set down a working definition of regulation. The second section discusses the student welfare aspects of the formal regulation regime, paying closest attention to the ESOS Framework. The third section discusses the international student welfare debate in Australia, and in doing so highlights the importance of the informal regulatory realm; that is, regulation outside of ESOS but bearing upon it. The fourth section outlines recent changes implemented in response to developments in the debate. Finally, in the fifth section the article discusses the implications of the analysis for regulatory change and proposes a reform agenda.

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2 In this analysis the term 'regulation theory' is not used in a manner consistent with the political economy of the 'French regulation school' (on which, see: Aglietta 1979; Boyer 1990). Rather, as the discussion makes clear, it reflects separate and mainly more recent innovations in the understanding of regulation through the work of policy studies, law and political science scholars.

## The Concept of Regulation

International education is regulated using a combination of traditional and contemporary methods. In public administration parlance, regulation was traditionally conceived as 'a mode of governmental activity' which was 'identifiable and discrete' (Baldwin and Cave 1999: 2). The nation-state was historically and perhaps up to the 1980s more or less alone at the centre of public affairs issuing formal-legal rules and standards. Regulatory subjects had to comply or face penalties or disincentives. This approach was consistent with Max Weber's (1921; 1947) model of 'bureaucracy' and formed the basis of the 'command and control' principle of regulation, which gave the state ultimate and arbitrating authority in public affairs.

In the last two decades, however, understandings of regulation have broadened in keeping with developments in regulatory practice. International education is in this space. In an era of marketisation of governmental functions and the partial decentralisation of policy making (e.g. Le Grand and Bartlett 1993; Powell 2007), traditional state regulation remains as the central ingredient, but there are mixed mechanisms at play. With regulation re-ordered in these ways, a plurality of legal and policy domains are invoked, and education involves more than just formal-legal regulation. Education is by no means the only sphere, with regulatory theorists calling for inter-disciplinarity in scholarship in general and across a wide range of market and service sectors (Parker, Scott, Lacey, Braithwaite (eds) 2004; Arup, Gahan, Howe, Johnstone, Mitchell and O'Donnell (eds) 2006).

Importantly, some scholars see the most important changes in the emergence of 'global regulation' noting that while the nation-state may still be dominant, trans-national and global forces exert great influence on processes and outcomes (Braithwaite and Drahos 2000; Drahos and Braithwaite 2001). Above all, regulation has been partially 'decentred' with some of the responsibilities of the state devolved to actors in the market and civil society. Universities and other education providers are engaged in this realm. 'Self-regulation' for all regulatory actors, whether voluntary, coerced or forced, is also now more significant for policy makers and analysts in most areas of economic activity (Baldwin and Cave 1999: 125-137), including international education. Students are subject to regulation from the state, from social and family networks and

other sources, but like all others in society they are also partially responsible for their own welfare.

Consistent with others (Arup *et al* (eds) 2006; Parker *et al* (eds) 2004), this article defines regulation as reflecting the multitude of mechanisms—formal and legal, informal and interpersonal, national and trans-national—which set social and economic rules, norms and customs. This incorporates the impact on, and the implications of, public debate on and public consciousness of international student welfare. Debate may not constitute regulation *per se* but it helps to shape and put pressure upon formal regulation and regulators. In the informal sense debate regulates via the efforts of participants to affect the social and economic opportunities of market participants. While in this analysis we do not systematically consider questions of self-regulation, we do invoke the principle that students' lives are affected by their own individual and collective efforts to maximise welfare. Also, trans-national regulation matters; and we allow for factors outside of the ESOS Framework in shaping the rights that international students do and do not enjoy.

Being able to step beyond ESOS, however, requires an initial understanding of ESOS in the broader context of formal regulation in Australia. The following section fulfils that task.

### **Australia's Formal Regulatory Regime**

The formal-legal dimension of international education regulation typically, even if tangentially, incorporates trade law. Migration through education and quality assurance provisions are typically jointly managed at the international and national levels, though it is the latter which usually matters most. On student welfare, apart from legislation explicitly covering it, at the national level there is a host of provisions covering teaching staff and students and these are of mixed legal origin. They take in, among others, areas as diverse as: employment and labour relations for staff; provisions covering academic freedom and intellectual property for both staff and students; issues of campus security; financial aid; tort and criminal law; discrimination; and health and safety, (Farrington and Palfreyman 2006; Jackson and Varnham 2007; Kaplan and Lee 2006). In short, many areas of public, administrative and welfare law are applicable to educational settings.

