

2022-2023-2024

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

**Education Services for Overseas  
Students Amendment (Quality and  
Integrity) Bill 2024**

**No.     , 2024**

*(Education)*

**A Bill for an Act to amend the *Education Services  
for Overseas Students Act 2000*, and for related  
purposes**



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1     **A Bill for an Act to amend the *Education Services***  
2     ***for Overseas Students Act 2000*, and for related**  
3     **purposes**

4     The Parliament of Australia enacts:

5     **1 Short title**

6                     This Act is the *Education Services for Overseas Students*  
7                     *Amendment (Quality and Integrity) Act 2024*.

8     **2 Commencement**

9                     (1) Each provision of this Act specified in column 1 of the table  
10                     commences, or is taken to have commenced, in accordance with  
11                     column 2 of the table. Any other statement in column 2 has effect  
12                     according to its terms.

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**Commencement information**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this Act	The later of: (a) the day after this Act receives the Royal Assent; and (b) 1 July 2024.	

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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

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(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

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### **3 Schedules**

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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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1 **Schedule 1—Amendments**

2 **Part 1—Education agents and commissions**

3 **Division 1—Amendments**

4 *Education Services for Overseas Students Act 2000*

5 **1 Section 5 (definition of agent)**

6 Repeal the definition.

7 **2 Section 5**

8 Insert:

9 *education agent* has the meaning given by section 6BA.

10 **3 Section 5**

11 Insert:

12 *education agent commission* has the meaning given by  
13 section 6BB.

14 **4 After section 6B**

15 Insert:

16 **6BA Meaning of education agent**

17 An *education agent* is an entity (whether within or outside  
18 Australia) that:

19 (a) engages in any one or more of the following activities in  
20 relation to a provider:

21 (i) the recruitment of overseas students, or intending  
22 overseas students;

23 (ii) providing information, advice or assistance to overseas  
24 students, or intending overseas students, in relation to  
25 enrolment;

26 (iii) otherwise dealing with overseas students, or intending  
27 overseas students; and

- 1 (b) is not a permanent full-time or part-time officer or employee  
2 of the provider.

3 **6BB Meaning of education agent commission**

4 *Education agent commission* means any consideration or benefit,  
5 whether monetary or non-monetary, that:

- 6 (a) is or will be given, by, or on behalf of, a provider to an  
7 education agent, or an associate of the education agent; and  
8 (b) is in connection with:  
9 (i) the recruitment of an overseas student or an intending  
10 overseas student; or  
11 (ii) any other activity in relation to an overseas student or an  
12 intending overseas student mentioned in paragraph (a)  
13 of the definition of education agent in section 6BA.

14 Note: Examples of such consideration or benefits include fees, charges,  
15 commissions, bonuses, performance payments, gifts, discounted or  
16 free services, rewards and incentives.

17 **5 After paragraph 7A(2)(g)**

18 Insert:

- 19 (gaa) whether the provider, or an associate of the provider, has any  
20 ownership or control (whether direct or indirect) of an  
21 education agent, and if so, the value or extent of the  
22 ownership or control; and  
23 (gab) whether an education agent, or an associate of the education  
24 agent, has any ownership or control (whether direct or  
25 indirect) of the provider, and if so, the value or extent of the  
26 ownership or control; and

27 **6 After subsection 17A(4)**

28 Insert:

- 29 (4A) A registered provider must notify the ESOS agency for the  
30 provider if any of the following events occur:  
31 (a) the provider, or an associate of the provider, begins to own or  
32 control an education agent;  
33 (b) there is a change in the ownership or control of an education  
34 agent by the provider or an associate of the provider;



- 1 (c) an education agent, or an associate of the education agent,  
2 begins to own or control the provider;  
3 (d) there is a change in the ownership or control of the provider  
4 by an education agent or an associate of the education agent.

5 (4B) Notice under subsection (4A) must be given within 10 business  
6 days after the event occurs.

7 **7 Section 21A (heading)**

8 Before “agents”, insert “education”.

9 **8 Paragraph 21A(1)(a)**

10 Before “agents”, insert “education”.

11 **9 Subsection 21A(2)**

12 Before “agents”, insert “education”.

13 **10 After section 21A**

14 Insert:

15 **21B Giving information about education agent commissions**

16 *Request for information about commissions*

- 17 (1) The Secretary may request a registered provider to give specified  
18 information about, or in relation to, education agent commissions,  
19 given by, or on behalf of, the provider to one or more education  
20 agents over a specified period (the *reporting period*) in connection  
21 with the recruitment of accepted students of the provider.
- 22 (2) The request must:
- 23 (a) be in writing; and  
24 (b) specify the reporting period; and  
25 (c) specify the day by which the information is to be given; and  
26 (d) specify the manner or form in which information is to be  
27 given (including by requiring information to be entered in the  
28 computer system established under section 109); and  
29 (e) specify the documents (if any) which must accompany the  
30 information.

**Schedule 1** Amendments

**Part 1** Education agents and commissions

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- 1 (3) Without limiting subsection (1), the information may relate to one  
2 or more of the following:  
3 (a) the total amount in dollars given to each education agent;  
4 (b) the value and description of non-monetary benefits given to  
5 each education agent;  
6 (c) the number of accepted students of the provider recruited by  
7 each education agent.

- 8 (4) The day specified for the purposes of paragraph (2)(c) must be at  
9 least 30 days after the request is given to the provider.

10 *Provider must comply with request*

- 11 (5) The registered provider must comply with the request before:  
12 (a) the day specified in the request; or  
13 (b) any later day allowed by the Secretary.

14 Note 1: If a registered provider breaches this section, the ESOS agency for the  
15 provider may take action under Division 1 of Part 6 against the  
16 provider.

17 Note 2: It is an offence to provide false or misleading information in  
18 complying or purporting to comply with this section: see section 108.

- 19 (6) If specified in the request, a registered provider must give the  
20 information required by this section by entering the information in  
21 the computer system established by the Secretary under  
22 section 109.

23 *Offence*

- 24 (7) A registered provider who fails to comply with subsection (5)  
25 commits an offence.

26 Penalty: 60 penalty units.

- 27 (8) An offence under subsection (7) is an offence of strict liability.

28 Note: For strict liability, see section 6.1 of the *Criminal Code*.

- 29 (9) Section 4K (continuing offences) of the *Crimes Act 1914* does not  
30 apply in relation to an offence under subsection (7) of this section.

1 **11 Paragraph 38(d)**

2 Omit “their agents”, substitute “education agents”.

3 **12 Paragraph 86(1)(d)**

4 Before “agent”, insert “education”.

5 **13 After paragraph 108(b)**

6 Insert:

7 (c) section 21B (giving information about education agent  
8 commissions);

9 **14 After paragraph 132(1)(d)**

10 Insert:

11 (da) subsection 21B(7);

12 **15 Subsection 175(3)**

13 Omit “agents of providers”, substitute “education agents”.

14 **16 Subsection 175(4) (heading)**

15 Before “agents”, insert “education”.

16 **17 Subsection 175(4)**

17 Omit “agents of providers”, substitute “education agents”.

18 **18 Paragraphs 175(5)(a), (b) and (c)**

19 Before “agent”, insert “education”.

20 **19 Paragraph 175(5)(d)**

21 Before “agents”, insert “education”.

22 **Division 2—Application of amendments**

23 **20 Application of amendments**

24 (1) The amendments of section 7A of the *Education Services for Overseas*  
25 *Students Act 2000* made by Division 1 of this Part apply in relation to:

26 (a) applications for registration made on or after the  
27 commencement of that Division; and

**Schedule 1** Amendments

**Part 1** Education agents and commissions

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- 1 (b) applications for registration made before the commencement  
2 of that Division but not yet decided as at that  
3 commencement; and  
4 (c) providers registered before, on or after the commencement of  
5 that Division.
- 6 (2) The amendments of section 17A of the *Education Services for Overseas*  
7 *Students Act 2000* made by Division 1 of this Part apply in relation to  
8 providers registered before, on or after the commencement of that  
9 Division.
- 10 (3) The insertion of section 21B of the *Education Services for Overseas*  
11 *Students Act 2000* made by Division 1 of this Part applies whether or  
12 not:  
13 (a) the reporting period starts before, on or after the  
14 commencement of that Division; or  
15 (b) the education agent commission is given before, on or after  
16 that commencement.

1 **Part 2—Giving information to registered providers**

2 **Division 1—Amendments**

3 *Education Services for Overseas Students Act 2000*

4 **21 After paragraph 175(3)(b)**

5 Insert:

6 ; or (c) protecting and enhancing Australia’s reputation for quality  
7 education and training services for accepted students;

8 **22 At the end of section 175**

9 Add:

10 (6) Without limiting subsection (3) or (5), the information given under  
11 subsection (3) may relate to:

12 (a) the number of transfers of accepted students, recruited or  
13 otherwise dealt with by an education agent, from one  
14 provider or registered provider to a different provider or  
15 registered provider; or

16 (b) the number of transfers of accepted students, recruited or  
17 otherwise dealt with by an education agent, from one course  
18 to a different course; or

19 (c) information about education agent commissions in  
20 connection with the recruitment of accepted students.

21 **Division 2—Application of amendments**

22 **23 Application of amendments**

23 The amendments of section 175 of the *Education Services for Overseas*  
24 *Students Act 2000* made by Division 1 of this Part apply in relation to  
25 information given on or after the commencement of that Division,  
26 regardless of when the information was obtained or received.

1 **Part 3—Management of provider applications**

2 *Education Services for Overseas Students Act 2000*

3 **24 Section 5**

4 Insert:

5 *processing activity* means:

- 6 (a) performance of a function or exercise of a power under or for  
7 the purposes of this Act; or  
8 (b) an act connected with performing functions or exercising  
9 powers under or for the purposes of this Act.

10 **25 Section 8A (after the paragraph beginning “Division 4”)**

11 Insert:

- 12 • Division 5 provides for the Minister to suspend the making or  
13 processing of applications for registration or adding courses to  
14 registration.

15 **26 Subsection 9(1)**

16 Omit “A provider”, substitute “Subject to section 14E, a provider”.

17 **27 At the end of subsection 9(1)**

18 Add:

19 Note: Under section 14E, the Minister may determine that no applications  
20 for registration may be made until after a specified day.

21 **28 At the end of subsection 10(1)**

22 Add:

23 Note: The Minister may determine that the ESOS agency for a provider is  
24 not required to, or must not, deal with applications for registration for  
25 a period (see section 14C).

26 **29 Paragraph 10D(2)(a)**

27 Omit “register provider”, substitute “registered provider”.

1     **30 Subsection 10H(1)**

2             Omit “A registered provider”, substitute “Subject to section 14F, a  
3             registered provider”.

4     **31 At the end of subsection 10H(1)**

5             Add:

6                     Note:        Under section 14F, the Minister may determine that no applications to  
7                                    add one or more courses at one or more locations may be made until  
8                                    after a specified day.

9     **32 At the end of subsection 10J(1)**

10            Add:

11                    Note:        The Minister may determine that the ESOS agency for a provider is  
12                                    not required to, or must not, deal with applications to add one or more  
13                                    courses at one or more locations for a period (see section 14D).

14     **33 At the end of Part 2**

15            Add:

16     **Division 5—Suspension of applications for registration**

17     **14C Minister may suspend processing of applications for**  
18            **registration**

19            *ESOS agency is not required to do any processing activity*

20            (1) The Minister may, by legislative instrument, determine that an  
21                    ESOS agency for a provider is not required to deal with  
22                    applications made under section 9 until after a day specified in the  
23                    instrument.

24                    Note:        Section 9 provides that a provider may apply to be registered to  
25                                    provide a course or courses at a location or locations to overseas  
26                                    students.

27            (2) Between the day an instrument made under subsection (1)  
28                    commences and the day specified in the instrument, the ESOS  
29                    agency for the provider is not required to do any processing  
30                    activity in relation to an application to which the instrument  
31                    applies.

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*ESOS agency must not do any processing activity*

- (3) The Minister may, by legislative instrument, determine that an ESOS agency for a provider must not deal with applications made under section 9 until after a day specified in the instrument.
- (4) Between the day an instrument made under subsection (3) commences and the day specified in the instrument, the ESOS agency for the provider must not do any processing activity in relation to an application to which the instrument applies.

*Instruments under this section*

- (5) The day specified in an instrument made under subsection (1) or (3) must not be more than 12 months after the day the instrument commences.
- (6) An instrument made under subsection (1) or (3) of this section may be expressed to apply to:
  - (a) all applications made under section 9 or one or more classes of applications made under that section; and
  - (b) applications under that section made before or after the commencement of the instrument (or both); and
  - (c) applications under that section made before or after the commencement of this section (or both).

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

- (7) Despite subsection 14(2) of the *Legislation Act 2003*, an instrument made under subsection (1) or (3) of this section may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.
- (8) Section 42 (disallowance) of the *Legislation Act 2003* does not apply to a legislative instrument made under subsection (1) or (3).



1 **14D Minister may suspend processing of applications to add courses**  
2 **to registration**

3 *ESOS agency is not required to do any processing activity*

- 4 (1) The Minister may, by legislative instrument, determine that an  
5 ESOS agency for a registered provider is not required to deal with  
6 applications made under section 10H until after a day specified in  
7 the instrument.

8 Note: Section 10H provides that a registered provider may apply to add one  
9 or more courses at one or more locations to the provider's registration.

- 10 (2) Between the day an instrument made under subsection (1)  
11 commences and the day specified in the instrument, the ESOS  
12 agency for the provider is not required to do any processing  
13 activity in relation to an application to which the instrument  
14 applies.

15 *ESOS agency must not do any processing activity*

- 16 (3) The Minister may, by legislative instrument, determine that an  
17 ESOS agency for a registered provider must not deal with  
18 applications made under section 10H until after a day specified in  
19 the instrument.

- 20 (4) Between the day an instrument made under subsection (3)  
21 commences and the day specified in the instrument, the ESOS  
22 agency for the provider must not do any processing activity in  
23 relation to an application to which the instrument applies.

24 *Instruments under this section*

- 25 (5) The day specified in an instrument made under subsection (1) or  
26 (3) must not be more than 12 months after the day the instrument  
27 commences.

- 28 (6) An instrument made under subsection (1) or (3) of this section may  
29 be expressed to apply to:

- 30 (a) all applications made under section 10H or one or more  
31 classes of applications made under that section; and  
32 (b) applications under that section made before or after the  
33 commencement of the instrument (or both); and

1 (c) applications under that section made before or after the  
2 commencement of this section (or both).

3 Note: For specification by class, see subsection 13(3) of the *Legislation Act*  
4 *2003*.

5 (7) Despite subsection 14(2) of the *Legislation Act 2003*, an instrument  
6 made under subsection (1) or (3) of this section may make  
7 provision in relation to a matter by applying, adopting or  
8 incorporating, with or without modification, any matter contained  
9 in an instrument or other writing as in force or existing from time  
10 to time.

11 (8) Section 42 (disallowance) of the *Legislation Act 2003* does not  
12 apply to a legislative instrument made under subsection (1) or (3).

13 **14E Minister may suspend making of applications for registration**

14 (1) The Minister may, by legislative instrument, determine that no  
15 applications may be made under section 9 until after a day  
16 specified in the instrument.

17 Note: Section 9 provides that a provider may apply to be registered to  
18 provide a course or courses at a location or locations to overseas  
19 students.

20 (2) An application under section 9 is invalid if:

21 (a) the application is made between the day an instrument made  
22 under subsection (1) of this section commences and the day  
23 specified in the instrument; and

24 (b) the application is an application to which the instrument  
25 applies.

26 (3) The day specified in an instrument made under subsection (1) must  
27 not be more than 12 months after the day the instrument  
28 commences.

29 (4) An instrument made under subsection (1) of this section may be  
30 expressed to apply to all applications that may be made under  
31 section 9 or one or more classes of application that may be made  
32 under that section.

33 Note: For specification by class, see subsection 13(3) of the *Legislation Act*  
34 *2003*.

- 1 (5) Despite subsection 14(2) of the *Legislation Act 2003*, an instrument  
2 made under subsection (1) of this section may make provision in  
3 relation to a matter by applying, adopting or incorporating, with or  
4 without modification, any matter contained in an instrument or  
5 other writing as in force or existing from time to time.
- 6 (6) Section 42 (disallowance) of the *Legislation Act 2003* does not  
7 apply to a legislative instrument made under subsection (1).

8 **14F Minister may suspend making of applications to add courses to**  
9 **registration**

- 10 (1) The Minister may, by legislative instrument, determine that no  
11 applications may be made under section 10H until after a day  
12 specified in the instrument.
- 13 Note: Section 10H provides that a registered provider may apply to add one  
14 or more courses at one or more locations to the provider's registration.
- 15 (2) An application under section 10H is invalid if:  
16 (a) the application is made between the day an instrument made  
17 under subsection (1) of this section commences and the day  
18 specified in the instrument; and  
19 (b) the application is an application to which the instrument  
20 applies.
- 21 (3) The day specified in an instrument made under subsection (1) must  
22 not be more than 12 months after the day the instrument  
23 commences.
- 24 (4) An instrument made under subsection (1) of this section may be  
25 expressed to apply to all applications that may be made under  
26 section 10H or one or more classes of application that may be  
27 made under that section.
- 28 Note: For specification by class, see subsection 13(3) of the *Legislation Act*  
29 *2003*.
- 30 (5) Despite subsection 14(2) of the *Legislation Act 2003*, an instrument  
31 made under subsection (1) of this section may make provision in  
32 relation to a matter by applying, adopting or incorporating, with or  
33 without modification, any matter contained in an instrument or  
34 other writing as in force or existing from time to time.

- 1 (6) Section 42 (disallowance) of the *Legislation Act 2003* does not  
2 apply to a legislative instrument made under subsection (1).

3 **14G Requirements before making instruments under this Division**

- 4 (1) Before the Minister makes an instrument under any of  
5 sections 14C, 14D, 14E or 14F, the Minister must consult with  
6 each of the following:  
7 (a) TEQSA;  
8 (b) the National VET Regulator;  
9 (c) the Secretary;  
10 (d) if the Minister has determined that an entity (other than an  
11 entity mentioned in paragraph (a), (b) or (c)) is an ESOS  
12 agency for a provider or a registered provider under  
13 subsection 6C(2)—that entity.
- 14 (2) If the Minister does not administer the *National Vocational*  
15 *Education and Training Regulator Act 2011*, the Minister must not  
16 make an instrument under any of sections 14C, 14D, 14E or 14F  
17 without the written agreement of the Minister who administers that  
18 Act.

19 **34 After subsection 170(1)**

20 Insert:

- 21 (1A) Subsection (1) does not apply in relation to the following  
22 provisions:  
23 (a) subsections 14C(1) and (3), 14D(1) and (3), 14E(1) and  
24 14F(1) (suspension of applications for registration);  
25 (b) subsection 26B(1) (Minister may impose total enrolment  
26 limits by legislative instrument);  
27 (c) subsection 26E(1) (Minister may impose course enrolment  
28 limits by legislative instrument);  
29 (d) subsection 96B(1) (Minister may make instrument specifying  
30 courses).

1 **Part 4—Registration requirements**

2 **Division 1—Amendments**

3 ***Education Services for Overseas Students Act 2000***

4 **35 Section 5**

5 Insert:

6 *study period* means a period of study within a course that meets the  
7 requirements (if any) set out in the national code.

8 Note: Examples of study periods include terms and semesters.

9 **36 Section 11**

10 Omit “A provider”, substitute “(1) A provider”.

11 **37 After paragraph 11(f)**

12 Insert:

- 13 (fa) if the provider is not:
- 14 (i) an exempt provider; or
  - 15 (ii) a registered provider; or
  - 16 (iii) a provider that provides only an ELICOS or a  
17 Foundation Program; or
  - 18 (iv) a Table A provider (within the meaning of the *Higher*  
19 *Education Support Act 2003*);  
20 the provider satisfies subsection (2); and

21 **38 At the end of section 11**

22 Add:

- 23 (2) A provider satisfies this subsection if the provider has provided one  
24 or more courses for consecutive study periods totalling at least 2  
25 years at a location or locations to students in Australia other than  
26 overseas students.

27 Note: For the definition of *study period*, see section 5.

1 (3) For the purposes of subsection (2), a break that ordinarily occurs,  
2 or could reasonably be expected to ordinarily occur, during or  
3 between one or more study periods:

4 (a) counts towards the total of 2 years; and

5 (b) does not prevent study periods from being consecutive.

6 Note: Such breaks may include weekends, public holidays or semester  
7 breaks.

## 8 **Division 2—Application of amendments**

### 9 **39 Application provision**

10 The amendments of section 11 of the *Education Services for Overseas*  
11 *Students Act 2000* made by Division 1 of this Part apply in relation to  
12 applications for registration made on or after the commencement of that  
13 Division.

1 **Part 5—Automatic cancellation of registration**

2 *Education Services for Overseas Students Act 2000*

3 **40 At the end of Subdivision C of Division 1 of Part 6**

4 Add:

5 **92A Automatic cancellation if provider does not provide a course in**  
6 **12 month period**

- 7 (1) This section applies in relation to a registered provider if:
- 8 (a) the provider is not an approved school provider; and
- 9 (b) in a period of 12 consecutive months beginning on or after
- 10 1 January 2024 (the *measurement period*), the provider does
- 11 not provide a course at a location to an overseas student.
- 12 (2) Subject to section 92B, the registration of the provider is cancelled
- 13 for all courses for all locations at the end of the measurement
- 14 period by force of this subsection.
- 15 (3) The ESOS agency for the provider must:
- 16 (a) give the provider a written notice stating that the provider's
- 17 registration has been cancelled under subsection (2); and
- 18 (b) if the ESOS agency for the provider is not the Secretary—
- 19 notify the Secretary that the provider's registration has been
- 20 cancelled under subsection (2).

21 Note: The Secretary must cause the Register to be altered if a provider's

22 registration is cancelled: see section 14B.

23 **92B Extension of measurement period**

24 *Registered provider may apply for extension of measurement*  
25 *period*

- 26 (1) A registered provider may apply to the ESOS agency for the
- 27 provider to extend the measurement period referred to in
- 28 paragraph 92A(1)(b).

**Schedule 1** Amendments

**Part 5** Automatic cancellation of registration

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1 (2) An application must be made at least 90 days before the  
2 measurement period would otherwise end.

3 (3) An application must be in a form (if any) approved by the ESOS  
4 agency for the provider.

5 *Extension*

6 (4) If an application is made, the ESOS agency for the provider may,  
7 in writing, extend the measurement period in relation to the  
8 provider.

9 (5) The ESOS agency may extend a measurement period in relation to  
10 a registered provider under subsection (4) more than once.

11 (6) The total period of all extensions of a measurement period in  
12 relation to a registered provider under subsection (4) must not  
13 exceed 12 months.

14 **41 Section 169AB (in the appropriate position in the table)**

15 Insert:

11 A decision by the ESOS agency for a registered provider to extend, or not to extend, the measurement period in relation to the provider under section 92B      The registered provider



1 **Part 6—Investigation of offences**

2 **Division 1—Amendments**

3 *Education Services for Overseas Students Act 2000*

4 **42 Before paragraph 7A(2)(a)**

5 Insert:

- 6 (aa) whether the provider or a related person of the provider is  
7 being investigated for an offence covered by  
8 subsection (2AA); and

9 **43 After subsection 7A(2)**

10 Insert:

11 (2AA) For the purposes of paragraph (2)(aa), the offences covered by this  
12 subsection are the following:

- 13 (a) an offence under this Act;  
14 (b) an offence under Division 270 or 271 of the *Criminal Code*;  
15 (c) an offence under section 590 of the *Corporations Act 2001*;  
16 (d) an offence specified in a legislative instrument made by the  
17 Minister for the purposes of this paragraph.

18 **Division 2—Application of amendments**

19 **44 Application provision**

20 The amendments of section 7A of the *Education Services for Overseas*  
21 *Students Act 2000* made by Division 1 of this Part apply in relation to:

- 22 (a) applications for registration made on or after the  
23 commencement of that Division; and  
24 (b) applications for registration made before the commencement  
25 of that Division but not yet decided as at that  
26 commencement; and  
27 (c) providers registered before, on or after the commencement of  
28 that Division;

**Schedule 1** Amendments  
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1                                   regardless of whether the conduct constituting the alleged offence  
2                                   occurred before, on or after that commencement.

1 **Part 7—Enrolment limits**

2 **Division 1—Amendments**

3 *Education Services for Overseas Students Act 2000*

4 **45 Section 5**

5 Insert:

6 *course enrolment limit:*

- 7 (a) for an instrument made under subsection 26E(1)—see  
8 section 26E; and  
9 (b) for a notice given under subsection 26F(1)—see section  
10 26F.

11 *total enrolment limit:*

- 12 (a) for an instrument made under subsection 26B(1)—see  
13 section 26B; and  
14 (b) for a notice given under subsection 26C(1)—see section  
15 26C.

16 **46 Section 15A (after the paragraph beginning “Division 1  
17 contains”)**

18 Insert:

- 19 • The Minister may determine under Division 1AA:  
20 (a) a limit (called the total enrolment limit) on the number  
21 of overseas students that may be enrolled in all courses  
22 provided by a provider in a year; and  
23 (b) a limit (called the course enrolment limit) on the number  
24 of overseas students that may be enrolled in a particular  
25 course provided by a provider in a year.

26 A provider must not exceed its enrolment limits for a year.

27 **47 After Division 1 of Part 3**

28 Insert:

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1 **Division 1AA—Limits on number of enrolments of**  
2 **overseas students**

3 **Subdivision A—General**

4 **26A Relationship between instruments and notices**

5 Nothing in this Division is intended to limit the legislative  
6 instruments or notices that may be made or given for the purposes  
7 of this Division in respect of the same year for the same:

- 8 (a) provider or class of providers; or  
9 (b) course or class of courses.

10 **Subdivision B—Total enrolment limits**

11 **26B Minister may impose total enrolment limits by legislative**  
12 **instrument**

13 *Total enrolment limit*

- 14 (1) The Minister may, by legislative instrument, determine a limit (the  
15 ***total enrolment limit***) on the number of overseas students that may  
16 be enrolled with a registered provider in a specified class of  
17 registered providers in respect of one or more specified years.
- 18 (2) The total enrolment limit for a registered provider in respect of a  
19 year may be expressed to apply in relation to:  
20 (a) the total number, worked out in accordance with the  
21 instrument, of new overseas students enrolled in all courses  
22 provided by the provider for the year (other than exempt  
23 courses under subsection (4)); or  
24 (b) the combined total number, worked out in accordance with  
25 the instrument, of new and ongoing overseas students  
26 enrolled in all courses provided by the provider for the year  
27 (other than exempt courses under subsection (4)).
- 28 (3) The total enrolment limit for a registered provider in respect of a  
29 year must be either:  
30 (a) specified in the instrument; or

1 (b) worked out in accordance with a method specified in the  
2 instrument.

3 *Courses exempt from total enrolment limit*

4 (4) An instrument under subsection (1) may exempt a specified course,  
5 or a course in a specified class of courses, from counting towards a  
6 registered provider's total enrolment limit.

7 (5) Without limiting subsection (4) or any other provision of this Act,  
8 a course or class of courses may be specified by reference to any  
9 matter, including the location of the course.

10 *Specified providers*

11 (6) Without limiting subsection (1) or any other provision of this Act,  
12 a class of providers may be specified by reference to any matter,  
13 including, but not limited to, any of the following:

- 14 (a) the kind of provider;  
15 (b) the kind of courses provided by the provider;  
16 (c) the location of courses provided by the provider;  
17 (d) other circumstances applying in relation to the provider.

18 *Instrument may provide differently*

19 (7) Without limiting subsection 33(3A) of the *Acts Interpretation Act*  
20 *1901*, an instrument under subsection (1) of this section may make  
21 different provision in relation to either or both of the following:

- 22 (a) different classes of providers;  
23 (b) different years.

24 *Prescribing matters by reference to other instruments*

25 (8) Despite subsection 14(2) of the *Legislation Act 2003*, an instrument  
26 under subsection (1) of this section may make provision in relation  
27 to a matter by applying, adopting or incorporating, with or without  
28 modification, any matter contained in an instrument or other  
29 writing as in force or existing from time to time.

1 *When instrument must be made*

- 2 (9) An instrument under subsection (1) in respect of one or more years  
3 has no effect unless it is made before 1 September of the year  
4 before the first year to which the instrument applies.

5 *When instrument may be varied*

- 6 (10) Despite subsection (9), and without limiting subsection 33(3) of the  
7 *Acts Interpretation Act 1901*, the Minister may, at any time, vary  
8 an instrument if the Minister is satisfied that it is appropriate to do  
9 so.

10 *Consultation*

- 11 (11) Before the Minister makes an instrument under subsection (1) or a  
12 variation under subsection (10), the Minister may consult with any  
13 person or body, including any of the following:

- 14 (a) TEQSA;  
15 (b) the National VET Regulator;  
16 (c) the Secretary;  
17 (d) if the Minister has determined that an entity (other than an  
18 entity mentioned in paragraph (a), (b) or (c)) is an ESOS  
19 agency for a provider or a registered provider under  
20 subsection 6C(2)—that entity;  
21 (e) the Immigration Minister.

22 *Agreement of other relevant Minister*

- 23 (12) If:  
24 (a) an instrument under subsection (1) or a variation under  
25 subsection (10) specifies a class of providers that includes a  
26 registered VET provider; and  
27 (b) the Minister does not administer the *National Vocational*  
28 *Education and Training Regulator Act 2011*;  
29 the Minister must not make or vary the instrument without the  
30 written agreement of the Minister who administers that Act.

1 **26C Minister may impose total enrolment limits by notice to**  
2 **provider**

3 *Total enrolment limit*

- 4 (1) The Minister may, by written notice given to a registered provider,  
5 determine a limit (the ***total enrolment limit***) on the number of  
6 overseas students that may be enrolled with the provider in respect  
7 of one or more specified years.
- 8 (2) The total enrolment limit for a registered provider in respect of a  
9 year may be expressed to apply in relation to:
- 10 (a) the total number, worked out in accordance with the notice,  
11 of new overseas students enrolled in all courses provided by  
12 the provider in the year (other than exempt courses under  
13 subsection (4)); or
- 14 (b) the combined total number, worked out in accordance with  
15 the notice, of new and ongoing overseas students enrolled in  
16 all courses provided by the provider in the year (other than  
17 exempt courses under subsection (4)).
- 18 (3) The total enrolment limit for a registered provider in respect of a  
19 year must be either:
- 20 (a) specified in the notice; or  
21 (b) worked out in accordance with a method specified in the  
22 notice.

23 *Courses exempt from total enrolment limit*

- 24 (4) A notice under subsection (1) may exempt a specified course, or a  
25 course in a specified class of courses, from counting towards a  
26 registered provider's total enrolment limit.
- 27 (5) Without limiting subsection (4) or any other provision of this Act,  
28 a course or class of courses may be specified by reference to any  
29 matter, including the location of the course.

30 *Notice may provide differently*

- 31 (6) Without limiting subsection 33(3A) of the *Acts Interpretation Act*  
32 *1901*, a notice given under subsection (1) of this section may make  
33 different provision in relation to different years.

1 *When notice may be given*

2 (7) A notice under subsection (1) in respect of one or more years may  
3 be given at any time.

4 Note: For variation of a notice, see subsection 33(3) of the *Acts*  
5 *Interpretation Act 1901*.

6 *Agreement of other relevant Minister*

7 (8) If:

8 (a) a provider is a registered VET provider; and

9 (b) the Minister does not administer the *National Vocational*  
10 *Education and Training Regulator Act 2011*;

11 the Minister must not give the provider a notice under  
12 subsection (1) of this section without the written agreement of the  
13 Minister who administers that Act, or a delegate of that Minister.

14 *Copy of notice*

15 (9) The Minister must give a copy of the notice to:

16 (a) the ESOS agency for the provider; and

17 (b) if the ESOS agency for the provider is not the Secretary—the  
18 Secretary.

19 *Notice not legislative instrument*

20 (10) A notice under subsection (1) is not a legislative instrument.

21 **26D Obligations relating to total enrolment limits**

22 (1) A registered provider (other than an exempt provider) must not  
23 enrol an overseas student, or intending overseas student, for a  
24 course that the provider is registered to provide in the year, if the  
25 enrolment of the student would result in the provider exceeding:

26 (a) unless paragraph (b) applies to the provider and the year—  
27 the total enrolment limit specified in the instrument under  
28 subsection 26B(1) for the provider and the year; or

29 (b) if the Minister gives a notice to the provider under  
30 subsection 26C(1) in respect of the year and the notice is in  
31 force—the total enrolment limit specified in the notice for the  
32 provider and the year.



1 Note: For the consequences of breaching this section, see Division 1AA of  
2 Part 6 (conditions, suspension and cancellation).

3 (2) For the purposes of working out under subsection (1) if enrolment  
4 of a student would result in the provider exceeding its total  
5 enrolment limit for the year, students enrolled in respect of that  
6 year before the instrument was made or varied, or before the notice  
7 was given, are to be taken into account.

8 (3) To avoid doubt, a registered provider may be subject to obligations  
9 in relation to a course and a year under subsection (1) and section  
10 26G.

## 11 **Subdivision C—Course enrolment limits**

### 12 **26E Minister may impose course enrolment limits by legislative** 13 **instrument**

#### 14 *Course enrolment limit*

15 (1) The Minister may, by legislative instrument, determine a limit (the  
16 ***course enrolment limit***) on the number of overseas students that  
17 may be enrolled in a specified course, or a course in a specified  
18 class of courses, provided by a registered provider in a specified  
19 class of registered providers in respect of one or more specified  
20 years.

21 (2) The course enrolment limit for a course in respect of a year may be  
22 expressed to apply in relation to:

- 23 (a) the total number, worked out in accordance with the  
24 instrument, of new overseas students enrolled with the  
25 provider for the course and the year; or  
26 (b) the combined total number, worked out in accordance with  
27 the instrument, of new and ongoing overseas students  
28 enrolled with the provider for the course and the year.

29 (3) The course enrolment limit for a course in respect of a year must  
30 be either:

- 31 (a) specified in the instrument; or  
32 (b) worked out in accordance with a method specified in the  
33 instrument.

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*Specified courses*

- (4) Without limiting subsection (1) or any other provision of this Act, a course or class of courses may be specified by reference to any matter, including the location of the course.

*Specified providers*

- (5) Without limiting subsection (1) or any other provision of this Act, a class of providers may be specified by reference to any matter, including, but not limited to, any of the following:
- (a) the kind of provider;
  - (b) the kind of courses provided by the provider;
  - (c) the location of courses provided by the provider;
  - (d) the number of overseas students enrolled with the provider;
  - (e) other circumstances applying in relation to the provider.

*Instrument may provide differently*

- (6) Without limiting subsection 33(3A) of the *Acts Interpretation Act 1901*, an instrument under subsection (1) of this section may make different provision in relation to any of the following:
- (a) different courses or classes of courses;
  - (b) different classes of providers;
  - (c) different years.

*Prescribing matters by reference to other instruments*

- (7) Despite subsection 14(2) of the *Legislation Act 2003*, an instrument under subsection (1) of this section may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

*When instrument must be made*

- (8) An instrument under subsection (1) in respect of one or more years has no effect unless it is made before 1 September of the year before the first year to which the instrument applies.

*When instrument may be varied*

- (9) Despite subsection (8), and without limiting subsection 33(3) of the *Acts Interpretation Act 1901*, the Minister may, at any time, vary an instrument if the Minister is satisfied that it is appropriate to do so.

*Consultation*

- (10) Before the Minister makes an instrument under subsection (1) or a variation under subsection (9), the Minister may consult with any person or body, including any of the following:
- (a) TEQSA;
  - (b) the National VET Regulator;
  - (c) the Secretary;
  - (d) if the Minister has determined that an entity (other than an entity mentioned in paragraph (a), (b) or (c)) is an ESOS agency for a provider or a registered provider under subsection 6C(2)—that entity;
  - (e) the Immigration Minister.

*Agreement of other relevant Minister*

- (11) If:
- (a) an instrument under subsection (1) or a variation under subsection (9) specifies a course that is, or a class of courses that includes, a VET course within the meaning of the *National Vocational Education and Training Regulator Act 2011*; and
  - (b) the Minister does not administer that Act;
- the Minister must not make or vary the instrument without the written agreement of the Minister who administers that Act.

**26F Minister may impose course enrolment limits by notice to provider**

*Course enrolment limit*

- (1) The Minister may, by written notice given to a registered provider, determine a limit (the ***course enrolment limit***) on the number of

- 1 overseas students that may be enrolled in a specified course, or a  
2 course in a specified class of courses, provided by the provider in  
3 respect of one or more specified years.
- 4 (2) The course enrolment limit for a course in respect of a year may be  
5 expressed to apply in relation to:
- 6 (a) the total number, worked out in accordance with the notice,  
7 of new overseas students enrolled with the provider for the  
8 course and the year; or
- 9 (b) the combined total number, worked out in accordance with  
10 the notice, of new and ongoing overseas students enrolled  
11 with the provider for the course and the year.
- 12 (3) The course enrolment limit for a course in respect of a year must  
13 be either:
- 14 (a) specified in the notice; or  
15 (b) worked out in accordance with a method specified in the  
16 notice.

17 *Specified courses*

- 18 (4) Without limiting subsection (1) or any other provision of this Act,  
19 a course or class of courses may be specified by reference to any  
20 matter, including the location of the course.

21 *Notice may provide differently*

- 22 (5) Without limiting subsection 33(3A) of the *Acts Interpretation Act*  
23 *1901*, a notice given under subsection (1) of this section may make  
24 different provision in relation to either or both of the following:
- 25 (a) different courses or classes of courses;  
26 (b) different years.

27 *When notice may be given*

- 28 (6) A notice under subsection (1) in respect of one or more years may  
29 be given at any time.

30 Note: For variation of a notice, see subsection 33(3) of the *Acts*  
31 *Interpretation Act 1901*.

1 *Agreement of other relevant Minister*

2 (7) If:

3 (a) a notice under subsection (1) specifies a course that is, or a  
4 class of courses that includes, a VET course within the  
5 meaning of the *National Vocational Education and Training*  
6 *Regulator Act 2011*; and

7 (b) the Minister does not administer that Act;  
8 the Minister must not give a notice under subsection (1) of this  
9 section without the written agreement of the Minister who  
10 administers that Act, or a delegate of that Minister.

11 *Copy of notice*

12 (8) The Minister must give a copy of the notice to:

13 (a) the ESOS agency for the provider; and

14 (b) if the ESOS agency for the provider is not the Secretary—the  
15 Secretary.

16 *Notice not legislative instrument*

17 (9) A notice under subsection (1) is not a legislative instrument.

18 **26G Obligations relating to course enrolment limits**

19 (1) A registered provider (other than an exempt provider) must not  
20 enrol an overseas student, or intending overseas student, for a  
21 course that the provider is registered to provide in the year, if the  
22 enrolment of the student would result in the provider exceeding:

23 (a) unless paragraph (b) applies to the course, the provider and  
24 the year—the course enrolment limit specified in the  
25 instrument under subsection 26E(1) for the course, the  
26 provider and the year; or

27 (b) if the Minister gives a notice to the provider under  
28 subsection 26F(1) in respect of the course and the year and  
29 the notice is in force—the course enrolment limit specified in  
30 the notice for the course, the provider and the year.

31 Note: For the consequences of breaching this subsection, see Division 1AA  
32 of Part 6 (conditions, suspension and cancellation).

1 (2) For the purposes of working out under subsection (1) if enrolment  
2 of a student would result in the provider exceeding its course  
3 enrolment limit for the course and the year, students enrolled in  
4 respect of that year before the instrument was made or varied, or  
5 before the notice was given, are to be taken into account.

6 (3) To avoid doubt, a registered provider may be subject to obligations  
7 in relation to a course and a year under subsection (1) and section  
8 26D.

9 **48 Section 83A (after the paragraph beginning “The ESOS  
10 agency”)**

11 Insert:

- 12 • Division 1AA provides for:
- 13 (a) automatic suspension of a provider’s registration for all  
14 courses in relation to a year if the provider exceeds its  
15 total enrolment limit for the year; and
- 16 (b) automatic suspension of a provider’s registration for a  
17 course in relation to a year if the provider exceeds its  
18 course enrolment limit for the course and the year.

19 **49 After Division 1 of Part 6**

20 Insert:

21 **Division 1AA—Automatic period of suspension for  
22 exceeding limits on enrolment**

23 **96 Automatic period of suspension for exceeding total enrolment  
24 limit**

25 *Automatic suspension for all courses for the year*

26 (1) If a registered provider fails to comply with section 26D in relation  
27 to a year, the registration of the provider is suspended for all  
28 courses (other than courses that are exempt from the provider’s  
29 total enrolment limit under subsection 26B(4) or 26C(4)) for all  
30 locations in respect of the year by force of this subsection.

1 *Consequences of suspension*

- 2 (2) A provider whose registration is suspended for a course under this  
3 section in respect of a year must not:
- 4 (a) enrol an overseas student or an intending overseas student for  
5 the course in respect of that year; or
  - 6 (b) solicit or accept any money from an overseas student or an  
7 intending overseas student for the course other than:
    - 8 (i) an overseas student or intending overseas student who is  
9 enrolled in, and has commenced, the course before the  
10 suspension; or
    - 11 (ii) an overseas student or intending overseas student who is  
12 enrolled in the course in respect of a later year; or
  - 13 (c) if an accepted student of the provider has not commenced the  
14 course before the suspension—permit the student to  
15 commence the course during that year.
- 16 (3) The provider is still registered for the course for the location for all  
17 other purposes.

18 *Notification of suspension*

- 19 (4) If the registration of a provider has been suspended by force of  
20 subsection (1), the Secretary must, in writing, notify the following  
21 of the suspension:
- 22 (a) the provider;
  - 23 (b) if the ESOS agency for the provider is not the Secretary—the  
24 ESOS agency for the provider.

25 *Duration of suspension*

- 26 (5) If the registration of a provider has been suspended under  
27 subsection (1) in respect of a year, the suspension of the provider's  
28 registration ends by force of this subsection at the earlier of the  
29 following times:
- 30 (a) the end of 31 December of that year;
  - 31 (b) when the Secretary gives the provider a notice under  
32 subsection (6) in respect of the year.

- 1 (6) The Secretary may give a notice to a provider under this subsection  
2 in respect of a year if the Secretary is satisfied that it is appropriate  
3 to do so.

4 **96A Automatic period of suspension for exceeding course enrolment**  
5 **limit**

6 *Automatic suspension for the course for the year*

- 7 (1) If a registered provider fails to comply with section 26G in relation  
8 to a course, the registration of the provider is suspended for the  
9 course in respect of the year by force of this subsection:  
10 (a) if the course is specified in the instrument under section 26E  
11 or notice under 26F by reference to the location of the  
12 course—for that location; or  
13 (b) otherwise—for all locations.

14 *Consequences of suspension*

- 15 (2) A provider whose registration is suspended for a course at a  
16 location under this section in respect of a year must not:  
17 (a) enrol an overseas student or an intending overseas student for  
18 the course at the location in respect of that year; or  
19 (b) solicit or accept any money from an overseas student or an  
20 intending overseas student for the course at the location,  
21 other than:  
22 (i) an overseas student or intending overseas student who is  
23 enrolled in, and has commenced, the course at the  
24 location before the suspension; or  
25 (ii) an overseas student or intending overseas student who is  
26 enrolled in the course at the location in respect of a later  
27 year; or  
28 (c) if an accepted student of the provider has not commenced the  
29 course at the location before the suspension—permit the  
30 student to commence the course at the location during that  
31 year.
- 32 (3) The provider is still registered for the course for the location for all  
33 other purposes.



1 *Notification of suspension*

- 2 (4) If the registration of a provider for a course has been suspended by  
3 force of subsection (1), the Secretary must, in writing, notify the  
4 following of the suspension:  
5 (a) the provider;  
6 (b) if the ESOS agency for the provider is not the Secretary—the  
7 ESOS agency for the provider.

8 *Duration of suspension*

- 9 (5) If the registration of a provider has been suspended under  
10 subsection (1) in respect of a course, a location and a year, the  
11 suspension of the provider's registration for the course at the  
12 location ends by force of this subsection at the earlier of the  
13 following times:  
14 (a) the end of 31 December of that year;  
15 (b) when the Secretary gives the provider a notice under  
16 subsection (6) in respect of the course, the location and the  
17 year.  
18 (6) The Secretary may give a notice to a provider under this subsection  
19 in respect of a course, a location and a year if the Secretary is  
20 satisfied that it is appropriate to do so.

21 **50 Section 169AB (in the appropriate position in the table)**

22 Insert:

- |    |  |                         |
|----|--|-------------------------|
| 12 | A decision by the Secretary not to give a registered provider a notice under subsection 96(6) in respect of a year                           | The registered provider |
| 13 | A decision by the Secretary not to give a registered provider a notice under subsection 96A(6) in respect of a course, a location and a year | The registered provider |

23 **51 At the end of Part 7A**

24 Add:

1 **169AH References to ESOS agency etc.**

- 2 (1) For the purposes of applying this Part and any related provisions of  
3 this or any other Act or instrument in respect of a decision of the  
4 Secretary not to give a notice to a provider under subsection 96(6)  
5 or 96A(6), references in this Part to any of the following:  
6 (a) ESOS agency;  
7 (b) ESOS agency for an affected provider;  
8 (c) agency;  
9 are taken to be a reference to the Secretary.
- 10 (2) Subsection (1) does not apply in relation to section 169AB.

11 **52 After section 176D**

12 Insert:

13 **176E Compensation for acquisition of property**

- 14 (1) If:  
15 (a) apart from this section, the operation of Division 1AA of  
16 Part 3 or Division 1AA or 1AB of Part 6 would result in the  
17 acquisition of property (within the meaning of  
18 paragraph 51(xxxi) of the Constitution) from a person  
19 otherwise than on just terms (within the meaning of that  
20 paragraph); and  
21 (b) the acquisition would be invalid because of  
22 paragraph 51(xxxi) of the Constitution;  
23 the Commonwealth is liable to pay a reasonable amount of  
24 compensation to the person in respect of the acquisition.
- 25 (2) If the Commonwealth and the person do not agree on the amount  
26 of the compensation, the person may institute proceedings in the  
27 Federal Court of Australia or the Supreme Court of a State or  
28 Territory for the recovery from the Commonwealth of such  
29 reasonable amount of compensation as the court determines.

1 **Division 2—Application of amendments**

2 **53 Application and transitional provisions**

- 3 (1) Subject to this item, Division 1AA of Part 3 and Division 1AA of Part 6  
4 of the *Education Services for Overseas Students Act 2000*, as inserted  
5 by Division 1 of this Part, apply in relation to the 2025 calendar year  
6 and later calendar years.

7 *Total enrolment limits for 2025*

- 8 (2) If the Minister makes a legislative instrument under section 26B or  
9 gives a notice under section 26C of the *Education Services for Overseas*  
10 *Students Act 2000*, as inserted by Division 1 of this Part, in respect of  
11 2025:
- 12 (a) the total enrolment limit for a registered provider may only  
13 be expressed to apply in relation to the total number, worked  
14 out in accordance with the instrument or notice, of new  
15 overseas students enrolled with the provider in respect of that  
16 year; and
  - 17 (b) subsection 26B(9) applies as if the reference to 1 September  
18 of the year before the first year to which the instrument  
19 applies were instead a reference to 31 December 2024.

20 *Total enrolment limits for later years*

- 21 (3) If the Minister makes a legislative instrument under section 26B or  
22 gives a notice under section 26C of the *Education Services for Overseas*  
23 *Students Act 2000*, as inserted by Division 1 of this Part, in respect of  
24 2026 or a later year, the total enrolment limit for a registered provider  
25 may only be expressed to apply in relation to:
- 26 (a) the total number, worked out in accordance with the  
27 instrument or notice, of new overseas students enrolled with  
28 the provider in respect of that year; or
  - 29 (b) the combined total number, worked out in accordance with  
30 the instrument or notice, of:
    - 31 (i) new overseas students enrolled with the provider in  
32 respect of that year; and
    - 33 (ii) ongoing overseas students enrolled with the provider in  
34 respect of that year if the ongoing students were  
35 enrolled with the provider as new overseas students in

1 respect of the 2025 calendar year or a later calendar  
2 year.

3 **Course enrolment limits for 2025**

4 (4) If the Minister makes a legislative instrument under section 26E or  
5 gives a notice under section 26F of the *Education Services for Overseas*  
6 *Students Act 2000*, as inserted by Division 1 of this Part, in respect of  
7 2025:

- 8 (a) the course enrolment limit for a course and a registered  
9 provider may only be expressed to apply in relation to the  
10 total number, worked out in accordance with the instrument  
11 or notice, of new overseas students enrolled in the course  
12 with the provider in respect of that year; and  
13 (b) subsection 26E(8) applies as if the reference to 1 September  
14 of the year before the first year to which the instrument  
15 applies were instead a reference to 31 December 2024.

