



Australian Government
**Department of Employment
and Workplace Relations**

Senate Inquiry into the Education Services for Overseas Students Amendment (Quality and Integrity) Bill 2024

Submission from the Department of Employment and
Workplace Relations to the Senate Education and
Employment Legislation Committee

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Introduction

1. The Department of Employment and Workplace Relations (the department) welcomes the opportunity to make a submission to the Senate Education and Employment Legislation Committee on the *Education Services for Overseas Students Amendment (Quality and Integrity) Bill 2024* (the Bill) which amends the *Education Services for Overseas Students Act 2000* (ESOS Act). DEWR supports the amendments to the legislation.
2. The ESOS Act has played a long-standing role in supporting the regulation of education services for overseas students; in turn providing these students with access to a high-quality, safe Australian education system. Rigorous protections for international students are set out in the ESOS Act and related legislation, with a focus on: protecting and enhancing Australia's reputation for quality education; supporting the integrity of the student visa program; and protections and assistance in the event a student's education provider defaults (the Tuition Protection Service).
3. The Government has committed to supporting the quality, integrity and long-term sustainability of the international education sector. This recognises the value of high quality international education to enhance Australia's workforce, economy and social fabric; strengthening Australia's reputation with key international partners; and supporting domestic and international skills needs given structural transitions and proportionally higher young people in partner countries. International trends across key partner countries present significant opportunities – for example India has over 600 million people aged under 25, representing more than 40 per cent of the total Indian population in 2023, relative to Australia with around 30 per cent.¹
4. The Government is progressing a range of initiatives that will strengthen the quality, integrity and long-term sustainability of the education sector. Initiatives include:
 - Responding to findings of the Nixon Review and addressing risks posed by non-genuine or unscrupulous providers;

¹ www.pewresearch.org/short-reads/2023/02/09/key-facts-as-india-surpasses-china-as-the-worlds-most-populous-country

- Investing and growing capability and resourcing for the Australian Skills Quality Authority (ASQA) to support decisive action to prevent non-genuine or unscrupulous providers circumventing regulatory requirements;
 - Introduction of a range of quality reforms in the *National Vocational Education and Training Regulator Act 2011* (NVETR Act) that tighten the regulatory requirements on prospective and established providers to ensure they are committed to quality VET outcomes;
 - Agreement with State and Territory Skills Ministers to implement new standards for Registered Training Organisations (RTOs) that will strengthen the focus on quality outcomes for learners and employers, and provide greater clarity for RTOs.
5. The proposed amendments to the ESOS Act complement and augment activity to date, and supports the objective of creating a managed system which delivers sustainable growth over time for onshore international education.
6. These amendments seek to lift the quality and integrity of higher education and Vocational Education and Training (VET), with a focus on delivering the best outcomes for students and meeting Australia's current and future skills needs. Quality and integrity are critical for Australia's education sector to remain a skills partner of choice for students, industry and governments, including with our key international partners. The Bill also details an approach to delivering sustainable growth across international onshore education, that is informed by Australia's skills needs and the scale of our domestic teacher workforce.
7. The first section of the submission considers Parts 1 to 6 of the amendments to the ESOS Act that complement recent changes to the NVETR Act. The second section of the submission points to substantive areas of the Bill (Parts 7 and 8) that will have a significant impact on the VET sector. Section three details the initiatives and activity undertaken to date by the Government. Section four considers the impacts on the VET sector and opportunities to manage these.