On the trade dimension Australia is a signatory to the World Trade Organisation's (WTO) General Agreement on Trade in Services (GATS), which was introduced in 2000 as a multilateral agreement to liberalise trade in the provision of services across borders within the (now) 153 country membership of the WTO. In education GATS covers several types of internationalised services but most significantly for this discussion the phenomenon of 'consumption abroad' which means students physically moving from one country to another for their studies. Distance and digital education and offshore campuses are also covered (OECD 2004: 33-37; Ziguras 2003). Like most of its competitors Australia is not obliged in practice to change its provision in meaningful ways as a product of being a GATS signatory, though GATS has the potential for substantive global regulatory influence through its provisions on cross-border service provision (Bashir 2007; Knight 2004; Sauvé 2002; Varghese 2007; Ziguras 2005).

Quality assurance and the use of the education pathway to migration – where students can qualify to stay long-term or permanently after the completion of studies – are well established areas of regulation in countries like Australia and internationally (eg, Daniel 2002; van Damme 2002; Knight 2011). The relationship between the two is particularly important in Australia, where permanent resident status can be gained through prior status as an international student. Applicants are eligible through a variety of criteria which link mainly to the skills needs and occupational requirements of the labour market. The central point of controversy in the link between education quality and migration has been the provision of easily completed courses in some cases, mainly by VET colleges, which provide approved preparatory training for entry into occupations that score highly in terms of migration points. This issue is taken up further on.

### **The ESOS Framework**

Though GATS, quality assurance and education-based migration provisions have significant implications for students, in formal regulation it is the ESOS Act (DEST 2007a) and the National Code of Practice (DEST 2007b) which together constitute the central welfare reference point. The influence of the Act is somewhat indirect. The Act specifies requirements which universities and non-university tertiary education

institutions must meet in order to be registered as education providers (referred to here as 'providers'). It features provisions designed to protect students by requiring that providers do not engage in 'misleading or deceptive conduct' (Pt 3, Div. 1, Sec. 15, or Pt 3.1.15). This includes a requirement that they 'refund course money' in circumstances where courses 'do not commence on the agreed starting date' (Pt 3.2.27.3). Separate clauses cover cases of student default on payment of course money (Pt 3.2.28). Providers must contribute to an ESOS Assurance Fund, and are subject to continuous government monitoring (Pts 6 and 7) each year in order to stay registered as international education providers. Hence student fee protection, a consumer right, is well & indirectly - enshrined under the Act.

However, it is the National Code, and not the Act, which explicates the substance of rights. Established in 2001 under the ESOS Act (Pt 4), and revised in 2007 (DEST, 2007b), the Code supports the Act in two ways: first, by specifying pre-conditions for registration of providers; and second, by 'establish[ing] and safeguard[ing] Australia's reputation as a provider of high quality education and training'. It addresses quality and national reputation by imposing nationally consistent international education standards and by providing 'student welfare and support services' and 'nationally consistent standards for dealing with student complaints and appeals' (DEST, 2007b: Pt A.3.1). The importance of these aspects of the analysis calls for some elaboration.

Where students are under 18 years of age the Australian Government must be satisfied that appropriate arrangements are in place for student accommodation, support and general welfare arrangements during the whole of the period that they are under 18 and studying onshore in Australia (Standard 5). Yet accommodation and living arrangements are the only specified requirements (Standard 5.1.a-5.1.d, 5.2, 5.3.a), with 'support and general welfare arrangements' being mentioned but left without qualification.

Where students are over 18 (Standard 6) the requirements of providers are less specific again, prescribing that they must provide access to support services and orientation programmes, with student access being given to university staff who assess and administer these. In addition, institutions must have 'critical incident policies' in place for all students (also Standard 6), with a critical incident defined by the (then) Department of Education, Science and Training (DEST) as 'a traumatic

event, or the threat of such (within or outside Australia), which causes extreme stress, fear or injury. Though each provider must have a critical incident policy on hand and in writing, notably “[t]he details of your [the provider’s] Critical Incident Policy do not need to be shared with students at orientation” (DEST, 2007c). Hence students cannot expect to be made aware of what the critical incident policy of their provider looks like unless such an incident takes place. This represents a regulatory information barrier for students.