16 **Course enrolment limits for later years**

17 (5) If the Minister makes a legislative instrument under section 26E or  
18 gives a notice under section 26F of the *Education Services for Overseas*  
19 *Students Act 2000*, as inserted by Division 1 of this Part, in respect of  
20 2026 or a later year, the course enrolment limit for a course and a  
21 registered provider may only be expressed to apply in relation to:

- 22 (a) the total number, worked out in accordance with the  
23 instrument or notice, of new overseas students enrolled in the  
24 course with the provider in respect of that year; or  
25 (b) the combined total number, worked out in accordance with  
26 the instrument or notice, of:  
27 (i) new overseas students enrolled in the course with the  
28 provider in respect of that year; and  
29 (ii) ongoing overseas students enrolled in the course with  
30 the provider in respect of that year if the ongoing  
31 students were enrolled with the provider as new  
32 overseas students in respect of the 2025 calendar year or  
33 a later calendar year.

1 **Part 8—Automatic cancellation of specified courses**

2 **Division 1—Amendments**

3 *Education Services for Overseas Students Act 2000*

4 **54 Section 83A (before the paragraph beginning “The**  
5 **Immigration Minister”)**

6 Insert:

- 7 

• Division 1AB provides for automatic suspension and 8 cancellation of courses specified by the Minister in a 9 legislative instrument.
---

10 **55 Before Division 2 of Part 6**

11 Insert:

12 **Division 1AB—Automatic suspension and cancellation of**  
13 **courses specified by the Minister**

14 **96B Minister may make instrument specifying courses**

- 15 (1) The Minister may, by legislative instrument, specify one or more  
16 classes of courses for the purposes of this section if the Minister is  
17 satisfied that:
- 18 (a) there are or have been systemic issues in relation to the  
19 standard of delivery of the courses included in the class; or  
20 (b) the courses included in the class provide limited value to  
21 Australia’s current, emerging and future skills and training  
22 needs and priorities; or  
23 (c) it is in the public interest to do so.
- 24 (2) In considering whether to make such an instrument, the Minister  
25 may have regard to any of the following matters:
- 26 (a) whether the courses included in the class are provided by  
27 registered providers that are breaching or have breached:

- 1 (i) this Act; or  
2 (ii) the national code; or  
3 (iii) if the ELICOS Standards or Foundation Program  
4 Standards apply in relation to the provider—those  
5 Standards; or  
6 (iv) a condition of the provider’s registration;  
7 (b) completion rates of accepted students of those courses;  
8 (c) the number of transfers of accepted students from or to those  
9 courses;  
10 (d) the location or locations at which providers are registered to  
11 provide those courses.

- 12 (3) Subsection (2) does not limit the matters to which the Minister may  
13 have regard in considering whether to make an instrument under  
14 subsection (1).

15 *Specified courses*

- 16 (4) Without limiting subsection (1) or any other provision of this Act,  
17 a class of courses may be specified by reference to any matter,  
18 including the location of the course.

19 *Prescribing matters by reference to other instruments*

- 20 (5) Despite subsection 14(2) of the *Legislation Act 2003*, an instrument  
21 made under subsection (1) of this section may make provision in  
22 relation to a matter by applying, adopting or incorporating, with or  
23 without modification, any matter contained in an instrument or  
24 other writing as in force or existing from time to time.

25 *Consultation*

- 26 (6) The Minister must consult with each of the following before the  
27 Minister makes an instrument under subsection (1):  
28 (a) TEQSA;  
29 (b) the National VET Regulator;  
30 (c) the Secretary;  
31 (d) if the Minister has determined that an entity (other than an  
32 entity mentioned in paragraph (a), (b) or (c)) is an ESOS

1 agency for a provider or a registered provider under  
2 subsection 6C(2)—that entity.

3 *Agreement of other relevant Minister*

4 (7) If:

5 (a) an instrument under subsection (1) specifies a class of  
6 courses that includes a VET course within the meaning of the  
7 *National Vocational Education and Training Regulator Act*  
8 *2011*; and

9 (b) the Minister does not administer that Act;  
10 the Minister must not make the instrument without the written  
11 agreement of the Minister who administers that Act.

12 **96C Automatic suspension of specified courses**

13 (1) This section applies if:

14 (a) a registered provider (other than an exempt provider) is  
15 registered to provide a course at a location or locations; and

16 (b) the course is included in a class of courses specified in an  
17 instrument under subsection 96B(1); and

18 (c) 30 days after that instrument commences, one or more  
19 students are enrolled in and have commenced, but not  
20 completed or withdrawn from, the course.

21 (2) The provider's registration for the course is suspended for all  
22 locations by force of this subsection.

23 (3) A provider whose registration is suspended for a course under this  
24 section must not:

25 (a) do any thing for the purpose of recruiting or enrolling  
26 overseas students or intending overseas students for the  
27 course; or

28 (b) solicit or accept any money from an overseas student or an  
29 intending overseas student for the course other than overseas  
30 students who are enrolled in and have commenced the  
31 course; or

32 (c) if an accepted student of the provider has not commenced the  
33 course—permit the student to commence the course.

- 1 (4) The provider is still registered for the course for the location for all  
2 other purposes.

3 **96D Automatic cancellation of specified courses**

- 4 (1) This section applies if:
- 5 (a) a registered provider (other than an exempt provider) is
  - 6 registered to provide a course at a location or locations; and
  - 7 (b) the course is included in a class of courses specified in an
  - 8 instrument under subsection 96B(1); and
  - 9 (c) 30 days after that instrument commences, there are no
  - 10 students that are enrolled in and have commenced, but not
  - 11 completed or withdrawn from, the course.
- 12 (2) This section also applies if:
- 13 (a) a provider's registration for a course is suspended under
  - 14 section 96C; and
  - 15 (b) all students that were enrolled in and had commenced the
  - 16 course before the suspension have since completed or
  - 17 withdrawn from the course.
- 18 (3) The provider's registration for the course is cancelled for all
- 19 locations by force of this subsection.

20 **Division 2—Application of amendments**

21 **56 Application provision**

22 Division 1AB of Part 6 of the *Education Services for Overseas Students*  
23 *Act 2000*, as inserted by Division 1 of this Part, applies in relation to a  
24 course, whether a provider is registered to provide the course before, on  
25 or after the commencement of that Part.



2022-2023-2024

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**EDUCATION SERVICES FOR OVERSEAS STUDENTS AMENDMENT (QUALITY AND INTEGRITY)  
BILL 2024**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Education, the Hon Jason Clare MP)

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# EDUCATION SERVICES FOR OVERSEAS STUDENTS AMENDMENT (QUALITY AND INTEGRITY) BILL 2024

## OUTLINE

The Education Services for Overseas Students Amendment (Quality and Integrity) Bill 2024 (the Bill) amends the *Education Services for Overseas Students Act 2000* (ESOS Act) to support the quality, integrity and sustainable growth of the international education sector. The Bill addresses issues identified in the *Rapid Review into the Exploitation of Australia's Visa System* (the Nixon Review) and the Government's *Migration Strategy* by:

- including a requirement for ESOS agencies to consider whether:
  - a provider has any ownership or control of an education agent, and their activities, and
  - an education agent, or an associate of the education agent, has any ownership or control of a provider,in assessing whether the provider is fit and proper to be registered;
- requiring providers to give education agent commission information to the Secretary of the Department of Education (Secretary) and expanding the ability of the Secretary, or an ESOS agency, to give information to registered providers about education agents;
- giving the Minister for Education (Minister) powers to determine how initial applications for the registration of providers, and for registration of courses by registered providers, are to be managed by ESOS agencies;
- requiring providers, prior to applying for registration of courses under the ESOS Act, to deliver one or more courses exclusively to domestic students (i.e. not overseas students) for consecutive study periods totalling two (2) years;
- enabling the automatic cancellation of a registered provider's registration where courses have not been delivered to overseas students for 12 consecutive months;
- setting out another new requirement for ESOS agencies to consider whether a provider is under investigation for a specified offence in the fit and proper provider test so that, if an ESOS agency determines that the provider is not fit and proper, the provider's registration is automatically suspended;
- giving the Minister power to set limits on the maximum number of overseas students that may be enrolled with a provider or a class of providers for a year, including in relation to the total number of students enrolled with the provider or in relation to the total number of students enrolled in individual courses, or classes of courses, with the provider; and
- enabling the automatic suspension and cancellation of courses that are identified by the Minister in a legislative instrument as having systemic issues in relation to the standard of delivery of the course, or courses that provide limited value to

Australia's skills and training needs and priorities, or courses that it is in the public interest to cancel.

These amendments affect higher education providers, Vocational Education and Training (VET) providers and schools providing education services to overseas students and are related to reforms to Australia's migration system. Where possible, the amendments also align with amendments addressing integrity issues specific to the VET sector, supporting whole-of-government priorities.

The amendments to the fit and proper provider test in Part 1 of Schedule 1 to the Bill aim to limit collusive and unscrupulous business practices occurring between providers and agents, where student enrolments are facilitated for maximum profit rather than in the student's best interests. These business practices are encouraging organised channels of labour exploitation and human trafficking, and enabling profiteering from non-genuine students. Under these amendments, the ESOS agency or designated State authority for a provider must, in deciding if the provider is fit and proper to be registered, have regard to whether:

- the provider, or an associate of the provider, has any ownership or control of an education agent and if so, the value or extent of the ownership or control; and
- an education agent, or an associate of the education agent, has any ownership or control (whether direct or indirect) of the provider, and if so, the value or extent of the ownership or control.

Part 1 also includes amendments to require providers to give information about education agent commissions, if requested by the Secretary. Education agent commissions may, in some cases, incentivise agents to facilitate student enrolments and course transfers for maximum profit, rather than in the best interests of the student. This amendment specifically relates to amendments in Part 2 of Schedule 1 to the Bill. Further, defining 'education agent commission' in the ESOS Act will allow the Minister to make complementary amendments to the *National Code of Practice for Providers of Education and Training to Overseas Students 2018* to ban commissions from being paid by providers to education agents for onshore student transfers.

The Nixon Review identified education agents as being involved in visa exploitation and human trafficking of students. Part 2 of Schedule 1 to the Bill amends the ESOS Act to enable providers to have better access to education agent information to assist them with making informed decisions about the particular education agents they want to engage with to deal with overseas students. Using the powers in these amendments, the Secretary, or an ESOS agency, will give providers information, via a secure channel, relating to the number of transfers of accepted students dealt with by an education agent, from one provider to another and from one course to another, as well as information about commissions (fees, charges or other consideration) that are paid or payable to an education agent relating to the recruitment of accepted students. This information will assist providers to identify reputable education agents to work with and drive unscrupulous operators out of the Australian international education sector.

Part 3 of Schedule 1 to the Bill will give the Minister powers to make determinations, via legislative instruments and with the agreement of the Minister responsible for administering the *National Vocational Education and Training Regulator Act 2011* (NVETR Act) (currently the Minister for Skills and Training), to specify up to a 12-month period where ESOS agencies are not required to, or must not, accept or process initial applications for registration by new providers and for the registration of new courses by registered providers. These amendments will support a managed system to deliver sustainable growth over time in the international education sector, and, if required, divert resources to addressing integrity issues that arise. The Ministerial determinations may apply to all initial applications or apply to a particular class or classes of providers or courses, so that there is flexibility to allow some providers and/or courses to progress.

Part 4 of Schedule 1 to the Bill will impose a new registration requirement on providers to deliver one or more courses to domestic students (i.e. not overseas students) for consecutive study periods totalling two years, in order to be eligible to apply for registration to provide courses to overseas students under the ESOS Act. This amendment will deter non-genuine providers from entering the international education sector purely for facilitating migration outcomes, to ensure that a provider is genuinely intending to deliver educational outcomes for students. Providers that are listed in Table A of the *Higher Education Support Act 2003* and providers that are seeking registration as standalone English Language Intensive Courses for Overseas Students providers or standalone Foundation Program providers will be exempt from the new registration requirement.

Part 5 of Schedule 1 to the Bill will enable the automatic cancellation of a provider's registration under the ESOS Act, by force of law, in circumstances where the provider has not delivered a course to overseas students in a period of 12 consecutive months. This amendment will address integrity issues posed by dormant providers who may be using their registration under the ESOS Act for non-genuine or fraudulent purposes, and providers that are not demonstrating a genuine commitment to the delivery of courses to overseas students.

Where a provider may have a legitimate, reasonable justification for not providing a course or courses during this period, they may apply to their ESOS agency for an extension to ensure that the registration will not be cancelled until the end of the extension period. An extension can be granted more than once, but the total period of extensions must not exceed 12 months. Legitimate circumstances may include that the provider is newly registered under the ESOS Act and there are operational challenges in commencing the delivery of courses, or there is a natural disaster such as fire, flood, or a pandemic event.

The Bill also proposes amendments to ensure that extension decisions are subject to internal and external merits review (via the Administrative Appeals Tribunal or, subject to the passage of legislation, the proposed Administrative Review Tribunal) in line with other reviewable decisions under the ESOS Act. Providers that are schools are exempt from this

amendment as intakes of overseas students are small and there may not be an overseas student enrolled in each year.

Part 6 of Schedule 1 to the Bill includes another amendment to the fit and proper provider test aimed at providers who are under investigation for specified offences. Where an ESOS agency, or designated State authority, has determined that a provider does not meet the fit and proper provider test because the provider is under investigation for a specified offence, the provider's registration will be automatically suspended under section 89 of the ESOS Act. This amendment expands the circumstances which could result in a provider's registration being automatically suspended, which in turn sends a strong message that unscrupulous practices by providers will not be tolerated.

Part 7 of Schedule 1 to the Bill will enable the Minister to make a legislative instrument specifying the number of overseas students that may be enrolled with a class of providers (total provider enrolment limit) and the number of overseas students that may be enrolled in courses or classes of courses at providers (course enrolment limit). Alternatively, the Minister can give a notice to a provider setting out its total provider enrolment limit or course enrolment limit. This would enable the Minister to set multiple enrolment limits for different courses for the one registered provider within the overall total provider enrolment limit. The Minister must obtain agreement from the Minister responsible for administering the NVETR Act (currently the Minister for Skills and Training), prior to setting limits for VET providers. Providers that exceed their enrolment limit will have their registration automatically suspended in relation to the courses covered by the enrolment limit. If a provider exceeds their course enrolment limit, they will be suspended for the courses that are covered by the course enrolment limit as specified in the legislative instrument or notice.

The Minister, using this power, will be able to proactively manage overseas student enrolments to deliver sustainable growth over time. In setting enrolment limits, the Minister will take into account the relevance of courses to Australia's skills needs. An additional consideration for the Minister when setting university limits will be the supply of purpose built student accommodation available to both domestic and international students.

Lastly, under Part 8 of Schedule 1 to the Bill, the Minister can make a legislative instrument specifying certain courses that will be automatically suspended and cancelled. The Minister must obtain agreement from the Minister responsible for administering the NVETR Act (currently the Minister for Skills and Training), prior to making an instrument that includes VET courses. The Minister may specify classes of courses if satisfied that there are systemic issues in relation to the standard of delivery of the course, or the courses provide limited value to Australia's skills and training needs and priorities, or if it is in the public interest to do so. This action is needed to prevent providers from delivering courses where there is a demonstrated reduction in the quality of delivery. It is also necessary to prevent high volumes of overseas students from completing courses that do not provide the essential

skills that typically lead to good employment outcomes in Australia and do not address Australia’s skills and training needs.

All the measures in the Bill enable the Government to uphold the quality and integrity of Australia’s international education sector and to support a managed system to deliver sustainable growth over time. The measures will support the Government to determine the appropriate settings and priorities for the size, shape and focus of the international education sector, taking into account Australia’s broader economic and social considerations.

### **FINANCIAL IMPACT STATEMENT**

The measures related to Parts 1 and 2 of Schedule 1 to the Bill are estimated to have the following impact on the underlying cash balance over the forward estimates period (\$m):

2022-23	2023-24	2024-25	2025-26	2026-27
0.0	-3.8	0.0	0.0	0.0

The measures in Parts 3 to 6 and Part 8 of Schedule 1 to the Bill are estimated to have the following impact on the underlying cash balance over the forward estimates period (\$m):

2022-23	2023-24	2024-25	2025-26	2026-27
0.0	-1.2	0.0	0.0	0.0

The remaining measure in Part 7 of Schedule 1 to the Bill is estimated to have the following impact on the underlying cash balance over the forward estimates period (\$m):

2023-24	2024-25	2025-26	2026-27	2027-28
0.0	-2.9	0.0	0.0	0.0

### **CONSULTATION**

The Council for International Education and representatives from the following sector and state and territory representative bodies were regularly engaged during the development of Parts 1 and 2 of Schedule 1 to the Bill:

- Independent Higher Education Australia
- Independent Schools Australia
- Independent Tertiary Education Council Australia
- TAFE Directors Australia
- Australian Government Schools International
- English Australia
- Regional Universities Network

- Australian Technology Network
- Group of Eight
- Innovative Research Universities
- Universities Australia
- International Education Association of Australia
- Council for International Students Australia
- Academia International Institute
- TAFE Queensland
- Study Queensland
- Study Adelaide
- Study NSW
- Department of Education, NSW – International
- International Education & Study Melbourne / Global Victoria
- Department of Education and Training Victoria
- Queensland Department of Education
- Department for Trade and Investment South Australia
- Study Perth
- Department of Jobs, Tourism, Science and Innovation (WA)
- Study Canberra
- ACT Education Directorate
- Study Tasmania
- Department of State Growth (Tasmania)
- Study NT / Department of Industry, Tourism and Trade
- Haileybury
- Scape
- The University of Melbourne
- Western Sydney University

The Department of Education (the department) addressed feedback from sector representatives in the development of Parts 1 and 2 of Schedule 1 to the Bill where possible. In particular, the definition of ‘education agent commission’ has been drafted to be quite broad to address concerns that a narrow definition could provide the opportunity for providers and agents to change their practices and also not capture some forms of financial compensation. New section 21B was inserted into Part 1 of Schedule 1 to the Bill following sector consultation, to allow for periodic reporting of commissions information to ensure that compliance with this requirement did not create an unnecessary administrative burden on providers. Similarly, the definition of ‘education agent’ took into account sector concerns regarding providers’ employees, who may have been captured inadvertently and those employees have been excluded from the definition accordingly. Feedback on cross-



ownership arrangements between providers and education agents was also taken into account.

The department also routinely engaged with relevant Government agencies in the development of the Bill, including:

- Department of Home Affairs and the Office of the Migration Agents Registration Authority, for matters relating to the *Migration Act 1958*;
- Department of Employment and Workplace Relations for matters relating to the *National Vocational Education and Training Regulator Act 2011*;
- Department of Foreign Affairs and Trade for matters relating to Australia's free-trade obligations; and
- Attorney-General's Department for matters relating to new disallowance exemptions.

The department considered advice from these agencies in development of the Bill.

The department regularly consulted with ESOS agencies on all Parts of the Bill. The department has worked with ESOS agencies to ensure that the amendments in the Bill can be implemented to achieve their purpose, without imposing an administrative or operational overburden on the ESOS agencies.

## **IMPACT ANALYSIS**

The Improving Integrity in the International Education Sector Policy Impact Statement is attached at the end of this Explanatory Memorandum.

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### Education Services for Overseas Students Amendment (Quality and Integrity) Bill 2024

The Education Services for Overseas Students Amendment (Quality and Integrity) Bill 2024 (the Bill) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Bill**

The Bill amends the *Education Services for Overseas Students Act 2000* (ESOS Act) to support the quality, integrity and sustainable growth of the international education sector. The Bill addresses issues identified in the *Rapid Review into the Exploitation of Australia's Visa System* (the Nixon Review) and the Government's *Migration Strategy* by:

- including a requirement for ESOS agencies to consider whether:
  - a provider has any ownership or control of an education agent, and their activities, and
  - an education agent, or an associate of the education agent, has any ownership or control of a provider,in assessing whether the provider is fit and proper to be registered;
- requiring providers to give education agent commission information to the Secretary of the Department of Education (Secretary) and expanding the ability of the Secretary, or an ESOS agency, to give information to registered providers about education agents;
- giving the Minister for Education (Minister) powers to determine how initial applications for the registration of providers, and for registration of courses by registered providers, are to be managed by ESOS agencies;
- requiring providers, prior to applying for registration of courses under the ESOS Act, to deliver one or more courses exclusively to domestic students (i.e. not overseas students) for consecutive study periods totalling two (2) years;
- enabling the automatic cancellation of a registered provider's registration where courses have not been delivered to overseas students for 12 consecutive months;
- setting out another new requirement for ESOS agencies to consider whether a provider is under investigation for a specified offence in the fit and proper provider test so that, if an ESOS agency determines that the provider is not fit and proper, the provider's registration is automatically suspended;
- giving the Minister power to set limits on the maximum number of overseas students that may be enrolled with a provider or a class of providers for a year, including in relation to the total number of students enrolled with the provider or in

relation to the total number of students enrolled in individual courses, or classes of courses, with the provider; and

- enabling the automatic suspension and cancellation of courses that are identified by the Minister in a legislative instrument as having systemic issues in relation to the standard of delivery of the course, or courses that provide limited value to Australia's skills and training needs and priorities, or courses that it is in the public interest to cancel.

These amendments affect higher education providers, Vocational Education and Training (VET) providers and schools providing education services to overseas students and are related to reforms to Australia's migration system. Where possible, the amendments also align with amendments addressing integrity issues specific to the VET sector, supporting whole-of-government priorities.

The amendments to the fit and proper provider test in Part 1 of Schedule 1 to the Bill aim to limit collusive and unscrupulous business practices occurring between providers and agents, where student enrolments are facilitated for maximum profit rather than in the student's best interests. These business practices are encouraging organised channels of labour exploitation and human trafficking, and enabling profiteering from non-genuine students. Under these amendments, the ESOS agency or designated State authority for a provider must, in deciding if the provider is fit and proper to be registered, have regard to whether:

- the provider, or an associate of the provider, has any ownership or control of an education agent and if so, the value or extent of the ownership or control; and
- an education agent, or an associate of the education agent, has any ownership or control (whether direct or indirect) of the provider, and if so, the value or extent of the ownership or control.

Part 1 also includes amendments to require providers to give information about education agent commissions, if requested by the Secretary. Education agent commissions may, in some cases, incentivise agents to facilitate student enrolments and course transfers for maximum profit, rather than in the best interests of the student. This amendment specifically relates to amendments in Part 2 of Schedule 1 to the Bill. Further, defining 'education agent commission' in the ESOS Act will allow the Minister to make complementary amendments to the *National Code of Practice for Providers of Education and Training to Overseas Students 2018* to ban commissions from being paid by providers to education agents for onshore student transfers.

The Nixon Review identified education agents as being involved in visa exploitation and human trafficking of students. Part 2 of Schedule 1 to the Bill amends the ESOS Act to enable providers to have better access to education agent information to assist them with making informed decisions about the particular education agents they want to engage with to deal with overseas students. Using the powers in these amendments, the Secretary, or an ESOS agency, will give providers information, via a secure channel, relating to the number of transfers of accepted students dealt with by an education agent, from one provider to

another and from one course to another, as well as information about commissions (fees, charges or other consideration) that are paid or payable to an education agent relating to the recruitment of accepted students. This information will assist providers to identify reputable education agents to work with and drive unscrupulous operators out of the Australian international education sector.

Part 3 of Schedule 1 to the Bill will give the Minister powers to make determinations, via legislative instruments and with the agreement of the Minister responsible for administering the *National Vocational Education and Training Regulator Act 2011* (NVETR Act) (currently the Minister for Skills and Training), to specify up to a 12-month period where ESOS agencies are not required to, or must not, accept or process initial applications for registration by new providers and for the registration of new courses by registered providers. These amendments will support a managed system to deliver sustainable growth in the international education sector, and, if required, divert resources to addressing integrity issues that arise. The Ministerial determinations may apply to all initial applications or apply to a particular class or classes of providers or courses, so that there is flexibility to allow some providers and/or courses to progress.

Part 4 of Schedule 1 to the Bill will impose a new registration requirement on providers to deliver one or more courses to domestic students (i.e. not overseas students) for consecutive study periods totalling two years, in order to be eligible to apply for registration to provide courses to overseas students under the ESOS Act. This amendment will deter non-genuine providers from entering the international education sector purely for facilitating migration outcomes, to ensure that a provider is genuinely intending to deliver educational outcomes for students. Providers that are listed in Table A of the *Higher Education Support Act 2003* and providers that are seeking registration as standalone English Language Intensive Courses for Overseas Students providers or standalone Foundation Program providers will be exempt from the new registration requirement.

Part 5 of Schedule 1 to the Bill will enable the automatic cancellation of a provider's registration under the ESOS Act, by force of law, in circumstances where the provider has not delivered a course to overseas students in a period of 12 consecutive months. This amendment will address integrity issues posed by dormant providers who may be using their registration under the ESOS Act for non-genuine or fraudulent purposes, and providers that are not demonstrating a genuine commitment to the delivery of courses to overseas students.

Where a provider may have a legitimate, reasonable justification for not providing a course or courses during this period, they may apply to their ESOS agency for an extension to ensure that the registration will not be cancelled until the end of the extension period. An extension can be granted more than once, but the total period of extensions must not exceed 12 months. Legitimate circumstances may include that the provider is newly registered under the ESOS Act and there are operational challenges in commencing the delivery of courses, or there is a natural disaster such as fire, flood, or a pandemic event.

The Bill also proposes amendments to ensure that extension decisions are subject to internal and external merits review (via the Administrative Appeals Tribunal or, subject to the passage of legislation, the proposed Administrative Review Tribunal) in line with other reviewable decisions under the ESOS Act. Providers that are schools are exempt from this amendment as intakes of overseas students are small and there may not be an overseas student enrolled in each year.

Part 6 of Schedule 1 to the Bill includes another amendment to the fit and proper provider test aimed at providers who are under investigation for specified offences. Where an ESOS agency, or designated State authority, has determined that a provider does not meet the fit and proper provider test because the provider is under investigation for a specified offence, the provider's registration will be automatically suspended under section 89 of the ESOS Act. This amendment expands the circumstances which could result in a provider's registration being automatically suspended, which in turn sends a strong message that unscrupulous practices by providers will not be tolerated.

Part 7 of Schedule 1 to the Bill will enable the Minister to make a legislative instrument specifying the number of overseas students that may be enrolled with a class of providers (total provider enrolment limit) and the number of overseas students that may be enrolled in courses or classes of courses at providers (course enrolment limit). Alternatively, the Minister can give a notice to a provider setting out its total provider enrolment limit or course enrolment limit. This would enable the Minister to set multiple enrolment limits for different courses for the one registered provider within the overall total provider enrolment limit. The Minister must obtain agreement from the Minister responsible for administering the NVETR Act (currently the Minister for Skills and Training), prior to setting limits for VET providers. Providers that exceed their enrolment limit will have their registration automatically suspended in relation to the courses covered by the enrolment limit. If a provider exceeds their course enrolment limit, they will be suspended for the courses that are covered by the course enrolment limit as specified in the legislative instrument or notice.

The Minister, using this power, will be able to proactively manage overseas student enrolments to deliver sustainable growth over time. In setting enrolment limits, the Minister will take into account the relevance of courses to Australia's skills needs. An additional consideration for the Minister when setting university limits will be the supply of purpose built student accommodation available to both domestic and international students.

Lastly, under Part 8 of Schedule 1 to the Bill, the Minister can make a legislative instrument specifying certain courses that will be automatically suspended and cancelled. The Minister must obtain agreement from the Minister responsible for administering the NVETR Act (currently the Minister for Skills and Training), prior to making an instrument that includes VET courses. The Minister may specify classes of courses if satisfied that there are systemic issues in relation to the standard of delivery of the course, or the courses provide limited value to Australia's skills and training needs and priorities, or if it is in the public interest to

do so. This action is needed to prevent providers from delivering courses where there is a demonstrated reduction in the quality of delivery. It is also necessary to prevent high volumes of overseas students from completing courses that do not provide the essential skills that typically lead to good employment outcomes in Australia and do not address Australia's skills and training needs.

All the measures in the Bill enable the Government to uphold the quality and integrity of Australia's international education sector and to support a managed system to deliver sustainable growth over time. The measures will support the Government to determine the appropriate settings and priorities for the size, shape and focus of the international education sector, taking into account Australia's broader economic and social considerations.

### **Human rights implications**

The Bill engages the right to education set out in Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).

#### Right to education

The Bill engages the right to education, which is set out in Article 13 of the ICESCR. Article 13 recognises the important personal, societal, economic, and intellectual benefits of education. Article 13 also provides that secondary education in all its different forms, including higher education, shall be made generally available and accessible to all by every appropriate means.

The measures in the Bill promote this right for students by placing safeguards around education providers to ensure that they are providing quality education services to overseas students. By amending the requirements in the fit and proper provider test, the amendments target those providers and agents who may be exploiting and profiteering off students and enable stronger action against these providers by facilitating an automatic suspension of their registration in appropriate cases. Requiring providers to give information about commissions they have given to education agents in connection with the recruitment of students, as well as strengthening the ability to give such information to providers also ensures that there is transparency of any early indicators of poor agent performance. These amendments also promote the right to education by limiting the ability of providers and agents to recruit non-genuine students to Australia, and ensuring that those students who are seeking education in Australia, are protected and receive the highest quality of education.

The amendments enable the Minister to, by legislative instrument, suspend the processing, and making of, applications for registration will also support the right to education by allowing for flexibility in the consideration of these applications. Applications may be triaged, with a focus on only accepting or processing those applications in a particular area of need or priority so that attention or consideration can be given by an ESOS agency to

focusing on integrity risks in the international education sector, thus improving the right to education. Any limitations imposed on the right to education by these amendments, for example, slower growth in the number of providers and courses as certain applications take longer to process, are thus reasonable, necessary, and proportionate.

The amendments bolstering oversight of providers' registrations, including new requirements for providers to focus on delivery of courses to domestic students prior to delivering to overseas students and the automatic cancellation of registration where a provider has not delivered courses to overseas students in a 12 month period, strengthen the integrity and quality of the international education sector and protect students' right to education by ensuring that only providers delivering quality education services are, and remain registered, under the ESOS Act.

To the extent that cancelling a provider's registration could be seen as limiting the right to education (for example, because fewer education services may be available as a result), this limitation is reasonable, necessary and proportionate to the legitimate policy objective of ensuring that only quality and legitimate organisations are able to be registered to provide courses to overseas students. Providers who have legitimate or reasonable circumstances for not delivering courses can apply for an extension to the 12 month period. Therefore, only providers that are not committed to providing quality education services will have their registration cancelled due to these amendments.

The amendments in Part 7 of Schedule 1 to the Bill promotes the right to education by ensuring that Australia's international education sector is carefully managed to be sustainable for future overseas students. Unpredictable overseas student numbers may put pressure on local infrastructure and housing, which can affect both overseas students' and domestic students' experience. This, in turn, impacts on students' expectations of a quality education, as well as the economic and social benefits that international study can provide to a student.

The amendments enabling the Minister to set student enrolment limits for providers and courses support the right to education and students' study experience in Australia. To the extent that this can be seen as limiting the right to education (for example, limiting the number of students coming to Australia to study), this limitation is reasonable, necessary and proportionate to ensure that the international education sector, and Australia's interests, remain sustainable for current and future overseas students and Australians. Rapid growth in the sector may also lead to a rise in integrity issues, which can threaten students' access to a safe and high-quality education and jeopardise the student experience. The Minister also has the power to determine a different enrolment limit for a specific provider which, in some cases, will increase their overseas student enrolment numbers, which won't limit this right.

The amendments in Part 8 of Schedule 1 to the Bill for the Minister to specify courses, which are then suspended and cancelled, also supports the right to education by ensuring that

students are accessing and studying in high quality courses, as well as courses which create suitable job opportunities and contribute to Australia's skills needs. The Minister is only able to specify courses if satisfied that there are systemic issues in relation to the standard of delivery of the course, or the courses provide limited value to Australia's skills and training needs and priorities, or if it is in the public interest to do so.

Overall, the amendments seek to strengthen the integrity and sustainability of the international education system, allowing Australia to promote and support the right to education.

### **Conclusion**

The Bill is compatible with human rights because it promotes the protection of human rights and, to the extent that it may operate to limit human rights, those limitations are reasonable, necessary and proportionate to achieve legitimate objectives.

**Minister for Education, the Hon Jason Clare MP**



**EDUCATION SERVICES FOR OVERSEAS STUDENTS AMENDMENT (QUALITY AND INTEGRITY)  
BILL 2024**

**NOTES ON CLAUSES**

**Clause 1: Short title**

1. This is a formal provision specifying the short title of the Act, the *Education Services for Overseas Students Amendment (Quality and Integrity) Act 2024*.

**Clause 2: Commencement**

2. The table in this clause sets out that the commencement date for the whole of the Education Services for Overseas Students Amendment (Quality and Integrity) Bill 2024 (the Bill), once it becomes an Act, is the later of:
  - a. the day after the *Education Services for Overseas Students Amendment (Quality and Integrity) Act 2024* receives the Royal Assent; and
  - b. 1 July 2024.

**Clause 3: Schedules**

3. This clause gives effect to the provisions in the Schedules to the Bill by providing that any legislation that is specified in a Schedule to the *Education Services for Overseas Students Amendment (Quality and Integrity) Act 2024* is amended or repealed as set out in the applicable items in the Schedule and that any other item in a Schedule has effect according to its terms.

## Schedule 1—Amendments

### Part 1—Education agents and commissions

#### Division 1 – Amendments

##### *Education Services for Overseas Students Act 2000*

1. Part 1 of Schedule 1 to the Bill amends the *Education Services for Overseas Students Act 2000* (ESOS Act) to update the definition of an education agent, introduce a new definition of education agent commission, and also introduce a new requirement for ESOS agencies to consider, when determining whether a provider is fit and proper to be registered, whether providers have any ownership or control of education agent entities or whether education agent entities have any ownership or control of providers. These amendments are designed to engender transparency in relation to relationships between providers and education agents, with the intent of limiting opportunities for collusive behaviour and improve the standard of conduct required by providers to gain and hold registration under the ESOS Act.
2. Part 1 also amends the ESOS Act to require providers to give to the Secretary information about education agent commissions that were given to an education agent in connection with the recruitment of accepted students of the provider.

#### Item 1: Section 5 (definition of agent)

3. **Item 1** repeals the definition of agent from section 5 of the ESOS Act.

#### Item 2: Section 5

4. **Item 2** inserts a new definition of ‘education agent’ in section 5 of the ESOS Act. Education agent has the meaning given by new section 6BA.

#### Item 3: Section 5

5. **Item 3** inserts a new definition of ‘education agent commission’ in section 5 of the ESOS Act. Education agent commission has the meaning given by new section 6BB.

#### Item 4: After section 6B

6. **Item 4** inserts a new section 6BA to outline the meaning of education agent. An education agent is an entity (whether within or outside Australia) that:
  - at paragraph (a), engages in any one or more of the following activities in relation to a provider:
    - at subparagraph (i), the recruitment of overseas students, or intending overseas students;

- at subparagraph (ii), providing information, advice or assistance to overseas students, or intending overseas students, in relation to enrolment;
  - at subparagraph (iii), otherwise dealing with overseas students, or intending overseas students; and
  - at paragraph (b), is not a permanent full-time or part-time officer or employee of the provider.
7. This new definition provides an activity-based approach to persons or entities considered to be education agents. It does not define an agent based on their relationship to a provider, as many agents do not have formal agreements or relationships with specific providers. Any full-time or part-time permanent officer or employee of the provider is also not captured in the definition, as these officers receive a salary and employment benefits from the provider. This is to ensure that employees who work for education providers that may undertake some, or all, of their own student recruitment activities internally, are not captured by the definition or subject to the additional obligations imposed on agents. For example, a permanent employee of a university who works in the university's student recruitment team and deals with current accepted or intending overseas students, will not be caught by this definition.
8. **Item 4** also inserts a new section 6BB to outline the meaning of education agent commission. Education agent commission means any consideration or benefit, whether monetary or non-monetary, that:
- at paragraph (a), is or will be given, by, or on behalf of, a provider to an education agent, or an associate of the education agent; and
  - at paragraph (b), is in connection with:
    - at subparagraph (i), the recruitment of an overseas student or an intending overseas student; or
    - at subparagraph (ii), any other activity in relation to an overseas student or an intending overseas student mentioned in paragraph 6BA(a) of the definition of education agent.
9. The note under new section 6BB explains that examples of such consideration or benefits include fees, charges, commissions, bonuses, performance payments, gifts, discounted or free services, rewards and incentives.
10. This new definition is required for amendments in Part 2 of Schedule 1 to the Bill, for the purposes of giving education agent information under subsection 175(3) of the ESOS Act, in particular, information related to the cost incurred by a provider to engage an education agent and the variability of these costs. This market

information is currently unavailable to providers. It will enable providers to assess and decide which education agents it should work with for cost-effective and quality results in student recruitment and student satisfaction.

11. As evidenced in the Nixon Review, some providers are facilitating student movements for maximum profit, rather than in the best interests of the student. This is paid for by an education provider to an agent in the form of a commission, and the payment of this commission can vary significantly from agent to agent. Some agents charge a fixed percentage of a student's tuition fees (e.g. 5 per cent). Some agents charge a set fixed fee per student (e.g. each student recruited costs \$5,000, regardless of the course the student is enrolled in or its duration). Some agents will also take payment in other forms, including fully subsidised holidays/travel to visit the provider in Australia, or subsidised educational services for the agents and their families. Some agents will also take payment in the form of gifts or other non-monetary incentives.

Item 5: After paragraph 7A(2)(g)

12. **Item 5** inserts new paragraphs 7A(2)(gaa) and (gab) in subsection 7A(2) of the ESOS Act which lists factors ESOS agencies or designated State authorities must have regard to when deciding whether a provider or registered provider is fit and proper. New paragraph 7A(2)(gaa) provides that the ESOS agency for the provider or designated State authority must have regard to whether the provider, or an associate of the provider, has any ownership or control (whether direct or indirect) of an education agent, and if so, the value or extent of the ownership or control.
13. New paragraph 7A(2)(gab) additionally provides that the ESOS agency for the provider or designated State authority must have regard to whether an education agent, or an associate of the education agent, has any ownership or control (whether direct or indirect) of the provider, and if so, the value or extent of the ownership or control.
14. ESOS agencies will rely on publicly available information, as well as information given by providers during their application for registration and re-registration, in making their assessment under new paragraphs 7A(2)(gaa) and (gab). It is in a provider's best interests to be honest and truthful in the information given to ESOS agencies, as this could result in an ESOS agency deciding that a provider is not fit and proper to be registered. An ESOS agency may also impose sanctions against a registered provider who provides false and misleading information. Furthermore, this section allows for ESOS agencies to have discretion when considering the impact of such

arrangements in the context of the broader fit and proper provider test.

15. These amendments to the fit and proper provider test are included in section 7A of the ESOS Act, rather than specified via a legislative instrument made by the Minister relying on paragraph 7A(2)(ga), to ensure that a strong message is sent to providers, their associates, and agents that collusion between a provider and an agent will not be tolerated in circumstances where the value or extent of a provider's ownership or control of an agent (or vice versa) could facilitate the exploitation of students.
16. These new considerations in the fit and proper provider test will apply to subsection 11(c) of the ESOS Act (where a provider is seeking registration), subsection 83(1B) of the ESOS Act (where an ESOS agency can impose sanctions on a provider if the agency believes on reasonable grounds that the provider is not fit and proper to be registered) and section 89 of the ESOS Act (where a provider's registration is automatically suspended if the provider is no longer fit and proper). The amendment will capture any ownership or control that exists between providers and agents operating in Australia and overseas.

Item 6: After subsection 17A(4)

17. **Item 6** inserts new subsections 17A(4A) and (4B) to require registered providers who begin to have ownership or control of an education agent, or begin to be owned or controlled by an education agent, to notify their ESOS agency of this.
18. New subsection 17A(4A) provides that a registered provider must notify the ESOS agency for the provider of the following events:
  - at paragraph (a), the provider or an associate of the provider, begins to own or control an education agent;
  - at paragraph (b), there is a change in the ownership or control of an education agent by the provider or an associate of the provider;
  - at paragraph (c), an education agent, or an associate of the education agent, begins to own or control the provider;
  - at paragraph (d), there is a change in the ownership or control of the provider by an education agent or an associate of the education agent.
19. New subsection 17A(4B) requires that notice under subsection 17A(4A) must be given within 10 business days after the event occurs.
20. This amendment ensures that an ESOS agency receives timely notice and information from a registered provider to be able to assess if any change in relationship with an education agent might impact on whether the provider

continues to be fit and proper. It is in a provider's best interest to comply with these new requirements as an ESOS agency may impose sanctions for any breaches of section 17A of the ESOS Act.

#### Items 7 to 9: Section 21A

21. **Item 7** inserts the term 'education' before the term 'agents' so that the heading of section 21A is now 'Obligations relating to the education agents of registered providers'.
22. **Items 8 and 9** similarly insert the term 'education' before the term 'agents' in section 21A.
23. The amendments in these items reflect the changes made by items 2 and 4 of the Bill to insert a new definition of 'education agent'.

#### Item 10: After section 21A

24. **Item 10** inserts new section 21B requiring a registered provider to give information about education agent commissions if requested to do so by the Secretary. New section 21B complements amendments to section 175 of the ESOS Act, outlined in Part 2 of Schedule 1 to this Bill, which will enable information that is collected about education agent commissions to be given to registered providers to achieve transparency of education agent practices and behaviours.
25. New subsections 21B(1) to (4) outline the Secretary's power to request a provider to give information about commissions.
26. New subsection 21B(1) provides that the Secretary may request a registered provider to give specified information about, or in relation to, education agent commissions given, by, or on behalf of, the provider to one or more education agents over a specified period (the reporting period) in connection with the recruitment of accepted students of the provider.
27. New subsection 21B(2) provides that the request must:
  - at paragraph (a), be in writing; and
  - at paragraph (b), specify the reporting period; and
  - at paragraph (c), specify the day by which the information is to be given; and
  - at paragraph (d), specify the manner or form in which information is to be given (including by requiring information to be entered in the computer system established under section 109); and

- at paragraph (e), specify the documents (if any) which must accompany the information.
28. New subsection 21B(3) provides that, without limiting subsection 21B(1), the information may relate to one or more of the following:
- at paragraph (a), the total amount in dollars given to each education agent;
  - at paragraph (b), the value and description of non-monetary benefits given to each education agent;
  - at paragraph (c), the number of accepted students of the provider recruited by each education agent.
29. New subsection 21B(4) provides that the day specified for the purposes of paragraph 21B(2)(c) must be at least 30 days after the request is given to the provider.
30. These provisions give the Secretary flexibility to determine the specific information that is to be given by each provider and the timeframes in which information must be given. This flexibility is necessary because, when it comes to the giving of a commission by a provider to an education agent, there is no set standard or practice that is applicable to all providers and agents. This flexible approach took into consideration feedback from the sector, and is also aimed at reducing the administrative burden providers may face in complying with this requirement. For example, an education agent may charge directly for the recruitment of a single student or charge a total amount of commission in relation to the recruitment of a number of accepted students. This flexible approach also reflects the diversity of the types of monetary and non-monetary commissions that can be given to an agent.
31. New subsections 21B(5) to (8) set out a provider's obligation to comply with a request made by the Secretary under new subsection 21B(1).
32. New subsection 21B(5) provides that the registered provider must comply with the request before:
- at paragraph (a), the day specified in the request; or
  - at paragraph (b), any later day allowed by the Secretary.
33. Note 1 under this subsection explains that if a registered provider breaches this section, the ESOS agency for the provider may take action under Division 1 of Part 6 of the ESOS Act against the provider. Note 2 under this subsection explains that under section 108 of the ESOS Act, it is an offence to provide false or misleading information in complying or purporting to comply with this section.

34. New subsection 21B(6) provides that, if specified in the request, a registered provider must give the information required by this section by entering the information in the computer system established by the Secretary under section 109. This is the Provider Registration and International Student Management System (PRISMS), but the Secretary may also specify a different method in the request in which information is to be given.
35. New subsection 21B(7) provides that a registered provider who fails to comply with subsection 21B(5) commits an offence. The penalty is 60 penalty units.
36. New subsection 21B(8) provides that an offence under subsection 21B(7) is an offence of strict liability. The note under this subsection explains that section 6.1 of the *Criminal Code* describes what is meant by the term 'strict liability'.
37. New subsection 21B(9) provides that section 4K (continuing offences) of the *Crimes Act 1914* does not apply in relation to an offence under subsection 21B(7).

Item 11: Paragraph 38(d)

38. **Item 11** omits the terms 'their agents' and substitutes it with 'education agents' so that amended paragraph 38(d) provides that the National Code may contain 'standards required of registered providers in connection with their dealings with education agents'. This amendment reflects the changes made by items 2 and 4 of the Bill to insert a new definition of 'education agent'.

Item 12: Paragraph 86(1)(d)

39. **Item 12** inserts the term 'education' before the term 'agent' so that amended paragraph 86(1)(d) provides that an example of a condition that can be imposed by an ESOS agency is 'the provider not deal with a specified education agent in relation to overseas students or intending overseas students'. This amendment reflects the changes made by items 2 and 4 of the Bill to insert a new definition of 'education agent'.

Item 13: After paragraph 108(b)

40. **Item 13** inserts new paragraph 108(c) into section 108 of the ESOS Act to list new section 21B which makes it an offence if a person provides false or misleading information in complying or purporting to comply with 'section 21B (giving information about education agent commissions)'.

Item 14: After paragraph 132(1)(d)



41. **Item 14** inserts new paragraph 132(1)(da) into subsection 132(1) of the ESOS Act to make non-compliance with new subsection 21B(7) subject to an infringement notice under Part 5 of the *Regulatory Powers (Standard Provisions) Act 2014*.

Item 15: Subsection 175(3)

42. **Item 15** omits the terms ‘agents of providers’ and substitutes it with ‘education agents’ so that under subsection 175(3) of the ESOS Act the Secretary, or ESOS agency, may give information relating to the exercise of functions by education agents to registered providers. This amendment reflects the changes made by items 2 and 4 of the Bill to insert a new definition of ‘education agent’.

Item 16: Subsection 175(4) (heading)

43. **Item 16** inserts the term ‘education’ before the term ‘agents’ so that the heading of subsection 175(4) is now ‘Publishing information about education agents’. This amendment reflects the changes made by items 2 and 4 of the Bill to insert a new definition of ‘education agent’.

Item 17: Subsection 175(4)

44. **Item 17** omits the terms ‘agents of providers’ and substitutes the terms “education agents” so that under subsection 175(4) of the ESOS Act the Secretary may cause to be published information relating to the exercise of functions by education agents. This amendment reflects the changes made by items 2 and 4 of the Bill to insert a new definition of ‘education agent’.

Item 18: Paragraphs 175(5)(a), (b) and (c)

45. **Item 18** amends paragraphs 175(5)(a), (b) and (c) to insert the term ‘education’ before the term ‘agent’ in the list of information that may be given under subsection 175(3) or published under subsection 175(4). These amendments reflect the changes made by items 2 and 4 of the Bill to insert a new definition of ‘education agent’.

Item 19: Paragraph 175(5)(d)

46. **Item 19** amends paragraph 175(5)(d) to insert the term ‘education’ before the term ‘agents’ in the last example of information that may be given under subsection 175(3) or published under subsection 175(4). This amendment reflects the changes made by items 2 and 4 of the Bill to insert a new definition of ‘education agent’.

Division 2—Application of amendments

Item 20: Application of amendments

47. **Item 20** sets out the application provisions for the amendments relating to education agents.
48. **Subitem 20(1)** provides that the amendments of section 7A of the ESOS Act made by Division 1 of Part 1 of Schedule 1 to the Bill apply in relation to:
- at paragraph (a), applications for registration made on or after the commencement of that Division; and
  - at paragraph (b), applications for registration made before the commencement of that Division but not yet decided as at that commencement; and
  - at paragraph (c), providers registered before, on or after the commencement of that Division.
49. This amendment means that the new considerations inserted into paragraphs 7A(2)(gaa) and (gab), related to deciding whether a provider or registered provider is fit and proper, will apply to:
- a provider applying for registration or re-registration after commencement; and
  - a provider who applied for registration or re-registration before commencement, but the ESOS agency or designated State authority has not yet made a decision on the application; and
  - a provider who is registered before, on or after commencement, as a matter for the ESOS agency to consider in relation to suspending or applying sanctions on the provider.
50. The amendments of section 7A will apply retrospectively to providers who have already been registered, and to applications by providers to be registered, that have not yet been decided prior to commencement. This means it is possible that ESOS agencies may consider that existing providers, and providers applying to be registered, are not fit and proper to be registered, relying on a factor that did not exist at the time those providers were registered, or applied to be registered.
51. It is necessary and appropriate to apply the amendments to providers registered before commencement of the Bill to ensure that those unscrupulous providers that are currently registered but are colluding or subject to a controlling relationship with an education agent, are subject to this consideration under the fit and proper test just like those who apply for registration post-commencement. If these amendments were not applied retrospectively, the section would not operate as intended and students would remain subject to the exploitative practices of currently registered providers. Some cross-ownership relationships are appropriate when there are transparent arrangements, however, many can result in altered practices whereby interactions with the sector and students occur for maximum profit or gain, rather

than to address student needs. Ensuring that all providers, regardless of when they were registered, are subject to the same test and the same standards, will send a strong message to the sector and allow ESOS agencies to use the amended fit and proper provider test and ensure that providers remain fit and proper to be registered.