1 A sector built on quality and integrity

8. Parts 1 to 6 of the Bill complement recent legislative amendments to the NVETR Act that strengthen regulatory levers and take a consistent regulatory approach to support integrity across the education system.
9. The Bill responds to issues raised through the Review of the Migration System and release of the Rapid Review into the Exploitation of Australia's Visa System (Nixon Review), which brought urgent attention to integrity issues in the international education sector. Following these reviews the Government set out a vision for the migration system through the Migration Strategy – released 11 December 2023. The Government has also implemented reforms that focus on lifting the quality and integrity of the international education sector and student visa program. These reforms include strengthening regulation of Australia's international education sector to disrupt and deter those who seek to exploit international students and undermine Australia's international education system for purposes other than study.
10. Recent amendments to the NVETR Act, enacted through the National Vocational Education and Training Regulator Amendment (Strengthening Quality and Integrity in Vocational Education and Training No.1) Act 2024 responded to integrity and quality issues highlighted in the Nixon Review and the Joint Standing Committee on Foreign Affairs, Defence and Trade's report: Quality and Integrity – the Quest for Sustainable Growth: Interim Report into International Education.
11. The NVETR amendments that complement the proposed amendments to the ESOS Act include:
 - empowering the Minister for Skills and Training (with the agreement of state and territory Skills Ministers) to determine that the National VET Regulator need not, or must not, accept or process new applications for new RTO registrations;
 - preventing RTOs from expanding their course offerings if they have been operating for less than 2 years;

- empowering the regulator to prioritise applications for RTO registration;
- an automatic lapse of registration where an RTO has been dormant for 12 consecutive months;
- expansion of offence and civil penalty provisions to cover a broader range of false or misleading representations by RTOs about their operations; and
- increased maximum penalties for breaches of relevant offences or civil penalties under the NVETR Act.

12. In addition, in collaboration with states and territories, the Government has worked to strengthen the fit and proper person requirements to better scrutinise those in management and operational positions in RTOs.

13. Provisions within the Bill that focus on quality and integrity include:

- Part 1 establishes a new requirement for ESOS agencies to consider when determining whether a provider is fit and proper to be registered. This requires ESOS agencies to take into consideration any ownership or control between providers and education agents, and the extent of that ownership.
- Part 2 expands the ability of the Secretary of the Department of Education, or an ESOS agency, to give information about education agents to registered providers for the purposes of protecting and enhancing Australia's reputation for quality education and training services for accepted students.
- Part 3 enables the Minister for Education, by legislative instrument, to suspend the making or processing of initial applications for the registration of providers and applications for the registration of new courses by registered providers for a specified period. The period specified must not be more than 12 months.
- Part 4 changes registration requirements, with education providers seeking registration required to demonstrate their ability to deliver effectively first to domestic students, by providing one or more courses for consecutive study periods totalling at least 2 years in Australia to students other than overseas students.

- Part 5 introduces 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 in a period of 12 consecutive months beginning on or after 1 January 2024.
- Part 6 introduces a new requirement for ESOS agencies to consider when determining whether a provider is fit and proper to be registered. ESOS agencies must take into consideration whether a provider or related person of the provider is being investigated for a specified offence.

2 A managed system to deliver sustainable growth over time

14. Like other student destination countries of choice including the United Kingdom and Canada, Australia has recently seen rapid growth in the number of international students, with arrivals exceeding pre-pandemic levels.

15. This accelerated growth has increased the risk of student exploitation and has the potential to undermine Australia's education sector's reputation for quality and integrity.

16. Following the release of the Migration Strategy, the Department of Home Affairs acted quickly to implement risk-based visa processing under Ministerial Direction 107 to secure the integrity of the student visa program. This has seen visa grant rates for primary international VET students move from 80.1 per cent in 2018-19 to 77.0 per cent in 2022-23. The latest year-to-date visa rates are around 62 per cent (July 2023 to May 2024)². Declining visa grant rates will have direct implications for the number of international VET student commencements in 2024 and beyond, and in turn implications for the regulation of economic consequences for the international VET sector (see section 4).

² Home Affairs, Student visa program release 26 June 2024 www.data.gov.au/data/dataset/student-visas.