Students do not enjoy stringent legal enforcement and appeals mechanisms in the event of a grievance with the provider. This is an administrative rights gap. Under Standard 8 of the Code providers are required only to offer students “internal” processes for handling complaints and appeals. Indeed research reveals that providers have invested significantly in internal mechanisms over the last decade, some appointing Deans of Students, for example (Astor 2005; Stuhmcke 2001). Importantly, where independent appeals mechanisms are requested by students these are appointed by the provider and not by the student.

### **The Public Debate**

Though there is relatively little knowledge of the ESOS Framework among members of the public and in the mainstream media, ample evidence exists of widespread concern in sections of Australian society for the lives and the general wellbeing of international students. This evidence is reflected partly in government-sponsored investigative inquiries and in policy documents, scholarly literature, and media articles.

Amid the ongoing push to market international education globally, and given education’s place among the nation’s top exports over the last decade (ABS 2011), controversy exists over whether the Australian economy and education providers have become too reliant on the international student dollar. Data from the Australian Department of Education, Employment and Workplace Relations (DEEWR 2011) reveals an indicator of international market-exposure in some institutions in the higher education sector, which in general is less international student-reliant than VET. Key examples are Central Queensland University, which is on top with international student fee income

constituting 35.8 percent of total university income. Macquarie University is second at 30.4 percent, with the University of Ballarat and RMIT University respectively third and fourth at 28.9 and 28 percent. These levels are historically unprecedented and raise questions of provider and system viability in the future. In this context, recent downturns in enrolment numbers in the sector become more significant than they otherwise would be. Indeed, concern over declining revenues and student numbers is evident (Ross 2009).

Education quality has been debated in the same context (Hare 2010). The Australian Government's international education agency, Australian Education International (AEI), reports that US students surveyed by the (US-based) Institute of International Education (IIE) perceived the quality of Australia's education system as lower than that of Canada, the UK and the US. Only 19.2 percent thought Australia had a high quality education system, whereas the same figure for Canada was 33.2 percent. For the UK it was 49.9 percent and for the US it was 75.6 percent (AEI 2011: 15). Yet overall satisfaction perceived by international students of their experience of the Australian education system is high. AEI reports overall satisfaction with living from its own studies at 86 percent for higher education students, 88 percent for VET students and 86 percent for English language students. Overall satisfaction with studying enjoys similar levels, with higher education at 84 percent, VET at 85 percent and English language at 86 percent (AEI 2010). At the level of higher education these data are not broken down by undergraduate versus postgraduate, though in the last decade a focus has been put on attracting the latter, with less emphasis on the former, both by institutions and by the Government (Obeng-Odoom 2012), and supported by the *Review of Australian Higher Education* (often called the Bradley Review) (Australian Government 2008: 93). Postgraduates ordinarily face less urgent welfare challenges and are generally not as disadvantaged as undergraduates, with the least disadvantaged being higher degree by research students. In 2010 international students accounted for more than 20 percent of total research degree enrolments in Australia (OECD 2011: 374).

Taking international students as one category, as most research does, some researchers exploring the views of students on their own welfare have shown up problems on and off campus and challenged AEI survey data. For example, on the basis of 200 in-depth interviews with enrolled international students studying in nine Australian universities,

Marginson, Nyland, Sawir and Forbes-Mewett (2010) found problems in a wide range of life-spheres. These include personal finances, paid part-time (and sometimes unofficially longer) employment, housing, health care, personal safety, and dealings with authority figures in the immigration department and in the educational institution setting. These authors also explored other, perhaps less formal arenas of student wellbeing, including questions of language, friendships and family connections, problems of loneliness and challenges in intercultural relations.

Such challenges have come to the fore in recent years amid the reassertion of broader social and cultural benefits stemming from international education (Davis 2010). These act to strengthen calls for improved access to services and infrastructure, particularly in relation to housing, which for some analysts is the standout challenge in Australia and internationally (Obeng-Odoom 2012; Wesley 2009). Government data does little to contradict this, with AEIØ (2010: 6) *International Student Survey* reporting that only 52 percent of English language students studying in Australia were satisfied with the cost of accommodation. The figure is higher for the higher education sector, at 60 percent, and higher again for the VET sector, at 72 percent. One question is whether educational institutions can do more themselves to provide international student residences, as some universities have admitted (e.g. Spence 2010). On a national basis there remain questions over not merely the supply of housing, but also housing quality and affordability, and associated issues of safety and security in commuting to and from campus and to part-time employment.