52. It is also necessary and appropriate to apply these amendments to providers that have applied to be registered before commencement of the Bill to ensure that any cross-ownership arrangements between prospective providers and education agents are considered by ESOS agencies prior to registration. This will ensure that the nature and impact of such relationships, and the effect they may have on students, can be considered prior to such providers enrolling students, with the aim of avoiding the facilitation of current unscrupulous practices described above.
53. The Department of Education will work with ESOS agencies to prepare guidance material that can be shared with recent applicants, and prospective applicants, to ensure they are aware of the new requirements pre-commencement of the amendments to the ESOS Act. This will allow providers time to review their applications against the new obligations, including time to make any adjustments prior to assessment if required, which ensures that these providers are not detrimentally affected by the commencement of this provision. It is also important to note that the fact a cross-ownership relationship exists between a provider and an education agent does not mean a provider is automatically unfit to be registered – this is simply one factor that ESOS agencies will consider when determining whether a provider is fit and proper to be registered.
54. **Subitem 20(2)** provides that the amendments of section 17A of the ESOS Act made by Division 1 of Part 1 of Schedule 1 to the Bill apply in relation to providers registered before, on or after the commencement of that Division.
55. This means that, on commencement, registered providers are required under section 17A of the ESOS Act to notify their ESOS agency if:
- the provider or an associate of the provider, begins to own or control an education agent; or
  - there is a change in the ownership or control of an education agent by the provider or an associate of the provider; or
  - an educational agent, or an associate of the education agent, begins to own or control the provider; or
  - there is a change in the ownership or control of the provider by an education agent or an associate of the education agent.

56. **Subitem 20(3)** provides that the insertion of section 21B of the ESOS Act made by Division 1 of Part 1 of Schedule 1 to the Bill applies whether or not:

- at paragraph (a), the reporting period starts before, on or after commencement of that Division; or
- at paragraph (b), the education agent commission is given before, on or after that commencement.

57. This means that, on commencement, the Secretary may issue a request under section 21B for education agent commission information that relates to a reporting period that started, or that relates to an education agent commission given to an education agent, before commencement of the provision. It is expected that education providers already have, and are keeping, records of commissions that are given to education agents so will be able to give accurate information in response to these requests (if made).

## Part 2—Giving information to registered providers

### Division 1 – Amendments

#### *Education Services for Overseas Students Act 2000*

58. Part 2 of Schedule 1 to the Bill amends the ESOS Act to achieve transparency of education agent practices and behaviours through the giving of education agent information to registered providers.

#### Item 21: After paragraph 175(3)(b)

59. **Item 21** inserts a new paragraph 175(3)(c) so that information relating to the exercise of functions by education agents can be given by the Secretary, or the ESOS agency for a provider or registered provider, to a registered provider for the purposes of “protecting and enhancing Australia’s reputation for quality education and training services for accepted students”.

60. The amendments to subsection 175(3) of the ESOS Act aim to achieve transparency of education agent practices and behaviours through strengthening the ability of the Secretary, or relevant ESOS agency, to give information relating to the exercise of functions by education agents to registered providers. The amendments, aimed at assisting providers to make better decisions about which agents to engage (based on a range of agent information), go towards protecting and enhancing Australia’s reputation for quality education and training services for accepted students.

#### Item 22: At the end of section 175

61. **Item 22** inserts a new subsection 175(6) to expand the list of information relating to the functions of education agents that may be given to a registered provider under subsection 175(3).

62. New subsection 175(6) provides that, without limiting subsection 175(3) or 175(5), the information given under subsection 175(3) may relate to:

- at paragraph (a), the number of transfers of accepted students, recruited or otherwise dealt with by an education agent, from one provider or registered provider to a different provider or registered provider; or
- at paragraph (b), the number of transfers of accepted students, recruited or otherwise dealt with by an education agent, from one course to a different course; or
- at paragraph (c), information about education agent commissions in connection with the recruitment of accepted students.

63. The information relating to functions of education agents will be given to registered providers in a controlled, access restricted platform and it is expected that providers will use this information to decide which education agents to engage and work with on agent-based activities, such as the recruitment of students. For example, a provider may choose to work with education agents who have a lower rate of course transfers (an indicator of student satisfaction) or lower commissions, and not choose to use agents who have a pattern of high visa refusals and high commission rates. Some of the agent information is given by providers to the department under section 19 of the ESOS Act, specifically, for the purposes of subsection 19(1) of the ESOS Act and as prescribed in the *Education Services for Overseas Students Regulations 2019* (ESOS Regulations). Providers will be required to give information about education agent commissions under new section 21B which is being inserted in the ESOS Act by Part 1 of Schedule 1 to this Bill.

#### Division 2—Application of amendments

##### Item 23: Application of amendments

64. **Item 23** provides that the amendments of section 175 of the ESOS Act made by Division 1 of Part 2 of Schedule 1 to the Bill apply in relation to information given on or after the commencement of that Division, regardless of when the information was obtained or received.
65. This provision enables the Secretary, or the ESOS agency, to give information relating to the exercise of functions by education agents to registered providers, that may have already been collected under existing provisions, for example, under section 19 of the ESOS Act or Division 1 in Part 3 of the ESOS Regulations. This will allow the Secretary, or relevant ESOS agency, to share this information shortly after commencement of the Bill, as opposed to having to wait until data has been collected post-commencement for providers to use to inform their decision making.

### Part 3 — Management of provider applications

#### *Education Services for Overseas Students Act 2000*

66. Part 3 of Schedule 1 to the Bill amends the ESOS Act to enable the Minister to, by legislative instrument, suspend the making or processing of applications for registration or adding courses to registration.

#### Item 24: Section 5

67. **Item 24** inserts a new definition of ‘processing activity’ in section 5 of the ESOS Act for the purposes of new Division 5. Processing activity means:
- at paragraph (a), performance of a function or exercise of a power under or for the purposes of the ESOS Act; or
  - at paragraph (b), an act connected with performing functions or exercising powers under or for the purposes of the ESOS Act.

#### Item 25: Section 8A (after the paragraph beginning “Division 4”)

68. **Item 25** inserts a new point into the ‘Guide to this Part’ at section 8A of the ESOS Act to give a brief overview of new Division 5. The new point is:
- Division 5 provides for the Minister to suspend the making or processing of applications for registration or adding courses to registration.

#### Item 26: Subsection 9(1)

69. **Item 26** amends subsection 9(1) of the ESOS Act to omit the terms ‘a provider’ and substitutes it with ‘Subject to section 14E, a provider’ such that the subsection would read: ‘Subject to section 14E, a provider may apply to be registered to provide a course or courses at a location or locations to overseas students’. This amendment clarifies that a legislative instrument made by the Minister under new section 14E could prevent a provider from making an application for registration under the ESOS Act for the period of the instrument’s operation.

#### Item 27: At the end of subsection 9(1)

70. **Item 27** adds a new note under subsection 9(1) of the ESOS Act which provides that under section 14E, the Minister may determine that no applications for registration may be made until after a specified day.

#### Item 28: At the end of subsection 10(1)

71. **Item 28** adds a new note under subsection 10(1) of the ESOS Act. That subsection provides that, if a provider makes an application under section 9, the ESOS agency for the provider may register the provider to provide a course or courses at a location or locations if the provider meets the registration requirements. The new

note provides that the Minister may determine that the ESOS agency for a provider is not required to, or must not, deal with applications for registration for a period (see section 14C). This note explains that the ESOS agency may refuse to, or alternatively, must not, process applications for registration in accordance with a legislative instrument made by the Minister under new section 14C.

Item 29: Paragraph 10D(2)(a)

72. **Item 29** corrects a typographical error in paragraph 10D(2)(a) by omitting the terms ‘register provider’ and substituting it with ‘registered provider’.

Item 30: Subsection 10H(1)

73. **Item 30** amends subsection 10H(1) of the ESOS Act to omit the terms ‘a registered provider’ and substitutes it with ‘Subject to section 14F, a registered provider’ such that the subsection would read: “Subject to section 14F, a registered provider may apply to add one or more courses at one or more locations to the provider’s registration”. This amendment clarifies that a legislative instrument made by the Minister under new section 14F could prevent a registered provider from making an application to add one or more courses at one or more locations to the provider’s registration under the ESOS Act for the period of the instrument’s operation.

Item 31: At the end of subsection 10H(1)

74. **Item 31** adds a new note under subsection 10H(1) of the ESOS Act which provides that under section 14F, the Minister may determine that no applications to add one or more courses at one or more locations may be made until after a specified day.

Item 32: At the end of subsection 10J(1)

75. **Item 32** adds a new note under subsection 10J(1) of the ESOS Act. That subsection provides that if a registered provider makes an application under section 10H to add one or more courses at one or more locations to the provider’s registration, the ESOS agency for the provider may add those courses at those locations to the provider’s registration if the provider meets the registration requirements. The new note provides that the Minister may determine that the ESOS agency for a provider is not required to, or must not, deal with applications to add one or more courses at one or more locations for a period (see section 14D). This note explains that the ESOS agency may refuse to, or alternatively, must not, process applications to add one or more courses at one or more locations to the provider’s registration in accordance with a legislative instrument made by the Minister under new section 14D.

Item 33: At the end of Part 2



76. **Item 33** adds a new Division 5 ‘Suspension of applications for registration’ to the end of Part 2 of the ESOS Act.
77. New sections 14C and 14D, respectively, provide the Minister with the power to determine that ESOS agencies must not, or may not, process applications made by providers for registration under section 9 of the ESOS Act or applications made by registered providers to add courses to their registration under section 10H of the ESOS Act.
78. These amendments enable the Minister to issue an instrument on management and processing of applications for registration made by new providers. By reference to the new definition of processing activity, it is clear that an ESOS agency is not required to, or must not, determine an application under sections 9 or 10H, which has not yet been determined, to the extent specified in the instrument from the date the instrument commences until the end date specified in the instrument. This means that the maximum period that an ESOS agency may not, or must not, do any processing activity under an instrument made is 12 months.
79. It is intended that the Minister will only exercise this power in limited circumstances, for example, where the Minister has concerns relating to the integrity or sustainability of the international education sector. This will help protect overseas students by ensuring that, where there are significant concerns associated with all, or a specified class of, registration applications, the Minister can direct the ESOS agencies to pause the processing of these applications, while allowing other applications to continue as appropriate, in order to undertake further investigation.
80. The powers under new subsections 14C and 14D might also be exercised on the advice of an ESOS agency. For example, in circumstances where an ESOS agency receives a considerable and unexplained influx of applications and requires additional time to determine whether granting all applications will have a negative effect on the integrity of the international education sector.
81. It is not appropriate for an instrument made under subsections 14C or 14D to be subject to disallowance as it may cause uncertainty for the operations and functions of ESOS agencies, and for providers, as the instrument is to be relied upon from the date it takes effect. As explained above, the Minister will only exercise this power in limited circumstances, for example, where the Minister has concerns relating to the integrity or sustainability of the international education sector and urgent and decisive action is required. As set out in new section 14G, the Minister is required to

consult before making legislative instruments under this Division.

82. In addition, the department will communicate with providers affected by the making of the instrument to provide them with advance notice. Once the instrument is in effect, an ESOS agency's main resources and focus will likely be diverted to investigating significant concerns in the international education sector rather than processing activities. Providers may also make certain adjustments to their commercial operations and business plans in response to the instrument, to enable them to continue providing domestically-focused education services.
83. Subjecting the legislative instrument to the disallowance process may result in further uncertainty in this period of change for the international sector, in respect of affording providers with commercial and business certainty once an instrument has been made. The matters covered by an instrument should also be under Executive control, given the primary purpose of the instrument will go to the functioning and operations of ESOS agencies and their role in regulating providers where integrity risks are present.
84. New section 14C sets out that the Minister may suspend processing of applications for registration. New subsections 14C(1) and (2) set out the Minister's powers to determine that an ESOS agency is not required to do any processing activity.
85. New subsection 14C(1) provides that the Minister may, by legislative instrument, determine that an ESOS agency for a provider is not required to deal with applications made under section 9 until after a day specified in the instrument. The note under subsection 14C(1) explains that section 9 provides that a provider may apply to be registered to provide a course or courses at a location or locations to overseas students.
86. New subsection 14C(2) provides that between the day an instrument made under subsection 14C(1) commences and the day specified in the instrument, the ESOS agency for the provider is not required to do any processing activity in relation to an application to which the instrument applies.
87. If the Minister makes an instrument under subsection 14C(1), this provides an ESOS agency with the discretion to decide whether or not it will process any applications for registration. This is not an administrative decision for which merits review is appropriate. A provider's interest is affected by the instrument itself, and an ESOS agency deciding whether it will process a registration application is merely a preliminary or procedural decision that facilitates, or leads to, the making of a

substantive decision on the application (which, if an ESOS agency refuses to register a provider, is merits reviewable under section 169AB of the ESOS Act). An ESOS agency deciding which applications to process is not likely to have substantive consequences for an individual provider, given the effect of the legislative instrument in place.

88. New subsections 14C(3) and (4) set out the Minister's powers to determine that an ESOS agency must not do any processing activity.
89. New subsection 14C(3) provides that the Minister may, by legislative instrument, determine that an ESOS agency for a provider must not deal with applications made under section 9 until after a day specified in the instrument.
90. New subsection 14C(4) provides that between the day an instrument made under subsection 14C(3) commences and the day specified in the instrument, the ESOS agency for the provider must not do any processing activity in relation to an application to which the instrument applies.
91. New subsections 14C(5) and (6) provide more detail about the instruments that are made by the Minister under this section.
92. New subsection 14C(5) provides that the day specified in an instrument made under subsections 14C(1) or 14C(3) must not be more than 12 months after the day the instrument commences.
93. New subsection 14C(6) provides that an instrument made under subsections 14C(1) or 14C(3) may be expressed to apply to:
  - at paragraph (a), all applications made under section 9 or one or more classes of applications made under that section; and
  - at paragraph (b), applications under that section made before or after the commencement of the instrument (or both); and
  - at paragraph (c), applications under that section made before or after the commencement of this section (or both).
94. The note under subsection 14C(6) explains that for specification by class, see subsection 13(3) of the *Legislation Act 2003*. This means that an instrument made under subsections 14C(1) or 14C(3) can be expressed to apply to certain classes of applications and, for clarity, also expressed to not apply to certain classes of applications, as both will form part of the description of the class of application to

which the instrument applies.

95. Paragraph 14C(6)(c) means that the Minister may make an instrument that is expressed to apply retrospectively to applications for registration made before or after the commencement of the Bill. This means that providers who have applied for registration prior to commencement of the amendments, may be affected by the making of an instrument, if such an instrument limits processing activity in relation to their application.
96. It is necessary and appropriate for the amendments to apply retrospectively to ensure this section operates as intended to allow ESOS agencies sufficient time to investigate and process applications effectively without risking the integrity and quality of the sector. Applying the amendments to applications on hand will avoid the risk of a situation arising where non-genuine providers seek to circumvent increased regulatory scrutiny ahead of changes being introduced, for example, by quickly submitting an application prior to commencement. It ensures that all intending providers are subject to the same considerations regardless of the time of their application.
97. New subsection 14C(7) provides that, despite subsection 14(2) of the *Legislation Act 2003*, an instrument made under subsections 14C(1) or 14C(3) may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time. This subsection provides a contrary intention to the requirements in subsection 14(2) of the *Legislation Act 2003* so that an instrument made by the Minister can flexibly refer to external documents. The ability to refer to external documents is important as the Minister may need to consider whether an instrument should not apply to applications for registration by providers delivering courses identified as essential for addressing new fields or emerging areas of critical skills needs. In such a scenario, it may be necessary for the instrument to refer to an independent analysis of skills needs identifying those critical areas. This purpose will benefit some providers seeking to apply for registration as they will be exempt from the application of the instrument, by reference to an external document identifying critical skills needs.
98. While generally, the external documents will apply at the time of commencement of an instrument, it may be necessary to have the flexibility to apply documents as existing from time to time to ensure that the instrument responds to Australia's skills needs so that providers can be registered to deliver relevant courses in respect of required skills. Any external documents incorporated into the instrument will be

freely available and the explanatory material accompanying the making of an instrument will identify where providers can find the external document online.

99. New subsection 14C(8) provides that section 42 (disallowance) of the *Legislation Act 2003* does not apply to a legislative instrument made under subsections 14C(1) or 14C(3).
100. New section 14D sets out that the Minister may suspend processing of applications made by registered providers to add courses to registration. New subsections 14D(1) and (2) set out the Minister's powers to determine that an ESOS agency is not required to do any processing activity.
101. New subsection 14D(1) provides that the Minister may, by legislative instrument, determine that an ESOS agency for a registered provider is not required to deal with applications made under section 10H until after a day specified in the instrument. The note under subsection 14D(1) explains that section 10H provides that a registered provider may apply to add one or more courses at one or more locations to the provider's registration.
102. New subsection 14D(2) provides that between the day an instrument made under subsection 14D(1) commences and the day specified in the instrument, the ESOS agency for the provider is not required to do any processing activity in relation to an application to which the instrument applies.
103. New subsections 14D(3) and (4) sets out the Minister's powers to determine that an ESOS agency must not do any processing activity.
104. New subsection 14D(3) provides that the Minister may, by legislative instrument, determine that an ESOS agency for a registered provider must not deal with applications made under section 10H until after a day specified in the instrument.
105. New subsection 14D(4) provides that between the day an instrument made under subsection 14D(3) commences and the day specified in the instrument, the ESOS agency for the provider must not do any processing activity in relation to an application to which the instrument applies.
106. New subsections 14D(5) and (6) provide more detail about the instruments that are made by the Minister under this section.

107. New subsection 14D(5) provides that the day specified in an instrument made under subsection 14D(1) or 14D(3) must not be more than 12 months after the day the instrument commences. This means that the maximum period that an ESOS agency may not, or must not, do any processing activity under an instrument made is 12 months.

108. New subsection 14D(6) provides that an instrument made under subsection 14D(1) or (3) may be expressed to apply to:

- at paragraph (a), all applications made under section 10H or one or more classes of applications made under that section; and
- at paragraph (b), applications under that section made before or after the commencement of the instrument (or both); and
- at paragraph (c), applications under that section made before or after the commencement of this section (or both).

109. The note under subsection 14D(6) explains that for specification by class, see subsection 13(3) of the *Legislation Act 2003*. This means that an instrument made under subsections 14D(1) or 14D(3) can be expressed to apply to certain classes of applications and, for clarity, also expressed to not apply to certain classes of applications as both will form part of the description of the class of application to which the instrument applies.

110. New subsection 14D(6)(c) means that the Minister may make an instrument that is expressed to apply retrospectively to applications for registration made before or after the commencement of the Bill. This means that providers who have applied for registration prior to commencement of the amendments, may be affected by the making of an instrument, if such an instrument limits processing activity in relation to their application.

111. It is necessary and appropriate for the amendments to apply retrospectively to ensure this section operates as intended to allow ESOS agencies sufficient time to investigate and process applications effectively without risking the integrity and quality of the sector. Applying the amendments to applications on hand will avoid the risk of a situation arising where non-genuine providers seek to circumvent future increased regulatory scrutiny ahead of changes being introduced, for example, by quickly submitting an application prior to commencement. It ensures that all providers seeking to add additional courses to their registration are subject to the same considerations regardless of the time of their application.

112. New subsection 14D(7) provides that despite subsection 14(2) of the *Legislation Act 2003*, an instrument made under subsections 14D(1) or 14D(3) may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time. This subsection provides a contrary intention to the requirements in subsection 14(2) of the *Legislation Act 2003* so that an instrument made by the Minister can flexibly refer to external documents. The ability to refer to external documents is important as the Minister may need to consider whether an instrument should not apply to applications for registration of new courses by providers delivering courses identified as essential for addressing new fields or emerging areas of critical skills needs. In such a scenario, it may be necessary for the instrument to refer to an independent analysis of skills needs identifying those critical areas. This purpose will benefit some providers seeking to apply for registration as they will be exempt from the application of the instrument, by reference to an external document identifying critical skills needs.
113. While generally, the external documents will apply at the time of commencement of an instrument, it may be necessary to have the flexibility to apply documents as existing from time to time to ensure that the instrument responds to Australia's skills needs so that providers can be registered to deliver relevant courses in respect of required skills. Any external documents incorporated into the instrument will be freely available and the explanatory material accompanying the making of an instrument will identify where providers can find the external document online.
114. New subsection 14D(8) provides that section 42 (disallowance) of the *Legislation Act 2003* does not apply to a legislative instrument made under subsection 14D(1) or (3).
115. New sections 14E and 14F, respectively, provide the Minister with the power to determine that no applications are to be made by providers for registration under section 9 of the ESOS Act or that no applications are to be made by registered providers to add courses to their registration under section 10H of the ESOS Act.
116. It is intended that the Minister will exercise this power only in circumstances where the Minister has concerns relating to the integrity and sustainability of the international education sector. The Minister may also exercise these powers on the advice of an ESOS agency, for example, where there is a considerable influx of applications under sections 9 or 10H and an ESOS agency requires additional time to investigate and process these applications effectively, without receiving new applications under sections 9 or 10H.

117. If a provider purports to make an application for registration under sections 9 or 10H, during the period specified in an instrument made by the Minister, the application will be invalid and an ESOS agency will not be permitted to accept, consider or decide the application. For the purposes of the ESOS Act, the application is taken to have not been made.
118. Valid applications for registration may still be made by providers where an instrument is in force, provided that the application does not fall within one (or more) of the classes specified in the instrument. Alternatively, the instrument may be expressed to not apply to certain classes of applications. Where only part of the application applies to a class of applications specified in the instrument, it is intended that the whole of the application be invalid. To avoid doubt, this would not prevent an organisation from resubmitting a valid application which excludes those classes which are the subject (or not subject) of the instrument in force. Enabling the Minister to target one or more classes of applications will assist ESOS agencies to review how a class of particular applications, if approved, may affect that segment of the international education sector. This would not require an ESOS agency to stop processing all applications under sections 9 or 10H of the ESOS Act.
119. It is not appropriate for an instrument made under subsections 14E or 14F to be subject to disallowance as it may cause uncertainty for the operations and functions of ESOS agencies, and for providers, as the instrument is to be relied upon from the date it takes effect. As explained above, the Minister will only exercise this power in limited circumstances, for example, where the Minister has concerns relating to the integrity or sustainability of the international education sector and urgent and decisive action is required. As set out in new section 14G, before making legislative instruments under this Division, the Minister is required to consult with ESOS agencies and also obtain the written agreement of the Minister administering the *National Vocational Education and Training Regulator Act 2011*.
120. In addition, the department will also communicate with providers that could become affected by the making of the instrument to provide them with advance notice. Once the instrument is in effect, an ESOS agency's main resources and focus will likely be diverted to investigating significant concerns in the international education sector as well as continuing to process existing applications under sections 9 or 10H. Providers may also make certain adjustments to their commercial operations and business plans in response to the instrument, to ensure they are able to continue providing domestic focused education services.



121. Subjecting the legislative instrument to the disallowance process may result in further uncertainty in this period of change for the international education sector, in respect of affording providers with commercial and business certainty once an instrument has been made. The matters covered by an instrument should also be under Executive control, given the primary purpose of the instrument will go to the functioning and operations of ESOS agencies and their role in regulating providers where integrity risks are present.
122. New section 14E sets out that the Minister may suspend the ability of providers to make applications for registration.
123. New subsection 14E(1) provides that the Minister may, by legislative instrument, determine that no applications may be made under section 9 until after a day specified in the instrument. The note under subsection 14E(1) explains that section 9 provides that a provider may apply to be registered to provide a course or courses at a location or locations to overseas students.
124. New subsection 14E(2) provides that an application under section 9 is invalid if:
- at paragraph (a), the application is made between the day an instrument made under subsection 14E(1) commences and the day specified in the instrument; and
  - at paragraph (b), the application is an application to which the instrument applies.
125. New subsection 14E(3) provides that the day specified in an instrument made under subsection 14E(1) must not be more than 12 months after the day the instrument commences. This means that the maximum period that the Minister is able to suspend the ability of providers to make applications for registration under an instrument is 12 months.
126. New subsection 14E(4) provides that an instrument made under subsection 14E(1) may be expressed to apply to all applications that may be made under section 9 or one or more classes of application that may be made under that section. The note under this subsection explains that for specification by class, see subsection 13(3) of the *Legislation Act 2003*. This means that an instrument made under subsection 14E(1) can be expressed to apply to certain classes of applications and, for clarity, also expressed to not apply to certain classes of applications as both will form part of the description of the class of application to which the instrument applies.
127. New subsection 14E(5) provides that despite subsection 14(2) of the *Legislation Act 2003*, an instrument made under subsection 14E(1) may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any

matter contained in an instrument or other writing as in force or existing from time to time. This subsection provides a contrary intention to the requirements in subsection 14(2) of the *Legislation Act 2003* so that an instrument made by the Minister can flexibly refer to external documents. The ability to refer to external documents is important as the Minister may need to consider whether an instrument should not apply to applications to add courses to registration made by providers delivering courses identified as essential for addressing new fields or emerging areas of critical skills needs. In such a scenario, it may be necessary for the instrument to refer to independent analysis of skills needs identifying those critical areas. This purpose will benefit some providers seeking to apply for registration as they will be exempt from the application of the instrument, by reference to an external document identifying critical skills needs.

128. While generally, the external documents will apply at the time of commencement of an instrument, it may be necessary to have the flexibility to apply documents as existing from time to time to ensure that the instrument responds to Australia's skills needs so that providers can be registered to deliver relevant courses in respect of required skills. Any external documents incorporated in the instrument will be freely available and the explanatory material accompanying the making of an instrument will identify where providers can find the external document online.

129. New subsection 14E(6) provides that section 42 (disallowance) of the *Legislation Act 2003* does not apply to a legislative instrument made under subsection 14E(1).

130. New section 14F sets out that the Minister may suspend the ability of registered providers to make applications to add courses to their registration.

131. New subsection 14F(1) provides that the Minister may, by legislative instrument, determine that no applications may be made under section 10H until after a day specified in the instrument. The note under subsection 14F(1) explains that section 10H provides that a registered provider may apply to add one or more courses at one or more locations to the provider's registration.

132. New subsection 14F(2) provides that an application under section 10H is invalid if:

- at paragraph (a), the application is made between the day an instrument made under subsection 14F(1) commences and the day specified in the instrument; and
- at paragraph (b), the application is an application to which the instrument applies.

133. New subsection 14F(3) provides that the day specified in an instrument made under subsection 14F(1) must not be more than 12 months after the day the instrument

commences. This means that the maximum period that the Minister is able to suspend the ability of providers to make applications for registration under an instrument is 12 months.

134. New subsection 14F(4) provides that an instrument made under subsection 14F(1) may be expressed to apply to all applications that may be made under section 10H or one or more classes of application that may be made under that section. The note under this subsection explains that for specification by class, see subsection 13(3) of the *Legislation Act 2003*. This means that an instrument made under subsection 14F(1) can be expressed to apply to certain classes of applications and, for clarity, also expressed to not apply to certain classes of applications as both will form part of the description of the class of application to which the instrument applies.
135. New subsection 14F(5) provides that despite subsection 14(2) of the *Legislation Act 2003*, an instrument made under subsection 14F(1) may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time. This subsection provides a contrary intention to the requirements in subsection 14(2) of the *Legislation Act 2003* so that an instrument made by the Minister can flexibly refer to external documents. The ability to refer to external documents is important as the Minister may need to consider whether an instrument should not apply to applications to add courses to registration made by providers delivering courses identified as essential for addressing new fields or emerging areas of critical skills needs. In such a scenario, it may be necessary for the instrument to refer to an independent analysis of skills needs identifying those critical areas. This purpose will benefit some providers seeking to apply for registration as they will be exempt from the application of the instrument, by reference to an external document identifying critical skills needs.
136. While generally, the external documents will apply at the time of commencement of an instrument, it may be necessary to have the flexibility to apply documents as existing from time to time to ensure that the instrument responds to Australia's skills needs so that providers can be registered to deliver relevant courses in respect of required skills. Any external documents incorporated into the instrument will be freely available and the explanatory material accompanying the making of an instrument will identify where providers can find the external document online.
137. New subsection 14F(6) provides that section 42 (disallowance) of the *Legislation Act 2003* does not apply to a legislative instrument made under subsection 14F(1).

138. New section 14G sets out a requirement for the Minister to consult with ESOS agencies, and also obtain agreement from the Minister administering the *National Vocational Education and Training Regulator Act 2011*, before making a legislative instrument under new sections 14C, 14D, 14E or 14F.

139. New subsection 14G(1) provides that, before making a legislative instrument under any of sections 14C, 14D, 14E or 14F, the Minister must consult with each of the following:

- at paragraph (a), TEQSA;
- at paragraph (b), the National VET Regulator;
- at paragraph (c), the Secretary;
- at paragraph (d), if the Minister has determined that an entity (other than an entity mentioned in paragraph (a), (b) or (c)) is an ESOS agency for a provider or a registered provider under subsection 6C(2)—that entity.

140. New subsection 14G(2) provides that, if the Minister does not administer the *National Vocational Education and Training Regulator Act 2011*, the Minister must not make an instrument under any of sections 14C, 14D, 14E or 14F, without the written agreement of the Minister who administers that Act. This will ensure that appropriate policy settings are in place in relation to providers in the Vocational Education and Training (VET) sector.

Item 34: After subsection 170(1)

141. **Item 34** inserts a new subsection (1A) into the delegation provision at section 170 of the ESOS Act.

142. New subsection 170(1A) provides that subsection 170(1) does not apply in relation to the following provisions:

- at paragraph (a), subsections 14C(1) and (3), 14D(1) and (3), 14E(1) and 14F(1) (suspension of applications for registration);
- at paragraph (b), subsection 26B(1) (Minister may impose total enrolment limits by legislative instrument);
- at paragraph (c), subsection 26E(1) (Minister may impose course enrolment limits by legislative instrument);
- at paragraph (d), subsection 96B(1) (Minister may make instrument specifying courses).

143. This amendment applies in relation to Parts 3, 7 and 8 of Schedule 1 to the Bill. This means that the Minister must personally exercise his powers in relation to the

suspension of applications for registration, setting limits on the number of enrolments of overseas students and specifying courses that will be subject to automatic suspension or cancellation. These powers are expected to have a profound effect on providers and the integrity of the international education sector and are not appropriate to be delegated.

## Part 4 — Registration requirements

### Division 1 – Amendments

#### *Education Services for Overseas Students Act 2000*

144. Part 4 of Schedule 1 to the Bill amends the ESOS Act to require that a provider must provide one or more courses for consecutive study periods totalling at least 2 years at a location or locations to students in Australia, other than overseas students, to be registered under that Act. This amendment is aimed at deterring non-genuine providers from entering the international education sector purely for facilitating migration outcomes or trafficking people into bonded labour rather than providing a quality education outcome.

#### Item 35: Section 5

145. **Item 35** inserts a new definition of ‘study period’ in section 5 of the ESOS Act. Study period means a period of study within a course that meets the requirements (if any) set out in the national code. The note under this definition explains that examples of study periods include terms and semesters.

146. Further examples of study periods include trimesters and monthly teaching periods.

#### Item 36: Section 11

147. **Item 36** makes a minor formatting change by omitting the terms “A provider” and substituting it with “(1) A provider” in section 11.

#### Item 37: After paragraph 11(f)

148. **Item 37** inserts a new paragraph 11(fa) specifying that a provider meets the registration requirements if the provider satisfies new subsection 11(2) and the provider is not:

- at subparagraph (i), an exempt provider; or
- at subparagraph (ii), a registered provider; or
- at subparagraph (iii), a provider that provides only an ELICOS or a Foundation Program; or
- at subparagraph (iv), a Table A provider (within the meaning of the *Higher Education Support Act 2003*).

149. Providers that provide only an ELICOS or only a Foundation Program are exempt from new subsection 11(2) as such providers are not able to deliver courses to domestic students. Table A providers are also exempt from new subsection 11(2) as these providers have demonstrated a commitment to delivering quality education

services through meeting the eligibility criteria under the *Tertiary Education Quality and Standards Agency Act 2011* to be able to self-accredit courses. This also ensures that, in the event of mergers or corporate restructures by Table A providers that result in the creation of a “new” provider that has demonstrated committed to delivery of quality courses, the new provider is not penalised or subject to this provision.

Item 38: At the end of section 11

150. **Item 38** inserts new subsections 11(2) and (3) which sets out the new registration requirement. New subsection 11(2) provides that a provider satisfies the subsection if the provider has provided one or more courses for consecutive study periods totalling at least 2 years at a location or locations to students in Australia other than overseas students. The note under this subsection explains that for the definition of study period, see section 5.
151. New subsection 11(3) provides that for the purposes of subsection 11(2), a break that ordinarily occurs, or could reasonably be expected to ordinarily occur, during or between one or more study periods:
- at paragraph (a), counts towards the total of 2 years; and
  - at paragraph (b), does not prevent study periods from being consecutive.
152. The note under this subsection explains that such breaks may include weekends, public holidays or semester breaks.
153. Only after satisfying the registration requirements, set out in section 11 of the ESOS Act, can a provider be registered to provide one or more courses at one or more locations to overseas students. A provider may satisfy subsection 11(2) if they deliver either one long course, or a mixture of shorter courses, for consecutive study periods totalling at least 2 years. It is not intended that a provider be limited to only applying for registration of the same course that was delivered to students other than overseas students.
154. New subsection 11(3) clarifies that regular breaks in between consecutive study periods, as determined by the provider in the normal course of delivery, are counted towards the 2 year delivery requirement. For example, where a provider teaches 2 semesters per year, the mid-semester breaks and natural breaks between semesters, where not interrupted beyond natural breaks, are included in the 2 years.
155. A student other than an overseas student is generally considered to be an Australian citizen, a holder of a permanent visa who is usually resident in Australia or a New Zealand citizen, located in Australia and enrolled with the provider in the relevant

course or courses.

## Division 2 – Application of amendments

### Item 39: Application provision

156. **Item 39** provides that the amendments of section 11 of the ESOS Act made by Division 1 of Part 4 of Schedule 1 apply in relation to applications for registration made on or after the commencement of that Division.



## Part 5 — Automatic cancellation of registration

### *Education Services for Overseas Students Act 2000*

157. Part 5 of Schedule 1 to the Bill amends the ESOS Act to include a new provision specifying that a provider's registration is automatically cancelled if they have not provided a course at a location to an overseas student. This amendment addresses integrity risks posed by dormant providers who may be using their registration for non-genuine purposes and providers who are not demonstrating a genuine commitment to course delivery.

### Item 40: At the end of Subdivision C of Division 1 of Part 6

158. **Item 40** inserts new sections 92A and 92B at the end of Subdivision C of Division 1 of Part 6 of the ESOS Act which relate to providers' registration conditions, and suspension and cancellation of providers' registrations.

159. New section 92A provides for the automatic cancellation of a registered provider's registration if the provider does not provide a course in a consecutive 12 month period.

160. New subsection 92A(1) provides that the section applies in relation to a registered provider if:

- at paragraph (a), the provider is not an approved school provider; and
- at paragraph (b), in a period of 12 consecutive months beginning on or after 1 January 2024 (the measurement period), the provider does not provide a course at a location to an overseas student.

161. Approved school providers are exempt from this amendment as intakes of overseas students at such providers are generally small and they may not enrol an overseas student every year.

162. New subsection 92A(2) provides that subject to section 92B, the registration of the provider is cancelled for all courses for all locations at the end of the measurement period by force of this subsection. This does not constitute an exercise of administrative power and there is no discretion on an ESOS agency as to the operation of this power.

163. Requiring the automatic cancellation of a provider's registration at the end of a measurement period sends a strong message about the seriousness of protecting the integrity of Australia's international education sector. The Bill uses the term 'cancelled' in reference to a provider's registration as this terminology is consistent

with existing provisions in the ESOS Act (for example, section 92 of the ESOS Act). The term ‘lapse’ is used in the *National Vocational Education and Training Regulator Act 2011* because the VET registration scheme operates differently to the ESOS Act, but in application, these terms have the same meaning and result in the same outcome (i.e. a provider no longer being registered).

164. Applying the measurement period from 1 January 2024 means that the amendments in this Part will apply retrospectively to providers who were registered on that date. It is necessary and appropriate to apply these amendments from 1 January 2024 as it affords genuine providers, who are in a position to deliver quality courses, a six-month period in which they can re-commence delivery of a course to an overseas student without being subject to automatic cancellation of their registration. Further, if these genuine providers are not in a position to re-commence delivery in this six-month period, and have legitimate reasons, they are able to apply for an extension of the measurement period which will be considered by their ESOS agency. This ensures that genuine providers are not detrimentally affected by this provision.

165. New subsection 92A(3) provides that the ESOS agency for the provider must:

- at paragraph (a), give the provider a written notice stating that the provider’s registration has been cancelled under subsection 92A(2); and
- at paragraph (b), if the ESOS agency for the provider is not the Secretary—notify the Secretary that the provider’s registration has been cancelled under subsection 92A(2).

166. The note under subsection 92A(3) explains that the Secretary must cause the Register to be altered if a provider’s registration is cancelled: see section 14B of the ESOS Act.

167. The requirement for a provider’s ESOS agency to give notice to the provider is to ensure that the provider is aware that they are no longer registered under the ESOS Act, but that they may apply for re-registration if they wish to do so.

168. New section 92B includes provisions enabling a provider to seek an extension of the relevant measurement period referred to in new paragraph 92A(1)(b) from their ESOS agency. As the automatic cancellation of a provider’s registration under subsection 92A(2) does not constitute an exercise of administrative power, internal and external merits review is not available. Instead, an ESOS agency will afford procedural fairness and exercise administrative discretion by determining applications for an extension of the measurement period.

169. New subsections 92B(1) to (3) set out when a registered provider may apply for an extension of the measurement period.
170. New subsection 92B(1) provides that a registered provider may apply to the ESOS agency for the provider to extend the measurement period referred to in paragraph 92A(1)(b).
171. New subsection 92B(2) provides that an application must be made at least 90 days before the measurement period would otherwise end.
172. New subsection 92B(3) provides that an application must be in a form (if any) approved by the ESOS agency for the provider.
173. An application for extension must be made within a reasonable time so that the ESOS agency can give detailed consideration to the reasons for an extension, undertake any further investigations or correspondence with the provider and to decide an appropriate length to extend the measurement period (in light of the provider's circumstances). Legitimate circumstances for an extension may include where:
- a newly registered provider is facing operational challenges preventing successful delivery of courses to overseas students (for example, lack of staff or funding), and
  - where a provider may be affected by a natural disaster or circumstances that are beyond their control impacting on delivery of a course (for example, fire, flooding, or a pandemic event).
174. New subsections 92B(4) to (6) set out provisions relating to the extension.
175. New subsection 92B(4) provides that, if an application is made, the ESOS agency for the provider may, in writing, extend the measurement period in relation to the provider.
176. New subsection 92B(5) provides that the ESOS agency may extend a measurement period in relation to a registered provider under subsection 92B(4) more than once.
177. New subsection 92B(6) provides that the total period of all extensions of a measurement period in relation to a registered provider under subsection 92B(4) must not exceed 12 months.
178. The ESOS agency has discretion to decide each period of extension to the measurement period, as appropriate, taking into consideration the provider's reasons

for an extension and the circumstances in which a provider may be able to start delivering a course again. The maximum extension period that an ESOS agency may grant is limited to a total period of 12 months.

Item 41: Section 169AB (in the appropriate position in the table)

179. **Item 41** inserts a new item 11 into the table listing reviewable decisions in section 169AB of the ESOS Act. New item 11 provides that a decision by the ESOS agency for a registered provider to extend, or not to extend, the measurement period in relation to the provider under section 92B, is a reviewable decision. The affected provider of this decision is the registered provider.

180. A decision to extend, or not to extend, a measurement period is an exercise of administrative power by the ESOS agency as they will be exercising a discretion when considering and deciding an extension application. As such, any decisions made in respect of valid extension applications are subject to internal and external merits review.

## Part 6 — Investigation of offences

### Division 1 – Amendments

#### *Education Services for Overseas Students Act 2000*

181. Part 6 of Schedule 1 to the Bill amends the ESOS Act to include another new factor ESOS agencies and designated State authorities must take into account when considering whether a provider is fit and proper. This new factor will capture circumstances where a provider is under investigation for a specified offence.

#### Item 42: Before paragraph 7A(2)(a)

182. **Item 42** inserts a new paragraph 7A(2)(aa) in subsection 7A(2) of the ESOS Act which lists factors ESOS agencies or designated State authorities must have regard to when deciding whether a provider or registered provider is fit and proper. New paragraph 7A(2)(aa) requires an ESOS agency or designated State authority to consider whether the provider or a related person of the provider is being investigated for an offence covered by subsection 7A(2AA).

#### Item 43: After subsection 7A(2)

183. **Item 43** inserts a new subsection 7A(2AA) to set out the offences referred to in new paragraph 7A(2)(aa), which are:

- at paragraph (a), an offence under the ESOS Act;
- at paragraph (b), an offence under Division 270 or 271 of the *Criminal Code*;
- at paragraph (c), an offence under section 590 of the *Corporations Act 2001*;
- at paragraph (d), an offence specified in a legislative instrument made by the Minister for the purposes of this paragraph.

184. This new consideration in the fit and proper provider test will apply to subsection 11(c) of the ESOS Act (where a provider is seeking registration), subsection 83(1B) of the ESOS Act (where an ESOS agency can impose sanctions on a provider if the agency believes on reasonable grounds that the provider is not fit and proper to be registered) and section 89 of the ESOS Act (where a provider's registration is automatically suspended if the provider is no longer fit and proper).

185. This amendment to the fit and proper provider test is included in section 7A of the ESOS Act, and is not being specified via a legislative instrument made by the Minister relying on paragraph 7A(2)(ga), to ensure that a strong message is sent to providers about the serious consequences that may affect their registration if they are under investigation for a specified offence. Section 89 of the ESOS Act provides that if an ESOS agency is no longer satisfied that a registered provider is fit and proper, their registration is automatically suspended. As the suspension is automatic, the ESOS

agency does not need to give the provider procedural fairness in relation to the suspension and the provider is not able to seek review of the suspension. This is consistent with the existing operation of the fit and proper test.

186. New subsection 7A(2AA) sets out offences in the ESOS Act, and specific offences in the *Criminal Code* and *Corporations Act 2001*, as the Nixon Review identified instances of such offences occurring in the international education sector. The ability for the Minister to determine additional offences in an instrument is necessary to enable action to be taken should further integrity concerns be identified in the future. These are serious offences, and providers who are being investigated for these offences are placing students at risk of serious exploitation if left unaddressed. Suspending providers who are under investigation for a serious offence ensures that vulnerable students are protected and further exploitation is limited while investigations are underway.

## Division 2 – Application of amendments

### Item 44: Application provision

187. **Item 44** provides that the amendments of section 7A of the ESOS Act made by Division 1 of Part 6 of Schedule 1 apply in relation to:

- at paragraph (a), applications for registration made on or after the commencement of that Division; and
- at paragraph (b), applications for registration made before the commencement of that Division but not yet decided as at that commencement; and
- at paragraph (c), providers registered before, or after the commencement of that Division; regardless of whether the conduct constituting the alleged offence occurred before, on or after that commencement.

188. This means that the new consideration inserted into paragraph 7A(2)(aa) related to whether a provider or registered provider is fit and proper to be registered will apply to:

- a provider applying for registration or re-registration after commencement; and
- a provider who applied for registration or re-registration before commencement, but the ESOS agency or designated State authority has not yet made a decision on the application; and
- a provider who is registered before or after commencement, as a matter for the ESOS agency to consider in relation to suspending or applying sanctions on the provider.

189. These amendments apply retrospectively in relation to investigations, including ongoing investigations, of providers who are already registered and providers that have applied to be registered prior to commencement whose applications have not yet been decided.

190. It is necessary and appropriate to apply these amendments to providers that are already registered to ensure that those unscrupulous providers that are under investigation for serious offences, that occurred or commenced prior to commencement, are subject to this consideration under the fit and proper test. Many investigations for serious offences, commence years post the event. Where providers are under investigation for the serious offences stated in this provision, suspension of enrolment should be able to apply to all providers, to ensure that vulnerable students are not exploited or otherwise continue to be detrimentally affected. Ensuring that all providers, regardless of when they were registered, are subject to the same test and the same standards, will send a strong message to the sector and allow ESOS agencies to, using the fit and proper provider test, ensure that providers remain fit to provide education to students, or risk suspension.

191. It is also necessary and appropriate to apply these amendments to providers that have applied to be registered before commencement of the Bill to ensure that this significant factor can be considered by ESOS agencies prior to registration. This will ensure that the nature and impact of such investigations, and the effect they may have on students, can be considered prior to such providers enrolling students, with the aim of protecting students and avoiding the registration of unscrupulous and unsafe providers. It is also important to note that the fact a provider is under investigation does not mean a provider is automatically unfit to be registered – this is simply one factor that ESOS agencies will consider when determining whether a provider is fit and proper to be registered.

## Part 7 — Enrolment limits

### Division 1 – Amendments

#### *Education Services for Overseas Students Act 2000*

192. Part 7 of Schedule 1 to the Bill amends the ESOS Act to give the Minister powers to determine the maximum number of overseas students that may be enrolled with a provider or a class of providers, or a course or class of courses at a provider, in respect of a particular year. The Minister can do this by making a legislative instrument specifying a total enrolment limit that will apply to a class of providers or by giving notice to a provider specifying their enrolment limit. The Minister may also set a course enrolment limit in relation to the total number of students enrolled in individual courses, or classes of courses, at the provider, either by legislative instrument or in a notice to an individual provider. This would enable the Minister to set multiple enrolment limits for different courses for the one registered provider within the overall provider enrolment limit. The Minister must obtain agreement from the Minister responsible for administering the NVETR Act (currently the Minister for Skills and Training), prior to setting limits for VET providers. These provisions allow the Minister to effectively control the number of overseas students enrolled by registered providers to ensure that these enrolments align with Government objectives to support a managed system to deliver sustainable growth and a high quality international education sector.

193. Providers that exceed their enrolment limit will have their registration automatically suspended in relation to the courses covered by the enrolment limit. If a provider exceeds their course enrolment limit, they will be suspended for the courses that are covered by the course enrolment limit as specified in the legislative instrument or notice.

#### Item 45: Section 5

194. **Item 45** inserts new definitions of ‘course enrolment limit’ and ‘total enrolment limit’ in section 5 of the ESOS Act. The ‘course enrolment limit’ is specified in sections 26E (for an instrument made under subsection 26E(1)) and 26F (for a notice given under subsection 26F(1)). The ‘total enrolment limit’ is specified in sections 26B (for an instrument made under subsection 26B(1)) and 26C (for a notice given under subsection 26C(1)).

#### Item 46: Section 15A (after the paragraph beginning “Division 1 contains”)

195. **Item 46** inserts a new point into the ‘Guide to this Part’ at section 15A of the ESOS Act. The new point is:



- The Minister may determine under Division 1AA:
  - (a) a limit (called the total enrolment limit) on the number of overseas students that may be enrolled in all courses provided by a provider in a year; and
  - (b) a limit (called the course enrolment limit) on the number of overseas students that may be enrolled in a particular course provided by a provider in a year.
 A provider must not exceed their enrolment limits for a year.

Item 47: After Division 1 of Part 3

196. **Item 47** adds a new Division 1AA ‘Limits on number of enrolments of overseas students’ to the end of Division 1 of Part 3 of the ESOS Act.

197. New section 26A is under the new heading ‘Subdivision A – General’. New section 26A sets out the relationship between instruments and notices, and provides that nothing in new Division 1AA of Part 3 of the ESOS Act is intended to limit the legislative instruments or notices that may be made or given for the purposes of Division 1AA in respect of the same year for the same:

- at paragraph (a), provider or class of providers; or
- at paragraph (b), course or class of courses.

198. New sections 26B, 26C and 26E are under the new heading ‘Subdivision B – Total enrolment limits’. New section 26B sets out the Minister’s powers to impose total enrolment limits on a class or classes of registered providers by legislative instrument.

199. New subsection 26B(1) provides that the Minister may, by legislative instrument, determine a limit (the total enrolment limit) on the number of overseas students that may be enrolled with a registered provider in a specified class of registered providers in respect of one or more specified years. For example, a class of providers may be categorised as ‘Table A providers (within the meaning of the *Higher Education Support Act 2003*)’, ‘newly registered providers’, or ‘higher education providers located in a metropolitan area’.