17. The proposed measures in the Bill provide the Education and Skills portfolios with the means to mitigate the risks to Australia's student visa program that Ministerial Direction 107 was implemented to address.
18. The proposed amendments to the ESOS Act are also complementary to recent NVETR Act amendments that are already in place. The Bill supports an approach across the VET sector and higher education, such that growth in both sectors is carefully managed through separate approaches that reflect structural differences.
19. The measures will enable the achievement of sustainable managed growth and lift the quality and integrity in the provision of international education. These reforms establish fit for purpose regulatory and risk frameworks for the international education sector. Through written agreement with the Minister that administers the NVETR Act (currently the Minister for Skills and Training), the proposed amendments to the ESOS Act provide a vehicle that enables the Minister for Education to undertake the following actions:
- set limits on enrolments at a provider level, including within specific courses or locations;
 - automatically suspend and cancel a class or classes of courses, that have systemic quality and integrity issues, and have limited value to Australia's skills needs or where it is in the public interest to do so.
20. Part 7 of the Bill enables the Minister for Education to determine the maximum number of overseas students at registered providers, including in specific courses at registered providers, in one or more years. The Minister for Education can apply enrolment limits by legislative instrument to a class of providers, and by individual notice to a provider.
21. These may relate to either a provider level 'total enrolment limit', or at the course level a 'course enrolment limit'. A power to apply a total enrolment limit to a provider, establishes the means to ensure sustainable growth in the overall sector over time, supporting the long-term resilience and diversity of the sector.

22. A limit also provides a lever to encourage greater diversity in the training on offer and to manage those provider models that present a narrow focus on low-cost, in some cases non-genuine, training for international students at the expense of the student experience.
23. A power to limit enrolments in certain courses recognises that in the context of delivery to international students, certain courses may be at increased risk of use as a vehicle to enrol high numbers of students in non-genuine study. In applying limits to certain courses, the Government would also have a lever to encourage increased delivery of courses that service skills needs in Australia's domestic labour market and across key international partner country labour markets. Such powers would need to be applied judiciously and recognise the value of the same qualifications in Australia's domestic VET system – for example where courses such as the Certificate III in Business reflects high numbers of enrolments with good post-study employment outcomes.
24. The Minister for Education, using this power, will be able to manage overseas student enrolments to deliver sustainable growth over time. In setting enrolment limits, the Minister for Education will take into account the relevance of courses to Australia's skills needs.
25. Depending on Government decisions regarding the application of these powers, they have the potential to significantly impact providers, including the ongoing financial viability of some providers. The application of the powers has the potential to lead to provider exits from the sector or otherwise encourage provider mergers. Where multiple enrolment limits are in place for different courses for the one registered provider within the overall total provider enrolment limit, there is a potential for additional impact on financial viability and complexity in business planning. Where settings lead to impacts on provider viability, these have the potential to generate displacement of existing students, both domestic and international.

26. During consultations stakeholders raised concerns about implementation of these reforms and the need to manage the changes so that unintended consequences are minimised.
27. The Minister for Education 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. This is necessary to ensure that the decision takes into consideration the full suite of impacts on the broader VET sector and is informed through sector specific policy expertise and engagement. Providers that exceed their enrolment limit will have their registration automatically suspended in relation to the courses covered by the enrolment limit.
28. 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. Stakeholders have noted that an approach to suspension needs to consider transitions, so that the impact on students is minimised.
29. Transitional provisions are set out for 2025, such that limits only apply to new enrolments for the calendar year. Some stakeholders have expressed concern that some offers to students will need to be rescinded, however, the department is of the view that this can be managed as part of the transition arrangements. For 2026 and beyond, limits may apply to new and ongoing enrolments for the relevant calendar year.
30. Part 8 of the Bill enables the Minister for Education to, by legislative instrument, specify certain classes of courses that will be automatically suspended and cancelled. The Minister for Education may exercise this power in relation to classes of courses if satisfied that there are systemic issues in relation to the standard of delivery of the courses, or if 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.

31. The Minister for Education must obtain agreement from the Minister administering the NVETR Act, prior to making an instrument that includes VET courses. Courses specified in an instrument will not be automatically cancelled if there are students enrolled or studying 30 days after the instrument commences.

32. No new enrolments for the courses will be allowed to enrol, however, providers will be able to teach any students that have already commenced studying the affected courses to completion of the course. The courses would then be cancelled on completion or withdrawal of the final student.