Using survey data from The University of Sydney but also using a range of other empirical sources, Obeng-Odoom (2012: 201) argues that the importance of housing is seen in its critical role in the process of obtaining quality education, and in contributing to the quality of security that students have and the nature of the social network that they develop. Housing has implications for student living costs, personal safety, and the location and potentially the quality of part-time employment (Forbes-Mewett, Marginson, Nyland, Ramia and Sawir 2009). It is noteworthy also that, as noted above, the ESOS Framework does not address questions of housing, except for provisions in relation to students under 18 years of age, where there is a legal duty of care.

To address broader welfare in the context of the ESOS Framework, the *Review of the Education Services for Overseas Students (ESOS) Act 2000* (Baird 2009) recommended important changes. Chaired by former Commonwealth Minister Bruce Baird, the Review urged that ESOS be made stronger by toughening sanctions against non-compliant providers and by seeking to ensure that government resourcing for regulatory activities is adequate (Recommendation 5). Importantly, Baird argued that ESOS should also be made smarter by giving those students who have had no effective access to an independent complaints body, the right to appeal to a newly created international education arm of the Commonwealth Ombudsman (Recommendation 8). This is since the adoption and resultant establishment of the International Student Ombudsman now applies, though only to VET students. It must be borne in mind that State Ombudsmen, to whose offices university students can complain, are not in any obvious way recognisable as avenues for student grievances.

Proceeding in parallel with the Baird Review was the Council of Australian Governments (COAG) *International Student Strategy* and the Associated *International Student Roundtable*, designed to improve the experience of international students in Australia and in turn benefit all of Australian society (COAG 2009). The COAG *Strategy* proposed to: improve pre- and post-arrival information for students and increase engagement with the wider community on matters of international education; promote cultural understanding, tolerance and language skills; change the relationship between international education and migration; and attend to the quality of education providers. Other government inquiries, though not federal, include the Victorian Government's *Overseas Student Education Experience Taskforce* (State of Victoria 2008), and the ongoing New South Wales *International Education and Research Industry Taskforce* (State of NSW 2012). The latter recommended, and recently managed to convince the Government of New South Wales to implement, limited public transport concessions for international students in that State (Patty 2012).

Other developments give cause for optimism. For example, in November 2009 the Australian and New Zealand Race Relations Roundtable met with relevant academics and international student representatives to explore issues of racism against international students, subsequently

issuing a Roundtable Communiqué (AHRC 2011). The Communiqué recognised that student safety, while the most publicly prominent issue, is itself symptomatic of other issues including: discrimination, the lack of accessible and affordable accommodation, poor employment conditions, transport costs, lack of student support services, variable quality of education, and social isolation and exclusion (AHRC 2009). Importantly, international student informants made Roundtable Commissioners aware of the importance of seeing international students not as cash cows but as net economic contributors, given that around twenty percent of them work part-time while studying, and that they all consume and contribute to aggregate national expenditure (AHRC 2009). In follow-up work, the Human Rights Commission, peak higher education body Universities Australia, and the Academy of Social Sciences in Australia combined with academics in efforts to address student welfare concerns, and in particular human rights and racism, through workshops and research-based discussion papers (Graycar 2010; Jakubowicz with Monani 2010).

Finally, in demonstrations of collective concern for protection and the will to advance their own interests through self-regulation, international students have set up public fora, some of which are on video and/or online (ustream 2011), with projects canvassing issues specifically important to female international students (VIWRC 2011), and with other student groups aiming to sharpen safety skills among their own ranks (thinkbefore 2011). Traditionally active student representative organisations also continue to raise public awareness of international education issues and to provide advice to international students. These include the Australian Federation of International Students (AFIS), the Council of International Students Australia (CISA), the National Union of Students (NUS) and the Council of Australian Postgraduate Associations (CAPA). Among the culturally specific student organisations, the Federation of Indian Students of Australia (FISA 2011) stands out as being most active, particularly in response to physical attacks against Indian students in recent years. In all, contrary to perceptions of international students as politically passive and culturally shy, at least one study (Sebastien 2009) has highlighted the political significance of international student activism and advocacy.