200. New subsection 26B(2) requires that the total enrolment limit for a registered provider in respect of a year may be expressed to apply:

- at paragraph (a), in relation to the total number, worked out in accordance with the instrument, of new overseas students enrolled in all courses provided by the provider for the year (other than exempt courses under subsection 26B(4)); or
- at subparagraph (b), the combined total number, worked out in accordance with the instrument, of new and ongoing overseas students enrolled in all courses provided by the provider for the year (other than exempt courses under subsection 26B(4)).

201. New subsection 26B(3) provides that the total enrolment limit for a registered provider in respect of a year must be either:

- at paragraph (a), specified in the instrument; or
- at paragraph (b), worked out in accordance with a method specified in the instrument.

202. New subsection 26B(4) allows the Minister to exempt courses from the total enrolment limit by providing that an instrument under subsection 26B(1) may exempt a specified course, or a course in a specified class of courses, from counting towards a registered provider's total enrolment limit. For example, the instrument could exempt courses addressing Australia's critical skill needs, such as teaching and nursing.

203. New subsection 26B(5) provides that without limiting subsection 26B(4) or any other provision of the ESOS Act, a course or class of courses may be specified by reference to any matter, including the location of the course. For example, the instrument could provide that enrolments at all courses undertaken by students at a regional location should not be counted towards a provider's enrolment limit.

204. New subsection 26B(6) provides that without limiting subsection 26B(1) or any other provision of the ESOS Act, a class of providers may be specified by reference to any matter, including, but not limited to, any of the following:

- at paragraph (a), the kind of provider;
- at paragraph (b), the kind of courses provided by the provider;
- at paragraph (c), the location of courses provided by the provider;
- at paragraph (d), other circumstances applying in relation to the provider.

205. New subsection 26B(7) provides that, without limiting subsection 33(3A) of the *Acts Interpretation Act 1901*, an instrument under subsection 26B(1) may make different provision in relation to either or both of the following:

- at paragraph (a), different classes of providers;
- at paragraph (b), different years.

206. These provisions give flexibility to the Minister to make an instrument that will appropriately reflect the Government's policy objectives at any given time. For example, an instrument may apply to Table A providers within the meaning of the *Higher Education Support Act 2003* or to particular providers offering a certain type of course, or to particular providers that have a certain number of overseas students already enrolled. The total enrolment limit set by the instrument will apply in relation to all courses that are provided by an affected provider (unless it is a class of course exempted under new subsection 26B(4)). The instrument can set out a limit in respect

of only the number of new students that a provider can enrol for the year or the instrument can set out a limit in respect of the combined total number of new and ongoing students that a provider can enrol for the year. This flexibility is necessary for the Minister to be able to respond appropriately to Australia's migration needs and to determine the appropriate size and composition for the management of a sustainable international education sector into the future.

207. New subsection 26B(8) provides that despite subsection 14(2) of the *Legislation Act 2003*, an instrument under subsection 26B(1) may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time. This subsection provides a contrary intention to the requirements in subsection 14(2) of the *Legislation Act 2003* so that an instrument made by the Minister can flexibly refer to external documents. The ability to refer to external documents is important as the Minister may need to consider whether an instrument should or should not apply to certain classes of provider or classes of courses and do so by reference to an external document.

208. While generally, the external documents incorporated into any instrument will apply at the time of commencement of the instrument, it may be necessary to have the flexibility to apply documents as existing from time to time to ensure that the instrument responds to Government objectives applying or not applying to certain classes of providers or classes of courses. For example, an instrument could refer to the Jobs and Skills Australia Skills Priority List to reflect Australia's skills needs at the time, or refer to the Australian Bureau of Statistics Australian Statistical Geography Standard as in force from time to time to describe urban, remote and rural areas. Any external documents incorporated into the instrument will be freely available and the explanatory material accompanying the making of an instrument will identify where providers can find the external document online.

209. New subsection 26B(9) provides that an instrument under subsection 26B(1) in respect of one or more years has no effect unless it is made before 1 September of the year before the first year to which the instrument applies. This will allow time for affected providers to consider their current enrolments and plan for the limits that have been set.

210. New subsection 26B(10) provides that, despite subsection 26B(9), and without limiting subsection 33(3) of the *Acts Interpretation Act 1901*, the Minister may, at any time, vary an instrument if the Minister is satisfied that it is appropriate to do so. The purpose of this provision is to partially override the effect of subsection 33(3) of the

*Acts Interpretation Act 1901*, which would otherwise require variations to the instrument to be made before 1 September of the year before the first year to which the instrument applied (subsection 26B(9)). This power provides the Minister with flexibility to change the allocation of places for providers after 1 September or at any point during the relevant year. For example, the Minister may use this power if a provider defaults under section 46A of the ESOS Act (is no longer able to provide a course) and its students need to be placed into replacement courses at other providers. The Minister may also vary the instrument if a class of courses should no longer be exempted from the enrolment limit, and determine new limits for providers factoring in previously exempt courses.

211. New subsection 26B(11) provides that, before the Minister makes an instrument under subsection 26B(1), the Minister may consult with any other person or body, including any of the following:

- at paragraph (a), TEQSA;
- at paragraph (b), the National VET Regulator;
- at paragraph (c), the Secretary;
- at paragraph (d), if the Minister has determined that an entity (other than an entity mentioned in paragraph (a), (b) or (c)) is an ESOS agency for a provider or a registered provider under subsection 6C(2)—that entity;
- at paragraph (e), the Immigration Minister.

212. New subsection 26B(12) requires that if:

- at paragraph (a), an instrument under subsection 26B(1) or a variation under subsection 26B(10) specifies a class of providers that includes a registered VET provider; and
- at paragraph (b), the Minister does not administer the *National Vocational Education and Training Regulator Act 2011*;

the Minister must not make or vary the instrument without the written agreement of the Minister who administers that Act.

213. It is necessary for the Minister to obtain written agreement from the Minister administering the NVETR Act before making an instrument under subsection 26B(1) or varying an instrument under subsection 26B(10) because there are currently over 900 registered VET providers. This is a diverse and dynamic sector and the allocation of total enrolment limits across the VET sector will require appropriate consideration of a variety of sector specific factors. Obtaining this written agreement will ensure that the Minister for Education acts on this advice, reflecting appropriate consideration and options for allocating the total enrolment limits for individual providers across the VET

sector.

214. An instrument made under subsection 26B(1) and, if varied under subsection 26B(10), can only apply to 2025 and later years i.e. it does not apply retrospectively.

215. New section 26C sets out the Minister's power to impose total enrolment limits on a provider by notice.

216. New subsection 26C(1) provides that the Minister may, by written notice given to a registered provider, determine a limit (the total enrolment limit) on the number of overseas students that may be enrolled with the provider in respect of one or more specified years.

217. New subsection 26C(2) provides that the total enrolment limit for a registered provider in respect of a year may be expressed to apply in relation to:

- at paragraph (a), the total number, worked out in accordance with the notice, of new overseas students enrolled in all courses provided by the provider in the year (other than exempt courses under subsection 26C(4)); or
- at paragraph (b), the combined total number, worked out in accordance with the notice, of new and ongoing overseas students enrolled in all courses provided by the provider in the year (other than exempt courses under subsection 26C(4)).

218. New subsection 26C(3) provides that the total enrolment limit for a registered provider in respect of a year must be either:

- at paragraph (a), specified in the notice; or
- at paragraph (b), worked out in accordance with a method specified in the notice.

219. New subsection 26C(4) provides that a notice under subsection 26C(1) may exempt a specified course, or course in a specified class of courses from counting towards a registered provider's total enrolment limit.

220. New subsection 26C(5) provides that without limiting subsection 26C(4) or any other provision of the ESOS Act, a course or class of courses may be specified by reference to any matter, including the location of the course.

221. New subsection 26C(6) provides that without limiting subsection 33(3A) of the *Acts Interpretation Act 1901*, a notice given under subsection 26C(1) may make different provision in relation to different years.

222. New subsection 26C(7) provides that a notice under subsection 26C(1) in respect of one or more years may be given at any time. The note under this subsection provides that for variation of a notice, see subsection 33(3) of the *Acts Interpretation Act 1901*, the effect of which does not need to be changed for this purpose (*c.f.* subsection 26B(10), which modifies the operation of subsection 33(3) of the *Acts Interpretation Act 1901* in relation to the timing of variations to the instrument under subsection 26B(1)). A notice under subsection 26C(1) can only be given in relation to 2025 and later years i.e. it cannot apply retrospectively.

223. New subsection 26C(8) provides that if:

- at paragraph (a), a provider is a registered VET provider; and
- at paragraph (b), the Minister does not administer the *National Vocational Education and Training Regulator Act 2011*;

the Minister must not give the provider a notice under subsection 26C(1), without the written agreement of the Minister who administers that Act, or a delegate of that Minister.

224. It is necessary for the Minister to obtain written agreement from the Minister administering the NVETR Act before giving notice to a VET provider under subsection 26C(1) because there are currently over 900 registered VET providers. This is a diverse and dynamic sector and the allocation of total enrolment limits across the VET sector will require appropriate consideration of a variety of sector specific factors. Obtaining this written agreement will ensure that the Minister for Education acts on this advice reflecting appropriate consideration and options for allocating the total enrolment limits for individual providers across the VET sector.

225. New subsection 26C(9) provides that the Minister must give a copy of the notice to:

- at paragraph (a), the ESOS agency for the provider; and
- at paragraph (b), if the ESOS agency for the provider is not the Secretary—the Secretary.

226. New subsection 26C(10) provides that a notice under subsection 26C(1) is not a legislative instrument. This provision is intended to clarify that a notice under subsection 26C(1) is not a legislative instrument within the meaning of subsection 8(1) of the *Legislation Act 2003*. Rather, a notice is declaratory of the law, that is, a method by which the Minister can inform the provider of the Minister's decision, and is not intended to prescribe a substantive exemption from the requirements of the *Legislation Act 2003*.

227. The Minister will only exercise this power where the Minister is satisfied that there is a need for a specific provider to have a different limit than the course enrolment limit that is specified in the instrument under subsection 26E(1). Factors that the Minister may consider include the location of the provider and/or course location, the number of other providers servicing the geographical location of the provider and the availability of student accommodation. The Minister may also give a notice to a provider under subsection 26C(1) if satisfied that the provider has demonstrated that they have developed, or otherwise made available, additional student accommodation to cater for an increase in student enrolments.
228. Another circumstance in which this power might be exercised is where a provider exits the international education sector and defaults in relation to accepted students. In this case, the Minister may increase the enrolment limits of certain other providers to provide suitable placements for the students affected by the default.
229. As such, a notice issued under subsection 26C(1) is excluded from merits review because these are decisions allocating a finite resource between competing applicants. In line with migration reforms, the allocation of student visas for overseas students will be limited and competitive amongst applicants. This power to set enrolment limits for a provider ensures that overseas student enrolments are allocated beneficially for Australia's interest. It is appropriate for merits review to be excluded from these decisions as this could overturn the Government's delicate balancing of these resources.
230. While these decisions are not merits reviewable, the Minister will comply with principles of administrative law in relation to these decisions by ensuring that the exercise of subsection 26C(1) and allocation of enrolment limits is fair and that decisions are made objectively. Before the Minister exercises this power, the provider must provide evidence and information to demonstrate that increasing its enrolment limit for overseas students is of significant public interest.
231. Noting that decisions under subsection 26C(1) are administrative decisions they will also be subject to judicial review under the *Administrative Decisions (Judicial Review) Act 1977*.
232. New section 26D sets out a registered provider's obligations in relation to total enrolment limits under sections 26B and 26C.
233. New subsection 26D(1) provides that a registered provider (other than an exempt provider) must not enrol an overseas student or intending overseas student, for a

course that the provider is registered to provide in the year, if the enrolment of the student would result in the provider exceeding:

- at paragraph (a), unless paragraph (b) applies to the provider and the year – the total enrolment limit specified in the instrument under subsection 26B(1) for the provider and the year; or
- at paragraph (b), if the Minister gives a notice to the provider under subsection 26C(1) in respect of the year and the notice is in force—the total enrolment limit specified in the notice for the provider and the year.

234. The note under this subsection explains that the consequences for breaching this subsection are set out in new Division 1AA of Part 6 (conditions, suspension and cancellation) of the ESOS Act.

235. New subsection 26D(2) provides that for the purposes of working out under subsection 26D(1) if enrolment of a student would result in the provider exceeding its total enrolment limit for the year, students enrolled in respect of that year before the instrument was made or varied, or before the notice was given, are to be taken into account. This means that any students that are enrolled for the relevant year prior to the Minister making an instrument under subsection 26B(1), or varying the instrument, or the Minister issuing a notice under subsection 26C(1), are counted for the purposes of the enrolment limit. This ensures that the provider's obligation under section 26D applies immediately, and providers are not able to enrol students early to avoid application of the enrolment limit.

236. New subsection 26D(3) provides that, to avoid doubt, a registered provider may be subject to obligations in relation to a course and a year under subsection 26D(1) and section 26G. This subsection clarifies that a provider may have a total enrolment limit with which they must comply, and also multiple course enrolment limits, within their total enrolment limit, with which they must comply.

237. New sections 26E, 26F and 26G are under the new heading 'Subdivision C – Course enrolment limits'.

238. New section 26E sets out the Minister's powers to impose enrolment limits on a specified course, or a specified class or classes of courses, provided by registered providers by legislative instrument.

239. New subsection 26E(1) provides that the Minister may, by legislative instrument, determine a limit (the course enrolment limit) on the number of overseas students that may be enrolled in a specified course, or a course in a specified class of courses,



provided by a registered provider in a specified class of registered providers in respect of one or more specified years.

240. New subsection 26E(2) provides that the course enrolment limit for a course in respect of a year may be expressed to apply in relation to:

- at paragraph (a), the total number, worked out in accordance with the instrument, of new overseas students enrolled with the provider for the course and the year; or
- at paragraph (b), the combined total number, worked out in accordance with the instrument, of new and ongoing overseas students enrolled with the provider for the course and the year.

241. New subsection 26E(3) provides that the course enrolment limit for a course in respect of a year must be either:

- at paragraph (a), specified in the instrument; or
- at paragraph (b), worked out in accordance with a method specified in the instrument.

242. New subsection 26E(4) provides that without limiting subsection 26E(1) or any other provision of the ESOS Act, a course or class of courses may be specified by reference to any matter, including the location of the course.

243. New subsection 26E(5) provides that without limiting subsection 26E(1) or any other provision of the ESOS Act, a class of providers may be specified by reference to any matter, including, but not limited to, any of the following:

- at paragraph (a), the kind of provider;
- at paragraph (b), the kind of courses provided by the provider;
- at paragraph (c), the location of courses provided by the provider;
- at paragraph (d), the number of overseas students enrolled with the provider;
- at paragraph (e), other circumstances applying in relation to the provider.

244. New subsection 26E(6) provides that without limiting subsection 33(3A) of the *Acts Interpretation Act 1901*, an instrument under subsection 26E(1) may make different provision in relation to any of the following:

- at paragraph (a), different courses or classes of courses;
- at paragraph (b), different classes of providers;
- at paragraph (c), different years.

245. New subsection 26E(7) provides that despite subsection 14(2) of the *Legislation Act 2003*, an instrument under subsection 26E(1) may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any

matter contained in an instrument or other writing as in force or existing from time to time. This subsection provides a contrary intention to the requirements in subsection 14(2) of the *Legislation Act 2003* so that an instrument made by the Minister can flexibly refer to external documents. The ability to refer to external documents is important as the Minister may need to consider whether an instrument should or should not apply to certain courses or classes of courses and do so by reference to an external document.

246. While generally, the external documents incorporated into any instrument will apply at the time of commencement of the instrument, it may be necessary to have the flexibility to apply documents as existing from time to time to ensure that the instrument responds to Government objectives applying or not applying to certain courses or classes of courses. For example, an instrument could refer to the Jobs and Skills Australia Skills Priority List to reflect Australia's skills needs at the time, or refer to the Australian Bureau of Statistics Australian Statistical Geography Standard as in force from time to time to describe urban, remote and rural areas. Any external documents incorporated into the instrument will be freely available and the explanatory material accompanying the making of an instrument will identify where providers can find the external document online.

247. New subsection 26E(8) provides that an instrument under subsection 26E(1) in respect of one or more years has no effect unless it is made before 1 September of the year before the first year to which the instrument applies.

248. New subsection 26E(9) provides that, despite subsection 26E(8), and without limiting subsection 33(3) of the *Acts Interpretation Act 1901*, the Minister may, at any time, vary an instrument if the Minister is satisfied that it is appropriate to do so. The purpose of this provision is to partially override the effect of subsection 33(3) of the *Acts Interpretation Act 1901*, which would otherwise require variations to the instrument to be made before 1 September of the year before the first year to which the instrument applied (subsection 26E(8)).

249. New subsection 26E(10) provides that before the Minister makes an instrument under subsection 26E(1) or a variation under subsection 26E(9), the Minister may consult with any person or body, including any of the following:

- at paragraph (a), TEQSA;
- at paragraph (b), the National VET Regulator;
- at paragraph (c), the Secretary;

- at paragraph (d), if the Minister has determined that an entity (other than an entity mentioned in paragraph (a), (b) or (c)) is an ESOS agency for a provider or a registered provider under subsection 6C(2)—that entity;
- at paragraph (e), the Immigration Minister.

250. New subsection 26E(11) provides that if:

- at paragraph (a), an instrument under subsection 26E(1) or a variation under subsection 26E(9) specifies a course that is, or a class of courses that includes, a VET course within the meaning of the *National Vocational Education and Training Regulator Act 2011*; and
- at paragraph (b), the Minister does not administer that Act; the Minister must not make or vary the instrument without the written agreement of the Minister who administers that Act.

251. It is necessary for the Minister to obtain written agreement from the Minister administering the NVETR Act before making an instrument under subsection 26E(1) or varying an instrument under subsection 26E(9) because there are currently over 900 registered VET providers. This is a diverse and dynamic sector and the allocation of total enrolment limits across the VET sector will require appropriate consideration of a variety of sector specific factors. Obtaining this written agreement will ensure that the Minister for Education acts on this advice reflecting appropriate consideration and options for allocating the total enrolment limits for individual providers across the VET sector.

252. New section 26F sets out the Minister’s power to impose course enrolment limits on a provider by notice.

253. New subsection 26F(1) provides that the Minister may, by written notice given to a registered provider, determine a limit (the course enrolment limit) on the number of overseas students that may be enrolled in a specified course, or a course in a specified class of courses, provided by the provider in respect of one or more specified years.

254. New subsection 26F(2) provides that the course enrolment limit for a course in respect of a year may be expressed to apply in relation to:

- at paragraph (a), the total number, worked out in accordance with the notice, of new overseas students enrolled with the provider for the course and the year; or
- at paragraph (b), the combined total number, worked out in accordance with the notice, of new and ongoing overseas students enrolled with the provider for the course and the year.

255. New subsection 26F(3) provides that the course enrolment limit for a course in respect of a year must be either:
- at paragraph (a), specified in the notice; or
  - at paragraph (b), worked out in accordance with a method specified in the notice.
256. New subsection 26F(4) provides that without limiting subsection 26F(1) or any other provision of the ESOS Act, a course or class of courses may be specified by reference to any matter, including the location of the course.
257. New subsection 26F(5) provides that without limiting subsection 33(3A) of the *Acts Interpretation Act 1901*, a notice given under subsection 26F(1) may make different provision in relation to either or both of the following:
- at paragraph (a), different courses or classes of courses;
  - at paragraph (b), different years.
258. New subsection 26F(6) provides that a notice under subsection 26F(1) in respect of one or more years may be given at any time. The note under this subsection provides that for variation of a notice, see subsection 33(3) of the *Acts Interpretation Act 1901*, the effect of which does not need to be changed for this purpose (*c.f.* subsection 26E(8), which modifies the operation of subsection 33(3) of the *Acts Interpretation Act 1901* in relation to the timing of variations to the instrument under section 26E(1)).
259. New subsection 26F(7) provides that if:
- at paragraph (a), a notice under subsection 26F(1) specifies a course that is, or a class of courses that includes, a VET course within the meaning of the *National Vocational Education and Training Regulator Act 2011*; and
  - at paragraph (b), the Minister does not administer that Act; the Minister must not give a notice under subsection 26F(1) without the written agreement of the Minister who administers that Act, or a delegate of that Minister.
260. It is necessary for the Minister to obtain written agreement from the Minister administering the NVETR Act before giving notice to a provider under subsection 26F(1) because there are currently over 900 registered VET providers. This is a diverse and dynamic sector and the allocation of total enrolment limits across the VET sector will require appropriate consideration of a variety of sector specific factors. Obtaining this written agreement will ensure that the Minister for Education acts on this advice reflecting appropriate consideration and options for allocating the total enrolment limits for individual providers across the VET sector.

261. New subsection 26F(8) provides that the Minister must give a copy of the notice to:
- at paragraph (a), the ESOS agency for the provider; and
  - at paragraph (b), if the ESOS agency for the provider is not the Secretary—the Secretary.
262. New subsection 26F(9) provides that a notice under subsection 26F(1) is not a legislative instrument. This provision is intended to clarify that a notice under subsection 26F(1) is not a legislative instrument within the meaning of subsection 8(1) of the *Legislation Act 2003*. Rather, a notice is declaratory of the law, that is, a method by which the Minister can inform the provider of the Minister’s decision, and is not intended to prescribe a substantive exemption from the requirements of the *Legislation Act 2003*.
263. The Minister will only exercise this power where the Minister is satisfied that there is a need for a specific provider to have a different limit than the course enrolment limit that is specified in the instrument under subsection 26E(1). Factors that the Minister may consider include Australia’s skills shortages or future needs, the demonstrated quality of the course, the number of other providers servicing the geographical location of the provider and the availability of student accommodation for both domestic and international students.
264. Another circumstance in which this power might be exercised is where a provider ceases to provide a course or courses and defaults in relation to accepted students. In this case, the Minister may increase the enrolment limits of certain other providers to provide suitable placements for the students affected by the default.
265. As such, a notice issued under subsection 26F(1) is excluded from merits review because these are decisions allocating a finite resource between competing applicants. In line with migration reforms, the allocation of student visas for overseas students will be limited and competitive amongst applicants. This power to set enrolment limits for a provider ensures that overseas student enrolments are allocated beneficially for Australia’s interest. It is appropriate for merits review to be excluded from these decisions as this could overturn the Government’s delicate balancing of these resources.
266. While these decisions are not merits reviewable, the Minister will comply with principles of administrative law in relation to these decisions by ensuring that the exercise of subsection 26F(1) and allocation of enrolment limits is fair and that decisions are made objectively. Before the Minister exercises this power, the provider

must provide evidence and information to demonstrate that increasing its enrolment limit for overseas students is of significant public interest.

267. Noting that decisions under subsection 26F(1) are administrative decisions they will also be subject to judicial review under the *Administrative Decisions (Judicial Review) Act 1977*.

268. New subsection 26G sets out a registered provider's obligations in relation to course enrolment limits under sections 26E and 26F.

269. New subsection 26G(1) provides that a registered provider (other than an exempt provider) must not enrol an overseas student, or intending overseas student, for a course that the provider is registered to provide in the year, if the enrolment of the student would result in the provider:

- at paragraph (a), unless paragraph (b) applies to the course, the provider and the year—the course enrolment limit specified in the instrument under subsection 26E(1) for the course, the provider and the year; or
- at paragraph (b), if the Minister gives a notice to the provider under subsection 26F(1) in respect of the course and the year and the notice is in force—the course enrolment limit specified in the notice for the course, the provider and the year.

The note under this subsection explains that for the consequences of breaching this subsection are set out in new Division 1AA of Part 6 (conditions, suspension and cancellation) of the ESOS Act.

270. New subsection 26G(2) provides that for the purposes of working out under subsection 26G(1) if enrolment of a student would result in the provider exceeding its course enrolment limit for the course and the year, students enrolled in respect of that year before the instrument was made or varied, or before the notice was given, are to be taken into account.

271. New subsection 26G(3) provides that to avoid doubt, a registered provider may be subject to obligations in relation to a course and a year under subsection 26G(1) and section 26D. This subsection clarifies that a provider may have a total enrolment limit with which they must comply, and also multiple course enrolment limits, within their total enrolment limit, with which they must comply.

Item 48: Section 83A (after the paragraph beginning “The ESOS agency”)

272. **Item 48** inserts a new point into the ‘Guide to this Part’ at section 83A of the ESOS Act. The new point is:

- Division 1AA provides for:

- (a) automatic suspension of a provider's registration for all courses in relation to a year if the provider exceeds its total enrolment limit for the year; and
- (b) automatic suspension of a provider's registration for a course in relation to a year if the provider exceeds its course enrolment limit for the course and the year.

Item 49: After Division 1 of Part 6

273. **Item 49** inserts a new Division 1AA titled 'Automatic period of suspension for exceeding limits on enrolment'. Division 1AA sets out the consequences of a provider breaching sections 26D and 26G, that is, where the provider has enrolled an overseas student, or intending overseas student in excess of the provider's total enrolment limit or course enrolment limit for the year.
274. New section 96 sets out the automatic period of suspension for a provider who exceeds the total enrolment limit. New subsection 96(1) provides that if a registered provider fails to comply with section 26D in relation to a year, the registration of the provider is suspended for all courses (other than courses that are exempt from the provider's total enrolment limit under subsections 26B(4) or 26C(4)) for all locations in respect of the year by force of the subsection.
275. New subsection 96(2) provides that a provider whose registration is suspended for a course under the section in respect of a year must not:
- at paragraph (a), enrol an overseas student or an intending overseas student for the course in respect of that year; or
  - at paragraph (b), solicit or accept any money from an overseas student or an intending overseas student for the course other than:
    - at subparagraph (i), an overseas student or an intending overseas student who is enrolled in, and has commenced, the course before the suspension; or
    - at subparagraph (ii), an overseas student or an intending overseas student who is enrolled in the course in respect of a later year; or
  - at paragraph (c), if an accepted student of the provider has not commenced the course before the suspension—permit the student to commence the course during that year.
276. New subsection 96(3) provides that the provider is still registered for the course for the location for all other purposes.
277. New subsection 96(4) provides that if the registration of a provider has been suspended by force of subsection 96(1), the Secretary must, in writing, notify the following of the suspension:
- at paragraph (a), the provider;

- at paragraph (b), if the ESOS agency for the provider is not the Secretary—the ESOS agency for the provider.

278. New subsection 96(5) provides that if the registration of a provider has been suspended under subsection 96(1) in respect of a year, the suspension of the provider’s registration ends by force of the subsection at the earlier of the following times:

- at paragraph (a), the end of 31 December of that year;
- at paragraph (b), when the Secretary gives the provider a notice under subsection 96(6) in respect of the year.

279. New subsection 96(6) provides that the Secretary may give a notice to a provider to end a provider’s suspension before 31 December in a year if the Secretary is satisfied that it is appropriate to do so.

280. The intent of section 96 is to prevent providers from enrolling any students above their total enrolment limit into their courses, except for courses that have been exempted from the enrolment limit under subsections 26B(4) or 26C(4). The automatic suspension applies when a provider breaches subsection 26D(2). Providers can continue to deliver courses only to overseas students who have commenced the course before the suspension and solicit and accept money from these students. Providers are also able to solicit or accept money from an overseas student or intending overseas student if they are enrolled in the course in respect of a later year. However, providers cannot permit an accepted student who has not commenced the course before the suspension, to commence the course while suspended for the year.

281. The automatic suspension will continue for the year unless the Secretary gives a notice to the provider under subsection 96(6). The Secretary may do this if there is evidence that the provider is no longer in excess of their enrolment limit, for example, students have completed their courses or have otherwise left the provider. The Secretary may also give a notice where providers are severely affected by the suspension because they deliver short courses or have short study periods, or to enable students to be enrolled in replacement courses from another provider who has defaulted under section 46A of the ESOS Act.

282. New section 96A sets out the automatic period of suspension for a provider who exceeds the course enrolment limit. New subsection 96A(1) provides that if a registered provider fails to comply with section 26G in relation to a course, the registration of the provider is suspended for the course in respect of the year by force of the subsection:



- at paragraph (a), if the course is specified in the instrument under section 26E or notice under section 26F by reference to the location of the course—for that location; or
- at paragraph (b), otherwise—for all locations.

283. New subsection 96A(2) provides that a provider whose registration is suspended for a course at a location under this section in respect of a year must not:

- at paragraph (a), enrol an overseas student or an intending overseas student for the course at the location in respect of that year; or
- at paragraph (b), solicit or accept any money from an overseas student or an intending overseas student for the course at the location other than:
  - at subparagraph (i), an overseas student or intending overseas student who is enrolled in, and has commenced, the course at the location before the suspension; or
  - at subparagraph (ii), an overseas student or intending overseas student who is enrolled in the course at the location in respect of a later year; or
- at paragraph (c), if an accepted student of the provider has not commenced the course at the location before the suspension—permit the student to commence the course at the location during that year.

284. New subsection 96A(3) provides that the provider is still registered for the course for the location for all other purposes.

285. New subsection 96A(4) provides that if the registration of a provider for a course has been suspended by force of subsection 96A(1), the Secretary must, in writing, notify the following of the suspension:

- at paragraph (a), the provider;
- at paragraph (b), if the ESOS agency for the provider is not the Secretary—the ESOS agency for the provider.

286. New subsection 96A(5) provides that if the registration of a provider has been suspended under subsection 96A(1) in respect of a course, a location and a year, the suspension of the provider's registration for the course at the location ends by force of this subsection at the earlier of the following times:

- at paragraph (a), the end of 31 December of that year;
- at paragraph (b), when the Secretary gives the provider a notice under subsection 96A(6) in respect of the course, the location and the year.

287. New subsection 96A(6) provides that the Secretary may give a notice to a provider under this subsection in respect of a course, a location and a year if the Secretary is

satisfied that it is appropriate to do so.

288. The intent of section 96A is to prevent providers from enrolling any students above their enrolment limit into the course, or class of courses, specified in an instrument made under subsection 26E(1) or in a notice given to the provider under subsection 26F(1). The automatic suspension applies when a provider breaches section 26G. Providers can continue to deliver the course or courses that are the subject of the suspension only to overseas students who have commenced the course or courses before the suspension and solicit and accept money from these students. Providers are also able to solicit or accept money from an overseas student or intending overseas student if they are enrolled in the course in respect of a later year. However, providers cannot permit an accepted student who has not commenced the course before the suspension, to commence the course while suspended for the year.

289. The automatic suspension will continue for the year unless the Secretary gives a notice to the provider under subsection 96A(6). The Secretary may do this if there is evidence that the provider is no longer in excess of their course enrolment limit, for example, students have not commenced the affected courses. The Secretary may also give a notice to enable students to be enrolled in replacement courses from another provider who has defaulted under section 46A of the ESOS Act.

Item 50: Section 169AB (in the appropriate position in the table)

290. **Item 50** inserts new items 12 and 13 into the table listing reviewable decisions in section 169AB of the ESOS Act.

291. New item 12 provides that a decision by the Secretary not to give a registered provider a notice under new subsection 96(6), that is to remove the suspension if a provider is suspended by subsection 96(1) for exceeding their total enrolment limit, is a reviewable decision. The affected provider of this decision (i.e. the person who can seek review of the decision) is the registered provider.

292. New item 13 provides that a decision by the Secretary not to give a registered provider a notice under subsection 96A(6) in respect of a course, a location and a year, that is to remove the suspension if a provider is suspended by subsection 96A(1) for exceeding their course enrolment limit, is a reviewable decision. The affected provider of this decision (i.e. the person who can seek review of the decision) is the registered provider. This means that the registered provider can seek merits review of the decision not to issue a notice, in accordance with Part 7A of the ESOS Act.

Item 51: At the end of Part 7A

293. **Item 51** inserts new section 169H to enable review of the Secretary's decisions under subsections 96(6) or 96A(6) not to give a notice to remove the suspension of a provider for breach of their total enrolment limit or course enrolment limit.

294. New subsection 169AH(1) provides that for the purposes of applying this Part and any related provisions of the ESOS Act or any other Act or instrument in respect of a decision of the Secretary not to give a notice to a provider under subsections 96(6) or 96A(6), references in Part 7A of the ESOS Act to any of the following:

- at paragraph (a), ESOS agency;
  - at paragraph (b), ESOS agency for an affected provider;
  - at paragraph (c), agency;
- are taken to be a reference to the Secretary.

295. New subsection 169AH(2) provides that subsection 169AH(1) does not apply in relation to section 169AB.

#### Item 52: After section 176D

296. **Item 52** inserts new section 176E to provide for compensation for acquisition of property that is otherwise than on just terms. New subsection 176E(1) provides that if:

- at paragraph (a), apart from this section, the operation of Division 1AA of Part 3 or Division 1AA or 1AB of Part 6 would result in the acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph); and
  - at paragraph (b), the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;
- the Commonwealth is liable to pay a reasonable amount of compensation to the person in respect of the acquisition.

297. New subsection 176E(2) provides that if the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia or the Supreme Court of a State or Territory for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

298. While the item inserting new section 176E is included in Part 7 of Schedule 1 to the Bill, the provision also applies to amendments in Part 8. This section means that the Commonwealth is only liable to pay compensation if a court finds that, in administering Division 1AA of Part 3, Division 1AA of Part 6 or Division 1AB of Part 6

the Commonwealth has acquired the property of a provider (within the meaning of paragraph 51(xxxi) of the Constitution) and in acquiring the property has not given the provider just terms (within the meaning of paragraph 51(xxxi) of the Constitution). Compensation would not automatically be payable to a provider simply because they are affected by the setting of an enrolment limit or the suspension or cancellation of a course. Rather, a provider would have to successfully argue that their automatic suspension under new Division 1AA of Part 6, or the automatic suspension and cancellation of their course under Division 1AB of Part 6, had such an effect on their existing property (e.g. rights under contracts with students) that it amounted to an acquisition of that property for the purposes of the Constitution, and that in all the circumstances the acquisition of that property was not on just terms.

## Division 2 – Application of amendments

### Item 53: Application and transitional provisions

299. **Item 53** sets out the application and transitional provisions for the amendments relating to enrolment limits.

300. Subitem 53(1) provides that, subject to this item, Division 1AA of Part 3 and Division 1AA of Part 6 of the ESOS Act, as inserted by Division 1 of this Part, apply in relation to the 2025 calendar year and later calendar years.

301. Subitem 53(2) sets out the application and transitional provisions for total enrolment limits for 2025. The subitem provides that, if the Minister makes a legislative instrument under section 26B or gives a notice under section 26C of the ESOS Act, as inserted by Division 1 of this Part, in respect of 2025:

- at paragraph (a), the total enrolment limit for a registered provider may only be expressed to apply in relation to the total number, worked out in accordance with the instrument or notice, of new overseas students enrolled with the provider in respect of that year; and
- at paragraph (b), subsection 26B(9) applies as if the reference to 1 September of the year before the first year to which the instrument applies were instead a reference to 31 December 2024.

302. Subitem 53(3) sets out the application and transitional provisions for total enrolment limits for later years. The subitem provides that if the Minister makes a legislative instrument under section 26B or gives a notice under section 26C of the ESOS Act, as inserted by Division 1 of this Part, in respect of 2026 or a later year, the total enrolment limit for a registered provider may only be expressed to apply in relation to:

- at paragraph (a), the total number, worked out in accordance with the instrument or notice, of new overseas students enrolled with the provider in respect of that year; or
- at paragraph (b), the combined total number, worked out in accordance with the instrument or notice, of:
  - at subparagraph (i), new overseas students enrolled with the provider in respect of that year; and
  - at subparagraph (ii), ongoing overseas students enrolled with the provider in respect of that year if the ongoing students were enrolled with the provider as new overseas students in respect of the 2025 calendar year or a later calendar year.

303. The intent of these provisions is to minimise the effect that a total enrolment limit may have on providers and the number of students and enrolments before the Minister makes an instrument under subsection 26B(1) or gives a notice under subsection 26C(1). For 2025, the Minister can only specify the total enrolment limit in the instrument or notice in respect of new overseas students enrolled for 2025 (but can make the relevant instrument at any time up to 31 December 2024). For 2026 or a later year, the Minister can specify a total enrolment limit in respect of new overseas students enrolled for 2026 or the later year, or can specify a combined total number of enrolments but only counting new overseas students enrolled for 2026 or a later year and ongoing overseas students for 2026 or a later year (if the students were new students in 2025 or later years).

304. Subitem 53(4) sets out the application and transitional provisions for course enrolment limits for 2025. The subitem provides that if the Minister makes a legislative instrument under section 26E or gives a notice under section 26F of the ESOS Act, as inserted by Division 1 of this Part, in respect of 2025:

- at paragraph (a), the course enrolment limit for a course and a registered provider may only be expressed to apply in relation to the total number, worked out in accordance with the instrument or notice, of new overseas students enrolled in the course with the provider in respect of that year; and
- at paragraph (b), subsection 26E(8) applies as if the reference to 1 September of the year before the first year to which the instrument applies were instead a reference to 31 December 2024.

305. Subitem 53(5) sets out the application and transitional provisions for course enrolment limits for later years. The subitem provides that If the Minister makes a legislative instrument under section 26E or gives a notice under section 26F of the ESOS Act, as inserted by Division 1 of this Part, in respect of 2026 or a later year, the

course enrolment limit for a course and a registered provider may only be expressed to apply in relation to:

- at paragraph (a), the total number, worked out in accordance with the instrument or notice, of new overseas students enrolled in the course with the provider in respect of that year; or
- at paragraph (b), the combined total number, worked out in accordance with the instrument or notice, of:
  - at subparagraph (i), new overseas students enrolled in the course with the provider in respect of that year; and
  - at subparagraph (ii), ongoing overseas students enrolled in the course with the provider in respect of that year if the ongoing students were enrolled with the provider as new overseas students in respect of the 2025 calendar year or a later calendar year.

306. The intent of these provisions is to minimise the effect that a course enrolment limit may have on providers and the number of students and enrolments before the Minister makes an instrument under subsection 26E(1) or gives a notice under subsection 26F(1). For 2025, the Minister can only specify the course enrolment limit in the instrument or notice in respect of new overseas students enrolled for 2025 (but can make the relevant instrument at any time up to 31 December 2024). For 2026 or a later year, the Minister can specify a course enrolment limit in respect of new overseas students enrolled for 2026 or the later year, or can specify a combined total number of enrolments but only counting new overseas students enrolled for 2026 or a later year and ongoing overseas students for 2026 or a later year (if the students were new students in 2025 or later years).

## Part 8 — Automatic cancellation of specified courses

### Division 1 – Amendments

#### *Education Services for Overseas Students Act 2000*

307. Part 8 of Schedule 1 to the Bill amends the ESOS Act to provide for the automatic suspension and cancellation of courses that are specified by the Minister in a legislative instrument. The Minister may specify courses that have systemic issues in relation to the standard of delivery of the course, or that provide limited value to Australia’s skills and training needs and priorities, or if it is in the public interest that certain courses are suspended and cancelled.

#### Item 54: Section 83A (before the paragraph beginning “The Immigration Minister”)

308. **Item 54** inserts another new point into the ‘Guide to this Part’ at section 83A of the ESOS Act. The new point is:

- Division 1AB provides for automatic suspension and cancellation for courses specified by the Minister in a legislative instrument.

#### Item 55: Before Division 2 of Part 6

309. **Item 55** inserts a new Division 1AB to provide for automatic suspension and cancellation of courses specified by the Minister in a legislative instrument.

310. New section 96B sets out the Minister’s power to make a legislative instrument specifying courses.

311. New subsection 96B(1) provides that the Minister may, by legislative instrument, specify one or more classes of courses for the purposes of this section if the Minister is satisfied that:

- at paragraph (a), there are or have been systemic issues in relation to the standard of delivery of the courses included in the class; or
- at paragraph (b), the courses included in the class provide limited value to Australia’s current, emerging and future skills and training needs and priorities; or
- at paragraph (c), it is in the public interest to do so.

312. New subsection 96B(2) provides that, in considering whether to make such an instrument, the Minister may have regard to any of the following matters:

- at paragraph (a), whether the courses included in the class are provided by registered providers that are breaching or have breached:
  - at subparagraph (i), the ESOS Act; or

- at subparagraph (ii), the national code; or
- at subparagraph (iii), if the ELICOS Standards or Foundation Program Standards apply in relation to the provider—those Standards; or
- at subparagraph (iv), a condition of the provider’s registration;
- at paragraph (b), completion rates of accepted students of those courses;
- at paragraph (c), the number of transfers of accepted students from or to those courses;
- at paragraph (d), the location or locations at which providers are registered to provide those courses.

313. New subsection 96B(3) provides that subsection 96B(2) does not limit the matters to which the Minister may have regard in considering whether to make an instrument under subsection 96B(1).

314. The Minister’s power will be exercised in circumstances where there are providers who deliver courses that do not result in quality education outcomes for students and there are inherent issues with the quality of the course delivery. For example, systemic issues may be identified by the completion rates of overseas students in these courses and the number of transfers to and from the course. Systemic issues may also be identified by courses that are exclusively delivered to overseas students, excluding ELICOS courses and Foundation programs. There are also low-cost courses which are susceptible to use by non-genuine providers and students as a channel to work and extend their time in Australia. For example, the Joint Standing Committee on Foreign Affairs, Defence and Trade’s interim report, *Quality and Integrity – the Quest for Sustainable Growth: Interim Report into International Education* identified that ‘VET Business Leadership and Management’ courses are generalist in nature and do not address Australia’s skill needs.

315. New subsection 96B(4) provides that without limiting subsection 96B(1) or any other provision of the ESOS Act, a class of courses may be specified by reference to any matter, including the location of the course.

316. New subsection 96B(5) provides that despite subsection 14(2) of the *Legislation Act 2003*, an instrument made under subsection 96B(1) of this section may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

317. This subsection provides a contrary intention to the requirements in subsection 14(2) of the *Legislation Act 2003* so that an instrument made by the Minister can



flexibly refer to external documents. The ability to refer to external documents is important as the Minister may need to consider whether an instrument should or should not apply to certain classes of provider or classes of courses and do so by reference to an external document.

318. While generally, the external documents incorporated into any instrument will apply at the time of commencement of the instrument, it may be necessary to have the flexibility to apply documents as existing from time to time to ensure that the instrument responds to Government objectives for applying or not applying to classes of providers or classes of courses, for example, to reflect Australia's skills needs at the time or to respond to public reporting by ESOS agencies regarding regulatory decisions. Any external documents incorporated into the instrument will be freely available and the explanatory material accompanying the making of an instrument will identify where providers can find the external document online.

319. New subsection 96B(6) requires that before the Minister makes an instrument under subsection 96B(1), the Minister must consult with each of the following:

- at paragraph (a), TEQSA;
- at paragraph (b), the National VET Regulator;
- at paragraph (c), the Secretary;
- at paragraph (d), if the Minister has determined that an entity (other than an entity mentioned in paragraph (a), (b) or (c)) is an ESOS agency for a provider or a registered provider under subsection 6C(2)—that entity.

320. It is mandatory for the Minister to consult with the above entities and persons before making an instrument under subsection 96B(1) specifying courses to ensure that relevant information provided by the entities and persons can be taken into consideration.

321. New subsection 96B(7) provides that if:

- at paragraph (a), an instrument under subsection 96B(1) specifies a class of courses that includes a VET course within the meaning of the *National Vocational Education and Training Regulator Act 2011*; and
- at paragraph (b), the Minister does not administer that Act; the Minister must not make the instrument without the written agreement of the Minister who administers that Act.

322. New section 96C provides for when a specified course is automatically suspended.

323. New subsection 96C(1) provides that section 96C applies if:

- at paragraph (a), a registered provider (other than an exempt provider) is registered to provide a course at a location or locations; and
- at paragraph (b), the course is included in a class of courses specified in an instrument under subsection 96B(1); and
- at paragraph (c), 30 days after that instrument commences, one or more students are enrolled in and have commenced, but not completed or withdrawn from, the course.

324. New subsection 96C(2) provides that the provider's registration for the course is suspended for all locations by force of this subsection.

325. New subsection 96C(3) provides that a provider whose registration is suspended for a course under this section must not:

- at paragraph (a), do any thing for the purpose of recruiting or enrolling overseas students or intending overseas students for the course; or
- at paragraph (b), solicit or accept any money from an overseas student or an intending overseas student for the course other than overseas students who are enrolled in and have commenced the course; or
- at paragraph (c), if an accepted student of the provider has not commenced the course—permit the student to commence the course.

326. New subsection 96C(4) provides that the provider is still registered for the course for the location for all other purposes.

327. These provisions mean that, despite a course being specified by the Minister in an instrument under new subsection 96B(1), if there is at least one student who is enrolled and has commenced, but not completed, the specified course, the provider's registration for the course will be suspended but the provider can continue to deliver the course to the students still enrolled, as well as solicit and accept money from these students. Effectively, this allows a provider to 'teach out' the course so as not to cause detriment to students who are currently studying in one of these courses. A provider cannot enrol or recruit any new overseas students to the course or permit an accepted student to commence the course.

328. New section 96D provides for when a specified course is automatically cancelled.

329. New subsection 96D(1) provides that section 96D applies if:

- at paragraph (a), a registered provider (other than an exempt provider) is registered to provide a course at a location or locations; and
- at paragraph (b), the course is included in a class of courses specified in an instrument under subsection 96B(1); and

- at paragraph (c), 30 days after that instrument commences, there are no students that are enrolled in and have commenced, but not completed or withdrawn from, the course.

330. New subsection 96D(2) provides that section 96D also applies if:

- at paragraph (a), a provider's registration for a course is suspended under section 96C; and
- at paragraph (b), all students that were enrolled in and had commenced the course before the suspension have since completed or withdrawn from the course.

331. New subsection 96D(3) provides that the provider's registration for the course is cancelled for all locations by force of this subsection.

332. These provisions set out the circumstances in which a specified course may be automatically cancelled. Relevantly, this is where there are no students enrolled in and have commenced, but not completed, the course. If there are, new subsection 96B applies and the provider's registration for the course is suspended until all students that were enrolled in and had commenced the course have completed the course. When that happens, the provider's registration for the course is then automatically cancelled.

## Division 2 – Application of amendments

### Item 56: Application provision

333. **Item 56** provides that Division 1AB of Part 6 of the ESOS Act, as inserted by Division 1 of Part 8 of the Bill, applies in relation to a course whether a provider is registered to provide the course before, on or after the commencement of that Part.

334. This means these amendments may apply to courses in which students are currently enrolled, and have commenced, the course. This is required to ensure that courses currently being offered or delivered that have systemic issues in relation to the standard of delivery of the course, or provide limited value to Australia's skills and training needs and priorities, or raise public interest concerns, may be subject to the Minister's determination. Under new subsection 96B, if one or more students are enrolled and have commenced, but not yet completed, the course, the provider's registration for the course will be suspended but providers can continue to deliver an affected course to those students. Under new subsection 96C, if there are no students enrolled or commenced in the course, or when all students have completed the course, the provider's registration for the course will be cancelled.

# **Improving Integrity in the International Education Sector Policy Impact Statement**

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# Abbreviations and Glossary

AIEC	Australian International Education Conference
AQF	Australian Qualifications Framework
ASQA	Australian Skills Quality Authority
ATN	Australian Technology Network
The Braithwaite Review	Refers to the <i>All eyes on quality: Review of the National Vocational Education and Training Regulator Act (2018)</i>
CBA	Cost-Benefit Analysis
CISA	Council for International Students Australia
CoE	Confirmation of Enrolment
CRICOS	Commonwealth Register of Institutions and Courses for Overseas Students
CST	Commonwealth State and Territory International Education Forum
The department Education agent	Refers to the Department of Education An entity (within or outside of Australia) that engages in the recruitment of overseas students, provision of advice or assistance of overseas students in relation to enrolment and/or otherwise dealing with overseas students, or intending overseas students.
ELICOS	English Language Intensive Courses for Overseas Students
ESOS Act	Refers to the <i>Education Services for Overseas Students Act 2000</i>
ESOS agencies	Refers to the Tertiary Quality and Standards Agency (TEQSA), the Australian Skills Quality Authority (ASQA) and the Secretary of the Department of Education
ESOS Framework	Refers to <i>Education Services for Overseas Students Act 2000 (ESOS Act)</i> and related instruments
Foundation Program	Preparatory program of study for tertiary education
Go8	Group of Eight
GOS	Refers to the QILT Graduate Outcomes Survey
IA	Impact Analysis
IEAA	International Education Association of Australia
IESF	International Education Stakeholder Forum
IHEA	Independent Higher Education Australia
IRU	Innovative Research Universities
ISA	Independent Schools Australia
ISANA	International Education Association Inc.
ISEAA	International Student Education Agents Association
ITECA	Independent Tertiary Education Council Australia
JSCFADT	Joint Standing Committee on Foreign Affairs, Defence and Trade
Migration Review	Refers to the <i>Review of the Migration System Final Report 2023</i>
Migration Strategy	Refers to the <i>Migration Strategy – Getting migration working for the nation</i>
National Code	Refers to the <i>National Code of Practice for Providers of Education and Training to Overseas Students 2018</i>
Nixon Review	Refers to <i>The Rapid Review into the Exploitation of Australia’s Visa System</i>
NOM	Net Overseas Migration
NVETR Act	Refers to the <i>National Vocational Education and Training Regulator Act 2011</i>
OIA	Office of Impact Analysis
OMARA	Office of Migration Agents Registration Authority

Operation Inglenook	A multi-agency operation led by the Australian Border Force to identify individuals and entities involved in the exploitation of Australia's visa program, primarily as part of the sex industry.
Overseas student	A person holding a Subclass 500 student visa who is in Australia for the purposes of gaining an Australian education
PRISMS	Provider Registration and International Student Management System
QILT	Quality Indicators for Learning and Teaching
RMA	Registered Migration Agent
RTOs	Registered Training Organisations
RUN	Regional Universities Network
SES	Refers to the QILT Student Experience Survey
TAFE	Technical and Further Education
TDA	TAFE Directors Australia
TEQSA	Tertiary Education Quality and Standards Agency
The Council	Refers to the Council for International Education
TPS	Tuition Protection Service
UA	Universities Australia
VET	Vocational Education and Training

# Executive summary

International education brings important economic, cultural and social benefits to Australia. It is one of the top **export revenue earners for Australia, with overseas students contributing \$30 billion to the Australian economy per annum** and supporting Australia's contribution to a peaceful, prosperous and resilient region.<sup>1</sup> At its best, Australian international education facilitates meaningful cross-cultural exchanges and builds influential alumni networks that enhance Australia's reputation and influence in the world.