3 Other Government actions

33. The Government has recently implemented, and is progressing a range of reforms, that are complemented by amendments to the ESOS Act.

Australia Skills Quality Authority

34. ASQA is the national VET regulator responsible for regulating approximately 90 per cent of Australian VET providers. Consistent with Australian Government decisions, ASQA transitioned to a full cost recovery agency from 1 July 2022.

35. In response to the Nixon Review and the Government's Migration Strategy, the Government announced on 3 October 2023 measures to improve the integrity of Australia's VET sector. This included \$37.8 million for measures to support the national VET regulator ASQA, to strengthen its regulatory activities by:

- establishing a new integrity unit within ASQA;
- upgrading ASQA's digital and data systems to identify and respond to potentially illegal activity in the sector; and
- establishing a confidential VET tip-off line for reports of serious non-compliance and illegal activity.

36. The Government has also taken swift action to strengthen the fit and proper person requirements under the NVETR Act. These changes provide ASQA with increased powers to scrutinise those who are in the business of managing or operating RTOs. This includes supporting ASQA to make more informed assessments, through expanding the range of matters that can be considered in assessing whether those in management and operational positions in an RTO are fit and proper.
37. These are already showing strong results. Since ASQA launched its VET tip-off line on 4 October 2023, it has received more than 1,800 tip-offs up to 30 May 2024, with more than 60 per cent providing actionable intelligence.
38. These measures will be supported and strengthened by the ongoing performance assessment, monitoring and compliance activities. This includes working alongside providers to build their capacity and uplift the practices for assuring providers' own delivery and continuous improvement of quality training.
39. It is important to note that these measures address integrity concerns in the VET sector, particularly those outlined in the Nixon Review. These measures do not specifically address the impact of changes proposed since the announcement of the amendments to the ESOS Act.

Revising the Standards for Registered Training Organisations

40. Amendments to the ESOS Act progress integrity measures and complement revisions to the 'Standards for Registered Training Organisations 2015' (the Standards). Revisions to the Standards will strengthen the focus on quality outcomes for learners and employers, provide greater clarity for RTOs, and allow for more flexibility and innovation in training delivery. The changes are designed to better reflect the diversity of the VET sector and ensure the Standards are fit for purpose across different RTO settings. The revised Standards will take full regulatory effect from 1 July 2025.

41. The Standards set out the requirements that an organisation must meet to be an RTO and deliver nationally recognised training. They are part of the VET Quality Framework, which also includes the:

- Fit and Proper Persons Requirements;
- Financial Viability Requirements;
- Data Provision Requirements;
- Australian Qualifications Framework.

42. The Standards apply to all RTOs registered by the ASQA and the Training Accreditation Council Western Australia. RTOs registered by the Victorian Registration and Qualifications Authority (VRQA) are required to meet the VRQA Guidelines for VET Providers.

4 Impacts

43. The department is consulting with VET stakeholders and is carefully considering impacts across different providers and courses. Recent trends in enrolment activity and actions to enrol students following the announcement of the Bill, will be considered in setting provider and course enrolment levels.

44. Through stakeholder consultations, concerns have been raised that measures proposed by the Bill may reduce the financial viability of some providers, closures (or mergers) and should this outcome eventuate, the consequent impact on displaced students (both international and domestic) will need to be managed. This is expected to be more significant in the VET sector given the diversity and vulnerability of some providers in the sector.

45. Should these risks be realised they will have a significant impact on ASQA's regulatory effort and this will need to be managed accordingly.

5 Summary statement

46. The Government recognises the critical role international education plays in the Australian economic and social landscape, and the importance of a sustainable VET sector going forward. To support and sustain this, the department will continue to engage with stakeholders and consider measures that ensures a sector built on quality and integrity; and provides a managed system for sustainable growth over time.

47. This recalibration of international student settings supports the quality and integrity of the education system, particularly at a time when Australia continues to face persistent skills shortages. Timely and responsive adjustments ensure that high-quality Australian based learning and training continues to be delivered, fostering, and maintaining the strong people-to-people links that education and learning generate across our region and beyond.