## **From Debate and Public Consciousness to Changes Implemented**

As regulation theory suggests, debate has some influence over the changes made by government. However, despite a wider debate about welfare it is mainly in the narrower realm of consumer protection that the Australian Government's implemented reforms belong. Alterations to the ESOS Act made effective in February 2010 and reflected in the *ESOS Amendment (Re-registration of Providers and Other Measures) Act*, went some way toward enhancing the position of some students. Designed to protect and enhance Australia's educational reputation for marketing purposes by forcing new rules upon VET colleges, in the process the changes acted as a constraint on the aggregate supply of student visas, making it more difficult for graduates to gain permanent resident status (see: Australian Government 2010).

All institutions registered under the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) had to undergo re-registration by the end of calendar 2010. This was to ensure that the Government furnishes at least a market perception that the right to be, and to continue to be, a provider extends only to reputable educational institutions. There were other new registration requirements. First, the primary purpose of the provider had to be shown to be education and not any other business. Second, the provider had to demonstrate the capacity to provide education of a standard deemed to be of high quality. Finally, each provider had to produce a list of the education agents who represented them and promoted their services to prospective international students.

The migration question has continued to play a central role to the current time. When the 2010 ESOS changes were put in place it was widely expected that the number of international students in higher education would fall significantly, by at least a third, over the next three years (Knight 2011). The Federal Government was faced with the potential for large scale collapse in provider incomes, especially for the most market-exposed institutions, and political pressure to reverse its tight fiscal policy so as to bail out such providers. With fiscal considerations even more important than sustaining a low-to-medium position on migration, in December 2010 the Government asked a former State politician, Michael Knight, to review the student visa program. The Knight (2011)

Review reported in June 2011. Its proposals were all accepted by the government, signifying a return to a friendlier policy approach to student migration. It applied the changes only to universities, where there have been far fewer instances of sham education and migration-driven course profiles and where there have been stronger administrative systems for self-regulation, though it was expected that the changes would be later extended to selected VET providers. Provisions concerning demonstrated financial support were eased. Visa processing was to be sped up, though this was to be implemented slowly because of staffing restrictions.

Individual universities were given enhanced responsibility to ensure students were *bona fide*, with the warning that if self-regulation failed, the provider would be taken off the list of preferred providers and more stringent conditions on student support and visa checks would be imposed. Students gained more flexible work rights, and international student graduates were provided with a new post-study work visa that enabled them to work for two to four years after graduation, depending on level of course. This last change was perhaps most significant in that it signalled a renewed commitment to the global competition for mobile skilled labour and lifted Australia's positioning in relation to competition from the other English speaking countries on that basis.

### **Implications: Markets, Welfare and Theoretically Informed Re-Regulation?**

With successive governments pursuing the goal of uninterrupted export flows from education, the industry and the government are arguably caught in a tacit alliance based on an overriding market strategy, entirely consistent with what some commentators have called the 'competition state' Lewis (2005: 19) makes this argument in his analysis of New Zealand's *Code of Practice of the Pastoral Care of International Students*. He sees international education as a project inextricably embedded within contemporary neo-liberalism and representing a

shift in national economic policy from managing the economy as an integrated, fully constituted whole to a project of securing access to foreign markets, promoting international competitiveness and encouraging inward foreign investment. In enforcing outcomes that emerge from world markets and displacing the national cultural project with macroeconomic

abstractions such as national competitiveness or more targeted interventions, it is one overt expression of the intersection of globalisation discourses and neo-liberal statecraft.

Although there are significant differences between the regulatory regimes of New Zealand and Australia, the analysis presented in this article suggests that Australia is in the same category as its neighbour. In relying on the ESOS Framework as the regulatory centrepiece, successive Australian governments have effectively offered students the appearance of legally mandated welfare services present in the language adopted by ESOS, as demonstrated - while what is delivered in practice is mainly consumer protection. In implicitly constructing international education as a consumer-based regime, as long as most students walk away with their academic qualification, whether they settle in Australia or go back to live in the home country, many or most students are relatively satisfied. Government reports reviewed above substantiate this. There is also seemingly enough remaining demand for an overseas education in Australia particularly among the growing Asian middle classes.