Integrity is a key support for a sustainable international education sector, one that is principally driven by quality with a strong connection with Australia's national interests. Robust integrity ensures only genuine providers and genuine students are able to participate in the sector, provides an overseas student experience free from exploitation and serves the best interests of the student.

Recent reviews, a major migration strategy and a parliamentary inquiry, drawing on submissions from across the education sector showed evidence of the exploitation of overseas students in Australia. This evidence has been bolstered by the results of taskforce criminal investigations into temporary migrant exploitation, including ongoing criminal investigations into actors in the international education sector who are exploiting students.

This Impact Analysis (IA) sets out recognised issues impacting the quality and integrity of the international education sector and provides policy options for the Australian Government to consider in response to identified problems relating to integrity in the international education sector.

This IA has been developed in accordance with the *Australian Government Guide to Policy Impact Analysis* and in consultation with the Department of the Prime Minister and Cabinet's Office of Impact Analysis (OIA). The draft IA was provided to the OIA for assessment as part of the policy proposal process and has informed an early decision by the Government. In consultation with the OIA, this IA has been further developed for second pass Final Assessment by the OIA.

This IA responds to the following recent reviews and inquiry:

- *Review of the Migration System Final Report 2023* (the Migration Review).
- *The Rapid Review into the Exploitation of Australia's Visa System* (the Nixon Review).
- the Joint Standing Committee on Foreign Affairs, Defence and Trade (JSCFADT) Inquiry into Australia's tourism and international education sector's *Quality and Integrity – the Quest for Sustainable Growth: Interim Report into International Education* (the JSCFADT Inquiry).

The IA draws on relevant material presented by sector stakeholders in the 483 submissions to the Migration Review, and the 133 written submissions and 20 public hearings across Australia of the JSCFADT Inquiry. The IA also considered seven key findings from the Nixon Review which drew on an interagency taskforce established to investigate trafficking and modern slavery practices in Australia involving the exploitation of temporary migrants, including within the international education sector.

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<sup>1</sup> Commonwealth of Australia, Migration Strategy 2023, [immi.homeaffairs.gov.au/programs-subsite/migration-strategy/Documents/migration-strategy.pdf](https://immi.homeaffairs.gov.au/programs-subsite/migration-strategy/Documents/migration-strategy.pdf).



The IA sets out three options to address these problems:

<b>1</b>	<p><i>Status quo</i></p> <p><b>No change</b></p> <ul style="list-style-type: none"> <li>• no legislative change.</li> <li>• no regulatory change.</li> <li>• ESOS agency activity and administration of the ESOS Framework continues <i>as is</i>.</li> <li>• status quo interaction with the international education sector.</li> </ul>
<b>2</b>	<p><i>Non-regulatory</i></p> <p><b>Communication</b> to the international education sector</p> <ul style="list-style-type: none"> <li>• encourage the international education sector to self-regulate to address issues of exploitation.</li> <li>• communication campaign to highlight provider requirements under existing legislation: <ul style="list-style-type: none"> <li>○ public communication materials that outline identified integrity issues in the sector and refine education providers' responsibilities and obligations under the ESOS Framework.</li> <li>○ an opt-in sector survey on commissions paid to education agents to gather point-in-time data.</li> </ul> </li> </ul>
<b>3</b>	<p><i>Regulatory changes</i></p> <p><b>Targeted legislative change</b> to the ESOS Act through strengthened regulatory capability of the ESOS agencies, improving data capture, improving transparency for Government, ESOS agencies and education providers to:</p> <ul style="list-style-type: none"> <li>○ amend the 'fit and proper' provider test under the ESOS Act to require ESOS agencies to consider cross-ownership of businesses between education providers and their agents to disrupt and deter collusive behaviour aimed to exploit students for profit.</li> <li>○ expand access for providers to all education agent performance data, not just to those agents they have an existing relationship with.</li> <li>○ require education providers to report through the Provider Registration and International Student Management System (PRISMS) information on agent commission fees they have paid to an education agent.</li> <li>○ pause the assessment of applications of registrations from new international education providers and of new courses from existing providers for a period of up to 12 months.</li> <li>○ require providers applying to deliver courses to overseas students to first deliver courses to domestic students for a period of 24 months.</li> <li>○ automatically cancel the registration of providers who have not delivered training to overseas students for a consecutive 12-month period.</li> <li>○ strengthen provisions to suspend the enrolment of new overseas students, including automatically where appropriate, by providers under serious regulatory investigation.</li> </ul> <p>Each legislative change would be accompanied by public communication, guidance notes, fact sheets and dedicated sector outreach to inform international education sector stakeholders on legislative changes, including reasons, requirements and benefits of each measure.</p>

**Option 1** presents the greatest risk of continued exploitative practices. **Option 2** has limited effectiveness as it does not take substantive or enforceable action against known misconduct and identified integrity concerns in the international education sector. **Option 3** would be the most effective and most consistent with the overarching policy objective to increase integrity in the international education sector and represents concrete action against serious exploitation.

The targeted legislative reform to the ESOS Act under **Option 3** would provide more information to providers to make informed decisions on their business relationships, increase provider reporting requirements across the sector and take strong action to deter and disrupt overseas student

exploitation. Action would target unscrupulous providers and would not be an undue regulatory burden on high quality providers with strong integrity.

**Option 3** would be the strongest response to support whole-of-government efforts to strengthen integrity, including reform proposed by the Department of Home Affairs to combat misuse of the student visa system and preserve Australia's education reputation internationally. This option has the strongest alignment with and supports Government objectives under the *Migration Strategy – Getting migration working for the nation* (Migration Strategy) and the Government response to the Nixon Review. It would also extend reforms targeted at strengthening the integrity of Vocational Education and Training providers, via legislative changes to the *National Vocational Education and Training Regulator Act 2011* (NVETR Act), to other international education sectors, including higher education and English language training.

# Introduction

Australia's international education sector plays a critical role in connecting Australia with the rest of the world. **Overseas students contribute \$30 billion to the Australian economy per annum and international education is Australia's fourth largest export.**<sup>2</sup> Overseas students are also a critical part of Australia's migration system, being the largest component of the temporary migration program **after New Zealand citizens.**<sup>3</sup>

Overseas students bring a diversity of perspectives, cultures and languages, enriching Australian communities and classrooms. The links forged through overseas students' experiences in Australia hold long term benefits to Australia's standing internationally, and in the strategically important Asia-Pacific region.

The Commonwealth Government regulates the international education sector through the *Education Services for Overseas Students Act 2000* (the ESOS Act) and associated instruments (the ESOS framework) to ensure that overseas students can enjoy a safe and quality education experience in Australia.

The Australian Government is committed to ensuring that overseas students who choose to study in Australia are safe, have access to a quality education and are free from exploitation. The Government is committed to Australia's *National Action Plan to Combat Modern Slavery 2020-25*, to take action against trafficking of persons and slavery-like incidents in Australia. The Government's intention is to safeguard and support Australia's international reputation as an education destination of choice and ensure that overseas students, who benefit from an Australian education, have the qualifications and aptitude to meet skills needs in and outside Australia.

Overseas students are a different consumer group to domestic students. They are more vulnerable due to their initial lack of local knowledge of the Australian education market and their reliance on advice offshore, often from education agents, to decide where to study and whom to study with. They make a significant social and financial investment in moving away from their home countries, friends, and families. They should be able to access a safe, high quality education experience in Australia.

Serious crimes such as trafficking can destroy a young person's life, derail their education journey and cause significant physical and psychological distress. While the number of those students who are victims of trafficking may be small compared to the overall overseas student population, the magnitude of the impact on an individual's life is significant and potentially life long. Exploitation that leads to poor education outcomes can damage the career trajectory of students and plunge them into debt that they may struggle to repay.

Unchecked unscrupulous behaviour within the international education sector feeds into and is driven by broader activities such as labour exploitation.

Since the reopening of Australia's borders post-COVID, growth in international education has been partly driven by non-genuine students and unscrupulous education providers undermining aspects of the current student visa framework and exploiting pandemic-era visa concessions, such as unrestricted working hours for overseas students. Throughout the consultation processes for recent independent reviews and a parliamentary inquiry into the international education sector (outlined in

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<sup>2</sup> Department of Foreign Affairs and Trade (2023), [www.dfat.gov.au/sites/default/files/australias-goods-and-services-by-top-25-exports-2022.pdf](https://www.dfat.gov.au/sites/default/files/australias-goods-and-services-by-top-25-exports-2022.pdf). Note, all dollar figures reported in this IA refer to Australian dollars.

<sup>3</sup> Commonwealth of Australia, Migration Strategy 2023, p.61.

Question 1), serious instances of exploitation of overseas students were reported. Stakeholders shared concerns that overseas student recruitment is partly being driven by some education providers helping non-genuine students to gain access to Australia's labour market using a student visa. Increasing student visa refusal rates also supported this assessment.<sup>4</sup>

The importance of strengthening integrity in the international education sector goes beyond disrupting and deterring unscrupulous actors - it supports and preserves Australia's international reputation for quality education. Ensuring quality and maintaining the integrity of the international education sector is also important for the Australian economy, including through overseas students and graduates contributing to Australia's skills needs.

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<sup>4</sup> Commonwealth of Australia, Migration Strategy 2023, p.61.

# Background

## The ESOS Framework

The Minister for Education is the Minister responsible for the ESOS Act. The Department of Education (the department) administers the ESOS Act and associated instruments that underpin Australia's international education sector, collectively known as the ESOS Framework. The ESOS Framework protects and enhances Australia's reputation for quality education, provides tuition protection and supports the integrity of the student visa program.

The ESOS Act establishes the regulation requirements and standards for education providers to offer Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) courses to student visa holders.

The ESOS Framework complements and operates in conjunction with other education and training frameworks, including:

- Australian Qualifications Framework (AQF)
- *Higher Education Support Act 2003*
- *National Vocational Education and Training Regulator Act 2011*
- *Tertiary Education Quality and Standards Agency Act 2011*
- *Australian Education Act 2013*
- *Higher Education Standards Framework (Threshold Standards) 2021*
- other state and territory school legislation.

The ESOS Framework also supports the integrity of the student visa system by ensuring education providers collect and report information relevant to student visas.

## ESOS agencies

The ESOS agencies are the regulators for international education providers under the ESOS Act and are accountable to the Minister for Education. They are responsible for registering CRICOS providers and courses, assessing and acting on any regulatory breaches, including those relating to integrity issues. The ESOS agencies are:

- the Australian Skills Quality Authority (ASQA) for providers of Vocational Education and Training (VET) and standalone English Language Intensive Courses for Overseas Students (ELICOS) courses.
- the Tertiary Education Quality and Standards Agency (TEQSA) for providers of higher education courses, and foundation programs and ELICOS courses delivered by higher education providers.
- the Secretary of the Department of Education for schools.

# Current regulatory approach

## Requirements for overseas students

Migration legislation, administered by the Department of Home Affairs, sets out assessment criteria and regulation of student visas, including student visa conditions to maintain enrolment and progress in CRICOS courses.

## Requirements for education providers

The ESOS Act and subordinate legislation set out requirements for education providers. Providers must meet these requirements to receive and maintain registration for courses and campus locations. Providers register through the relevant ESOS agencies and must meet the 'fit and proper' provider requirement.

## Requirements for education agents

The Government does not regulate education agents. Under the current ESOS Framework, the Government requires education providers to take legal and effective responsibility for any third parties to which they outsource their services. This includes education agents.

Many education agents operate offshore, outside Australian jurisdiction. As part of the Government's response to the Nixon Review the Government is considering direct regulation of education agents as providers of migration advice through a potential expansion of the Office of Migration Agents Registration Authority (OMARA).<sup>5</sup> This work is being led by the Department of Home Affairs and not considered as part of this IA.

# International education sector

## Overseas students

Overseas students are defined in the ESOS Act as a person holding a Subclass 500 student visa who are in Australia for the purposes of gaining an Australian education. They are often referred to as 'international students'. In 2020, 10 per cent of international tertiary students around the world studied with Australian providers.<sup>6</sup> **As at 31 January 2024, there were 486,398 primary student visa holders in Australia.**<sup>7</sup>

## International education providers

Overseas students come to Australia to study with a range of education providers including higher education, VET, ELICOS (English language), Foundation Program (tertiary preparatory program) and schools.

Table 1 shows the number of education providers by sector as at 19 December 2023.<sup>8</sup>

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<sup>5</sup> Government Response to the Nixon Review Recommendations, [www.homeaffairs.gov.au/reports-and-pubs/files/nixon-review/government-response-nixon-review.pdf](http://www.homeaffairs.gov.au/reports-and-pubs/files/nixon-review/government-response-nixon-review.pdf), p.3.

<sup>6</sup> OECD 2022 International Migration Outlook 2022, p.120.

<sup>7</sup> Department of Home Affairs, BP0019 Number of Temporary visa holders in Australia at 2024-01-31, [www.data.gov.au](http://www.data.gov.au).

<sup>8</sup> PRISMS data, Department of Education, accessed 19 December 2023.

**Table 1: Private and public education providers by sector**

Main course sector	Private providers	Public providers	TOTAL Number of providers
Higher Education	115	42	<b>157</b>
VET	865	16	<b>881</b>
ELICOS	104	1	<b>105</b>
Schools	324	8	<b>332</b>
Non-Award	2	0	<b>2</b>
<b>TOTAL</b>	<b>1410</b>	<b>67</b>	<b>1477</b>

Providers commit substantial resources to recruit overseas students and receive significant revenue from overseas students. Providers use overseas student revenue to expand their operations, fund their research capabilities and support existing operations.

Most large providers have 'International' or 'Global' Deputy Vice-Chancellors with staff and resources dedicated to international education. The amount providers spend on recruitment in total is difficult to quantify as this data is not collected by the Government.

## Education agents

An education agent is a person or organisation who recruits overseas students and refers them to education providers under a fee for service, commission, or 'in kind' arrangements. Overseas student recruitments are largely outsourced to for-profit education agents both in and outside of Australia, with most Australian education providers engaging education agents to recruit overseas students into their courses. Education agents are the frontline marketing and sales partners of education providers to attract students to study in Australia. Education agents also assist students onshore, including facilitating student transfers between providers in Australia.

In 2022, 86 per cent of overseas students reported using an education agent to source study in Australia.<sup>9</sup> This broadly corresponds with data from PRISMS, which indicates that approximately 80 per cent of overseas students utilise an education agent. In 2023, there were approximately 5,800 agencies and 23,000 individual agents who facilitated enrolments for overseas students at Australian education providers. These numbers fluctuate, as agents enter and depart the market.

A recent media article indicated that some universities, including Sydney University, University of New South Wales, University of Technology Sydney, Macquarie University and the University of Wollongong, together spent \$147 million on agent commissions in 2022. It also noted that no university revealed the percentage of overseas student fees it paid to agents in commission, but the peak body for education agents said the industry average of higher education was about 15 per cent of first-year fees.<sup>10</sup>

<sup>9</sup> 2022 Quality Indicators for Learning and Teaching (QILT) Student Experience Survey – the International Student Experience, p.31.

<sup>10</sup> Daniella White, 'Agents earn record fees to recruit students', *The Sydney Morning Herald*, 5 December 2023.

# 1. What is the policy problem you are trying to solve and what data is available?

There are interrelated issues that together contribute to the overarching policy problem of weaknesses in the integrity of the international education sector, the extent of which is obscured by existing data gaps.

There is evidence of exploitation of overseas students and of actors in the sector who seek to subvert Australia's migration and education systems to enable the entry of people into Australia for purposes other than study. This exploitation can range from providing poor quality education products, to high student fees, and false promises of pathways to permanent migration. The problem extends to grave instances of sex trafficking, bonded labour and slavery-like conditions for people entering the country on a student visa. Such activity is funding and supporting networks of criminal activity inside and outside of Australia.

Strong integrity underpins quality in the international education sector. Weakened integrity damages quality, is antithetical to the best interests of the student and, over the long term, damages Australia's international reputation for quality education and damages the capacity of the sector to produce graduates ready for skilled jobs both in Australia and overseas.

Currently there are significant gaps in the data collected by the department, especially in respect to education agents that education providers work with to recruit students. These gaps, which will be set out in more detail below, limit the ability of the Government to:

- understand the breadth and depth of potential issues of corruption and exploitation.
- gain a more nuanced sense of areas of risk and potential for risk.
- target effective compliance action.

Addressing integrity concerns is a key issue for the international education sector. This chapter will first set out the findings of recent independent reviews and a parliamentary inquiry relating to serious integrity issues in the sector.

Drawing on the key findings of these reviews and inquiry, this chapter will then lay out four specific policy problems:

- provider and agent collusion.
- lack of transparency of agent performance data.
- lack of data on agent commissions.
- limited ability to identify, deter and disrupt unscrupulous actors.



# 1.1 Integrity issues in the international education sector

The recent findings of the Migration Review, the Nixon Review and the evidence tabled as part of the Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry (the JSCFADT Inquiry) into Australia's tourism and international education sector's interim report collectively demonstrate that there are serious integrity issues in the international education sector that need to be addressed.

All found unscrupulous education agents and providers were abusing weaknesses in the international education regulatory framework to exploit overseas students and subverting the international education system and student visas to facilitate non-genuine students to enter the country for purposes other than study.

## *Rapid Review into the Exploitation of Australia's Visa System (Nixon Review)*

The Nixon Review, led by former Chief Commissioner of Victoria Police, Christine Nixon AO APM, identified systemic integrity issues within the international education sector, including collusive and unscrupulous business practices between education providers, their agents and non-genuine students.

It presented evidence that some education providers are forming business relationships and working with related education agents to facilitate student movements for maximum profit, rather than acting in the best interests of the student.<sup>11</sup> These business relationships also enable the trafficking and exploitation of students, and they profit from non-genuine students who are using student visas to gain access to Australia for work instead of study.

In forming its recommendations, the Nixon Review drew on findings from the investigations of Operation Inglenook, which was established in November 2022 following media reporting by *60 Minutes*, *The Age* and *The Sydney Morning Herald* as part of the joint *Trafficked* series.<sup>12</sup> Allegations of sex trafficking and foreign worker exploitation were reported, including against overseas students.

Operation Inglenook's remit is to investigate the systemic abuse of Australia's visa system for the purpose of exploitation. This includes identification of individuals, including Registered Migration Agents and other professional facilitators, who are complicit in the exploitation of Australia's visa system. The recommendation to extend Operation Inglenook for a further three years was agreed by the Government in its response to the review.

The Nixon Review reported that as of 31 March 2023, Operation Inglenook had assessed more than 175 persons of interest to determine complicity in exploiting the temporary visa program, resulting

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<sup>11</sup> *Rapid Review into the Exploitation of Australia's Visa System*, [www.homeaffairs.gov.au/reports-and-pubs/files/nixon-review/nixon-review-exploitation-australia-visa-system.pdf](http://www.homeaffairs.gov.au/reports-and-pubs/files/nixon-review/nixon-review-exploitation-australia-visa-system.pdf), p.16.

<sup>12</sup> The Australian Border Force is the lead agency responsible for the coordination of activities, agencies and resources involved in Operation Inglenook. Partners include the Australian Criminal Intelligence Commission, the Australian Transaction Reports and Analysis Centre, ASQA and the Australian Federal Police.

in more than 57 border alerts being raised. Some 93 foreign nationals were of interest to the operation. The Department of Home Affairs had also identified 87 higher risk visa applications.

Further reporting by the Australian Border Force as of July 2023, noted that investigations had resulted in 22 instances of visa cancellation, identification of unlawful non-citizens and refused immigration clearance.<sup>13</sup> This is in addition to targeted disruption activities against 77 businesses. These figures do not differentiate between actions taken in relation to the student visa program or other temporary visa categories, but it can be assumed that a proportion of the individuals affected would involve student visa holders, and ‘business and persons of interest’ would include education agents and international education providers.

While these figures reported by Operation Inglenook are small in comparison to the more than 500,000 student visa holders in Australia, the severity of the identified cases is not in doubt. This is exacerbated by overseas students’ added vulnerabilities due to language barriers, potential financial vulnerability (offshore and onshore), limited knowledge of Australian criminal law, and fear of deportation.

Calculating the magnitude and the number of overseas students who are vulnerable to or are victims of exploitation is difficult given the clandestine and criminal nature of trafficking and exploitation. The Australian Institute of Criminology (AIC) estimates there are approximately four undetected victims of human trafficking and modern slavery for every victim detected in Australia.<sup>14</sup> AIC identify low reporting due to mistrust in authorities and fear of deportation, affected individuals not identifying as victims, and victims not being correctly identified as such by the professionals who encounter them, as further compounding the assessment of magnitude of trafficking in Australia.

Australia’s slavery offences have universal jurisdiction, meaning they apply whether or not the conduct occurred in Australia and whether or not the victim or the offender is an Australian citizen or resident. The Government is obligated to act to disrupt and deter slavery and slavery-like practices in Australia’s international education sector and support Australia’s *National Action Plan to Combat Modern Slavery 2020-25*.

## ***Review of the Migration System (Migration Review)***

The Migration Review found clear evidence of systemic exploitation and the risk of an emerging ‘permanently temporary’ underclass, which included both overseas students and graduates. These individuals move from temporary visa to temporary visa, without any realistic hope of meeting requirements to gain permanent residency, sometimes bouncing from student visa to temporary graduate visa and back to student visa over an extended period.

The Migration Strategy noted that overseas students and graduates make up the largest share of ‘permanently temporary’ migrants, with 108,000 having lived in Australia for more than five years.<sup>15</sup> Their primary motivation is to work, and most of this work is low-skilled. This cohort are vulnerable to exploitation due to their temporary visa status. Like the Nixon Review, the Migration Review also found that some education agents and complicit education providers facilitate this process.

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<sup>13</sup> Australian Border Force, [www.abf.gov.au/newsroom-subsite/Pages/Women-stopped-from-entering-Australia-after-sex-work-admission.aspx](http://www.abf.gov.au/newsroom-subsite/Pages/Women-stopped-from-entering-Australia-after-sex-work-admission.aspx), 5 July 2023.

<sup>14</sup> Lyneham, Samantha, Dowling, C and Bricknell S, (2019) *Estimating the dark figure of human trafficking and slavery victimisation in Australia*, Statistical Bulletin 16, Australian Institute of Criminology, p.6.

<sup>15</sup> Commonwealth of Australia, Migration Strategy 2023, p.63.

The Migration Review noted that private providers in the VET sector offering lower fees are of particular concern as these providers are deliberately creating incentives and pathways for non-genuine students to apply for a student visa solely to gain access to the Australian labour market.<sup>16</sup>

Cumulatively, the review found that these factors are eroding public confidence in Australia's migration system.<sup>17</sup> Unchecked, such behaviours damage the international education sector's quality and integrity and its ability to retain its social license.

## Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry (JSCFADT Inquiry)

The JSCFADT Inquiry sought views from a large number of stakeholders on topics, including on education agents and integrity issues in the international education sector.

The Committee found that with respect to international education integrity, there were instances of active collusion between non-genuine students, agents and education providers, including instances of education agents directing genuine students to take up unsuitable courses that are profitable for the agent in commissions and the provider in recruitment numbers. Key international education sector stakeholders in their submissions and witness statements advocated for greater transparency, especially in relation to making agent performance available in PRISMS for all providers, which they argued would assist in identifying disreputable agents. The JSCFADT Inquiry recommended targeted action to remove disreputable providers and to send a strong message that Australia is serious about protecting the integrity of international education.

Evidence received by the Committee also indicated the current market is hyper competitive around student recruitment, which places providers at a disadvantage in managing agents. Witnesses highlighted that this environment fostered the payment of large commissions to agents. The Committee considered the case for mandating transparency in agent commissions overwhelming, where providers would be obliged to disclose to students the commission paid to their agent.

The Committee heard evidence that some education providers are supporting a system of non-attendance and 'funneling' non-genuine students into so-called 'ghost schools' where education agents work with providers to enrol students in courses they do not attend. There are instances where courses are offered to overseas students only<sup>18</sup>, which has been identified as a possible indicator of poor quality.<sup>19</sup>

The JSCFADT Inquiry found that there are persistent and deep-seated issues in the private VET sector. Student enrolment data shows that despite these concerns, growth in the VET sector far outstrips that of other sectors. The growth rate of VET from year-to-date December 2019 to December 2023 was 16.6 per cent.<sup>20</sup> This compares to a growth rate of 2.4 per cent for all enrolments.<sup>21</sup>

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<sup>16</sup> Commonwealth of Australia 2023, Review of the Migration System 2023, [www.homeaffairs.gov.au/reports-and-pubs/files/review-migration-system-final-report.pdf](http://www.homeaffairs.gov.au/reports-and-pubs/files/review-migration-system-final-report.pdf), pp.106-107.

<sup>17</sup> Commonwealth of Australia 2023, Review of the Migration System 2023.

<sup>18</sup> Based on data drawn from National Centre for Vocational Education Research, [www.ncver.edu.au](http://www.ncver.edu.au)

<sup>19</sup> This assumption does not hold for ELICOS courses, which often only teach overseas students.

<sup>20</sup> Department of Education (n.d.), [www.education.gov.au/international-education-data-and-research/resources/international-student-data-yeardate-ytd-december-2023](http://www.education.gov.au/international-education-data-and-research/resources/international-student-data-yeardate-ytd-december-2023).

<sup>21</sup> As at year-to-date December 2023, there were 975,229 enrolments by overseas students. Compared with 952,379 enrolments in the same period of 2019, enrolments have increased by 22,850.

## 1.2 Problems to be addressed in the international education sector

To address the systemic integrity and exploitation issues identified by the reviews and inquiry, this IA examines four specific integrity problems in the international education sector:

- provider and agent collusion.
- lack of transparency of agent performance data.
- lack of data on agent commissions.
- limited ability to identify, deter and disrupt unscrupulous actors.

### 1.2.1 Problem 1: Provider and agent collusion

*The Nixon Review identified that some education providers formed business relationships and worked with education agents to facilitate student movements for the purposes of profit only, rather than the genuine education needs of the student. Operation Inglenook found that non-genuine providers were colluding with education agents to facilitate student visas and funnel students into criminal activities.*

When an overseas student engages an agent, they do so with the reasonable expectation that the agent will act in the student's best interests in linking them to appropriate providers and courses that suit their education needs. However, undisclosed cross-ownership arrangements between providers and agents can give rise to collusive behaviours that funnel students into particular courses in the interests of profit, rather than in the best interests of the student. This can lead to students enrolling in courses inappropriate to their abilities and aspirations, as well as potentially finding themselves in situations where they are vulnerable to exploitation.

Overseas student revenue is highly valuable, and there is a market for people wishing to access the Australian job market through any means. This can result in businesses established as education providers solely for the purposes of gaining overseas student revenue and secondarily acting as a conduit for those seeking to subvert student visas to work full time instead of study.

Overseas students are on average young and most are new to Australia. They can be vulnerable to exploitation in a number of areas including housing, employment, consumer scams and their education providers. Overseas students overwhelmingly use education agents to find an education provider in Australia and integrity issues within the international education sector, whether with agents or providers, ultimately have the most significant impact on the student. Low quality providers will not give overseas students the necessary skills to find work in Australia or at home.

The ESOS Act currently does not legislate ESOS agency assessments of cross-ownership between education provider and education agent businesses. The Government currently does not collect data on cross-ownership between education providers and agents and the regulators do not ask for this information at the time of registration. There is therefore a significant data gap in relation to cross-ownership arrangements making it difficult to quantify these arrangements. Some providers may hide these business relationships through having related (but not the same) persons on different boards or as owners.

## Current regulatory settings/existing measures

Cross-ownership between a provider and their agents is currently not specified as a separate consideration when assessing whether a provider would meet the 'fit and proper' requirements and may not always be disclosed to the ESOS agencies.

In addition to requirements providers must meet for domestic registration, the ESOS Act applies additional 'fit and proper' requirements for providers registering to deliver to overseas students.

Section 7A of the ESOS Act sets out the requirements for the ESOS agency to determine if the provider or registered provider is 'fit and proper' to be registered as a provider of education to overseas students. This includes where circumstances change, or information comes to light which means the ESOS agency is no longer satisfied the registered provider meets these requirements. This includes 'related persons' convicted of an offence or having had their registration cancelled under the ESOS Act.

A related person of a provider or 'registered provider' is:

- (a) an associate of the provider who has been, is or will be, involved in the business of the provision of courses by the provider; or
- (b) a high-level managerial agent of the provider.

Requirements to meet the 'fit and proper' test for domestic provision differ between the higher education and VET sectors. In the higher education sector, the *Tertiary Education Quality and Standards Agency Act 2011* (the TEQSA Act) includes a 'fit and proper person' requirement for providers at the registration and renewal of their registration, and as an ongoing condition of registration as a higher education provider. The *Tertiary Education Quality and Standards Agency Fit and Proper Person Determination 2018* (the TEQSA Determination) specifies matters that TEQSA may have regard to when determining whether a person is 'fit and proper' under paragraph 21(1)(b), subsection 25A and paragraph 36(1)(b) of the TEQSA Act.

In the VET sector, amendments made in 2023 to the *Standards for Registered Training Organisations (RTOs) 2015* strengthened the 'fit and proper' provider requirements for all RTOs. These changes provide VET regulators with stronger powers to scrutinise the people managing, overseeing and controlling RTOs.

### 1.2.2 Problem 2: Transparency of agent performance data

*Providers have a responsibility to ensure education agents act ethically, honestly and in the best interests of students, but currently they have no access to information on agent performance before engaging new agents, increasing the risk of establishing relationships with underperforming or non-genuine agents.*

Limited information about education agents is an issue for providers. The University of Melbourne's submission to the JSCFADT Inquiry considered that institutions' ability to engage with reputable agents is stymied by a lack of transparent information on agent performance.<sup>22</sup> Currently providers can only access the performance data of agents that they have engaged.

The University of Wollongong, in their submission to the JSCFADT Inquiry, identified that the growth of education agents within Australia is driven in part by provider competition for overseas students

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<sup>22</sup> University of Melbourne, Submission 62, p.4.

within Australia as well as internationally.<sup>23</sup> As previously noted, over 80 per cent of overseas students use an education agent.

Education providers who are unable to assess and make informed choices on the education agents they engage may be vulnerable to education agents pressuring them for high commissions, using them as a 'transit' to a secondary provider and recruiting students who may be non-genuine or are ill suited to the courses they are recruited for.

## Current regulatory settings/existing measures

Under the current regulatory settings, performance data on education agents is only available to the education providers who are already partnered with a particular agent. Additionally, this data is available in relation to the agent's performance for that provider only. This is available through the department's 'agency dashboard', released in 2020, which is an interactive data resource that gives providers access to information on their education agents, including enrolment and visa outcomes. This information is derived from the PRISMS database. The publication of the de-identified agent data *Agent Summary Report* (released in June 2019) provides further information for providers.

Indicators of agent performance available to providers on their existing agents include metrics such as the proportion of students recruited by the agent who did not receive a visa and the rate of course incompleteness, including whether the student commenced in the course. High negative rates in these categories could indicate to a provider that an agent is involved in the recruitment of non-genuine students who have the intention of using a student visa for the purposes of work instead of study.

There is a data gap for education providers looking to engage with new agents or who wish to benchmark the performance of the agents they currently engage. In engaging a new agent, the provider is currently unable to assess the track record of the agent in advance. Engaging an unscrupulous agent could have significant reputational, revenue and Department of Home Affairs evidence level impacts for a provider through a loss of enrolments, as non-genuine students look to transfer to other courses once onshore, do not commence their courses or are never granted a visa in the first place.

While the Government does not directly regulate education agents, through the ESOS Framework it does regulate education providers' interactions with the education agents with whom they have formal agreements, including requiring providers to provide information on the agents they engage. Registered providers must ensure that their education agents act ethically, honestly, in the best interest of overseas students, and uphold the reputation of Australia's international education sector.<sup>24</sup>

Under Standard 4 of the *National Code of Practice for Providers of Education and Training to Overseas Students 2018* (National Code), education providers are required to have written agreements with the agents who represent them. The *Education Services for Overseas Students Regulations 2019* (ESOS Regulations) prescribe information that providers must report to the Government, including details about their agents. The ESOS Act enables the publishing of some agent data for viewing by their providers.

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<sup>23</sup> University of Wollongong, Submission 19, p.4.

<sup>24</sup> Standard Four *National Code of Practice for Providers of Education and Training to Overseas Students 2018*

Since 2012, PRISMS has enabled institutions to record the involvement of an education agent in enrolling an overseas student. Providers are also legislatively required to list any agents they work with on their websites.

### 1.2.3 Problem 3: Agent commissions

*Comprehensive and system wide data on the commissions paid to agents by providers does not exist. This makes it difficult to assess the scale of commissions and its impact on provider and agent behaviours.*

Commissions paid across the international education sector are largely opaque to providers giving them little opportunity to compare the commissions they pay with the market. Providers' evidence presented to the JSCFADT Inquiry related that the international education recruitment environment has been an 'agent's market' for several years, where providers are largely reliant on agents to source their students.

There is an information asymmetry for providers on agent commissions. Agents know the commission rates they can receive from each provider, allowing them to chase the higher commission, however providers only know their own commission. This can result in providers offering higher-than-average commissions or agents misrepresenting what they receive from other providers to drive up the commission payment. Providers have no way to verify the truth of these claims. Providers do not have resources to compare how their commission payments relate to those of other providers, as providers do not release this information publicly.

Some collusive business practices between providers and agents are driven by agents seeking commissions through facilitating onshore transfers of students between providers, especially from the higher education sector to the VET sector. Some stakeholders believe that commission payments incentivise agents to direct students to the highest-paying institutions. Media reports claim that there are significant variations in commissions between providers, with some paying commissions as high as 30 per cent of the student's annual tuition fee.<sup>25</sup> The Government is currently unable to verify these claims.

Often overseas students are not aware of these commission arrangements, which raises concerns about their ability to critically evaluate the information provided by agents to make informed decisions. A peak body, ISANA (International Education Association Inc.), reports that some education agents direct genuine students to take up courses that are unsuitable for the student, but profitable for the agent in commissions and for the provider in terms of recruitment numbers. ISANA has seen problems with students being given misinformation, resulting in students leaving their primary course and course hopping.<sup>26</sup>

The Government does not collect information on commission payments made by providers to individual education agents. The ESOS framework is silent on agent commissions. The data gap on commissions prevents a full and accurate analysis by the department and ESOS agencies. This limits the ability of the Government to determine behaviour driven by commissions, where these behaviours are most prevalent, and to take appropriate regulatory action.

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<sup>25</sup> Pii-Tuulia Nikula, Vincenzo Raimo and Eddie West, 'Do recruitment agents offer universities value for money?', *University World News*, 30 September 2023, [www.universityworldnews.com/post.php?story=20230926151616737](http://www.universityworldnews.com/post.php?story=20230926151616737)

<sup>26</sup> Ms Sharon Cook, National President, ISANA International Education Association, *Committee Hansard*, Canberra, 15 May 2023, p.11.



## Current regulatory settings/existing measures

Currently, the department can access information and aggregate it as needed on a provider, qualification type and sector level basis and identify practices of concern for further investigation by the ESOS agencies. Information about agent commissions paid by providers is not collected by the department. This means there is a lack of government insight into agent commissions and how they may be connected to provider behaviour.

The Government has taken recent action to address integrity issues in the international education sector by closing the concurrent study option in PRISMS which was designed to allow students to take a concurrent course that enhanced their primary course. In practice, providers, often facilitated by agents, had begun to use the concurrent function as a loophole to shift overseas students who had been in Australia for less than six months from the primary provider and course of study to new providers to facilitate work instead of study.

The concurrent enrolment function saw a sharp uptake in 2023 as a result of misuse by unscrupulous providers and education agents, who were seeking and gaining onshore commissions. In the first half of 2023, 17,000 concurrent enrolments were created, compared to approximately 10,500 for the same period in 2019 and 2022 combined.<sup>27</sup> The size of this cohort indicates this activity was lucrative for the agents facilitating it, though a lack of data on commissions makes this difficult to quantify.

While this measure has closed one available loophole facilitating unscrupulous behaviour, avenues remain for students, agents and providers to misuse the international education and visa systems for non-genuine reasons. Lack of transparency on agent commissions makes it difficult to track the financial incentives and relationships driving this behaviour.

### 1.2.4 Problem 4: Limited ability to identify, deter and disrupt unscrupulous actors

*Under the current ESOS legislative framework, ESOS agencies have limits on their ability to take action against unscrupulous education providers, safeguard the best interest of the student and respond to identified and emerging integrity issues.*

There are unscrupulous actors operating in the international education sector. Non-genuine students are using the student visa program to enter Australia for purposes other than study. The flow of these people into Australia is commonly facilitated by education agents and providers. Criminal networks also operate in the sector to traffic people assisted by education providers and agents working together in sophisticated chains of exploitation. It is challenging to identify, disrupt and deter these operations and ensure only genuine providers and genuine students participate in the sector.

As flagged, reviews which included evidence from multi-agency task force investigations found that parts of the international education sector were infiltrated by criminal elements that were exploiting the international education and migration systems to traffic people into bonded labour and sex trafficking, and to funnel non-genuine students into Australia.

The JSCFADT Inquiry detailed the existence of non-genuine providers who were not actually delivering any courses to overseas students. Non-genuine students are funnelled into 'ghost schools' for the purposes of full-time work or into potential trafficking situations. The provider falsifies attendance and course progression to ensure the student was not in breach of visa conditions.

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<sup>27</sup> PRISMS data, Department of Education



The recruitment of overseas students by providers of low quality and integrity threatens the reputation of Australia’s international education sector and increases the potential risk of exploitation of overseas students. Overseas students expend significant resources and undergo a dramatic life change to study for an Australian qualification. The stakes are often higher for an overseas student than a domestic student when choosing an education provider. Overseas students do not always have access to domestic information on the condition and quality of the education provider and are legislatively restrained from changing providers in the first six months of their primary study without a written release from their provider.

The entry of non-genuine or high-risk providers to the international education sector affects the quality of international education. ‘Discount’ providers compete against genuine providers who charge appropriately for quality education products. This creates unfair market competition and may put genuine providers out of business or encourage them to embrace non-genuine practices. The entry of non-genuine providers into the market negatively impacts the reputation of Australia’s international education offering and affects confidence in the quality of education delivered to overseas students.

A possible indicator of poor quality is a provider’s delivery of education and training to overseas students only. The department has broadly identified some characteristics of VET providers with high proportions of overseas student enrolments based on the National Centre for Vocational Education Research data collection of the Department of Employment and Workplace Relations. As of 2022, 258 registered VET providers had zero domestic students and 72 registered VET providers had less than 5 domestic students while having at least one overseas student enrolment. These 330 VET providers had around 139,000 overseas students in total, making the delivery of their education and training focussed on overseas students only. These 139,000 overseas students represented approximately 50.8 per cent of total overseas student enrolments in the VET sector in 2022. In 2022, there were 438 registered VET providers with larger overseas student enrolments than their domestic student enrolments.

As at 30 June 2023, ASQA was the ESOS Agency for 932 CRICOS registered providers. Of those, 852 were CRICOS registered RTOs, with the remaining 80 being non-RTO ELICOS only providers, which by its definition delivers to non-English speaking overseas students.

**Figure 1: CRICOS registered providers as a proportion of the total market**

Registration type			Totals	%	Description
NVR RTO	CRICOS	ELICOS			
X			2,910	76%	RTOs (approved for domestic delivery only i.e., not registered on CRICOS)
X	X		610	16%	RTOs which are registered on CRICOS to deliver training to overseas students (but are not registered for ELICOS delivery)
X	X	X	242	6%	RTOs which are registered on CRICOS to deliver training to overseas students and are registered for ELICOS delivery)
	X	X	80	2%	ELICOS only providers (providers registered on the CRICOS but are NOT NVR RTOs)
<b>3,762</b>	<b>932</b>	<b>322</b>	<b>3,842</b>		

Source: ASQA, 79.4 Supplementary to Submission 79, JSCFADT Inquiry into International Education.

Regardless of the standard of delivery, and with the exception of ELICOS and Foundation courses, delivering education and training solely to overseas students can impact the quality of the overseas student experience. Studies have considered the quality and quantity of contact, friendship patterns, social support networks and the functional roles of intercultural interactions. The results of the

research converge to indicate that overseas students expect and desire greater contact, and that interaction with domestic peers is generally associated with psychological, social, and academic benefits for the overseas student.

There was a total of 188 CRICOS applications received by ASQA in 2022-23, representing a 38.2 per cent increase compared to 136 CRICOS applications received in 2021-22.<sup>28</sup>

This marked rise in new applications has placed pressure on the ESOS agencies' capacity to effectively consider a provider's fitness and credentials to provide quality education services to overseas students.

The JSCFADT Inquiry identified that some education providers were targeting vulnerable overseas students by offering lower student fees and relaxed requirements for class attendance.<sup>29</sup> Within this group are providers established for the singular purpose of profiting from the flow of non-genuine students and exploiting vulnerable genuine students to facilitate access to the labour market or through promises of permanent migration outcomes, rather than providing quality education and training leading to a qualification.

Some providers use a 'false front' or ghost school to present as genuine education providers while their students are funnelled into full-time work. There are also individuals who shut provider doors to avoid regulatory investigation, or default on students, only to 'phoenix' and re-emerge by activating inactive CRICOS registered provider businesses. These practices impact the quality and reputation of the sector as a whole and decrease industry certainty of graduates' skills and competencies. These providers, often with the collusion of agents, offer low quality education outcomes and facilitate non-genuine student access to into Australia, and enable their long-term presence onshore.

This behaviour may be contributing to higher temporary migration and Net Overseas Migration (NOM) as unscrupulous providers and agents, in collusion with non-genuine students, set up a flow into the country of people on student visas who have no intent and potentially no capability to progress in study and who largely work in unskilled or low skills jobs.

Students may become 'permanently temporary', as found by the Migration Review, by jumping between providers and moving between student and other visas without a clear path to permanent residency and are faced with a diminishing opportunity to secure skilled work. The Nixon Review found that non-genuine overseas students entering on a student visa were prolonging their stay in Australia for up to a decade through exploiting protracted merit and judicial review timeframes.<sup>30</sup>

The Migration Strategy found that the numbers of overseas students staying in Australia on a second, or subsequent student visa has grown by over 30 per cent to more than 150,000 in 2022–23. The biggest growth in students moving from course to course, particularly to courses that are below their current level of study, to prolong their stay in Australia has been in the VET sector. In 2022–23 almost 69,000 students granted a subsequent student visa in Australia have stayed in, or moved into, studying in the VET sector, compared to 42,000 students pre-pandemic in 2018–19.<sup>31</sup> This can contribute to the continuation and expansion of criminal networks that extend inside and outside

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<sup>28</sup> Parliament of Australia (2023), Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry into Australia's tourism and international education sectors *Quality and Integrity – the Quest for Sustainable Growth: Interim Report into International Education*, pp.108–109.

<sup>29</sup> Parliament of Australia (2023), *Quality and Integrity – the Quest for Sustainable Growth: Interim Report into International Education*, p.107.

<sup>30</sup> *Rapid Review into the Exploitation of Australia's visa system*, Finding Six, p.24.

<sup>31</sup> Commonwealth of Australia, *Migration Strategy 2023*, p.67.

Australia that seek to subvert Australian migration, education and employment law and conditions, and contribute to other forms criminal activity involving vulnerable overseas students such as money laundering.<sup>32</sup>

Throughout the Migration Review consultation process, stakeholders shared concerns that overseas student recruitment is partly being driven by some education providers helping non-genuine students to gain access to Australia's labour market using a student visa. Some private providers in the VET sector with lower fees and shorter durations are of particular concern because these institutions create financial incentives for non-genuine study. Student visa refusal rates also support this assessment, with consistently higher refusal rates for those applying to study VET courses compared with those seeking higher education.<sup>33</sup>

The Migration Review found that there is clear evidence of systemic exploitation and the risk of an emerging 'permanently temporary' underclass without a pathway to permanent residence. Stakeholder concerns in the Review focused on the ethics of having a significant population of people living in Australia who have no pathway, or no clear pathway, to permanent residence, and from there to Australian citizenship. The Migration Review identified former students as amongst the largest cohort of this 'permanently temporary' underclass.

Strengthening the quality and integrity of the international education sector by ensuring overseas students are coming to Australia for genuine educational purposes would reduce the number of 'permanently temporary' population driving up NOM. Of that group there are graduates on temporary graduate visas (TGV) without real prospects of skilled permanent pathways and who may cycle back to a student visa after their TGV is finished, students cycling through cheaper courses to remain in Australia for work, who are attempting full time work while studying, or whose full-time work is facilitated through a ghost school operation. This group often work in low skilled and casual labour, facilitated through provider and agent connections to employers. As a group they are vulnerable to exploitation, and coercion into accepting sub-standard wages and conditions through threat of deportation.

Genuine students supported by quality providers and education are better equipped to enter the global skilled workforce, return to their countries to take up professional pathways, or choose to stay and find work in Australia with a pathway to permanent residency through skilled visas. While these integrity issues are limited to a set of unscrupulous education providers, agents and students, they pose a significant risk to Australia's international standing as an education destination of choice and a valuable export worth \$30 billion per annum.

These issues hinder Australia's ability to attract, train and retain the best and brightest skilled students and graduates capable of taking up skilled jobs identified by Jobs and Skills Australia to be in critical need in the mid to long term, and unable to be met by domestic labour supply.<sup>34</sup> Low quality educational outcomes have a flow-on negative impact on the certainty of matching graduate skills to industry demand. It will also have implications for Australia's research and development capacity.

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<sup>32</sup> AFP Media Release, 'Australian police warn university students about money muling', 19 February 2024, [www.afp.gov.au/news-centre/media-release/australian-police-warn-university-students-about-money-muling-dontbeamule](http://www.afp.gov.au/news-centre/media-release/australian-police-warn-university-students-about-money-muling-dontbeamule).

<sup>33</sup> Commonwealth of Australia, Migration Review 2023.

<sup>34</sup> Jobs and Skills Australia, 2023 Skills Priority List, Key Findings Report, September 2023, [www.jobsandskills.gov.au/data/skills-shortages-analysis#keyfindings](http://www.jobsandskills.gov.au/data/skills-shortages-analysis#keyfindings)

## Current regulatory settings/existing measures

There is currently no legislative requirement for a provider seeking CRICOS registration to have experience in delivering courses to domestic students.

To manage the volume of CRICOS applications and support a detailed assessment of quality and integrity issues in the application process, ESOS agencies can currently decide to pause assessment of applications. This decision is vulnerable to legal challenge under section 7 of the *Administrative Decisions (Judicial Review) Act 1977*. The current ESOS Framework does not provide a strong legal basis for ESOS agencies to pause assessment of CRICOS applications.

Currently education providers who are under regulatory investigation can continue to enrol new overseas students unless action is taken by the ESOS agency to apply a condition to prohibit enrolment of new overseas students. This decision is applied on a case-by-case basis and requires a written notice to be given to the provider with an opportunity for the provider to respond. The decision to impose a condition is also subject to review. Providers under serious investigation can continue to enrol overseas students while they go through this process. Overseas students may not be aware of these investigations, and their enrolment with providers with known integrity concerns increases the risk of students receiving a low-quality education product and potentially being exposed to exploitation.

## 2. What are the objectives, why is government intervention needed to achieve them, and how will success be measured?

### 2.1 Need for government action

The integrity of the international education system is a shared responsibility between the international education sector and the Government.