Where does that leave the question of regulatory reform? Based on the analysis presented here - and importantly, incorporating regulation theory - three key principles are put forward. First, there is a need to step up efforts, already underway among various stakeholders, to more effectively co-ordinate and integrate existing national support structures. Second, though it is a complex principle which is difficult to implement, more effective co-ordination of national and trans-national structures is necessary. Third and finally, regulators need to re-design broader regulatory programs to construct international students as subjects of trans-national citizenship rather than mere consumers of education services. These three principles are discussed in turn.

### **Integrate and Co-ordinate National Support Structures<sup>3</sup>**

The root of welfare resides in the individual student: students partly seek the benefits of international education in the host country through self-help. As Marginson *et al* (2010) reveal, however, loneliness and intercultural and language difficulties can provide barriers to the

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3 Here, given that in education studies the term 'institution' often refers to universities, colleges and schools, in order to avoid confusion the more widely understandable term, 'structures' is used in place of institutions.

realisation of individual capacities, though family and friendship networks help to fill some voids. While universities and other educational institutions provide services in many vital areas, including health and medical, employment, counselling and accommodation, student knowledge of these is highly imperfect, and government and institutions need to spread the word on available services. This is brought to the fore in research with international students, conducted by AEI (2012), which finds that significant numbers of international students do not know of the support services available to them at their institution. For example, 32 percent of VET students did not know there was an accommodation office which they could access. The analogous university sector figure was 23 percent. And forty-one percent of VET and 31 percent of university students did not know of their institution's careers and job advice services (AEI 2012: 8).

The ESOS Framework, incorporating the central formal regulatory instruments, reflects a traditional, legislation-based, top-down program, with immigration and trade-related agencies being the only ones working directly with education. Reform needs to take a more simultaneously horizontal or 'whole of government' approach to international student service and rights provision and adopt genuinely consultative decision making which incorporates students into the process. The Australian Government has made efforts in other policy domains in recent years to encourage consultation and inter-agency work (MAC 2004).

This requires extension to international education, and may include relatively easy initial reforms such as a unified national approach to the provision of public transport concessions, requiring that State transport ministries co-ordinate more effectively with their federal counterparts. In the same framework it may require transport agencies to co-ordinate with policing authorities, for example, to provide safer travel, and with public health departments and health providers at the national and State levels to facilitate cross-agency services. Consideration should be given to providing all international students the same rights to the Medicare system as enjoyed by local students. Students sponsored by the Australian development agency AusAID, a small percentage of total international students, already enjoy such rights (AusAID 2012). Finally, the government needs to talk to students, more intensively than it has in the past, and to the communities in which students live, about housing and other key services such as those discussed in the kinds of scholarly and empirical research cited above. Doing so would demonstrate greater

public commitment to services while not necessarily giving up on the objective of global market opportunism.

### **Co-ordinate National and Global Structures**

In their ground-breaking analysis of *Global Business Regulation*, Braithwaite and Drahos (2000) considered the actions of a range of regulatory agents. First, there were states and international organisations of states, or 'intergovernmental organisations' (IGOs) as they are commonly labelled; 'actors' as Braithwaite and Drahos call them. Other actors include business organisations and NGOs, whose regulatory roles typically include policy implementation and service provision. Provision, distribution and regulation must inter-mingle in the minds of regulators. Braithwaite and Drahos' regulatory 'principles' and 'mechanisms' also take in key co-ordination roles and more general regulatory functions, and most co-ordination is trans-national. Their principles include concepts of 'world' best practice and their mechanisms include 'non-reciprocal co-ordination'. These are potentially key ingredients in international education reform, involving the Australian Government's education agencies in formal engagement, and preferably with legal effect, alongside other country counterparts and global representatives in relevant IGOs.

Otherwise viewed, there ought to be a conceptual reconciliation between regulatory principles, mechanisms and actors, and between the dual policy objectives of international market-based competition and the trans-national co-operation needed to harmonise social objectives among nations. As Krahmman (2003) argues, regulation (though Krahmman uses 'governance') can be conceived as one phenomenon and not many, equally applicable to analysis of structures at the global, regional and national levels. Australian governmental authorities need not be alone in seeking student welfare. The European Higher Education Area as part of the 'Bologna Process' approximates the kind of trans-national co-ordination needed, though Bologna only applies co-ordination to academic questions of degree program structure and duration, qualifications frameworks and credit transfer across universities in member states, cross-border joint degrees and similar measures (EUA 2012).