Commonwealth law establishes the conditions and requirements for education providers to deliver courses to overseas students and under which overseas students can come to Australia, who they can and cannot study with, what they can and cannot study, and restrictions around work and other activities. As previously outlined, international education providers have certain responsibilities under the ESOS Framework in relation to their obligations towards overseas students and the behaviour of the agents they engage.

The Government, through the department, legislates and administers the ESOS Framework, which regulates education services to students in Australia on a student visa. It protects students' financial investment, ensures high quality education services, and supports students to adapt to life in Australia, while maintaining the integrity of Australia's student visa system. All international education providers are required to comply with the ESOS Framework.

ASQA, TEQSA and the department's powers to regulate provider actions is limited to what is allowed under the ESOS Framework. Any change to the ESOS Act and related legislative instruments requires intervention from the Government.

The severity of the issues outlined in Question 1, including the serious criminal behaviour identified by the Nixon Review, means that the Government is best placed to take action to address these issues. Neither providers nor agents are well positioned to address these issues, as the behaviour of some providers and agents is directly contributing to the problem. Overseas students are particularly vulnerable and, as individuals, do not have the power to influence outcomes beyond the reporting of unscrupulous behaviour by agents and providers, which they may be reluctant to do for the reasons set out in Question 1. Some non-genuine students also act deliberately to circumvent the international education and visa systems for purposes other than study.

The Government has human rights obligations to address serious integrity issues. Trafficking of human beings is an internationally recognised human rights violation which can result in a chain of other human rights abuses such as forced labour, sexual servitude, and debt bondage. The Government has a long-standing commitment to combatting human trafficking and modern slavery in Australia and around the world and has developed the *National Action Plan to Combat Modern Slavery 2020-25*.

## 2.2 Objectives of government action

The Government's primary objective is to address the exploitation of the international education system thereby improving the quality and integrity of the international education sector and protecting overseas students from exploitation by unscrupulous actors. Government action could involve continuing to administer the ESOS Framework as per the current status quo, or through non regulatory or regulatory solutions. These three options will be outlined in Question 3.

Direct and specific objectives of Government action are to:

- increase the quality of providers entering and operating in Australia's international education sector.
- reduce the presence of criminal activity and networks operating in the sector.
- reduce the ability of providers and agents to engage in collusive practices to exploit overseas students.
- increase ability to identify and act on unscrupulous behaviour in the sector.
- increase data on provider and agent interactions that leads to unscrupulous behaviour.
- ensure overseas students have a positive experience of studying in Australia.

These lead to outcomes of:

- a positive and safe overseas student experience in Australia.
- improved market space for quality providers with strong integrity to recruit students.
- better education and better outcomes for overseas students after graduation.
- maintaining Australia's healthy and competitive international education reputation in the region and globally.

In addition, expanded and improved data capture would help inform future policy to continue to improve the quality and integrity of Australia's international education sector.

In the short term (one to two years post-implementation), action signals that the Government is serious about addressing integrity in the sector and deterring those who wish to exploit students from entering and disrupting those continuing to operate in the sector.

Over the medium to long term (three to five years post-implementation), strengthening integrity will improve the competitive advantage of Australia's international education industry. International education is the face Australia presents to the world. Supporting genuine providers and improving the quality of students' educational experience and their post-education outcomes will strengthen the Australian international education sector's reputation on the global stage.

The Government has a holistic focus on integrity across the international education sector. The Government's primary lever to ensure integrity in the sector is through its administration of the ESOS Act and associated legislation. The ESOS Framework regulates education providers who deliver courses to overseas students (defined as those holding a student visa).

Efforts to assure the integrity of the international education sector through the ESOS Framework will be complemented by other Government reform efforts currently underway to the migration system and VET sector. Where the ESOS Framework focusses on the conduct of international education providers, these levers will target the behaviour of overseas students and VET providers and will consider the regulation of education agents.

On 11 December 2023, the Australian Government released its *Migration Strategy – Getting migration working for the nation* (Migration Strategy). The Migration Strategy builds on the



Migration Review and represents an overhaul of the entire migration system and a major recalibration of visa classes, including student and graduate visas. The Government also committed to considering the regulation of education agents through the Office of the Migration Agents Registration Authority (OMARA) as part of its response to the Nixon Review. One of the key Government actions of the Migration Strategy is to seek to strengthen the integrity and quality of international education, which will complement and support actions undertaken to strengthen student visa integrity.

Reform targeted at VET providers is also being undertaken through legislative changes to the *National Vocational Education and Training Regulator Act 2011* (NVETR Act). The ESOS Act applies to those VET providers who are CRICOS registered to deliver to overseas students. The NVETR Act outlines the requirements for all VET providers (RTOs) to register in Australia. RTOs must meet the NVETR Act requirements regardless of whether they deliver to domestic students, overseas students or a mixture of both.

The ESOS Act outlines additional requirements for VET providers and all other providers across all sectors (Higher Education, ELICOS, Schools) who are registered to deliver CRICOS courses to overseas students.

The proposed changes to the NVETR Act will empower ASQA to apply greater scrutiny to RTOs seeking to enter the VET sector and to take action to deter and remove RTOs that conduct fraudulent activity or circumvent regulatory requirements. It will also expand the kinds of false and misleading conduct that ASQA can target through offence and civil penalty provisions and provides for increases to the penalties applicable to egregious conduct and breaches of the NVETR Act.

These changes will increase integrity in the VET sector only. They do not apply to other sectors offering courses to overseas students, including in the higher education, schools and ELICOS sectors. They also do not directly address policy problems impacting international education, such as collusive behaviour between providers and agents and a lack of transparency of agent performance and commissions.

## 2.2.1 Constraints and barriers

Legislative – introduction, debate, and passage of any legislation to amend the ESOS Act is subject to parliamentary timeframes. The timing of the parliamentary agenda and any delays could be a barrier to achieving objectives. The department will allocate dedicated staff resourcing to progress any required legislative amendments as decided by decision-makers and collaborate with relevant areas on the legislation drafting. This will support a high quality and timely drafting and legislation process.

Regulatory enforcement – under the current settings, ESOS agencies have limits on their ability to apply more targeted scrutiny to education providers' actions. Consideration of the risks of cross-ownership would require adjustments to resourcing and administration of ESOS agencies. The department will work closely with ESOS agencies to ensure a consistent regulatory and implementation approach across the international education sector.

Student behaviour – some overseas students knowingly and deliberately do not comply with their visa conditions. Their intention is to work in Australia rather than genuinely study and make use of the sophisticated knowledge of education agents to achieve this outcome. Some overseas students experiencing exploitation are reluctant to report their situation due to a fear of deportation. Other measures being implemented by the Department of Home Affairs on student visa scrutiny and compliance, such as the Genuine Student Test, will support addressing these issues.

Provider behaviour – some providers knowingly and deliberately subvert the requirements of the ESOS Framework, engaging in collusive or corrupt behaviour in relation to overseas students.

Efforts to increase integrity will need to consider how to effectively influence the behaviour of unscrupulous providers, remove them from the international education sector or prevent entry to the sector without placing an undue regulatory burden on high quality providers.

Education agent behaviour and location – some agents knowingly and deliberately subvert the requirements of the ESOS Framework and student visa system, engaging in collusive or corrupt behaviour in relation to overseas students.

Most education agents operate outside of Australia's borders, which presents a barrier to regulation.

OMARA's requirements for Registered Migration Agents (RMAs) state that an RMA must be an Australian citizen, an Australian permanent resident, or a New Zealand citizen with a special category visa. Education agents are not permitted to provide student visa advice if they are not an RMA. Regulation of education agents is currently under consideration by the Department of Home Affairs.

## 2.2.2 What success will look like

Success will be measured through qualitative analysis of several performance metrics. Qualitative analysis is the preferred approach noting a number of whole-of-government reform process are underway to strengthen integrity in the VET sector and migration program, as set out above. The success of these reforms is difficult to separate from those of the three options outlined in the IA given shared objectives. This, combined with the significant data gaps previously outlined and the continuing impact of the COVID-19 pandemic on available data, means that qualitative measures of success are most appropriate.

Broad quantitative analysis of various metrics will also be used to assist with measuring success where possible. However, a strict quantitative analysis may not be suitable given that there will be a number of other of significant reform measures and policy measures in train which may impact the data points outlined below, such as the number of complaints and the number of graduates in full-time employment.

Additionally, the sector is still in a post-COVID recovery period, using current data points as strict benchmarks against which to measure future success is not an appropriate strategy. As such, the qualitative analysis will incorporate quantitative analysis of data where available and appropriate, taking into consideration these limitations.

The results of Government actions will see a decrease in unscrupulous behaviour in the international education sector and the weeding out of low-quality providers and agents from the market. Success will be measurable through tracking the rate of breaches of the ESOS Act, student complaints to ESOS agencies and the Office of the Commonwealth Ombudsman and feedback from the sector on positive outcomes. In the short term, the rate of reporting complaints and regulatory breaches is expected to increase somewhat, as unscrupulous behaviour is identified and acted upon. However, these metrics should stabilise in the medium term and decrease in the long term.

Qualitative feedback from the sector will be gathered and analysed. The sector's views on the quality of students recruited and the performance of agents over time will be sought. Success will also be measured through quantitative analysis over the medium to long term, such as an increase in completion rates for overseas students and a decrease in the number of overseas students transferring to new courses onshore prior to completing their original courses. Both metrics will



indicate that that quality of recruitment has improved, and that agents and providers are better matching students to appropriate courses.

Feedback will also be sought from the department's network of offshore Education Counsellors and from Austrade Trade Commissioners abroad. These officers engage with education institutions and agents based offshore. They also monitor and analyse trends in student recruitment, including emerging integrity concerns, in their host countries and countries of accreditation.

Action to strengthen quality in the sector should see an increase in the number of graduates being able to take up skilled work in Australia and elsewhere. This will be tracked via the annual Quality Indicators for Learning and Teaching (QILT) Graduate Outcomes Survey (GOS), funded by the department. Responses to two specific questions will be tracked for improvements:

- graduate employment and study outcomes by level of study, international and domestic graduates.
  - This question tracks the percentage of overseas and domestic graduates (differentiated by undergraduate, post-graduate coursework and post-graduate research graduates) in full time employment, overall employment, labour force participation rate and median full-time salary.
- international undergraduate employment outcomes by residence at time of survey and study outcomes
  - This question tracks the percentage of international graduates in full time employment, overall employment, labour force participation rate and in further full-time study based on their location in Australia or overseas.

Improvement will be tracked via a qualitative and broad quantitative analysis of outcomes over time including:

- increased percentage of overseas graduates in full-time employment across all levels of study.
- narrowing gap between the employment outcomes and median full-time income for overseas and domestic graduates.
- similar rates of full-time employment for overseas students who remain in Australia after they graduate, compared to those offshore.

In assessing these results, the department would expect to see stable responses in the short term, noting the time lag between government action and effect. In the medium to long term, success would see a sustained improvement in these measures.

Noting that the COVID-19 pandemic has had a significant and ongoing impact on graduate employment outcomes for both overseas and domestic students since 2020, it is difficult to benchmark an appropriate quantitative target for improvement over the short, medium and long term. The GOS survey report from 2022 also acknowledges that because data is drawn from a survey to which only a subset of graduates respond, analysis can be affected both by the total number of survey responses and by how representative those responses received are of the total graduate population. It is unknown how representative the survey is in relation to whether a graduate is living in Australia or overseas at the time of the survey.<sup>35</sup>

The experience of overseas students in Australia will also be analysed qualitatively via the annual QILT Student Experience Survey (SES), which releases a report specific to the responses of overseas students. The department will track overseas students' responses to the section 'International

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<sup>35</sup> QILT 2022 International Graduate Outcomes Survey, p.1.

undergraduate student education experience’, with a particular focus on the metric ‘quality of educational experience.’

Analysis will be qualitative due to limitations in the data presented in the report, for example the report only presents results for undergraduate students. It is also difficult to benchmark results given changes in the survey methodology due to the COVID-19 pandemic. Prior to 2020, the scope of the SES was restricted to overseas students located onshore in Australia. However, due to the pandemic and border closures, the scope of the survey captured many overseas student visa holders who were unable to travel to Australia and studied online from offshore. The proportion of overseas student respondents located offshore at the time of the survey varied from 12.1 per cent of undergraduate respondents in 2020 to 33.9 per cent in 2021 and 8.9 per cent in 2022.<sup>36</sup>

In assessing these results, the department would expect to see stable responses in the short term. In the medium to long term, success would see a sustained improvement in these measures.

Related effects of Government action should also see a drop in visa refusal rates for student visas over the long term as more genuine students are recruited by ethical agents and providers, and fewer non-genuine students apply for student visas, aided and abetted by unscrupulous agents and providers. This will be tracked via visa application and refusal data from the Department of Home Affairs. Trends will be analysed qualitatively, noting that other factors may influence visa refusal rates and will need to be accounted for, including separate integrity reform measures coming out of the Migration Strategy.

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<sup>36</sup> QILT 2022 Student Experience Survey – the International Experience, p.1.

# 3. What policy options are you considering?

## 3.1 Option 1 – Status Quo

Under the status quo option, the department will continue to administer the ESOS Framework as it currently stands. International education providers will continue to be required to meet their existing obligations under the ESOS Framework towards overseas students and hold responsibility for the behaviour of the agents they engage.

### Problem 1: Provider and agent collusion

The existing ‘fit and proper’ test for providers under the ESOS Act, which does not specify cross-ownership, will remain unchanged. No action will be taken to explicitly require ESOS agencies to consider this business practice at provider registration.

### Problem 2: Transparency of agent performance data

Education providers continue to have written agreements with agents that work with them and are required to report details to the department via PRISMS. This information feeds into the agency dashboard that shows success rate of agents, including student retention and ‘success’ rates.

### Problem 3: Agent commissions

Currently, the Government and the broader international education sector has no visibility of the type or value of commissions and other remunerative practices between providers and agents. Under the status quo option, providers would continue to pay agent commissions without data comparing commission rates charged by agents across the market. Providers would have to rely on anecdotal reports to compare their commission payments.

### Problem 4: Limited ability to identify, deter and disrupt unscrupulous actors

The ESOS agencies would continue to operate within the current ESOS Framework arrangements.

Any decision by ESOS agencies to pause assessment of CRICOS applications will continue to be vulnerable to legal challenge under section 7 of the *Administrative Decisions (Judicial Review) Act 1977*. Providers registering to deliver courses to overseas students can deliver to overseas students without any domestic delivery experience and providers who have not delivered training to overseas students in the preceding 12 months will remain on the CRICOS register.

If an education provider is under investigation for serious integrity concerns, ESOS agencies can decide to apply a condition on the provider to prohibit its enrolment of new overseas students, assessed and applied on a case-by-case basis. ESOS agencies are required to issue a written notice and provide the provider with an opportunity to respond delaying the imposition of the condition

and allowing the provider of concern to continue to recruit overseas students. The decision to impose a decision is subject to review.

## 3.2 Option 2 – Non-regulatory option

The department has identified an option that takes a non-regulatory, risk management approach.

An educative approach would be taken to increase international education sector knowledge on integrity issues relating to education providers and agents. This would be in addition to the department and ESOS agencies' regular activities to remind the sector of their responsibilities.

This approach would be targeted specifically towards providers and focus on educating the international education sector on identifying risks when engaging new education agents. This approach may improve providers' ability to fully comply with their responsibilities and would be separate to communications on general regulation matters.

### Problem 1: Provider and agent collusion

In collaboration with ASQA and TEQSA, the department would inform the international education sector that there would be an increased focus on cross-ownership as a risk factor when assessing whether a provider is 'fit and proper'.

Under current regulation ESOS agencies can independently consider on a case-by-case basis 'any other relevant matter' in determining if the provider is 'fit and proper' to be registered or re-registered, which could include cross-ownership between provider and education agent businesses.

The Government, working with relevant peak bodies, such as the International Student Education Agents Association (ISEAA), would undertake a targeted education outreach to highlight to providers their obligation under Standard 4.3.1 of the National Code to require their education agent to 'declare in writing and take reasonable steps to avoid conflicts of interests with its duties as an education agent of the registered provider'.

### Problem 2: Transparency of agent performance data

The Government would undertake an educational campaign on provider engagement of new education agents.

The Government would undertake a series of activities to help providers make decisions on establishing new agents including best practice on assessing new agents. These activities would require Government funding and include:

- work with ISEAA to develop optional best practice agent contract templates, guidelines, or checklists, for engaging with new agents.
- work with ISEAA to increase opt-in from agents and providers.
- develop a best practice guide to monitoring agents.
- hold a series of onshore and offshore sessions on the ESOS Act and obligations for providers and interested education agents.

This would be supported by factsheets and notices on education agent management on the department's website, PRISMS, and departmental social media to educate providers about existing responsibilities with respect to monitoring education agents.

### **Problem 3: Agent commissions**

The Government would undertake an international education sector survey on commissions, designed to gather information on commissions and improve the Government's understanding of the practice of paying commissions (e.g. commission rates and other remunerative practices).

A de-identified report, showing average or scaled commissions, as reported to the Government, would be made available to education providers.

The Government would encourage the sector to establish their own mechanisms to exchange information on agents including average commission rates.

### **Problem 4: Limited ability to identify, deter and disrupt unscrupulous actors**

The Government would support the ESOS agencies and peak bodies to take a more proactive and whole of international education sector educative approach targeted at increasing education providers' awareness of their responsibilities and promoting integrity.

The Government would develop communications materials that outline the identified integrity issues in the international education sector and education providers' responsibilities and obligations under the ESOS Framework and call for education providers to comply with relevant requirements.

The communications materials would be disseminated to education providers through ESOS agencies and peak bodies.

The Government would also provide support to the ESOS agencies and peak bodies to deliver targeted information sessions to education providers, including encouraging better reporting to the regulators on known or suspected maleficence.

## **3.3 Option 3 – Regulatory changes**

Option 3 would make changes to the ESOS Framework to address agent integrity issues and support provider quality. The severity of the identified behaviours outlined in Question 1, including the involvement of overseas students in the identified cases of trafficking and exploitation, would be met with a robust response. Action under this option would target providers who are deliberately engaging in behaviour to find loopholes and exploit current regulatory and legislative measures.

The package of amendments has been informed by findings and recommendations of the Nixon and Migration reviews and evidence presented to the JSCFADT Inquiry. Changes to the ESOS Act would see an increased focus on the provider at the registration stage, supported by enhanced monitoring and investigation. Legislative changes would support the uplift of ASQA to conduct monitoring and compliance operations. On 3 October 2023, increased resourcing was announced for ASQA in addition to an uplift for its systems and analytic capability to support an increased focus on integrity.

## Problem 1: Provider and agent collusion

In its response to Recommendation 13 of the Nixon Review, the Government agreed to consider action to ban commissions paid by providers to education agents for onshore student transfers and further measures to deter collusive behaviour between providers and agents to exploit Australia's education and migration systems.

Genuine providers are vulnerable to undue control and influence by non-genuine education agents assuming cross-ownership for the purpose of commission profits, to pressure providers to make courses cheaper and who are seeking to establish cross-ownership for the purpose of establishing pipelines of non-genuine student entry into Australia.

The option to amend the 'fit and proper provider' test under the ESOS Act would legally require ESOS agencies to consider cross-ownership of businesses between education providers as a part of assessing all providers and their agents, making a consistent approach to cross-ownership rather than the potentially 'piecemeal' approach afforded under current legislation defining 'any other relevant matter'.

This change would give ESOS agencies a clear direction and greater scope to assess the material impact of cross-ownership relationships on provider operations. Cross-ownership would require consideration of controlling interests in either business.

## Problem 2: Transparency of agent performance data

Based on evidence presented, Recommendation 26 of the JSCFADT Inquiry recommended the 'expansion of the current Education Agents Dashboard on PRISMS to allow provider access to all education agents' information.'

Through amendments to the ESOS Act and ESOS Regulations, the Government could increase the amount of information it can share with providers. This would increase international education sector visibility of education agent performance outcomes by extending access for providers to education agent success rates and outcomes through the agency dashboard for all agents, not just those where there is an existing relationship.

This would allow education providers to consider new agents on their proven success rates in student enrolment, visa outcomes and course completion. This information would support providers to engage with new agents who have a track record of recruiting genuine students and enable benchmarking of their existing agents.

## Problem 3: Agent commissions

In its response to Recommendation 13 of the Nixon Review, the Government agreed to consider action to ban commissions paid by providers to education agents for onshore student transfers and further measures to deter collusive behaviour between providers and agents to exploit Australia's education and migration systems.

Changes to the ESOS Act and the ESOS Regulations would require education providers to report information for a specified time period through PRISMS on commission they have paid to an education agent for the recruitment of a student, whether individually or as a group recruitment incentive. This information would be an expansion of information on agents that providers are already required to report in PRISMS.

Providers would be able to view commissions paid to education agents in the agency dashboard. The intention is to impart providers with comparable commissions information paid to an agent across all providers. Providers would also be able to search for agents they do not have an existing relationship with and view information about commissions paid to these agents.

## **Problem 4: Limited ability to identify, deter and disrupt unscrupulous actors**

Part of Recommendation 18 of the Nixon Review recommended removing CRICOS eligibility for high-risk providers and courses and amending the ESOS Act and the National Code.

The JSCFADT Inquiry considered evidence from witnesses and submissions and concluded that determined and targeted action is required to remove disreputable providers and to send a strong message that Australia is serious about protecting the integrity of international education.

Based on evidence presented, Recommendation 14 of the JSCFADT Inquiry recommended actions to address 'persistent and deep-seated integrity issues' in the private VET sector could include:

- a pause for at least 12 months by ASQA in processing new provider applications for CRICOS registered VET providers, with limited exceptions for legitimate applications such as industry linked entities, high economic value proposals or those endorsed by state and territory governments.
- requiring new providers seeking CRICOS registration to have operated and delivered to domestic students for at least 12 months.
- suspension of recruitment of overseas students to CRICOS VET courses identified with persistent quality and integrity issues and/or of limited value to Australia's critical skills needs, such as management and leadership courses.
- automatic suspension of new overseas student intake for providers under serious regulatory investigation.
- cancellation of a provider's CRICOS registration if no training is delivered for 12 months or more.

Four legislative reform measures to the ESOS Act are proposed to address this policy problem, outlined below.

### **1. A pause on applications for registration of new providers and of new courses from existing providers for a period of up to 12 months**

This measure would give increased legislative authority to manage applications and allow for in-depth assessment of high-risk applicants.

Through amendments to the ESOS Act, the Minister may determine, by way of legislative instrument, that no initial applications for the registration of providers and of new courses from registered providers are to be made for 12 months. The Minister may also determine, by way of legislative instrument, that an ESOS agency is not required to, or must not, accept or process initial applications for registration of providers and of new courses, for a period of up to 12 months. This means that providers can continue to make applications for registration, but ESOS agencies cannot make decisions on these applications. At the time the Minister makes the legislative instrument, the Minister may consider exemptions such as the registration of new courses identified as essential for addressing new fields or emerging areas of critical skills needs. The instruments could apply to all applications or one or more classes of applications.

## **2. Require providers applying to deliver courses to overseas students to first deliver courses to domestic students for a period of 24 months**

Through amendments to the ESOS Act, providers would be required to demonstrate delivery of courses to domestic students for a period of 24 months, as determined by the relevant ESOS agency, before expanding to overseas students.

Standalone ELICOS providers and Foundation Program providers would be excluded from this requirement as they do not deliver to domestic students.

Table A providers under the *Higher Education Support Act 2003* are all providers who have an established record in delivering courses to domestic students. Because of this, Table A Higher Education providers would also be excluded from this requirement. The exemption of Table A providers intends to ensure those higher education providers who have a demonstrable history of sustained delivery to domestic students, but may merged or restructured their business operations resulting in the establishment of a new entity, are able to continue delivery to overseas students. The exemption was developed following consultation with TEQSA, ASQA, and DEWR.

The introduction of this requirement would assist providers to demonstrate genuine education provider credentials and allow an assessment of previous performance. This requirement does not currently exist under the ESOS legislative framework.

## **3. Automatically cancel the registration of providers who have not delivered training to overseas students for a consecutive 12-month period**

Amendments to the ESOS Act would result in the automatic cancellation of a provider's registration where the provider has not delivered courses to overseas students for a consecutive 12-month period. This would ensure that providers not currently delivering to overseas students need to go through a registration process again to determine that they are 'fit and proper' and meet other requirements to recommence delivery to overseas students. The current ESOS legislative framework does not provide a basis to support this action.

Schools would be exempt from this change, as intakes of overseas students at schools are small and a school may not enrol an overseas student each year.

It is also proposed that a provider could apply to their ESOS agency for an extension of their non-delivery period. This would allow ESOS agencies to consider on a case-by-case basis a continuation of registration where providers are genuinely committed but due to legitimate circumstances, unable to deliver courses (noting that the total period of extensions must not exceed 12 consecutive months).

An example of a legitimate circumstance could include where a newly registered CRICOS provider may not be in a position to deliver to overseas students in the first 12 months of its registration or in the event of natural disaster impacting a campus location.

## **4. Strengthen provisions to suspend the enrolment of new overseas students, including automatically where appropriate, by providers under serious regulatory investigation**

Where a provider is already registered and delivering courses, ESOS agencies will be enabled to take decisive action to prevent the provider from recruiting and enrolling new overseas students if serious misconduct is suspected.



Amendments to the ESOS Act would allow the automatic application of a condition to prevent a provider from enrolling new overseas students when the provider is under serious regulatory investigation and has been issued a written notice. This would also allow the ESOS agencies flexibility to determine that where the suspension may alert the provider and is likely to undermine an ongoing regulatory or investigation action, the notice can be withheld to a more appropriate time.

# 4. What is the likely net benefit of each option?

## 4.1 Option 1 – Status Quo

Option 1 maintains the status quo. Under this option, the Government would not take any non-regulatory or regulatory actions to address the four policy problems outlined in Question 1. The trends and integrity issues identified in the international education sector, including serious instances of trafficking and exploitation, would be expected to continue or potentially grow over time.

The status quo provides the baseline from which the costs and benefits of options are analysed in this chapter. This option would not incur any regulatory burden in addition to the existing regulatory requirements for education providers.

## 4.2 Option 2 – Non-regulatory option

Option 2 takes a non-regulatory, educative approach to increase international education sector knowledge on integrity issues and to enhance providers' awareness of their responsibilities, aiming to improve ethical behaviours of education providers and their ability to identify risks when engaging new education agents.

The level of benefits that this option would deliver is dependent on buy-in from providers. For providers who are willing to do the right thing but lack knowledge or understanding of compliance obligations, or capabilities or skills to engage and manage their agents, this option would assist those providers in developing or improving their capabilities and business processes. As the nature of unscrupulous and exploitative behaviours is driven by strong financial incentives, this option is highly unlikely to be effective in changing the behaviours of unscrupulous providers and agents. Due to the uncertainty of the level of buy-in from providers, it is not possible to quantify the potential size of benefits to providers and the broader sector.

This option would increase some costs to the providers who are willing to make changes to improve their compliance activities and business processes. It would not increase any costs to unscrupulous providers who are unlikely to change their actions. Similarly, due to the uncertainty of the level of buy-in from providers, it is not possible to quantify the potential size of costs to providers.

This option would incur some costs to the Government for undertaking a series of communication and educative activities.

## 4.3 Option 3 – Regulatory changes

Under Option 3, a package of seven legislative reform measures is proposed to address the four policy problems outlined in Question 1.

A cost-benefit analysis (CBA) has been undertaken by Deloitte Access Economics to assess the potential impacts of Option 3.

### 4.3.1 Methodology

A costs and benefits framework was established for the proposed legislative reforms under Option 3 to provide an organising structure for analysis by identifying the full range of costs and benefits by stakeholder groups. The framework consists of three substantive components:

- A theory of change and intervention logics that describe how each legislative change is expected to influence stakeholders and the international education sector, and ultimately lead to benefits (see details at [Appendix A](#)).
- A benefits framework that describes the 11 identified benefit streams from the legislative changes and the alignment of each of these benefits to a stakeholder group (see details at [Appendix B](#)).
- A costs framework that identifies the corresponding incremental costs for each legislative change and the attributable stakeholder group (see details at [Appendix C](#)). It is noted that the regulatory burden estimate is defined by all incremental costs, excluding costs attributable to government.<sup>37</sup>

Key modelling assumptions used in the cost-benefit analysis are outlined in [Appendix D](#).

Individual legislative reform measures are referred to in the CBA as follows:

- **Reform 1:** amend the 'fit and proper' provider test under the ESOS Act to require ESOS agencies to consider cross-ownership of businesses between education providers and their agents to disrupt and deter collusive behaviour aimed to exploit students for profit.
- **Reform 2:** expand access for providers to all education agent performance data, not just to those agents they have an existing relationship with.
- **Reform 3:** require education providers to report through the Provider Registration and International Student Management System (PRISMS) information on agent commission fees they have paid to an education agent.
- **Reform 4:** pause the assessment of applications of registrations from new international education providers and of new courses from existing providers for a period of up to 12 months.
- **Reform 5:** require providers applying to deliver courses to overseas students to first deliver courses to domestic students for a period of 24 months.
- **Reform 6:** automatically cancel the registration of providers who have not delivered training to overseas students for a consecutive 12-month period.
- **Reform 7:** strengthen provisions to suspend the enrolment of new overseas students, including automatically where appropriate, by providers under serious regulatory investigation.

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<sup>37</sup> Regulatory burden costs include all incremental costs imposed on business and individuals from an introduction of or change in policies and include all compliance costs and delayed costs, defined in the *Regulatory Burden Measurement Framework*, Office of Impact Analysis.

## 4.3.2 Key aggregate results

A comprehensive analysis has been conducted to assess the costs and benefits of the package of legislative reforms. Due to the nature of legislation changes and data gaps, more assumption-driven approaches have been required, relying on conservative and transparent settings to these assumptions (see key assumptions in [Appendix D](#)).

As many benefits have been challenging to quantify and attribute, this analysis has taken a break-even analysis approach to compare estimated costs and benefits, including comparisons of the break-even point with the projected overall value and returns of the sector in the status quo scenario, and case studies and qualitative discussions of the potential scale of the unquantified benefits. A summary of the key results is presented below as well as at Table 2, noting all values are calculated as present values (in 2024 dollars) using a 7 per cent discount rate.

- Across all seven legislative reforms, the **total cost is estimated to be \$93.3 million over 10 years** from 2025 to 2034.
  - The **regulatory burden cost is estimated to be \$89.9 million** (i.e. all costs presented at Table 2, excluding costs to government).
  - The largest costs are incurred by providers (as the directly regulated stakeholder) and estimated at \$83.1 million or 89.0 per cent of total estimated costs.
- The **total quantified benefits are estimated to be \$86.1 million across three benefit streams**.
  - As the stakeholder group most exposed to quality and integrity issues, overseas students are recipients of the greatest benefits at \$48.6 million or 56.4 per cent of total quantified benefits.
  - Of the 11 benefit streams established as part of the analysis, eight benefits are not able to be quantified. Some of these unquantified benefits could be substantial and magnitudes larger than the total estimated costs.
    - For example, as outlined later in section 4.3.4 (Table 7), a potential benefit to student growth is not able to be quantified given the complex factors and dynamics underpinning overseas student demand. As an indication of the potential scale of this benefit, one per cent of growth in overseas student numbers in one year generates a benefit of \$47.9 million for providers. Across a 10-year period, the benefit of this size would exceed \$400 million.
- **To achieve a break-even point** – where benefits are at least equivalent to costs – the **additional value of the eight unquantified would need to be at least \$7.2 million**. To put the break-even point in perspective of the projected overall value and returns of the sector in the status quo scenario, as shown in Table 3:
  - This is equivalent to 0.002 per cent of the \$310.4 billion projected 10-year value of Australia’s education exports (based on \$30.3 billion in 2022)<sup>38</sup>, or 0.018 per cent of an estimated \$41.2 billion in projected 10-year returns from overseas student fees (based on \$4.1 billion in 2022).<sup>39</sup>

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<sup>38</sup> \$30.3 billion value in 2022 reported by Department of Foreign Affairs and Trade, (2023), *Australia’s top 25 exports, goods & services*. Converted to 2024 dollars and projected for 10 years (2025-2034), assuming 5% annual growth, before discounting to present values.

<sup>39</sup> Status quo scenario estimate based on 746,387 in total overseas student enrolments in 2022 (Department of Education data), with growth projections from 2025 to 2034 assuming a 5% growth rate, applied to the annual fees paid by overseas students across all sectors, adjusted for discounting/scholarships, completion rates and average returns to business (based on February 2024 publicly reported CRICOS course fees). Note, where incremental benefits were derived above the growth rate of 5%, the growth rate in and of itself had relatively limited effects on the overall cost and benefit results of Option 3.

- It is also considerably smaller than two case study values of a change in student enrolments or completions.
- Sensitivity testing undertaken demonstrates the likelihood that the benefits of the legislative changes are likely to exceed the costs. This is particularly likely in relation to Reform 4, in the event the Minister for Education applies discretion to an instrument so that a pause on registrations is in place for less than 12 months and includes exemptions for certain new courses (see details in section 4.3.5, Table 10).

**Table 2: Total estimated costs and benefits, by stakeholder, \$ million present values over 10 years**

<b>Total costs</b>	<b>93.3</b>
To providers	83.1
To agents	0.9
To overseas students	5.9
To government	3.4
<b>Total (quantifiable) benefits</b>	<b>86.1</b>
To providers	29.0
To agents	0.0
To overseas students	48.6
To government	8.5
<b>Breakeven point:</b> Required value of (unquantifiable) benefits in order for benefits to meet costs	<b>7.2</b>

Source: Deloitte Access Economics. Note: Breakeven point calculated as the difference between quantified costs and benefits.

**Table 3: Contextualisation of the value of unquantified benefits required to reach a 'break-even point'**

<b>Breakeven point</b>	<b>\$7.2 million</b>
<b>Presented relative to measures of the size of the sector</b>	
As a % of education exports over 10 years (\$310.4 billion projected value in present values from 2025 to 2034)	0.002% of \$310.4 billion
As a % of returns on overseas student tuition over 10 years (\$41.2 billion projected value in present values from 2025 to 2034)	0.018% of \$41.2 billion
<b>Compared to case studies of two unquantified benefits</b>	
Single year change in student revenue from 1% growth in enrolments (benefit P1)	\$47.9 million
Single year change in student revenue from 1% growth in student completions (benefit P2)	\$26.2 million

Source: Deloitte Access Economics.

### 4.3.3 Detailed cost results

As shown in Table 4, the most substantial costs are attributable to collecting and sharing agent commission data (reform 3) and the temporary pause on CRICOS applications (reform 4), at \$39.9 million and \$30.2 million respectively. The cost of a potential pause was conservatively

estimated to capture the greatest possible length of the pause (12 months) and the number of providers and courses covered by an instrument. Costs for the remaining five legislative changes are smaller and range from \$1.3 million to \$10.3 million, totalling \$23.3 million.

For each legislative change, providers typically incur the majority of costs. The exception is for 'Consideration of agent cross-ownership' (reform 1), where students are expected to incur additional administrative costs in the admissions and enrolments process.

There are potentially significant transfers within the provider and agent groups respectively.

**Transfers among providers amount to an estimated \$348.7 million**, representing students who enrol at a different provider as a result of reforms preventing them from enrolling with their original preferred provider. **Transfers among agents amount to an estimated \$48 million**, representing students who are similarly supported by a different agent. These costs are not included in the total cost, as they represent a transfer from one stakeholder to another, within the same stakeholder group. No transfers are modelled for the student group.

Across the legislative changes, costs are generally larger in the first year, representing one-off cost items and/or a larger group of impacted stakeholders following initial implementation. Costs in out years are typically lower, but increasing over time as the number of students, providers and agents are expected to grow in the base case (Table 5).

The scenario defined for a 'Temporary pause on CRICOS applications' (reform 4), whereby the pause takes place entirely in the first year, means that costs in year one are substantially higher than any other year. To this end, a lower discount rate would result in a smaller breakeven value, and a higher discount rate would result in a larger breakeven value. However, **changes to the discount rate are not expected to materially change the overarching insights from this work** or the material magnitudes of the breakeven benefits required to meet costs.

**Table 4: Total estimated costs, by reform and stakeholder, \$ million present values over 10 years**

<b>Reform</b>	<b>Total costs</b>	<b>To providers</b>	<b>To agents</b>	<b>To students</b>	<b>Regulatory burden</b>	<b>To government</b>
<b>1: Consideration of agent cross-ownership</b>	10.3	3.2	0.9	5.9	10.0	0.3
<b>2: Sharing agent performance data</b>	1.3	0.0	0.0	0.0	0.0	1.3
<b>3: Collecting and sharing agent commission data</b>	39.9	38.5	0.0	0.0	38.5	1.3
<b>4: Temporary pause on CRICOS applications</b>	30.2	30.2	0.0	0.0	30.2	0.0
<b>5: Domestic provision criteria</b>	3.4	3.3	0.0	0.0	3.3	0.1
<b>6: Automatic cancellation of inactive providers</b>	2.7	2.4	0.0	0.0	2.4	0.2
<b>7: Preventing new enrolments for providers under serious investigation</b>	5.6	5.5	0.0	0.0	5.5	0.1
<b>Total</b>	<b>93.3</b>	<b>83.1</b>	<b>0.9</b>	<b>5.9</b>	<b>89.9</b>	<b>3.4</b>

Source: Deloitte Access Economics

Table 5: Total costs over time, by reform, \$ million real 2024 values, undiscounted

Reform	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
<b>1: Consideration of agent cross-ownership</b>	2.6	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3
<b>2: Sharing agent performance data</b>	0.3	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2
<b>3: Collecting and sharing agent commission data</b>	18.5	3.1	3.3	3.4	3.6	3.8	3.9	4.1	4.3	4.5
<b>4: Temporary pause on CRICOS applications</b>	32.3	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>5: Domestic provision criteria</b>	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
<b>6: Automatic cancellation of inactive providers</b>	0.7	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3
<b>7: Preventing new enrolments for providers under serious investigation</b>	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8
<b>Total</b>	<b>55.7</b>	<b>6.2</b>	<b>6.3</b>	<b>6.5</b>	<b>6.7</b>	<b>6.8</b>	<b>7.0</b>	<b>7.2</b>	<b>7.4</b>	<b>7.6</b>

Source: Deloitte Access Economics. Note that ‘Temporary pause of CRICOS applications’ (reform 4) was modelled as though a single 12-month instrument is introduced in 2025, hence no costs occur beyond this point. This modelling is intended to show the quantum of costs and it is not reflective of when an instrument may actually be introduced. It is noted that undiscounted values are presented to support readers understand how costs are expected to vary (or not vary) over time.



### 4.3.4 Detailed benefits results

As discussed previously, many of the economic benefits are challenging to measure, particularly when associated with sector wide growth that is attributable (albeit indirectly) to all legislative reforms. Of the 11 benefit streams identified, three of the benefits are quantified as part of the CBA, three of the benefits are quantified through a ‘case study’ approach that is not included in the core CBA results, and five of the benefits are discussed qualitatively only.

The **total quantified benefits are estimated at \$86.1 million across the three benefit streams** in present value terms from 2025 to 2034 (see Table 6). The largest of these benefit streams accrue to students, who generate \$48.6 million savings in searching for agents and navigating the admissions and enrolment processes.

**Table 6: Total quantified benefits, by benefit and stakeholder, \$ million present values over 10 years**

<b>Total benefit</b>	<b>86.1</b>
<b>To providers</b>	
(P3) Cost savings and ‘peace of mind’ in the student admissions process and engaging with agents	29.0
<b>To students</b>	
(S1) Reduced administrative costs and personal burden in the education admissions process, from avoiding unscrupulous agents and greater quality and assurances in the market for agents	48.6
<b>To government</b>	
(G3) Reduced regulator workload and burden in monitoring and policing lower quality providers and non-genuine students	8.5

Source: Deloitte Access Economics

When analysing the potential size of three benefits using a case study approach, there are significantly larger potential benefits associated with the legislative reform (see Table 7). The largest of the potential benefits accrues to providers, due to the significant revenue associated with each additional student attending a provider, while the smaller two accrue to the government and agents. Notably, 1 per cent growth in student demand is estimated to generate **\$47.9 million in benefits for providers in 2025 alone**. However, these benefits are not captured in the core CBA results due to the significant degree of uncertainty associated with the impact of the reforms.

It is expected that benefits P1 (growth in overall student volume) and P2 (growth in student retention) **could exceed the breakeven point of the CBA** and therefore generate a net benefit associated with the reports. Benefit A1 (growth in demand for agents) is smaller in nature and would have a minor contribution to the necessary breakeven value.

The remaining five benefits are analysed qualitatively in Table 8. The qualitative discussion captures the value accrued to each stakeholder as a result of the legislative reform where it cannot be quantified. Where available, the qualitative benefits are supported with quantitative or qualitative evidence from literature.

The relative contribution of each reform to each benefit has been qualitatively assessed (Table 9), based on the intervention logic and theory of change (see [Appendix A](#)). As shown in Table 9,

reforms 2 and 6 have higher attributions across the 11 benefits streams, noting that the benefits streams are not equivalent in magnitude.

**Table 7: Case studies that illustrate potential benefits**

<b>Benefit stream</b>	
<b>To providers</b>	
<p>(P1) Growth in enrolments and profit, supported by a strengthened branding and reputation of providers and Australia’s international education sector as a destination</p>	<p>Attributing the legislative changes to an estimated change in growth is challenging, given the myriad of factors and complex dynamics underpinning overseas student demand.</p> <p>Accordingly, this analysis has not sought to quantify an expected benefit to student growth. As an indication of the scale of this benefit, 1% growth in international enrolments in Australia is equivalent to a benefit of \$47.9 million in 2025 alone (underpinned by an average of \$21,055 in average student revenue to providers, equating to \$5,547 in profit per student), in addition to other direct and indirect economic contributions.</p> <p>In order to account for the CBA breakeven value, a single year’s growth of 0.018% would be sufficient.</p>
<p>(P2) More resilient enrolments and profit, supported by higher quality students with greater retention and completions</p>	<p>By supporting more resilient enrolments through higher quality agents and hence students, the reforms have the potential to improve the overall retention rate among overseas students in Australia. Despite this potential impact, it is challenging to attribute a specific growth rate to student retention associated with the legislative changes.</p> <p>Accordingly, this analysis has not sought to quantify an expected benefit associated with student retention. As an indication of the scale of this benefit, 1% growth in the average student retention rate in Australia (from 83% to 84%) is equivalent to a benefit of \$26.2 million in 2025 alone (underpinned by average student payments to providers rising from \$21,055 to \$21,171, each at a profit margin of 26%).</p> <p>In order to account for the CBA breakeven value, student retention rates would only need to increase by 0.032%.</p>
<b>To agents</b>	
<p>(A1) Profit growth from increased demand for and use of agent services by both providers and students, underpinned by a stronger reputation of agent services and Australia’s international education sector as a destination</p>	<p>Attributing the legislative changes to an estimated change in agent demand is challenging, given the wide range of factors involved in decisions to engage an agent.</p> <p>Accordingly, this analysis has not sought to quantify an expected benefit to growth in agent demand. As an indication of the scale of this benefit, 1% growth in education agent demand in Australia is equivalent to a benefit of \$3 million in 2025 alone, underpinned by average commissions to agents of \$1,301 (of which, \$343 is estimated to be profit) and the fact that around 50% of agents are onshore and therefore in-scope when accounting for benefits.</p> <p>In order to account for the CBA breakeven value, a single year’s growth of 1.08% would be sufficient.</p>

Source: Deloitte Access Economics

**Table 8: Qualitative discussion of remaining unquantified benefits**

<b>Benefit stream</b>	
<b>To students</b>	
(S2) Improved student experience and educational outcomes, supported by closer alignment between personal goals and studies, and avoided exploitative behaviour	<p>Improving the regulation of providers and agents is expected to enhance the quality of the sector and combat unscrupulous actors from operating. This will enable students to better align their aspirations with their academic pursuits and with higher quality offerings, supporting the specialising of their skills and knowledge, and attainment of human capital development. This recognises a wealth of literature on the returns to education and the value of a studying abroad.</p> <p>Moreover, removing unscrupulous actors from the market will lower the chance of exploitative practices occurring. Noting the reviews and inquiries (as well as media reporting) on the harms of exploitative practices on students.</p>
(S3) Improved student wellbeing and welfare, from greater trust and safety in the study experience, and improved reputations, without fear of being considered 'not genuine'	<p>Improving student-to-provider matching and avoiding non-genuine providers and agents not only improves the educational experience, but improves the overall study experience for students, particularly from a student wellbeing and welfare perspective. Trust and safety are integral to Australia's international education offering and are highly valued and perceived by the overseas student community.</p> <p>Further, by raising the overall status of overseas students and increasingly removing non-genuine students, overseas students are expected to benefit from the reputational effects and lack of fear of being perceived as non-genuine or lacking authenticity, further improving their sense of security and welcomeness.</p>
<b>To government</b>	
(G1) Public confidence and trust in government and the regulator, and specifically Australia's international education sector and migration system	<p>Noting the recent media attention and criticism of Australia's international education and migration sectors, there is greater scrutiny over the government's role in upholding the integrity and quality of the sectors. Supporting greater transparency and accountability, while detecting unscrupulous behaviours and enforcing the rule of law (and community expectations) is intended to reinforce the credibility of the regulator and government – which is fundamental to democratic governing.</p> <p>A previous study found that improving a business' ethical reputation can improve its relationships with customers and suppliers and can lead to a 7% increase in return on assets, showcasing the importance of ethics and trust (albeit in a commercial setting).<sup>40</sup></p>
(G2) Supporting diplomatic relationships and global authority with a strengthened 'Brand Australia'	<p>Not only does the quality and integrity of Australia's international education sector reflect on local public confidence in government, but it can influence and enable global confidence and the foundations of Australia's presence and credibility on the global stage, including in trade and investment, collaboration in international forums, and joint research and development.</p> <p>The Universities Accord Interim Report noted that the quality of international education was not only crucial for delivering export value, but was a 'crucial</p>

<sup>40</sup> Deloitte Access Economics (2020) *The ethical advantage: the economic and social benefits of ethics to Australia*, <https://www.deloitte.com/au/en/services/economics/perspectives/ethical-advantage-economic-social-benefits-ethics-australia.html>.

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**Benefit stream**

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*element of Australia's soft diplomacy and the generation of relationships and reputation across the world'.<sup>41</sup>*

In the past 50 years 2.5 million overseas students studied in Australia. As a result, many foreign government and business leaders have studied in Australia and understand Australian institutions, values and perspectives on the world.<sup>42</sup> Research collaboration has improved from 2012 to 2021 from 42.6% to 60.5% of research publications with an Australian author including an international co-author, increasing Australia's access to cutting-edge global research and discoveries.<sup>43</sup>

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**To industry**

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(I1) Greater access to, confidence in, higher quantity and quality of and improved skills alignment for skilled graduates

By attracting talented individuals and providing a world class education it is expected that graduates will possess both a higher quantity and quality of skills when entering the market. A previous study found that overseas student graduates who stayed in Australia would represent a 3% increase in the share of Australia's workforce with a tertiary education, resulting in an increase to Australia's GDP per capita of around 0.5%.<sup>44</sup> Attracting more students with better skills may also contribute to addressing Australia's critical skills shortage.

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Source: Deloitte Access Economics

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<sup>41</sup> Department of Education (2023) *Australian Universities Accord Interim Report*, <https://www.education.gov.au/australian-universities-accord/resources/accord-interim-report>.

<sup>42</sup> Parliament of Australia (2023), *Quality and Integrity - the Quest for Sustainable Growth: Interim Report into International Education*.

<sup>43</sup> Department of Education (2023) *Australian Universities Accord Interim Report*.

<sup>44</sup> Department of Education (2016) *The value of international education in Australia*, <https://internationaleducation.gov.au/research/research-papers/Documents/ValueInternationalEd.pdf>.