In the sense that Bologna also has resulted for some students in increased tuition fees, and given that it does not target student welfare, it is not

pursuing the kind of end-goals called for in this analysis. Yet it does demonstrate that education-based trans-national co-operation is possible.

### **Re-conceive International Students as Trans-National Citizenship Subjects**

The integration of global and local services is not out of step in principle with longstanding suggestions by social democratic scholars to move the governance of world affairs from a neo-liberal to a more cosmopolitan regulatory basis. As Archibugi and Held (1995) identified as long ago as the mid-1990s, for example, post-Cold War politics increasingly called for the protection of the rights of minorities; though such protection had to be more trans-national in structure. Protection, they argued, was increasingly a matter for the world community as a whole. Social policy should be globally focused (Deacon 2007). Cosmopolitanism was important in that it indicated a trans-national organisational model in which citizens, wherever they are located in the world, have a voice, input and political representation in international affairs, in parallel with and independently of their own governments (Archibugi and Held 1995: 5).

Consistent with such a vision, some have argued for trans-national citizenship (Fox 2005). For genuine reform applied to international students, our analysis suggests that governments and international institutions need to re-conceive international students as citizens along similar lines. This would change the basis of both international education marketing and the services and protections offered international students. It runs counter to the current patterns of treating them mainly as fee-paying cross-border education consumers. That is to say, students' status as legal citizens of their home country and as non-citizens of the host, needs to be re-thought. Full social citizenship in the host is not proposed, but a reconstruction of international student rights, with a view to a form of citizenship in co-operation with IGOs as suggested above, is a consideration.

### **Conclusion**

Australia's formal regime of international student welfare regulation relies on several instruments. The centrepiece is the ESOS Framework, consisting of the ESOS Act and the National Code. The Framework can

be reformed. In particular it can be substantially amended to deal more effectively with service and rights considerations. However, even if this were to occur, regulation theory suggests strongly that regulating any area of human wellbeing requires more than just applying the traditional conception of one legislative framework for one area. A revised ESOS cannot adequately capture welfare because even though it mentions welfare, addressing welfare is a problem that invokes combinations of regulation; formal and informal, national and trans-national, and economic and social.

For positive change to occur, all of these need to interact in productive ways. This is a difficult platform to bring to fruition. Governments need to run agendas through pluralities of agencies within and outside their borders. Locally, as many senior public administrators counsel (MAC 2004), citizens demand and have the right to demand that government departments talk to each other. Reformers also ask that non-government entities and citizens themselves be consulted and incorporated into the policy making process. Though international students are not citizens in the legal sense, they are subjects of government policy, and whole-of-government principles suggest that they ought to be involved in regulation formation and reform, as should education providers. Students' own social and family networks also require consideration, these often being as much trans-national as local. AEIØ (2010) *International Student Survey* found that at one of the key local arenas - that of the educational institution - 33 percent of higher education, 24 percent of VET and 31 percent of English language course students were not satisfied with opportunities to interact with local students. If such a localised level is problematic, little realistic hope exists for the national sphere and beyond.

Despite a great deal of public debate on student welfare, and the mention of welfare as a category in ESOS and in numerous government inquiries, as it stands the approach followed in Australia prioritises export revenues at the expense of student rights. Our analysis suggests that knowledge of informal and trans-national regulation, in addition to traditional instruments, can assist policy makers, institutions and students. This need not mean throwing out the competition state strategy altogether, but it does imply not risking welfare in the rush to maximise market opportunities.

*Gaby Ramia is Associate Professor in the Graduate School of Government at the University of Sydney*

*Gaby.ramia@sydney.edu.au*

*Simon Marginson is Professor in the Centre for the Study of Higher Education at the University of Melbourne.*

*s.marginson@unimelb.edu.au*

*Erlenawati Sawir is Research Fellow in the International Education Research Centre at Central Queensland University, Melbourne.*

*e.sawir@cqu.edu.au*

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