**Table 9: Relative assessment of the attribution between legislative changes and benefits streams**

<b>Benefit stream</b>	<b>Reform 1</b>	<b>Reform 2</b>	<b>Reform 3</b>	<b>Reform 4</b>	<b>Reform 5</b>	<b>Reform 6</b>	<b>Reform 7</b>
(P1) Growth in enrolments and profit, supported by a strengthened branding and reputation of providers and Australia's international education sector as a destination	Lower	Lower		Lower	Lower	Lower	Lower
(P2) More resilient enrolments and profit, supported by higher quality students with greater retention and completions	Lower	<b>Higher</b>		Lower	Lower		Lower
(P3) Cost savings and 'peace of mind' in the student admissions process and engaging with agents		<b>Higher</b>	Lower				
(A1) Profit growth from increased demand for and use of agent services by both providers and students, underpinned by a stronger reputation of agent services and Australia's international education sector as a destination	Lower	<b>Higher</b>	Lower				
(S1) Reduced administrative costs and personal burden in the education admissions process, from avoiding unscrupulous agents and greater quality and assurances in the market for agents	<b>Higher</b>	Lower					
(S2) Improved student experience and educational outcomes, supported by closer alignment between personal goals and studies, and avoided exploitative behaviour	Lower	<b>Higher</b>		Lower	Lower	Lower	Lower
(S3) Improved student wellbeing and welfare, from greater trust and safety in the study experience, and improved reputations, without fear of being considered 'not genuine'	Lower			Lower	Lower	<b>Higher</b>	<b>Higher</b>
(G1) Public confidence and trust in government and the regulator, and specifically Australia's international education sector and migration system	Lower		Lower	<b>Higher</b>	Lower	<b>Higher</b>	Lower
(G2) Supporting diplomatic relationships and global authority with a strengthened 'Brand Australia'	Lower	Lower		Lower	Lower	Lower	Lower
(G3) Reduced regulator workload and burden in monitoring and policing lower quality providers and non-genuine students	Lower	Lower		Lower	<b>Higher</b>	<b>Higher</b>	Lower
(I1) Greater access to, confidence in, higher quantity and quality of and improved skills alignment for skilled graduates		Lower		Lower	Lower	Lower	Lower

Source: Deloitte Access Economics: Note: 'Higher' refers to a higher expected attribution between a legislative change and benefits stream, whereas 'lower' refers to a lower attribution. 'Blank' cells are expected to have minimal or weaker attribution.

### 4.3.5 Sensitivity testing of the temporary pause on CRICOS registration (reform 4)

Recognising both the relatively higher cost estimates and higher levels of uncertainty in implementation for reform 4, sensitivity testing has focused on the key parameters underpinning this reform.

The expected scenario relied on a more conservative and higher cost scenario, whereby the pause in CRICOS registrations is immediately implemented (in year 1) for the full potential duration (for 12 months) and to all new providers and courses (that is, no exemptions).

This means that the cost estimated in this work represents the highest cost estimate, and in practice, costs could be expected to be lower where the Minister for Education varies the implementation of legislative power. In respect of this, this section tests two key parameters that reflect decision-making by the Minister, a third influential parameter, as well as the combined effects of changing all three parameters. These tests are defined as follows:

1. A shorter duration, with a 6 month pause on applications rather than the maximum 12 months.
2. An exemption to 25 per cent of new courses by existing providers, compared to a pause for all new courses by existing providers and all new providers.
3. A smaller share of 5 per cent of students no longer studying in Australia, compared to 10 per cent of students – noting that as these represent new offerings to market, student preferences on average are likely to be more flexible and not course or provider specific.
4. A combined scenario, whereby all three of these tests are jointly applied.

The headline cost of reform 4 is \$30.2 million, representing a conservative, high-cost scenario. **The sensitivity test shows that costs could be \$6.6 million to \$24.3 million lower** (Table 10). Notably, the results are highly sensitive to the assumed length of a pause in CRICOS applications and the assumed share of students who would no longer study in Australia due to losing access to their preferred course.

The implication of changing the defined scenario for this reform would be substantial to the overall results across all seven legislative changes, holding all else constant. Notably, **the breakeven value would shift from \$7.2 million net cost in the central case to \$17.0 million net benefit** when applying all three sensitivities (fourth scenario).

This sensitivity testing provides policy makers with greater confidence that the benefits of the legislative changes are likely to exceed the costs. This is particularly likely in the event that the Minister applies discretion to an instrument so that it may be in place for less than 12 months and include some exemptions for new courses.

**Table 10: Sensitivity testing of the temporary pause in CRICOS registrations**

	<b>Cost \$m</b>	<b>Deviation from central case \$m</b>	<b>Breakeven value \$m</b>
<b>Central case</b>	30.2	NA	+7.2
1: Length of pause is 6 months	15.1	+15.1	-7.9
2: 25% of new courses by existing providers are exempt	23.6	+6.6	+0.6
3: 5% of students no longer study in Australia	15.1	+15.1	-7.9
<b>4: All of the above</b>	5.9	+24.3	-17.0

Source: Deloitte Access Economics. Note: A negative breakeven value is interpreted as quantified benefits greater than costs, and any unquantified benefits are above and beyond what is required for positive net benefits.

# 5. Who did you consult and how did you incorporate their feedback?

## 5.1 Purpose

The purpose of consultation is to identify issues impacting the international education sector and ensure that the sector has opportunity to comment on any proposed changes. This includes seeking stakeholder feedback to further develop the Government's understanding of any significant impacts the proposed options under Question 3 will have on their operations and on the overseas student experience.

## 5.2 Stakeholder feedback

### Option 1: Status Quo

Stakeholder and industry consultation is conducted regularly through a range of stakeholder roundtables, forums, and meetings. For example, the department holds regular formal consultations with sector peak bodies through quarterly meetings of the International Education Stakeholder Forum (IESF) and meets quarterly with state and territory education representatives and study clusters through the Commonwealth, State and Territory International Education Forum (CST). These forums provide an opportunity to engage with the sector and state and territory counterparts on the status quo functioning of the ESOS Framework, what is working well, potential areas for improvement and new issues arising in the sector.

The department also meets regularly with relevant Government agencies and peak bodies. In these forums, the department actively seeks views of the international education sector, including where regulatory gaps or integrity concerns exist that need to be addressed. For example, stakeholder feedback was important for informing the department's identification and subsequent closing of the concurrent study loophole, which was facilitating non-genuine onshore transfers by overseas students (see section 1.2.3).

Evidence presented to the JSCFADT Inquiry was also considered in assessing the options in this IA. The JSCFADT Inquiry was informed by at least 85 submissions from the international education sector, the public and experts in the field of international education that primarily focused on the international education component of the JSCFADT Inquiry, and 20 public hearings held across the country.

Witnesses to the Inquiry expressed views that the seriousness of the integrity concerns and the reputational impact of these issues on quality providers meant that Government action was required. For example, the peak body for the higher education sector, Universities Australia (UA),



noted that unscrupulous actors were paying no attention to the current regulatory framework and ‘getting away with murder’. Better enforcement of the current rules was needed.<sup>45</sup>

ISANA, the association of Australian and New Zealand international education professionals, noted the main issues that concerned ISANA members were in relation to the effectiveness of regulation. There were a number of loopholes being exploited, including course hopping, students enrolling in lower AQF courses without any implications for their student visas, and concurrent enrolment.<sup>46</sup> Academia International described the regulatory model as ‘not fit for purpose, and never was when it comes to quality’.<sup>47</sup>

An earlier parliamentary inquiry was undertaken by the Joint Standing Committee on Migration in 2019 into the efficacy of current regulation of Australian migration and education agents.<sup>48</sup> Submitters to the inquiry generally held the view that overseas students were vulnerable, open to exploitation by unscrupulous education agents, and a lack of regulation enabled them to operate without any consequences for their actions.<sup>49</sup> During the course of this inquiry the Committee received representations from a number of overseas students with evidence alleging that education agents were operating in an unlawful and unethical manner.

## Option 2: Non-regulatory option

A non-regulatory, educative option focussed on communications as outlined in Option 2, is not generally supported by stakeholders, given the ongoing presence of bad actors in the international education sector. The broad view was that good actors would continue to act with integrity, while bad actors, be they education agents, providers or students, would have no real incentive to change their behaviour.

For example, UA noted the problem faced by the sector regarding the behaviour of education agents was that the good agents join good quality organisations and were already good at self-regulation. The bad agents were a problem, but difficult to identify and root out. UA suggested the solution was not just about one or two fixes for a particular bad set of agents, but needed a whole-of-sector response, involving the Department of Education, the Department of Home Affairs and providers.<sup>50</sup>

Likewise, the International Education Association of Australia (IEAA) noted to the Inquiry that industry self-regulation had been tried previously and been unsuccessful, as agreement could not be reached among the peak bodies involved in deliberations on what could be done.<sup>51</sup>

ISANA raised concerns that, while there was a framework in place that should be sufficient to monitor and manage education agent practices, education providers were not using the resources

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<sup>45</sup> Ms Catriona Jackson, Chief Executive Officer, Universities Australia, *Committee Hansard*, Canberra, 15 May 2023, p.12.

<sup>46</sup> Ms Sharon Cook, National President, ISANA International Education Association, *Committee Hansard*, Canberra, 15 May 2023, p.11.

<sup>47</sup> Mr Menelaos Koumides, Managing Director, Academia International, *Committee Hansard*, Canberra, 16 May 2023, p.6.

<sup>48</sup> Joint Standing Committee on Migration, *Efficacy of current regulation of Australian migration agents* tabled 21 February 2019.

<sup>49</sup> Joint Standing Committee on Migration, *Efficacy of current regulation of Australian migration agents* tabled 21 February 2019.

<sup>50</sup> Ms Catriona Jackson, Chief Executive Officer, Universities Australia, *Committee Hansard*, Canberra, 15 May 2023, p.12.

<sup>51</sup> The Hon Phil Honeywood, Chief Executive Officer, International Education Association of Australia, *Committee Hansard*, Canberra, 15 May 2023, p.15.

that had been developed to support best practices across the sector.<sup>52</sup> This feedback suggests that an educative approach may have little impact on behaviours and quality.

### Option 3: Regulatory option

The proposed legislative changes in Option 3 are in close alignment with broader Government reform, including reform of the student visa system and to the VET sector. They have been informed by the large body of stakeholder submissions to the Migration Review totalling 483 submissions, investigations undertaken through the Nixon Review and evidence presented to the JSCFADT Inquiry, relevant submission to the Australian Universities Accord were also considered. This is in addition to targeted consultation undertaken by the department.

Witnesses to public hearings to the JSCDADT Inquiry were broadly supportive of increased integrity and ensuring a quality international education product and experience. For example, ISANA provided feedback that regulatory bodies need to have more ability to monitor and regulate to ensure there is best practice, not just minimum standards. A strong framework that is regulated and monitored effectively would attract high quality students who enrol with high quality education providers.<sup>53</sup>

The Joint Standing Committee on Migration noted that the inquiry received an overwhelming amount of evidence raising concerns about the unethical and unlawful behaviour of education agents. That overseas students were socially, legally and financially vulnerable to exploitation from the actions of unscrupulous education agents. That publishing education agent performance data improves transparency; provides education providers a greater understanding about the work of their agents; and enables overseas students to make informed choices.<sup>54</sup>

The department also gained advice via regular meetings with the international education sector through formal forums such as the Council for International Education (the Council), which was established to set the direction for Australia's role in international education and training. The Council is comprised of six Government Ministers and eleven international education sector experts.

Proposals contained in Option 3 were discussed with the sector through individual meetings between international education sector leaders, providers and departmental senior executives, and dedicated sessions on integrity at conferences such as the 2023 Universities Australia Conference and the 2023 Australian International Education Conference (AIEC), as well as Austrade engagement with a global forum of education agents in late November 2023.

Formal consultations undertaken as part of the development of the Australian Universities Accord and the draft International Education and Skills Strategic Framework have also provided valuable feedback.

A series of dedicated Integrity Stakeholder Meetings, chaired by the department, were specifically established to discuss and gather international education sector feedback on integrity issues and responses, including proposals to change legislation. The meeting attendees include expert members of the Council, education peak bodies, state and territory governments and Federal Government departments.

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<sup>52</sup> Ms Sharon Cook, National President, ISANA International Education Association, *Committee Hansard*, Canberra, 15 May 2023, p.11.

<sup>53</sup> Ms Sharon Cook, National President, ISANA International Education Association, *Committee Hansard*, Canberra, 15 May 2023, pp.11-12.

<sup>54</sup> Joint Standing Committee on Migration *Efficacy of current regulation of Australian migration agents* tabled 21 February 2019.

Six meetings were held to discuss the proposed changes between October 2023 and February 2024, with more planned. The department will continue to engage with the international education sector on proposed reforms and their implementation, including through targeted consultations and other regular international education forums.

The participants of the Integrity Stakeholder Meeting are:

Peak bodies

- Australian Government Schools International (AGSI)
- Australian Technology Network (ATN)
- Council for International Students Australia (CISA)
- English Australia
- Group of Eight (Go8)
- International Education Association of Australia (IEAA)
- Independent Higher Education Australia (IHEA)
- Innovative Research Universities (IRU)
- Independent Schools Australia (ISA)
- International Student Education Agents Association (ISEAA)
- Independent Tertiary Education Council Australia (ITECA)
- Regional Universities Network (RUN)
- TAFE Directors Australia (TDA)
- Student Accommodation Council
- Universities Australia (UA)

Providers (representatives are members of the Council)

- Academia International Institute
- Haileybury
- The University of Melbourne
- Western Sydney University

State and territory government agencies

- ACT Education Directorate
- Department of Education and Training Victoria
- Department of Education International (Education Queensland International)
- Department of Jobs, Tourism, Science and Innovation (Western Australia)
- Department of State Growth (Tasmania)
- Department for Trade and Investment (South Australia)
- International Education and Study Melbourne/Global Victoria
- New South Wales, Department of Education, International
- TAFE Queensland
- Study Adelaide
- Study Canberra
- Study NSW
- Study NT/Department of Industry, Tourism and Trade
- Study Queensland
- Study Perth
- Study Tasmania

The department has also drawn on feedback provided through previous consultation with the international education sector and relevant agencies to identify issues requiring legislative change. The department received extensive feedback from the international education sector regarding several of the proposed reforms as outlined in the ESOS 2022 Review Discussion Paper.<sup>55</sup> The ESOS 2022 Review and the ESOS 2023 Reform explored potential reforms in depth, including to address unscrupulous education agent practices, as well as increasing transparency of data on agent performance and commissions, and issues relating to onshore transfers.

Feedback relating to specific reforms proposed under Option 3 are outlined below.

## **Problem 1: Provider and agent collusion**

Stakeholders raised concerns that there are multiple ‘fit and proper’ tests for domestic and international provider registration and these should be aligned where possible. The structure of the proposed amendment under Option 3 for cross-ownership to be a consideration rather than an automatic refusal, aligns with the structure of the ‘fit and proper person’ tests in both the NVETR Act and TEQSA legislation that do not have any criteria that immediately exclude a potential provider.

Stakeholders at the integrity consultation meetings shared views on the expansion of the ‘fit and proper’ test, with some expressing that parameters used to define ‘cross-ownership’ need to be carefully articulated. The independent tertiary education sector suggested that the department consider more nuanced definitions used in other sectors. Some stakeholders expressed that more nuanced definitions of ‘partners’ and ‘trust’ would be better to reflect the complexity of these arrangements, however the department considers these would not be suitable noting the scope is limited to relationships between agents and providers only. Any broadening of the language as proposed would risk the unintentional capture of other entities.

Many providers have shareholdings in IDP Australia and do not want this to be caught up in tightened ‘fit and proper’ requirements. IDP Australia began as a government development and education outreach program and is now an Australian-listed international education services company with global operations. Some Universities still hold a share in IDP Australia holding 0.66 per cent or below each.<sup>56</sup> The department took on this feedback to develop a definition of cross-ownership that considers ‘controlling interest’. In the case of IDP Australia, providers do not have a controlling interest with providers holding at most 0.66 per cent of shares each.

Overall, there was in-principle support for a ‘fit and proper’ test that accounts for cross-ownership with strong agreement among stakeholders that the implementation of this measure needs to be well thought through and communicated, especially the transition period for existing registered providers.

## **Problem 2: Transparency of agent performance data**

Stakeholders were generally supportive of increased transparency of agent data. Stakeholders raised the idea that good, high performing agents should be ‘rewarded’ as opposed to identifying those who underperform.

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<sup>55</sup> ESOS Review 2022 Discussion Paper <https://www.education.gov.au/esos-framework/resources/education-services-overseas-students-esos-review-2022-discussion-paper>

<sup>56</sup> IDP Australia Annual Report 2023, [investors.idp.com/FormBuilder/\\_Resource/\\_module/v1AiEHYL20-Rje11PzkYA/IDP\\_Annual\\_Report\\_FY23.pdf](https://investors.idp.com/FormBuilder/_Resource/_module/v1AiEHYL20-Rje11PzkYA/IDP_Annual_Report_FY23.pdf), p.129.

In evidence to the JSCFADT Inquiry, UA strongly argued for making comparative data on agent performance available in PRISMS.<sup>57</sup> The Independent Tertiary Education Council Australia (ITECA) concluded that it is very important that all providers have access to a suite of information on all education agents.<sup>58</sup>

Stakeholders were invited to submit feedback on what is useful in the current agency dashboard made available to providers on the agents they work with, to contribute to a collaborative design approach to increased transparency.

Overall consultations indicated stakeholder support for **Option 3** to increase access to agent data.

### Problem 3: Agent commissions

The collection and sharing of agent commission information raised concerns from some stakeholders.

Initial feedback on this proposed amendment was collected during the *ESOS Review 2022*, with further detailed conversations occurring with the Stakeholder Integrity group. Concerns raised by respondents include:

- commissions are ‘commercial in confidence’.
- a ‘price war’ could put upwards pressure on prices.
- negative impacts on Australia’s competitiveness.
- recruitment incentives go beyond commissions alone therefore commissions are incomplete data.
- treatment of hidden payments such as bonuses.

In providing this feedback, stakeholders were concerned that the proposed reforms would see information on agent commissions made public. The department has considered this feedback and is satisfied that the way in which this information will be shared with providers only should alleviate many of these concerns, noting the information will not be made publicly available. The specifics behind how commissions information will be collected and shared with providers is still being developed, however it is not intended that raw figures will be shared in order to protect individual student privacy.

Stakeholders expressed a range of views on how ‘commissions’ should be defined in the ESOS Act and what should be included or excluded. The department has taken this feedback into account in considering the drafting of proposed legislative changes and how they would be implemented.

Feedback supporting increased transparency included:

- value in benchmarking purposes.
- helping students to demand a better service and aid student choice.

In the JSCFADT Inquiry, the Migration Institute of Australia noted that if registered migration agents and financial advisers all have to disclose commissions, why should education agents be any

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<sup>57</sup> Ms Catriona Jackson, Chief Executive Officer, Universities Australia, *Committee Hansard*, Canberra, 15 May 2023, p.12.

<sup>58</sup> Mr Felix Pirie, Deputy Chief Executive, Policy and Research, Independent Tertiary Education Council Australia, *Committee Hansard*, Canberra, 16 May 2023, p.17.

different.<sup>59</sup> ITECA proposed an arrangement where not only the fees are disclosed but there's a schedule of other necessary arrangements which are made very clear to both the student and the provider and are readily discoverable by Government, such as health insurance; a copy of the agreement between the student and the agent, whether that be an onshore agent or an offshore agent; and transparency of any third party agreements.<sup>60</sup> ISANA contended that there needs to be greater transparency with education agent practices, including the payment of commissions.<sup>61</sup>

The Group of Eight, representing the top research universities, and the Australian Technology Network, representing six technology universities, told the JSFADT Inquiry that they supported transparency of commissions as a way to deal with unscrupulous agents.

ATN universities also supported this view arguing that the principle of transparency around how much an agent is getting in terms of commission is a good thing and we should adhere to it.<sup>62</sup>

English Australia, the peak body for the ELICOS sector, advised that the transparency of agent commissions data will become an administrative burden for providers, if they were required to record this information for individual students recruited. It noted that the system would need to take into account that bonuses paid to agents are usually paid across a volume of students, for example an agent may receive a bonus if they recruited a certain number of students. The accuracy and reliability of commissions data was called into question, with stakeholders noting that this information could be entered incorrectly and may not capture the information that the department is intending to capture as a measure of integrity.

English Australia proposed that annual reporting of the percentage of revenue spent by the provider on student recruitment may be more effective in understanding which providers have sustainable businesses. It suggested that a single figure be reported annually to the Tuition Protection Service (TPS) as part of other mandatory annual reporting.

In considering this feedback, the department has proposed providers report to the department the total amount of commissions paid to each of their agents, and the number of students recruited by each of their agents over a specific period, for example 12 months. Access to commissions data will be restricted to ESOS agencies and providers only. The data may be further broken down into separate payment types including commissions, bonuses and in-kind. The department determined that this approach would alleviate sector concerns regarding the administrative burden and potential inaccuracy of reporting commissions with each individual CoE. This reporting will give providers an average commission payment for each education agent that would enable them to make an informed decision.

The international education sector collectively agreed that students should be aware if a commission is paid by the provider to the education agent.

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<sup>59</sup> Ms Bronwyn Markey, Senior Professional Services Manager, Migration Institute of Australia, *Committee Hansard*, Canberra, 15 May 2023, p.17.

<sup>60</sup> Mr Troy Williams, Chief Executive, Independent Tertiary Education Council Australia, *Committee Hansard*, Melbourne, 18 April 2023, p.33.

<sup>61</sup> Ms Sharon Cook, National President, ISANA International Education Association, *Committee Hansard*, Canberra, 15 May 2023, p.11.

<sup>62</sup> Luke Sheehy, Executive Director, ATN Universities, *Committee Hansard*, Melbourne, 18 April 2023, JSFADT Inquiry.

## Problem 4: Limited ability to identify, deter and disrupt unscrupulous actors

Stakeholder consultation was not undertaken on the proposed legislative reform measures to address Problem 4. These measures were considered to be highly market sensitive and were not publicly announced to avoid the risk of a situation arising where non-genuine providers sought to circumvent future increased regulatory scrutiny ahead of any changes being introduced. In addition, the department did not want to create a situation or perception of some providers or peak bodies gaining an unfair market advantage from being consulted ahead of the broader sector.

Should Government decide to implement the reform measures under Option 3, a targeted post-decision consultation process will take place after it is announced publicly, but before it is implemented. The department will ensure that post-decision consultation will focus on the implementation of the policy, including timeframes and planned reviews, in accordance with the OIA's *Best Practice Consultation* guidance note (22 May 2023).

These consultations will occur through regular meetings of the Stakeholder Integrity Group and feedback will be sought through other regular consultative mechanisms chaired by the department including IESF and CST. The department will also welcome feedback from the international education sector through meetings with individual stakeholders and invite written feedback through contact points to be provided on communications materials relating to the reforms. This feedback will inform the implementation of the measures and help to identify any gaps or refinements that need to be addressed.

While direct consultation with the sector was not undertaken in advance of a decision, stakeholder views on the public record have been carefully considered in the development of the proposed reforms.

The JSCFADT Inquiry heard evidence from stakeholders in relation to the provision of low-quality courses by some private VET providers. The William Angliss Institute of TAFE observed that a minority of private VET providers offer cheap and lower-quality courses, for which students are not required to attend classes. The William Angliss Institute provided examples of students at private VET institutions having their competencies signed off without proper assessment and students working instead of undertaking training, for example commercial cookery students working at the provider's restaurant.<sup>63</sup>

Similarly, the Australian Academy of Vocational Education and Trades Pty Ltd observed that a small number of private VET providers operate 'ghost schools', in which the hiring premises are usually empty classrooms and automatic passes are widely awarded to students.<sup>64</sup> Echoing these concerns, the Primary Industries Skills Council noted in its submission to the JSCFADT Inquiry that some Certificate III RTOs are supporting a system of non-attendance and fraudulently issuing qualifications. The Primary Industries Skills Council recommended that the Department of Home Affairs and ASQA together comprehensively investigate the delivery arrangements of certain short courses such as Certificate III trade courses.<sup>65</sup>

The department has considered this feedback and assesses that the proposals under Option 3 to require providers to first deliver to domestic students for 24 months and cancel provider registrations where they have not delivered for 12 months would likely go some way to addressing

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<sup>63</sup> Mr Bruce Bradfield, International Marketing Manager, William Angliss Institute of TAFE, *Committee Hansard*, Melbourne, 18 April 2023, pp.46-49.

<sup>64</sup> Mr Menelaos (Mel) Koumides, Managing Director, the Australian Academy of Vocational Education and Trades Pty Ltd, *Committee Hansard*, Canberra, 16 May 2023, p.5.

<sup>65</sup> Primary Industries Skills Council, *Submission 106*, pp.3-6.



these concerns about ‘ghost schools’. Requiring delivery to domestic students would create a significant entry barrier for providers intending to act as ‘fronts’ for overseas students seeking to work.

ASQA identified the collusive activity between non-genuine providers, unethical education agents and students who seek to enter Australia for paid employment rather than study as a risk to the quality and international reputation of Australia’s VET sector. ASQA noted that it is important to review policy and regulatory settings to ensure controls can be strengthened to detect and treat this risk.<sup>66</sup>

Stakeholder views in response to the legislative changes to the NVETR Act, introduced to Parliament in February 2024, have also been taken into account. The NVETR changes are parallel to the four proposed reforms under Problem 4 and, like the ESOS Act changes, take action to address the issues raised in evidence informing Recommendation 14 of the JSCFADT Inquiry. All RTOs must meet NVETR requirements for registration, irrespective of whether they deliver to domestic or overseas students.

The impetus for the NVETR Act changes was also the Nixon Review which identified the risks posed by RTOs that do not have the genuine purpose of delivering quality training and instead undermine integrity in the VET sector and exploit vulnerable students. The 2018 *All eyes on quality: Review of the National Vocational Education and Training Regulator Act 2011* (the Braithwaite Review) also highlighted the need to strengthen quality and integrity in VET by placing more rigorous legislative requirements on RTOs at the point of registration and throughout the registration period. The Braithwaite Review recommended strengthening entry to market requirements to ensure RTOs are committed to and capable of providing quality VET. The NVETR reforms implement recommendations from the Braithwaite Review and respond more broadly to the findings in the Nixon Review in relation to non-genuine VET providers.<sup>67</sup>

These changes will apply to VET delivery only, with the proposed ESOS Act changes providing an additional level of scrutiny for providers across the broader international education sector. All providers, including RTOs, seeking to deliver CRICOS courses to overseas students must meet requirements for registration under the ESOS Act.

TAFE Directors Australia (TDA), the peak body for publicly owned VET providers, has expressed strong support for the changes to NVETR Act aimed at enhancing integrity in the VET sector by stepping up compliance and enforcement.<sup>68</sup> ITECA advised putting in place safeguards, such as placing a limit on the amount of time that a pause on new RTOs would be in place and publishing the underpinning reason for making such decisions.<sup>69</sup>

The proposed legislative change to the ESOS Act goes some way to addressing ITECA’s concern by limiting the pause of registration of new CRICOS providers and courses to up to 12 months and requiring consultation with the ESOS agencies and the Minister for Skills and Training before the Minister for Education makes that decision.

Integrity risks posed by dormant CRICOS providers using their registration for non-genuine or fraudulent purposes, or those not demonstrating a genuine commitment to training delivery are the same as those as highlighted in the Braithwaite Review for RTOs. For RTOs the NVETR Act changes

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<sup>66</sup> Australian Skills Quality Authority (ASQA) *Submission 79*, p.5.

<sup>67</sup> National Vocational Education and Training Regulator Amendment (Strengthening Quality and Integrity in Vocational Education and Training No. 1) Bill 2024 – Explanatory Memorandum.

<sup>68</sup> TDA Media Release, 7 February 2024, [tda.edu.au/wp-content/uploads/2024/02/TAFEs-welcome-steps-to-enhance-integrity-of-vocational-training\\_7-Feb-2024.pdf](https://tda.edu.au/wp-content/uploads/2024/02/TAFEs-welcome-steps-to-enhance-integrity-of-vocational-training_7-Feb-2024.pdf).

<sup>69</sup> ITECA news item, [www.iteca.edu.au/news/skills/2024-Qtr1/nvetra.amendments.need.safeguards.aspx](https://www.iteca.edu.au/news/skills/2024-Qtr1/nvetra.amendments.need.safeguards.aspx).



will be addressed by amendments to enable the automatic lapse of an RTO's registration (Part 1 of the Bill). Specifically, where an RTO has not delivered training and/or assessments for a period of 12 consecutive months its registration will automatically lapse by force of law. A similar approach will help close the loop on other dormant CRICOS providers.

# 6. What is the best option from those you have considered and how will it be implemented?

## 6.1 What is the best option?

### 6.1.1 The Decision Rule

The decision rule used to assess the three options outlined in Question 3 was to select the option that delivers the greatest net benefit to the international education sector and would best meet the Government's objectives.

Using this decision rule, **Option 3** is the best option as, to the greatest extent, it firmly and directly addresses identified integrity issues raised in the Migration and Nixon Reviews and the JSCFADT Inquiry, and addresses the Government's objectives to strengthen quality and integrity.

### 6.1.2 Assessment of the best option - Option 3

This package of regulatory change would reduce the risk of student exploitation, weed out nongenuine providers and agents from the international education sector and provide the ESOS agencies with flexibility and enhanced regulatory powers to respond to changing conditions and emerging integrity issues. Increased transparency will prevent non-genuine behaviour and support quality providers to deliver education products to overseas students.

Given the clandestine nature of actors deliberately utilising loopholes in the migration and international education frameworks, action is needed to close regulatory gaps and strengthen enforcement. A direct measure that will increase data gathering capability and empower targeted action against identified unscrupulous behaviour through legislative change is the best option.

Other options to improve communication and provider understanding of requirements, rely on sector self-regulation, and to opt into best practice. This option's success heavily relies on the ethical behaviour of all actors in the sector. Those seeking to undermine international education for profit or student exploitation will not 'opt in' and will continue to act unscrupulously and to the detriment of overseas students. The analysis in Question 4, alongside stakeholder views from consultations, written submissions, witness statements and results from criminal investigations documented in recent Government reviews and a parliamentary inquiry, points to **Option 3** as the best option.

As assessed in Question 4, while it is the option with the highest regulatory burden estimates and the total estimated costs exceed the total quantified benefits, there are eight unquantified benefit streams and some of the unquantified benefits could be substantial and larger than the total estimated costs. It is also important to note that costs estimated in this work represent the highest cost estimate, and in practice, costs could be expected to be lower where the Minister for Education varies the implementation of legislative power.

Option 3 is the only option that will fully address each of the four policy issues identified in Question 1. Directly enforceable and clear obligations have the potential for significant positive impacts for student safety, for sector integrity and Australia's global reputation. Clear and specific obligations establish the ground for increased data collection, and a clearer view of the sector and areas of risk.

Robust and fit for purpose frameworks are needed to address emerging integrity and quality issues and challenges. The focus on non-genuine providers will address integrity issues with a modest additional regulatory burden on genuine quality providers.

### **Problem 1: Provider and agent collusion**

Collusion between agents and providers to facilitate the movement and exploitation of overseas students will be curtailed through amendments to the ESOS Act, which will close avenues for unscrupulous providers and agents to enter the market to act in the interests of profit instead of the best interests of the student. Under the current ESOS Framework, the Government lacks both the ability to gain insight into the depth and breadth of the problem and the ability to effectively act to strengthen integrity. Through better data collection, the Government will have a clearer picture of the scale of collusive practices and can better target compliance activity to prevent exploitation of overseas students.

### **Problem 2: Transparency of agent performance data**

Quality providers need to be able to make informed choices. Increasing the transparency of the performance of the agents that providers are considering working with will achieve this goal and advance the best interest of overseas students. Legislative amendments are required to increase provider access to agent performance data and strengthen provider reporting obligations for the education agents they work with.

Under Option 3, providers will be able to assess the quality and performance of new agents they engage and to benchmark the performance of the agents they currently use. This data expansion will increase the level of transparency for providers and support them to partner with ethical agents.

### **Problem 3: Agent Commissions**

Collecting information on commissions will allow the department to understand the scale, and connections to provider behaviour, such as student recruitment, transfers, and attrition rates. The department will have the information required to further inform policy to address any issues identified due to commission related behaviour and support action by the ESOS agencies. Providers will have access to high level data on commission payments to individual education agents based on the number of COEs and be able to identify where their own commissions payments are above the market average.

### **Problem 4: Limited ability to identify, deter and disrupt unscrupulous actors**

Option 3 will meet the policy objectives by providing ESOS agencies with the necessary flexibility and enhanced regulatory powers to manage the volume of new applications for CRICOS registration, deterring non-genuine providers and students by placing greater scrutiny on new providers and courses entering the market and requiring providers to demonstrate a track record of delivery to domestic students before enrolling overseas students.

**1. A pause on applications for registration of new providers and of new courses from existing providers for a period of up to 12 months**

Pausing the acceptance of applications will allow the ESOS agencies a period of up to 12 months to focus on any integrity issues with current CRICOS registered providers before new providers can enter the international market and recruit overseas students. This measure will ensure high quality provision by restricting the entry of non-genuine providers and courses.

It is expected that high-quality providers will still enter the market, albeit delayed, as they will be assessed by ESOS agencies with a focus on quality. This additional quality assurance will improve choice certainty and educational outcomes for students, as well as trust in the quality of the sector.

**2. Require providers applying to deliver courses to overseas students to first deliver courses to domestic students for a period of 24 months**

This measure will deter and prevent entry of new providers who have not demonstrated genuine commitment to the delivery of courses to domestic students for a period of 24 months. This will enhance Australia's international education reputation and improve the certainty of quality education delivered to students. This will have a flow-on benefit of greater certainty in skills matching between graduates and industry.

Interaction with domestic students is often an important value proposition for overseas students and can be a driver of both quality and student demand, generating returns to students and the sector more widely.

**3. Automatically cancel the registration of providers who have not delivered training to overseas students for a consecutive 12-month period**

This measure will restrict providers with volatile enrolment activities that may rush training activities or present a 'false front' as genuine education providers (this is also intended to prevent inactive companies from 'phoenixing'). Prospective students will be increasingly protected with providers not delivering courses to have their registration cancelled. This measure will support the removal of non-genuine providers from the sector, enhance positive experience and quality of education for overseas students, as well as providing industry certainty regarding graduate skills.

**4. Strengthen provisions to suspend the enrolment of new overseas students, including automatically where appropriate, by providers under serious regulatory investigation**

Prospective students will be increasingly protected with providers under serious regulatory investigation automatically unable to recruit new overseas students. It is expected that students will have higher certainty about the quality of education they will receive as well as increased confidence in the quality and alignment of their skills.

The package of changes under Option 3 will, over time, transform the delivery of courses to overseas students by eliminating non-genuine providers and demonstrate providers' ability to effectively deliver courses to domestic students before expanding into overseas student delivery.

These changes will complement amendments to VET legislation announced by the Minister for Skills and Training that address integrity issues specific to the VET sector, extending some of these requirements to the broader international education sector. Together with reforms underway to the student visa program, this option will also support the sustainability of the international education sector and provide relief to broader infrastructure pressures with fewer non-genuine students arriving and remaining in Australia and fewer non-genuine providers offering courses.

### 6.1.3 Assessment of alternative options

Assessment in this Impact Analysis confirms that **Option 1** and **Option 2** are insufficient to address the problems and objectives outlined in Questions 1 and 2.

Taking no action, as per **Option 1**, will allow non-genuine provider behaviours to continue with the ESOS agencies unable to effectively address integrity issues. This option will not achieve the policy objectives to improve the quality and integrity of the international education sector and protect overseas students from exploitation by unscrupulous actors. Avenues enabling the exploitation of overseas students will remain open. Organised transnational criminal networks will continue to benefit from current gaps and vulnerabilities to misuse the migration and international education systems.

Issues such as cross-ownership between providers and agents to facilitate exploitation and lack of information about agent commissions will mean that agents can continue to collude with and influence providers and exploit students to gain commission profits through encouraging the transfer of students onshore. This would result in students being placed in inappropriate courses or in potentially exploitative situations. This will impact on the interests of the student and genuine providers as it will negatively affect course completion rates across the international education sector. A continued lack of transparency of agent performance and commissions will also prevent providers from evaluating the quality of new agents they engage. Agents can continue to exploit this information gap to mislead providers and ramp up commission fees.

Option 1 will also not provide complementary support for the measures taken by the Department of Home Affairs to improve the integrity of the student visa program and measures taken by the Department of Employment and Workplace Relations to lift registration requirements for VET providers. For example, changes in the student visa program will be less effective if unscrupulous providers are able to continue colluding with education agents to traffic overseas students.

The Government has made public commitments to addressing these issues and would be subject to embarrassment and criticism if no equivalent action was taken in the Education portfolio.

**Option 2** takes some steps towards uplifting the capability of education providers to appropriately manage their agents. This option will assist providers who want to do the right thing but lack capabilities, skills, or money to develop their own appropriate processes and resources. This will achieve the policy objective to improve the quality and integrity of the sector to some extent. However, this option will not deliver the policy objective to protect overseas students from exploitation by unscrupulous actors. Providers and agents deliberately acting to exploit students might become aware of increased scrutiny but will be unlikely to change their actions.

While Option 2 takes an educational and risk management approach to raise and enhance providers' awareness of responsibilities, it is dependent on buy-in from providers. There are strong financial incentives to providers for not doing the right thing even if they are fully aware of their responsibilities. The integrity issues identified by the Nixon Review and JSCFADT Inquiry were driven and facilitated by the unscrupulous behaviour of education providers and the agents they engage.

Option 2 will not provide complementary support for separate measures taken by the Department of Home Affairs to improve the integrity of the student visa program and measures taken by the Department of Employment and Workplace Relations to lift registration requirements for domestic VET providers.

## 6.2 Implementation

Legislative changes to the ESOS Act, through the *Education Services for Overseas Students Amendment (Quality and Integrity) Bill 2024* (Bill), will be required to implement the measures under Option 3 to set out legislated requirements for education providers. Subject to passage in Parliament, the Bill is expected to commence on 1 July 2024.

The post announcement period will be bracketed by communication from the department and ESOS agencies that are publicly accessible to students, providers and agents, with a supply of material to peak bodies for dissemination to their members to ensure the settled details of the legislation is widely understood by sector stakeholders.

### 6.2.1 Implementation of data requirements

Systems change will be implemented to allow for agency dashboard expansion as soon as practicable after legislation is in place.

The department will engage with providers on these changes to ensure that the method of entering data required by providers is simple, straightforward and minimises the burden of reporting requirements, whilst capturing essential data.

Providers will need to change their practices to engage with the agency dashboard, to view agent data and take this into account when recruiting new agents.

A proposed guidance-note and step-by-step process will be posted in the PRISMS environment that providers and users can draw on to guide and inform how they enter and can use the data.

### 6.2.2 Implementation communication

The international education sector has been consulted in the development of these proposals, and the sector and general public are aware of the reviews and Government responses that have informed and driven these changes with many contributing to these reviews. Implementation will build on this work, particularly through the continuation of the Integrity Stakeholders Meetings.

Following the Government's announcement of the legislative changes and the introduction of the Bill, a communication plan will be implemented, and outreach undertaken to ensure the sector and the public will have access to plain language information and guidance. The department will continue targeted sector consultation and information sessions and roundtables to inform understanding of the changes.

This will comprise of:

- ongoing utilisation of the consultation mechanisms established with sector stakeholders.
- department participation in relevant sector-led and peak body conferences and workshops across Australia as an opportunity to set out implementation and field questions from the sector.
- briefing notes distributed to the education offshore network to inform their engagement with offshore stakeholders including education agents, sector representatives and prospective students.

- dedicated fact sheets and guidance notes that address different parts of the sector including students, education providers and other stakeholders will be published on the departmental website.

The department will work closely with other ESOS agencies to inform their individual communication to the sectors that they are responsible for:

- TEQSA communication to the Higher Education Sector and relevant ELICOS.
- ASQA communication to the VET Sector and relevant ELICOS.
- the department for the Schools sector.

Guidance materials and links will also be provided to the Department of Home Affairs Student Visa area, and relevant areas in the Department of Employment and Workplace Relations.

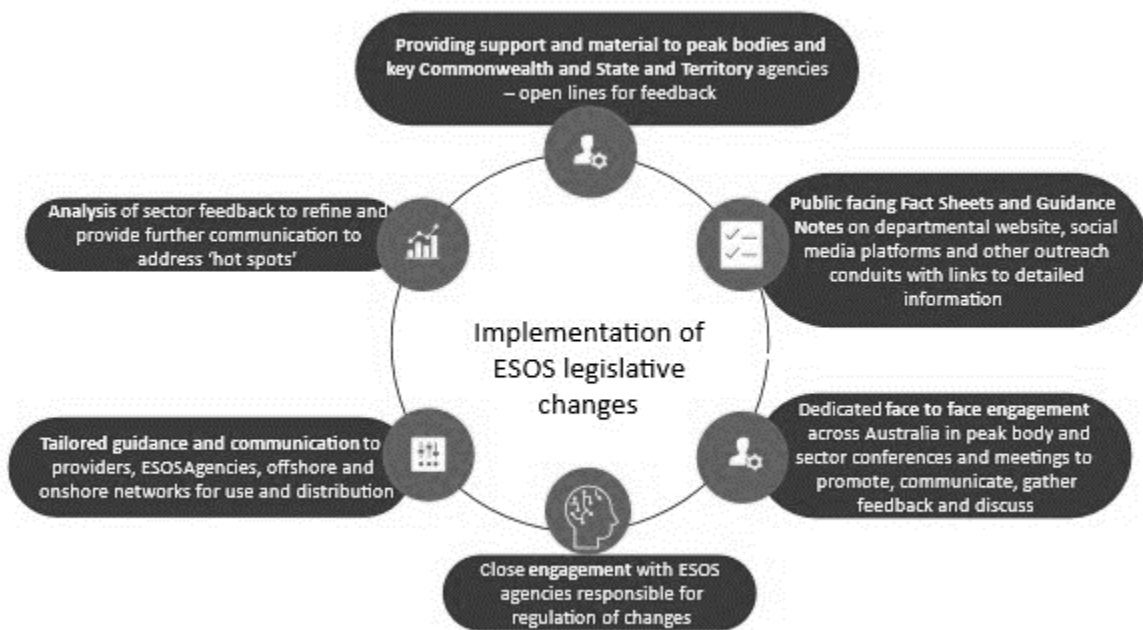


Figure 2: Implementation Matrix

### 6.2.3 Decision points after implementation

Once legislative changes have been made, the Minister for Education will have the power to trigger a pause on the applications for registration of new providers and of new courses from existing providers for a period of up to 12 months. Should the Minister choose to make the legislative instrument to enact a pause, the Minister will have the discretion to consider the appropriate length of the measure for a period of up to 12 months and whether any providers or courses should be exempt. To make this decision, the Minister would be provided with advice by the department and consult with ESOS agencies and the Minister for Skills and Training.

### 6.2.4 Implementation risks and mitigations

Implementing **Option 3** will require legislative and systems changes, which can be subject to parliamentary timeframes. Should Government legislative priorities change, the legislative package may not be introduced and in place for implementation by mid-2024.

To mitigate this risk, the time between the final decision point and implementation of legislation and systems changes will be used to consult the international education sector on the details of proposed reforms, continue to gather feedback, and allow ESOS agencies to prepare and train staff to enable systems changes to be tailored for maximum effectiveness. If introduction of the legislation is delayed, the department will work with the Minister and drafters to see the legislation tabled as soon as practicable for implementation ahead of Semester One 2025.

It will need international education sector buy-in to use the new agent data available to them.

Systems changes will be required to PRISMS to expand access to the agency dashboard. Providers will need to change their practices to engage with the agency dashboard, to view agent data and take this into account when recruiting new agents.

A new reporting field will also be developed in PRISMS for commission information. This will be an additional field that providers are required to complete on a regular basis for a specific period, for example 12 months. The department will require the provider to report the number of students, and the total amount paid to each individual education agent or agency they have accepted students from over the specified period. The payment information may be broken down into payment types. The figure paid to each education agent could then be averaged over the number of students that education agent recruited for the provider.

Providers will be required to declare any relationships they have with agents to the ESOS agency at the time of registration or re-registration. The ESOS agencies will need to build their capability to verify provider claims and investigate suspected undeclared relationships. As providers are required to continue to meet the 'fit and proper' provider requirements throughout their registration, the ESOS agencies will need to monitor their ongoing compliance. They will need to create new forms and processes to verify provider 'fit and proper' requirements.

To be effective, amendments should also be made to the legislative instruments, including the ESOS Regulations which detail the collection of data. If timing does not allow these amendments to be made, implementation could be delayed. This will be taken under consideration and work will be done to ensure changes are aligned.

Transitional arrangements will be put in place. The department will engage the international education sector through forums, the peak bodies and written information via the departmental and PRISMS websites to inform stakeholders of the new requirements. The ESOS agencies will also engage education providers. The Minister for Education may engage directly with the international education sector and through the media. Upon the passage of legislation, there will be a period before the proposed commencement of 1 July 2024, to allow the international education sector to understand the new legislative requirements and to implement systems changes if required.

To ensure effective implementation, the department will work closely with key stakeholders, including other ESOS agencies, the international education sector and relevant Government agencies, to consult on the amendments and their implementation. Upon passage of legislation providers and peak bodies will be informed of the new requirements.



## 6.3 Impact Analysis status at each major decision point

This IA has been developed in close consultation with the OIA and in line with the relevant requirements.

A draft of an earlier version of this IA was provided to the OIA for assessment as part of the policy proposal development process, as well as to Government to inform an interim decision on the proposals under Option 3. Since then, the department has undertaken extensive analysis and further consultation with the OIA and stakeholders to inform the development of this IA for the Second Pass Final Assessment. This version of the IA was also provided to the Minister for Education as part of the final briefing process seeking agreement for the *Education Services for Overseas Students Amendment (Quality and Integrity) Bill 2024* to be introduced in Parliament.

## 7. How will you evaluate your chosen option against the success metrics?

The department will monitor and evaluate the implementation of the measures to ensure it aligns with the objectives and success metrics outlined in Question 2 and gauge its effectiveness. This evaluation will form a part of the department's ongoing commitment to strengthen integrity and quality in the international education sector and will be supported by other significant integrity reform to build data and regulatory capacity for the department and ESOS agencies.

Feedback gathered through post announcement legislative changes will be drawn from ongoing consultation with relevant sector stakeholders and a communications plan which includes fact sheets and guidance notes (as set out in detail Question 6). Additional monitoring will be via feedback gathered through a departmental contact email that can be accessed by students, providers, and other interested parties to raise and seek response to issues arising from the changes. These responses will be monitored and collated as a business-as-usual practice and inform evaluation of the implementation process.

A related non-regulatory measure, the development of whole-of-system risk indicators, will inform a risk-based approach to support ESOS agencies access faster, more nuanced data to inform targeted regulatory action, including the regulatory action that may flow out from the legislative changes detailed in this IA. The whole-of-system approach to risk will result in a better and more nuanced picture of risk behaviour in the sector. As an adjunct to the primary focus of whole-of-system risk mapping, it can be utilised to inform the impact the legislative changes have on the sector's integrity over time. This work complements a significant uplift in analytical capabilities of ASQA combined with an increased compliance function in the Department of Home Affairs and OMARA, which will play a critical role in identifying and driving targeted ESOS agency action and will support the successful implementation, and inform evaluation, of the ESOS Act changes.

Evaluation of the measures will also be assessed as part of a proposed independent Evaluation Plan to measure reform impact at a projected timeframe of six months, one year and two-years.

The Evaluation Plan will include:

- data analysis tracking student enrolments and completion rates.
- education agent performance data.
- regulatory actions/assessments and outcomes.
- stakeholder feedback.

As outlined in in Question 2, the above are performance metrics that can be used to measure trends in the quality and integrity of the sector. Increased student completion rates indicate that overseas student recruitment is more targeted and effective, and students are being better matched to courses by agents and providers. Agent performance data includes metrics such as the proportion of students recruited by the agent who did not receive a visa, and the rate of course incompleteness, including whether the student commenced in the course. Improvement in these rates would

indicate increased quality of agent performance and that agents are recruiting genuine students who are better matched to courses and providers.

Regulatory actions, assessments and outcomes by ESOS agencies are direct indicators of integrity in the sector, as they track compliance with the ESOS Act by providers. Stakeholder feedback is a more qualitative measure and important for understanding the effect of changes, any issues with implementation and whether new issues are emerging. Providers, agents, peak bodies and overseas students all have valuable and varied insights to offer on the functioning of the sector in evaluating the reform measures.

The Evaluation Plan will also consider information from the Commonwealth Ombudsman, international education peak bodies and the Quality Indicators for Learning and Teaching (QILT) Student Experience Survey and Graduate Outcomes Survey.

Success will be measured through the increase in sector integrity over time – this success will be in concert with the impact of other reforms announced in the Migration Strategy and broader implementation of the Nixon Review. Table 11 shows a number of success metrics against Government’s objectives.

**Table 11: Success metrics against Government objectives**

Government objectives	Success metrics against objectives include assessment of:
<p>1. Increase the quality of providers entering and operating in Australia’s international education sector.</p>	<ul style="list-style-type: none"> <li>• Improved visibility of the number of unscrupulous providers and agents identified and penalised and the shift in numbers over time.</li> <li>• Improved visibility of the number of poor performing providers and agents leaving the sector and the shift in numbers over time.</li> <li>• Analysis of type and reduction of complaints from students about provider conduct (to the department, to TEQSA, to ASQA and the Commonwealth Ombudsman).</li> <li>• Number of students who graduate and are able to take up skilled work in Australia (given a decrease in low quality courses and increase in quality of education providers available yielding better outcomes for students).</li> <li>• Analysis of PRISMS data on good outcomes and performance of students, agents and providers.</li> <li>• Collection of positive feedback from sector stakeholders.</li> <li>• Decrease in the number of persons attempting to enter Australia under a student visa for purposes other than study (the conduits available to those persons being disrupted through closing down providers and agents facilitating their movement).</li> </ul>
<p>2. Reduce the presence of criminal activity and networks operating in the sector</p>	<ul style="list-style-type: none"> <li>• Improved visibility of the number of unscrupulous providers and agents identified and penalised and the shift in numbers over time.</li> <li>• Collection of positive feedback from sector stakeholders.</li> <li>• Decrease in the number of persons attempting to enter Australia under a student visa for purposes other</li> </ul>

Government objectives	Success metrics against objectives include assessment of:
	than study (the conduits available to those persons being disrupted through closing down providers and agents facilitating their movement).
3. Reduce the ability of providers and agents to engage in collusive practices to exploit overseas students.	<ul style="list-style-type: none"> <li>• Improved visibility of the number of unscrupulous providers and agents identified and penalised and the shift in numbers over time.</li> <li>• Analysis of PRISMS data on good outcomes and performance of students, agents and providers.</li> <li>• Collection of positive feedback from sector stakeholders.</li> <li>• Decrease in the number of persons attempting to enter Australia under a student visa for purposes other than study (the conduits available to those persons being disrupted through closing down providers and agents facilitating their movement).</li> </ul>
4. Increase ability to identify and act on unscrupulous behaviour in the sector.	<ul style="list-style-type: none"> <li>• Decrease in data gaps.</li> <li>• Improved visibility of the number of unscrupulous providers and agents identified and penalised and the shift in numbers over time.</li> <li>• Analysis of PRISMS data on good outcomes and performance of students, agents and providers.</li> <li>• Collection of positive feedback from sector stakeholders.</li> <li>• Decrease in the number of persons attempting to enter Australia under a student visa for purposes other than study (the conduits available to those persons being disrupted through closing down providers and agents facilitating their movement).</li> </ul>
5. Increase data on provider and agent interactions that leads to unscrupulous behaviour.	<ul style="list-style-type: none"> <li>• Decrease in data gaps.</li> <li>• Improved visibility of the number of unscrupulous providers and agents identified and penalised and the shift in numbers over time.</li> <li>• Analysis of PRISMS data on good outcomes and performance of students, agents and providers.</li> <li>• Collection of positive feedback from sector stakeholders.</li> </ul>
6. Ensure overseas students have a positive experience of studying in Australia.	<ul style="list-style-type: none"> <li>• Improved visibility of the number of unscrupulous providers and agents identified and penalised and the shift in numbers over time.</li> <li>• Improved visibility of the number of poor performing providers and agents leaving the sector and the shift in numbers over time.</li> <li>• Analysis of type and reduction of complaints from students about provider conduct (to the department, to TEQSA, to ASQA and the Commonwealth Ombudsman).</li> <li>• Analysis of overseas student satisfaction metrics through the QILT survey.</li> <li>• Number of students who graduate and are able take up skilled work in Australia (given a decrease in low</li> </ul>

Government objectives	Success metrics against objectives include assessment of:
	<p>quality courses and increase in quality of education providers available yielding better outcomes for students).</p> <ul style="list-style-type: none"> <li>• Analysis of PRISMS data on good outcomes and performance of students, agents and providers.</li> <li>• Collection of positive feedback from sector stakeholders.</li> <li>• Decrease in the number of persons attempting to enter Australia under a student visa for purposes other than study (the conduits available to those persons being disrupted through closing down providers and agents facilitating their movement).</li> </ul>

Data on provider and student trends, such as enrolments and commencements, will be sourced from PRISMS and student visa data from the Department of Home Affairs. Where appropriate, analysis of trends will be shared with the sector to inform discussions on how reform measures are working and whether gaps remain. The number of ESOS agency investigations and breaches of the ESOS Act, as well as student complaints to ESOS agencies and the Office of the Commonwealth Ombudsman will be tracked for trends and emerging issues. Results from the QILT Graduate Outcomes and Student Experience surveys will be analysed for improvements in outcomes and experience of overseas students. The results of these surveys are publicly available and will inform discussions with the sector.

The department will continue to actively seek input from sector stakeholders, international education peak bodies, the Council of International Students Australia (CISA) and liaison with and feedback from outposted Department of Education counsellors in the region and globally and feedback from the ESOS agencies to ensure diverse perspectives on the implementation and impact of the measures are gathered, analysed and considered.

## 7.1 Problem 1: Provider and agent collusion

The department expects to see an increase in the identification of behaviours that have previously gone undetected and a subsequent uptick in regulatory action, and over time a decrease in the instances of overseas student exploitation as identified by the Nixon Review. This will be supported by data and reporting from Operation Inglenook, which will continue until 2026.

This measure, along with those to address Problems 2 and 3, will afford an expansion of data collection and data availability to the department and ESOS agencies, and a reduction in data gaps that have hampered efforts to detect and deter unscrupulous behaviours.

It is difficult to estimate the change in the number of cross-ownership arrangements as this data is not currently collected. With less cross-ownership the risk of education agents unduly influencing provider delivery will be mitigated, and it will be more challenging for providers and agents to collude, especially in operation of chain or network arrangements to traffic students. Undisclosed cross-ownership, if discovered, would be an immediate red-flag for the ESOS agencies to investigate any further wrongdoing under the ESOS Act and refer to the appropriate authorities if criminal activity is suspected.

The ESOS agencies will share insights on how they are managing the cross-ownership requirements, through appropriate inter-departmental forums to ensure consistency across sectors. ESOS agencies may adapt their approach based on this information sharing.

## 7.2 Problem 2: Transparency of agent performance

Data analytics will be run on a regular basis in PRISMS to determine uptake of the new agent data. This will clearly show the percentage of providers who engage with the new agent data. A success metric for this will see 20 per cent or more of providers interacting with this information in the first 12 months of implementing the changes.

Qualitative provider feedback on how they use the expanded agency dashboard will also be collected, including through ongoing formal consultations with the international education sector. Iterative changes based on continuing assessment and evaluation of provider feedback will be considered for IT implementation to refine the information in a way which is most useful to providers when deciding whether they should engage a new agent.

## 7.3 Problem 3: Agent commissions

Data analytics will be run on a regular basis in PRISMS to determine provider use of the new agent data. These analytics will clearly show the percentage of providers who engage with the new agent data.

A success metric for this will see 20 per cent or more of providers interacting with this information in the first 12 months of implementing the changes. Data reports and analytics will be run on the agent commission data to understand compliance. This information can be used by the ESOS agencies for compliance monitoring and investigation.

Red flags may include:

- providers reporting no commission paid against a significantly high number of CoEs, when compared to all providers in the same sector.
- lower than expected commissions (e.g. under \$100).
- unusual patterns in commission payment data.

This information can be used by the ESOS agencies for compliance monitoring and investigation.

Continuing provider feedback will also feed into the mechanics of how providers record new data required by the changes to ensure that requirements are not overly burdensome and useful information is captured. Input fields are intended to be adaptable, within the parameters of the information prescribed by the ESOS Regulations.

## 7.4 Problem 4: Limited ability to identify, deter and disrupt unscrupulous actors

Success of Option 3 will see an increase in the quality of providers and a decrease in the activity of non-genuine providers and students operating in the market. It will be measured through quantitative feedback on the number of registration applications from new providers and of new courses over a period of up to 24 months that result in successful registrations.

The number of existing providers who have their registration cancelled due to not delivering training to overseas students, or suspended, due to serious regulatory investigation, will be tracked and trends will be monitored and assessed.

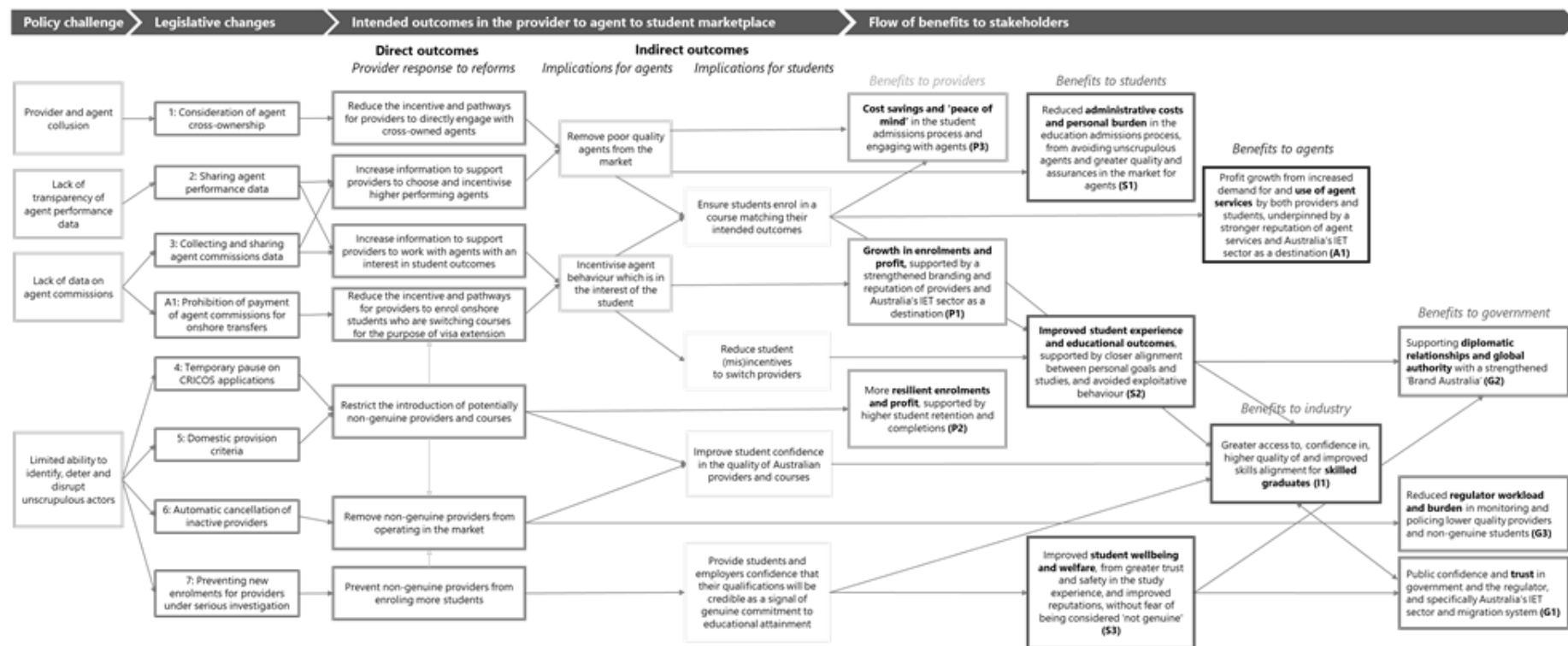
Qualitative feedback on increased flexibility of options for ESOS agencies in the assessment process and compliance activities will be sought from ESOS agencies and international education sector stakeholders.

# Appendices

## Appendix A

Figure A1: Theory of change

**Theory of Change: Identifying the logic from each legislative reform to influencing stakeholders and supporting benefits**



Source: Deloitte Access Economics.

Note: 'IET' in this figure stands for 'international education and training'—this is collectively referred to in the IA as international education.

**Table A2: Intervention logic of the seven legislative reforms**

<b>Reform</b>	<b>Intervention logic</b>
<b>1: Consideration of agent cross-ownership</b>	<ul style="list-style-type: none"> <li>• The reform will give ESOS Agencies instruction to examine agent ownership structures, improving the government’s oversight of agent cross-ownership structures and monitoring potential provider-agent collusion.</li> <li>• The reform will improve transparency of agent ownership structures, decreasing the ability of agents and providers to collude and improving the trust, integrity and reputation of the sector. This will enable students to have more certainty about the quality of agents and providers they are engaging.</li> </ul>
<b>2: Sharing agent performance data</b>	<ul style="list-style-type: none"> <li>• This reform establishes the basis for sharing performance data with providers. This will enhance the visibility of agents’ performance, which will facilitate better informed decision-making for providers.</li> <li>• It is expected to improve the quality of agents in the market and enhance agent-provider matchmaking. This will improve the certainty of students and providers alike and ensure that agents act in the best interests of students and perform ethically, enhancing student certainty and experience.</li> </ul>
<b>3: Collecting and sharing agent commission data</b>	<ul style="list-style-type: none"> <li>• Currently the government does not collect information on agent commissions or the nature of arrangements. This reform will expand provider reporting requirements to include reporting on agent commissions. This will enhance transparency in the sector and increase provider price certainty on agent commissions.</li> <li>• With increased commission price data and transparency, some price convergence is expected as the market adjusts. It will lower providers’ uncertainty of commissions paid to agents and inform better decision-making and possible cost savings. Moreover, higher commission transparency will support more competition for high quality services.</li> </ul>
<b>4: Temporary pause on CRICOS applications</b>	<ul style="list-style-type: none"> <li>• This reform seeks to moderate growth in the sector and give ESOS Agencies more time to assess the backlog of applications. The reform will restrict the introduction of potentially non-genuine providers and courses, ensuring high quality provision.</li> <li>• It is expected that higher quality providers will enter the market, albeit delayed, as they have been vetted more rigorously. This additional quality assurance will improve choice certainty and educational outcomes for students, as well as trust in the quality of the sector overall.</li> </ul>
<b>5: Domestic provision criteria</b>	<ul style="list-style-type: none"> <li>• This reform would prevent entry of providers who have not demonstrated genuine educational outcomes for domestic students for 24 months.</li> <li>• It is expected to deter and prevent entry of new providers who do not intend to deliver genuine educational outcomes. This will enhance the reputation of international education in Australia and improve the certainty of quality education delivered to students. This will have a flow-on-benefit of greater certainty of skills matching between graduates and industry in-demand skills.</li> <li>• Interaction with local domestic students is often an important value proposition for overseas students, and can be a driver of both quality and student demand, generating returns to students and the sector more widely. However, the attribution and quantification of this return is likely to be challenging.</li> </ul>
<b>6: Automatic cancellation of inactive providers</b>	<ul style="list-style-type: none"> <li>• This reform will restrict providers with volatile enrolment activity that may be rushing training activities or presenting a ‘false front’ as a genuine educational provider (this is also intended to prevent inactive companies from ‘phoenixing’). These providers, either with or without agent collusion, offer lower-quality education outcomes and possible non-genuine students’ access</li> </ul>



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to irregular migration. This impacts the quality and reputation of the sector and decreases industry certainty of graduates' skills.

- The reform will support removing non-genuine providers from the sector, increasing the experience and quality of education for students, as well as industry certainty regarding graduates' skills.

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**7: Preventing new enrolments for providers under serious investigation**

- Preventing new students from enrolling to study at providers under serious investigation will protect genuine students from unknowingly enrolling with a provider at risk of poor quality and limit the options for non-genuine students seeking to enrol for non-educational reasons.
- It is expected that students will have higher certainty about the quality of education they will receive as well as increase confidence in the quality and alignment of skilled graduates. Removing unscrupulous actors from the sector will also improve the trust and brand of the sector.

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Source: Deloitte Access Economics

# Appendix B

**Table B1: Benefits framework**

<b>Stakeholder</b>	<b>Benefits</b>
<b>Providers</b>	<ul style="list-style-type: none"> <li>• (P1) <b>Growth in enrolments and profit</b>, supported by a strengthened branding and reputation of providers and Australia’s international education sector as a destination</li> <li>• (P2) More <b>resilient enrolments and profit</b>, supported by higher quality students with greater retention and completions</li> <li>• (P3) <b>Cost savings and ‘peace of mind’</b> in the student admissions process and engaging with agents</li> </ul>
<b>Agents</b>	<ul style="list-style-type: none"> <li>• (A1) Profit growth from increased demand for and <b>use of agent services</b> by both providers and students, underpinned by a stronger reputation of agent services and Australia’s international education sector as a destination</li> </ul>
<b>Overseas students</b>	<ul style="list-style-type: none"> <li>• (S1) Reduced <b>administrative costs and personal burden</b> in the education admissions process, from avoiding unscrupulous agents and greater quality and assurances in the market for agents</li> <li>• (S2) Improved <b>student experience and educational outcomes</b>, supported by closer alignment between personal goals and studies, and avoided exploitative behaviour</li> <li>• (S3) Improved <b>student wellbeing and welfare</b>, from greater trust and safety in the study experience, and improved reputations, without fear of being considered ‘not genuine’</li> </ul>
<b>Government</b>	<ul style="list-style-type: none"> <li>• (G1) Public confidence and <b>trust</b> in government and the regulator, and specifically Australia’s international education sector and migration system</li> <li>• (G2) Supporting <b>diplomatic relationships and global authority</b> with a strengthened ‘Brand Australia’</li> <li>• (G3) Reduced <b>regulator workload and burden</b> in monitoring and policing lower quality providers and non-genuine students</li> </ul>
<b>Industry</b>	<ul style="list-style-type: none"> <li>• (I1) Greater access to, confidence in, higher quantity and quality of and improved skills alignment for <b>skilled graduates</b></li> </ul>

Source: Deloitte Access Economic. Note: P = benefits to providers, A = benefits to agents, S = benefits to overseas students, G = benefits to Government, and I = benefits to industry.

**Table B2: Attribution between benefits and each legislative reform**

<b>Benefit stream</b>	<b>Reform 1</b>	<b>Reform 2</b>	<b>Reform 3</b>	<b>Reform 4</b>	<b>Reform 5</b>	<b>Reform 6</b>	<b>Reform 7</b>	
(P1) Growth in enrolments and profit, supported by a strengthened branding and reputation of providers and Australia's international education sector as a destination								<i>Indirect attribution across reforms</i>
(P2) More resilient enrolments and profit, supported by higher quality students with greater retention and completions								<i>Indirect attribution across reforms</i>
(P3) Cost savings and 'peace of mind' in the student admissions process and engaging with agents			✓	✓				
(A1) Profit growth from increased demand for and use of agent services by both providers and students, underpinned by a stronger reputation of agent services and Australia's international education sector as a destination	✓	✓						
(S1) Reduced administrative costs and personal burden in the education admissions process, from avoiding unscrupulous agents and greater quality and assurances in the market for agents	✓	✓						
(S2) Improved student experience and educational outcomes, supported by closer alignment between personal goals and studies, and avoided exploitative behaviour								<i>Indirect attribution across reforms</i>
(S3) Improved student wellbeing and welfare, from greater trust and safety in the study experience, and improved reputations, without fear of being considered 'not genuine'	✓			✓	✓	✓	✓	
(G1) Public confidence and trust in government and the regulator, and specifically Australia's international education sector and migration system								<i>Indirect attribution across reforms</i>
(G2) Supporting diplomatic relationships and global authority with a strengthened 'Brand Australia'								<i>Indirect attribution across reforms</i>
(G3) Reduced regulator workload and burden in monitoring and policing lower quality providers and non-genuine students	✓	✓		✓	✓	✓	✓	
(I1) Greater access to, confidence in, higher quantity and quality of and improved skills alignment for skilled graduates								<i>Indirect attribution across reforms</i>

Source: Deloitte Access Economics

# Appendix C

**Table C1: Costs Framework**

	<b>1: Consideration of agent cross-ownership</b>	<b>2: Sharing agent performance data</b>	<b>3: Collecting and sharing agent commissions data</b>	<b>4: Temporary pause on CRICOS applications</b>	<b>5: Domestic provision clause</b>	<b>6: Automatic cancellation of inactive providers</b>	<b>7: Preventing new enrolments for providers under serious regulatory investigation</b>
<b>Providers</b>	1a: De-merger costs, including risk of closure 1b: Lost efficiency from ceasing integrated services 1c: Increased administrative burden		3a: Refine internal reporting systems 3b: Additional reporting preparation	4a: Lost profit from delayed entry 4b: Lost profit from delayed entry of courses that are responding to growing demand	5a: Lost profit from delayed entry	6a: Cost and burden of reapplying to CRICOS	7a: Lost profit for investigated providers 7b: Lost profit from reduction in total students
<b>Agents</b>	1d: De-merger costs 1e: Lost efficiency from ceasing integrated services 1f: Losses of business for cross-owned agents	2a: Losses to lower performing agents	3c: Losses for higher commission agents				
<b>Overseas students</b>	1g: Increased administrative costs			4c: Lost access to preferred course/provider	5b: Lost access to the preferred course/provider		7c: Lost access to the preferred course/provider
<b>Government</b>	1h: Develop extension to 'fit and proper test' for ownership structure 1i: Monitoring and enforcement	2b: Extend reporting system access 2c: Data processing, validation and reporting	3d: Extension to PRISMS platform 3e: Data processing, validation and reporting		5c: Increased administrative burden on assessing providers	6b: Increased administration burden on monitoring providers	7d: Increased administrative burden on monitoring enrolments for providers under serious regulatory investigation

Source: Deloitte Access Economics

# Appendix D

## Analytical approach

This Appendix outlines the analytical approach used to populate the conceptual cost and benefits framework. Key modelling assumptions used in this work are outlined in Table D1. A standard 7 per cent discount rate and 10-year time frame (commencing in 2025) is used.

**Table D1: Key modelling assumptions**

Assumption	Notes
<b>All</b>	
<b>International education sector gross profit-to-revenue rate</b> 26%	<ul style="list-style-type: none"> <li>• Revenue represents the gross earnings by a business, whereas profits represent the returns to that business (after accounting for business costs in delivering a good or service), and better represent the returns to business owners, in this instance, providers and agents.               <ul style="list-style-type: none"> <li>– If a provider or agent does not incur enrolment activity, then they do not receive the revenue from that activity, however they also do not incur the business costs associated with delivering that activity. The 'cost' to the business is the profits or returns from that activity, calculated as revenue less business costs.</li> <li>– Revenue can often be used in analysis as it is typically more accurately measured, whereas profits tend to be commercial in confidence. Further, when calculating ratios (such as a benefit-cost-ratio), a comparison of revenues may be appropriate. However, this analysis compares a variety of revenue and non-revenue-based costs and relies on breakeven analysis, which is less appropriate for relying on revenue measures.</li> <li>– Further, marginal revenue tends to be constant (e.g. course fees do not differ across similar students), whereas marginal profit can often vary, as marginal costs vary (i.e. the incremental cost of delivering to a student changes). This variation is typically larger for more capital-intensive industries and tends to be less variable for more labour-intensive industries, such as international education.</li> </ul> </li> <li>• Whereas accounting profit measures can often account for taxation (a transfer to government), for simplicity, no adjustment for taxation is made.</li> <li>• Revenue is estimated from average fee revenues (as per below) and costs are estimated from a Department of Education study of university student costing (\$18,800 average per student, inflated to \$22,366 in 2024).<sup>70</sup></li> <li>• It is noted that while costs and profits for other international education sub-sectors are likely to vary, overall international education is typically a labour-intensive sector with lower returns (relative to more capital-intensive sectors with typically higher returns).               <ul style="list-style-type: none"> <li>– Accordingly, it is reasonable to expect that sub-sectors within international education will have relatively similar rates of return, compared to the average Australian business.<sup>71</sup></li> <li>– Further, industry-wide estimates of profits and revenues are not suitable, as they can include schooling, early childhood education and adult education, which typically operate with significantly smaller profit-to-revenue ratios. Likewise, estimates for universities (in entirety) are likely to result in smaller profit-to-revenue ratios, as these will capture broader non-teaching activities, such as research and community services, that are expected to have lower profits (if any) and are known to be cross-subsidised by more profitable teaching activities.</li> </ul> </li> </ul>

<sup>70</sup> Deloitte Access Economics report prepared for the Department of Education (2022) *Transparency in Higher Education expenditure for publication*.

<sup>71</sup> The exception is for schooling, noting that these represent less than 2% of international education enrolments.

Assumption	Notes
	<ul style="list-style-type: none"> <li>The same rates are applied to international education agents, noting that the costs and benefits estimated for agent commissions are magnitudes smaller (to provider revenues) and do not have a material effect on the overall result.</li> </ul>
<b>International education sector growth rate</b> Average 5% year-on-year growth rate for students, providers and agents.	<ul style="list-style-type: none"> <li>Assumption-driven, <b>noting that this primarily informs Option 1 (status quo) and where incremental benefits and costs are derived above this growth rate, the growth rate in and of itself has relatively limited effects on the overall results.</b></li> </ul>
<b>Students</b>	
<b>Student preferences</b> 10% of students decide to no longer study in Australia	<ul style="list-style-type: none"> <li>Assumption driven.</li> <li>Noting the drivers of overseas student decision-making, where typically students will choose to study abroad, then choose a destination, then choose a provider, such that it is expected most students will transfer to an alternative Australian provider.</li> </ul>
<b>Value of student time</b> \$37 per hour	<ul style="list-style-type: none"> <li>Consistent with the OIA Regulatory Burden Measurement Framework (non-work-related labour costs).</li> </ul>
<b>Providers</b>	
<b>Cross-ownership of businesses</b> 5% of VET providers have cross-ownership structures with agents	<ul style="list-style-type: none"> <li>Based on findings from the Nixon Review and expectations of the Department, VET providers are most likely to be affected by cross-ownership monitoring. Initial analysis of 11 cross-ownership providers identified via ABN matching indicated these businesses primarily operated in VET enrolments.</li> <li>Assumption that 5% of VET providers have cross-ownership structures. Of 989 VET providers in 2024, this equates to 49 providers.</li> <li>Initial conservative departmental estimates identified 11 cross-owned providers only relying on ABN matching.</li> <li>Assumption that 100% of providers identified under reform are impacted.</li> </ul>
<b>Providers seeking CRICOS registration</b> 91 providers apply for CRICOS each year	<ul style="list-style-type: none"> <li>Based on 5-year average over 2019-23 of newly registered CRICOS providers.</li> <li>Approximately 15 of these providers are ELICOS providers.</li> </ul>
<b>Providers under serious investigation</b> 22 providers each year	<ul style="list-style-type: none"> <li>Based on 6-year average of 'ASQA Compliance Monitoring – Cases' over 2018-19 to 2023-24.</li> </ul>
<b>International education sector wage costs</b> \$52 hourly wage and 75% on-costs (\$91 in total)	<ul style="list-style-type: none"> <li>ABS average weekly earnings, full time adult ordinary earnings, assuming a 37.5-hour work week.</li> <li>Office of Impact Analysis Regulatory Burden Measurement Framework.</li> </ul>
<b>Fees</b> Average adjusted course fees of \$21,055	<ul style="list-style-type: none"> <li>Unadjusted fees: Higher education \$36,915, VET \$13,440, Schools \$34,110, ELICOS \$14,746.</li> <li>Relies on average reported fees in public CRICOS reporting by sector. Fees for courses longer than a year are adjusted for a single year tuition. Includes both tuition and non-tuition fees.</li> <li>Adjusted for an assumed 10% discount to account for scholarships.</li> <li>Adjusted for an average 83% completion rate based on agent performance data over 2022-23, whereby students who do not complete are assumed to pay 50% of their fees.</li> <li>Profit margins are applied to fees.</li> <li>It is noted that this average course fee is re-weighted for the specific sub-sector composition impacted for each legislative change.</li> </ul>
<b>Agents</b>	
<b>Agent commissions</b> Average agent commission of \$1,301	<ul style="list-style-type: none"> <li>Commissions: Higher education \$1,876, VET \$683, Schools \$1,733, ELICOS \$749.</li> <li>Average commission for universities relies on Department analysis of potential agent spend using university finances reporting: \$14.1m total agent spend per university,</li> </ul>

Assumption	Notes
	<ul style="list-style-type: none"> <li>including other advertising and marketing spend, 9,382 overseas students per university, and 80% of students facilitated by agents.</li> <li>Commissions for other sectors (VET, ELICOS, schooling) scaled proportionally by average tuition fees.</li> <li>Profit margins are applied to commissions.</li> </ul>
<b>Onshore agents</b> 50% of agents are onshore	<ul style="list-style-type: none"> <li>Based on estimates of business location address for agents.</li> <li>Noting Department advice to caution these agent counts and field values.</li> </ul>
<b>Department</b>	
<b>Department wages</b> \$99,032 wages and 75% on-costs (\$173,306 in total)	<ul style="list-style-type: none"> <li>Midpoint of the minimum and maximum APS 6 earnings for DoE.</li> <li>On-costs consistent with the OIA Regulatory Burden Measurement Framework.</li> </ul>
<b>Extension to PRISMS platforms</b> \$100,000 for each extension	<ul style="list-style-type: none"> <li>Assumption-driven.</li> </ul>

Source: Multiple references compiled by Deloitte Access Economics

## Measuring benefits

This section outlines the analytical approach to measuring benefits, noting that in many instances, the nature of the benefits is challenging or not appropriate to quantify. In these instances, an approach to qualitatively describing the benefits is sought. The approach to each of the 11 benefit streams is outlined in Table D2. These benefits are captured with many of the underlying key assumptions that are outlined in Table D1.

Several of the benefits have potential for quantification, however a significant degree of uncertainty regarding the potential impact. To capture the potential size of these benefits, without overstating the overall CBA outcomes associated with the reforms, these benefits have been captured through a 'case study' approach. The case studies capture the benefit associated with a 1 per cent improvement in student growth, retention or agent demand.

**Table D2: Approach to measuring benefits**

Benefit stream	Quantifiable?	Approach
<b>Education providers</b>		
(P1) Growth in enrolments and profit, supported by a strengthened branding and reputation of providers and Australia's international education sector as a destination	Case study only	<ul style="list-style-type: none"> <li>Attributing future growth to the sector from these legislative changes is challenging and uncertain.</li> <li>The quantum of potential impacts is examined by a 1% increase in enrolments, relying on an estimate of total revenue using the average adjusted fee of \$21,055 per student and total enrolments of 864,036 (forecast) in 2025.</li> <li>26% profit margin for sector</li> </ul>
(P2) More resilient enrolments and profit, supported by higher quality students with greater retention and completions	Case study only	<ul style="list-style-type: none"> <li>Attributing future completion rates in the sector from these legislative changes is challenging and uncertain.</li> <li>The quantum of potential impacts is examined by a 1% improvement in completions, relative to the current completion rate of 83%, whereby an incomplete student is assumed to pay 50% of fees.</li> <li>26% profit margin for sector</li> </ul>

<b>Benefit stream</b>	<b>Quantifiable?</b>	<b>Approach</b>
(P3) Cost savings and 'peace of mind' in the student admissions process and engaging with agents	<b>Yes</b>	<ul style="list-style-type: none"> <li>Providers are assumed to experience a <b>10% reduction in time</b> involved in admissions processes due to the higher calibre of agents and therefore students. The admissions process is assumed to take <b>one hour</b> per student admission prior to the reform.</li> <li>Providers are assumed to experience a <b>10% reduction in time</b> spent searching for quality agents and conducting due diligence on them. This process is assumed to take <b>five hours</b> prior to the reform.</li> <li>Hourly wage is estimated at \$91 per hour.</li> </ul>
<b>Agents</b>		
(A1) Profit growth from increased demand for and use of agent services by both providers and students, underpinned by a stronger reputation of agent services and Australia's international education sector as a destination	Case study only	<ul style="list-style-type: none"> <li>Attributing future growth in use of agents from these legislative changes is challenging and uncertain.</li> <li>The quantum of potential impacts is examined by a 1% growth in agent use, relative to the current utilisation rate of 79.9%, and a current average commission of \$1,301 per student.</li> <li>26% profit margin for sector.</li> </ul>
<b>Overseas students</b>		
(S1) Reduced administrative costs and personal burden in the education admissions process, from avoiding unscrupulous agents and greater quality and assurances in the market for agents	<b>Yes</b>	<ul style="list-style-type: none"> <li>Students are assumed to experience a <b>1-hour time saving</b> from engaging with a high-quality agent when compared to a low-quality agent. <b>17% of agents</b> are assumed to be low quality, with visa refusal rates or student incompleteness below 50%.</li> <li>Students are assumed to experience a <b>25% time reduction</b> in the agent search process, as the Australian market becomes better known for agent quality. The average search time among students is assumed to be <b>one hour</b>.</li> </ul>
(S2) Improved student experience and educational outcomes, supported by closer alignment between personal goals and studies, and avoided exploitative behaviour	No	<ul style="list-style-type: none"> <li>This benefit is not quantified – the harms of integrity and quality issues to overseas students and education outcomes, including the damages of exploitation are discussed.</li> </ul>
(S3) Improved student wellbeing and welfare, from greater trust and safety in the study experience, and improved reputations, without fear of being considered 'not genuine'	No	<ul style="list-style-type: none"> <li>This benefit is not quantified – the importance of trust and safety to overseas students are discussed, as well as the harms from safety fears for overseas students.</li> </ul>
<b>Government</b>		
(G1) Public confidence and trust in government and the regulator, and specifically Australia's international education sector and migration system	No	<ul style="list-style-type: none"> <li>This benefit is not quantified – the importance of trust in government is discussed, as well as the harms from integrity and quality issues in Australia's migration system.</li> </ul>
(G2) Supporting diplomatic relationships and global authority with a strengthened 'Brand Australia'	No	<ul style="list-style-type: none"> <li>This benefit is not quantified – the importance of Australia's global and diplomatic presence is discussed,</li> </ul>



Benefit stream	Quantifiable?	Approach
(G3) Reduced regulator workload and burden in monitoring and policing lower quality providers and non-genuine students	Yes	<p>and the role that Australia’s international education sector has in supporting that.</p> <ul style="list-style-type: none"> <li>Assumed that ESOS Agencies experience a <b>1% efficiency</b> in monitoring activities as a result of having fewer low-quality agents and providers and non-genuine students in Australia, including ASQA, TEQSA and the Department of Home Affairs (student visa processing only).</li> <li>Based on Agency resourcing for ASQA (\$48.3m) and TEQSA (\$23.5 m) in 2022-23 from agency financial reports (annual funding).<sup>72,73</sup> Funding for ESOS agencies is assumed to be reasonably stable on an annual basis.</li> <li>Department of Home Affairs resourcing for student visa processing is calculated based on the total cost of visa processing (\$395.9 m, Program 2.2 in the Department of Home Affairs Annual Report 2022-23), apportioned for the share of student visas (12% of all visas, from various Home Affairs reporting for 2022-23).</li> </ul>
<b>Industry</b>		
(I1) Greater access to, confidence in, higher quantity and quality of and improved skills alignment for skilled graduates	No	<ul style="list-style-type: none"> <li>This benefit is not quantified – the role of the international education sector in supporting the skilled graduate pipeline is discussed, as well as how integrity and quality issues compromise that pipeline.</li> </ul>

## Measuring costs

This section outlines the analytical approach to measuring costs by each legislative change, including whether the cost is expected to be ongoing (or once-off), whether the cost represents a within stakeholder group transfer, and whether the cost has been quantifiable or not (Table D3 to Table D9).

It is noted that the implementation of reform 4 is relatively uncertain, as this legislative change is described to be used at the discretion of the Minister for Education. In particular, the duration of the pause (up to 12 months) and the use of exemptions to the pause (to specific providers or courses) is not known. This work has relied on conservative and high-cost assumptions to determine the headline result (i.e. an immediate 12 month pause applied to all new courses and providers), with sensitivity testing of key parameters to examine the potential downwards variance in costs.

<sup>72</sup> Australian Government Transparency Portal (2023), *Tertiary Education Quality and Standards Agency Annual Report 2022–23*, [www.transparency.gov.au/publications/education/tertiary-education-quality-and-standards-agency/tertiary-education-quality-and-standards-agency-annual-report-2022-23/part-4%3A-financial-report/note-5%3A-funding](http://www.transparency.gov.au/publications/education/tertiary-education-quality-and-standards-agency/tertiary-education-quality-and-standards-agency-annual-report-2022-23/part-4%3A-financial-report/note-5%3A-funding).

<sup>73</sup> Australian Government Transparency Portal (2023), *Australian Skills Quality Authority Annual Report 2022–23*, [www.transparency.gov.au/publications/employment-and-workplace-relations/australian-skills-quality-authority-national-vocational-education-and-training-regulator/asqa-annual-report-2022-23/chapter-4.-finances/funding](http://www.transparency.gov.au/publications/employment-and-workplace-relations/australian-skills-quality-authority-national-vocational-education-and-training-regulator/asqa-annual-report-2022-23/chapter-4.-finances/funding).

Table D3: Approach to measuring costs for 'Consideration of agent cross-ownership' (Reform 1)

Costs	Stakeholder	Ongoing?	Transfer?	Quantifiable?	Approach
<b>1a: Provider demerger costs, including risk of closure</b>	Providers	No	No	<b>Yes</b>	<ul style="list-style-type: none"> <li>25 businesses assumed to demerge (based on 49 businesses with cross-ownership arrangements identified and impacted, and 50% assumed demerger rate).</li> <li>Average demerger cost of \$50,880 per combined business (based on 2015 USD analysis of average cost of starting a small business as a proxy, converted to 2024 Australian dollars).</li> <li>Assumption that 50% of cross-owned businesses need to demerge, with 50% of business demerger costs borne by providers (the other half are borne by the agent in cost 1d).</li> <li>Business closure is considered qualitative only, with the modelling assuming all businesses bear the cost of demerging rather than closure.</li> </ul>
<b>1b: Lost efficiency for providers from ceasing integrated services</b>	Providers	<b>Yes</b>	No	No	<ul style="list-style-type: none"> <li>\$25.2m in student revenue generated by affected cross-owned providers annually, based on 92 enrolments per cross-owned business (Departmental analysis) and \$11,055 adjusted VET fees per student.</li> <li>\$50,914 in average lost business synergies (5% of provider revenue assumed) for each provider affected by demerger.</li> <li>26% profit margin for sector.</li> </ul>
<b>1c: Increased administrative burden for providers</b>	Providers	<b>Yes</b>	No	<b>Yes</b>	<ul style="list-style-type: none"> <li>91 new CRICOS registrations per year (based on 5-year annual average registrations for 2019-2023, PRISMS).</li> <li>\$455 administrative cost per provider, based on 5 hours assumed additional resourcing effort and \$91 hourly education sector wage.</li> </ul>
<b>1d: Agent demerger costs, including risk of closure</b>	Agents	No	No	<b>Yes</b>	<ul style="list-style-type: none"> <li>Calculated as the 50% of costs in 1a.</li> <li>Business closure is considered qualitative only, with the modelling assuming all businesses bear the cost of demerging rather than closure.</li> </ul>
<b>1e: Lost efficiency for agents from ceasing integrated services</b>	Agents	<b>Yes</b>	No	No	<ul style="list-style-type: none"> <li>\$119,811 in revenue generated by agents annually, based on 92 enrolments per cross-owned business (Departmental analysis) and \$1,301 estimated agent commissions per student.</li> <li>\$5,991 average lost business synergies (5% of revenue assumed) for each agent affected by the demerger.</li> <li>26% profit margin for sector.</li> </ul>

<b>Costs</b>	<b>Stakeholder</b>	<b>Ongoing?</b>	<b>Transfer?</b>	<b>Quantifiable?</b>	<b>Approach</b>
<b>1f: Loss of business for cross-owned agents</b>	Agents	No	<b>Yes</b>	<b>Yes</b>	<ul style="list-style-type: none"> <li>\$5.9 million in agent commissions generated annually by businesses with cross-ownership arrangements (based on 49 identified businesses, 92 average annual enrolments and \$1,301 average agent commission).</li> <li>Assumption that 50% of identified businesses demerge and 20% of agent commissions are lost due to business demerger, with lost business transferring to other onshore agents.</li> <li>26% profit margin for sector.</li> </ul>
<b>1g: Increased administrative costs for students</b>	Overseas students	<b>Yes</b>	No	<b>Yes</b>	<ul style="list-style-type: none"> <li>4,555 students impacted annually (based on an average 92 enrolments per cross-owned business and 49 providers impacted).</li> <li>\$185 cost per student based on a 5-hour increase in time spent engaging separately with providers and agents (assumed).</li> </ul>
<b>1h: Develop extension to 'fit and proper test' for ownership structure</b>	Government	No	No	<b>Yes</b>	<ul style="list-style-type: none"> <li>\$100,000 fixed cost assumed.</li> </ul>
<b>1i: Monitoring and enforcement</b>	Government	<b>Yes</b>	No	<b>Yes</b>	<ul style="list-style-type: none"> <li>0.2 FTE at APS6 level.</li> </ul>

Source: Deloitte Access Economics

Table D4: Approach to measuring costs for 'Sharing agent performance data' (Reform 2)

Costs	Stakeholder	Ongoing?	Transfer?	Quantifiable?	Approach
<b>2a: Lost profit for lower performing agents</b>	Agents	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<ul style="list-style-type: none"> <li>• 17% of agents are lower performing, defined by a visa refusal rate and/or incompletions rate greater than 50%.</li> <li>• 4,399 onshore agents (17% of 25,876 agents projected in 2025) are lower-performing and facilitate 63,708 enrolments (14.5 enrolments per agent) at an average commission of \$1,301 per agent (enrolment), generating \$82.9 m in commissions.</li> <li>• Lower performing agents lose half of their business (50%) to higher performing agents, 50% of who are on shore resulting in a \$20.7 m transfer (25% onshore transfer rate).</li> <li>• 26% profit margin for sector.</li> </ul>
<b>2b: Government extension of reporting system access</b>	Government	No	No	<b>Yes</b>	<ul style="list-style-type: none"> <li>• \$100,000 fixed cost assumed.</li> </ul>
<b>2c: Data processing, validation, and reporting</b>	Government	<b>Yes</b>	No	<b>Yes</b>	<ul style="list-style-type: none"> <li>• 1 FTE at APS 6 level.</li> </ul>

Source: Deloitte Access Economics

Table D5: Approach to measuring costs for 'Collecting and sharing agent commissions data' (Reform 3)

Costs	Stakeholder	Ongoing?	Transfer?	Quantifiable?	Approach
<b>3a: Provider alignment of internal reporting systems</b>	Providers	No	No	<b>Yes</b>	<ul style="list-style-type: none"> <li>\$10,000 fixed cost assumed for systems and process change (per provider) for 1,542 providers in 2025.</li> </ul>
<b>3b: Provider additional reporting preparation</b>	Providers	<b>Yes</b>	No	<b>Yes</b>	<ul style="list-style-type: none"> <li>20 hours additional resourcing assumed at \$91 hourly rate for 1,542 providers in 2025.</li> </ul>
<b>3c: Lost profit for higher commission agents</b>	Agents	<b>Yes</b>	<b>Yes</b>	No	<ul style="list-style-type: none"> <li>Some price convergence is expected where higher commission agents will face lower commissions, on average, and vice versa.</li> <li>Noting the lack of data or transparency in agent commissions. No further analysis is undertaken to estimate this transfer.</li> </ul>
<b>3d: PRISMS platform extension - new data collection and access</b>	Government	No	No	<b>Yes</b>	<ul style="list-style-type: none"> <li>\$100,000 fixed cost assumed.</li> </ul>
<b>3e: Data processing, validation and reporting</b>	Government	<b>Yes</b>	No	<b>Yes</b>	<ul style="list-style-type: none"> <li>1 FTE at APS 6 level.</li> </ul>

Source: Deloitte Access Economics

Table D6: Approach to measuring costs of 'Temporary pause on CRICOS applications' (Reform 4)

Costs	Stakeholder	Ongoing?	Transfer?	Quantifiable?	Approach
<b>4a: Lost profit from delayed entry</b>	Providers	No	Yes	Yes	<ul style="list-style-type: none"> <li>91 new CRICOS registrations per year, with an average of 105 students each (based on 5-year annual average registrations for 2019-2023, PRISMS).</li> <li>An estimated 2,336 new courses (excluding those from new providers) entered the market in 2023, with an average of 28 enrolments per new course.</li> <li>If a 12-month instrument were introduced, affecting each of the aforementioned courses and enrolments, 75,911 students would be affected.</li> <li>Each enrolment is estimated to be associated with an average course fee of \$16,135, based on the mix of new courses across education sectors. 26% profit margin for sector.</li> <li>It is assumed that 90% of students will choose to study in Australia at a different institution.</li> </ul>
<b>4b: Lost profit from students who chose to study outside of Australia</b>	Providers	No	No	Yes	<ul style="list-style-type: none"> <li>Based on enrolments in 4a.</li> <li>Assumption that 10% of overseas students (7,591 enrolments) opt not to study at an Australian institution, resulting in lost provider fee revenue of \$16,135 per student.</li> <li>26% profit margin for sector.</li> </ul>
<b>4c: Lost access to preferred course/provider</b>	Overseas Students	No	No	No	<ul style="list-style-type: none"> <li>Overseas students may lose access to their preferred choice of provider or course which has an impact on student's utility.</li> <li>No further work was undertaken to quantify this cost stream.</li> </ul>

Source: Deloitte Access Economics

Table D7: Approach to measuring costs for 'Domestic provision clause' (Reform 5)

Costs	Stakeholder	Ongoing?	Transfer?	Quantifiable?	Approach
<b>5a: Lost profit from delayed entry</b>	Providers	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<ul style="list-style-type: none"> <li>1,515 students annually who are now unable to enrol (based on \$11,055 average adjusted VET student fee revenue, 21 new VET providers annually with no domestic students, and average commencements of 73 students per year).</li> <li>VET fees were modelled due to expected exemptions for other education sectors. 26% profit margin for sector.</li> <li>It is assumed that 90% of these students will choose to study elsewhere in Australia, imposing a cost of \$15.1 million annually to the providers who cannot enrol these potential students, but a gain to remaining providers.</li> </ul>
<b>5b: Lost access to the preferred course/provider</b>	Overseas students	<b>Yes</b>	No	<b>Yes</b>	<p>Based on enrolments in 5a.</p> <p>It is assumed that 10% of students will chose to study outside of Australia as a result of losing their preferred provider, imposing a revenue loss to providers of \$3.4 million annually. 26% profit margin for sector.</p>
<b>5c: Increased administrative burden on assessing providers</b>	Government	<b>Yes</b>	No	<b>Yes</b>	<ul style="list-style-type: none"> <li>0.1 FTE at APS 6 level.</li> </ul>

Source: Deloitte Access Economics

**Table D8: Approach to measuring costs of 'Automatic cancellation of inactive providers' (Reform 6)**

<b>Costs</b>	<b>Stakeholder</b>	<b>Ongoing?</b>	<b>Transfer?</b>	<b>Quantifiable?</b>	<b>Approach</b>
<b>6a: Cost and burden of reapplying to CRICOS</b>	Providers	<b>Yes</b>	No	<b>Yes</b>	<ul style="list-style-type: none"> <li>• 160 providers identified with zero international enrolments in 2023.</li> <li>• Estimated that each year 66 providers will have zero international enrolments, based on the average number of providers with zero enrolments at some point over 2019-23.</li> <li>• Identified that 32% of providers who had zero international enrolments over 2019-23, had zero in only one of the five years. These 32% are assumed to reapply for CRICOS registration.</li> <li>• Re-registration is assumed to cost providers the CRICOS application fee (\$6,800) in addition to 10 business days of labour to complete the application and facilitate site visits, valued at \$92 per hour.</li> </ul>
<b>6b: Increased administration burden on monitoring providers</b>	Government	<b>Yes</b>	No	<b>Yes</b>	<ul style="list-style-type: none"> <li>• 0.2 FTE at APS 6 level.</li> </ul>

Source: Deloitte Access Economics



Table D9: Approach to measuring costs of 'Preventing new enrolments for providers under serious regulatory investigation' (Reform 7)

Costs	Stakeholder	Ongoing?	Transfer?	Quantifiable?	Approach
<b>7a: Lost profit for investigated providers</b>	Providers	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<ul style="list-style-type: none"> <li>2,682 students annually are unable to enrol at providers under investigation (22 providers with average commencements of 122 students per year).</li> <li>Assumed that 90% of these students (2,414 students in total) choose to study at other institutions within Australia.</li> <li>Based on an average VET fee of \$11,055 per student, providers who are under serious investigation have the potential to lose \$26.7 million each year, which will be transferred to the other providers these students choose to engage with.<sup>74</sup></li> </ul>
<b>7b: Lost profit from reduction in total students</b>	Providers	<b>Yes</b>	No	<b>Yes</b>	<ul style="list-style-type: none"> <li>Based on enrolments in 7a.</li> <li>It is assumed that 10% of these students (268 in total) choose to no longer study in Australia, as a result of losing their preferred provider.</li> <li>Based on an average VET fee of \$11,055, lost revenue to providers would be approximately \$3.0 million each year. 26% profit margin for sector.</li> </ul>
<b>7c: Lost access to the preferred course/provider</b>	Overseas students	<b>Yes</b>	No	No	<ul style="list-style-type: none"> <li>Overseas students may lose access to their preferred choice of provider or course which has an impact on students' utility.</li> <li>No further work was undertaken to quantify this cost stream.</li> </ul>
<b>7d: Increased administrative burden on monitoring enrolments for providers under serious regulatory investigation</b>	Government	<b>Yes</b>	No	<b>Yes</b>	<ul style="list-style-type: none"> <li>0.1 FTE at APS 6 level.</li> </ul>

Source: Deloitte Access Economics

<sup>74</sup> Based on findings from various reviews (the Nixon Review, Migration Review and JSCFADT Inquiry) and data responses from ESOS agencies it is assumed that VET providers are the most likely cohort to face serious investigation. No data was available on serious investigations from TEQSA.