INDEPENDENT HIGHER EDUCATION AUSTRALIA

IHEA SUBMISSION

SENATE INQUIRY INTO THE EDUCATION LEGISLATION AMENDMENT (INTEGRITY AND OTHER MEASURES) BILL 2025

13 November 2025

IHEA Submission

Senate Inquiry into the Education Legislation Amendment (Integrity and Other Measures) Bill 2025

Introduction

Independent Higher Education Australia (IHEA) welcomes the opportunity to provide input to the Senate Inquiry into the Education Legislation Amendment (Integrity and Other Measures) Bill 2025 (the ELA Bill), for which submissions are due by 14 November 2025.

We would like to refer the Committee to our previous submissions from July and September 2024 to the Senate Inquiry into the Education Services for Overseas Students Amendment (Quality and Integrity) Bill 2024 (ESOS Bill).

While the ELA Bill makes consequential amendments to the *Education Services for Overseas Students Act 2000* (ESOS Act), the *Tertiary Education Quality and Standards Agency Act 2011*, the *Higher Education Support Act 2003* (HESA), and the *Family Assistance (Administration) Act 1999*, this submission focuses exclusively on amendments to the ESOS Act, and to a lesser extent the TEQSA Act, which are contained in Schedule 1 of the Bill.

Firstly, we welcome that the ELA Bill does not include a proposal to cap international students. This was a major cause of concern, which we noted in our previous submissions, and which would have had a deleterious effect on students, independent higher education providers and Australia as an international education destination. Given international education is Australia's fourth largest export ($51.5 billion in 2024) and largest services and non-resources export, this would also have been damaging to the economy.

While IHEA understands that the stated intent of the ELA Bill, as it relates to the ESOS Act, is to strengthen integrity and transparency across the international education sector, we retain a number of concerns about the breadth of Ministerial discretion, the potential for unintended consequences and the risk of over-reach into established regulatory functions that are the remit of Tertiary Education Quality and Standards Agency (TEQSA) and the Australian Skills Quality Authority (ASQA).

In our view, the ELA Bill's stated objective to strengthen integrity and transparency will not be realised through broad and unfettered Ministerial powers. The provisions should be tied to objective criteria, clear consultation requirements and alignment with existing TEQSA and ASQA regulatory processes. We remain concerned about the breadth of ministerial discretion, duplication of regulatory powers already held by TEQSA and ASQA, and the risk of unintended consequences for compliant providers.

Schedule 1, Part 1 of the ELA Bill

Item 3, definition of an education agent

The new definition expands the scope of an education agent to include any person or entity that, for gain, recruits or advises overseas students about studying in Australia, whether or not there is a formal written agreement with a provider. This replaces the previous definition of agent based on a formal agreement, to include an activity-based capture of all agent interactions, even informal ones.

An entity or individual is considered an agent if they are undertaking the following action for a provider:

- Recruiting or assisting overseas or intending overseas students.
- Provides information, advice, or assistance on enrolment.
- Otherwise deals with overseas students on behalf of the provider.

We note that permanent full-time or part-time employees of a provider are excluded, but casuals and contractors performing these functions are included in the definition of an agent, which may be seen as an arbitrary and potentially confusing distinction.

Importantly, as per the Explanatory Memorandum, the definition of an agent is not intended to capture sector peak bodies, such as IHEA, or Government entities, such as the Department of Education (DoE) or Austrade. While these organisations may provide information, advice or assistance to overseas students, the fact that they are not doing so in relation to or on behalf of an individual provider means they are not captured in the definition.

This clarification is an improvement on the previously proposed definition in the ESOS Bill.

Item 3, definition of an education agent commission

The definition of an education agent is proposed to encompass monetary or non-monetary benefits paid or given to agents in connection with recruitment, advice or dealings with overseas students.

While examples of non-monetary benefits may include gifts, subsidised travel or discounted services, in practice, we believe this will be a very difficult practice to effectively police.

While not explicit in the ELA Bill, the definitions of an education agent and an education agent commission are a preamble to banning commissions for onshore student transfers between providers through subsequent amendment to the National Code of Practice for Providers of Education and Training to Overseas Students 2018.

The stated purpose of such a ban is because commissions financially incentivise unscrupulous behaviour of agents to push students into courses that are not necessarily in the students' best interest. However, such a blanket ban may have unintended consequences.

The approach may impact and disrupt current, legitimate arrangements that are currently in place and may not necessarily resolve the issue of concern. This may lead to direct engagement between students and agents without the protections afforded under the ESOS Act, which come into effect when a provider is involved.

Further, prohibiting all agent commissions for onshore transfers does not recognise the appropriate and valuable role that agents generally play in supporting students to appropriately transition to new courses. It does not acknowledge that for quality agents, their relationship with students often continues throughout the life of their study in Australia through delivering a significant range of services other than simply assisting in selecting a course and provider.

There are many legitimate reasons why an international student may wish to transfer to another higher education provider (or why VET students want to move into higher education courses) to better meet and fulfil their skills and knowledge requirements and meet their identified needs:

- The original course is no longer suited to them and as such they wish to transfer to a more relevant course at the same Australian Qualifications Framework (AQF) level.
- The student was not academically successful at their original provider and now needs to pursue alternative study options at a more supportive provider where they can receive the type of attentive and responsive support they require.
- They are enduring a poor experience with their original provider since they incorrectly assumed there would be a positive correlation with high research-based rankings and a strong student experience; or
- They simply need to relocate to another state in which their original provider does not have an established campus.

The proposed commission ban may deny these students access to a reputable education agent who could support them appropriately and as such would be consequentially denied the opportunity to benefit significantly via a transition to a provider with an exemplary reputation for high-quality education.

This may create vulnerabilities for international students, particularly those released by their provider under the 'compelling and compassionate' circumstances that are detailed in the National Code.

There is also the potential that 'black market' agents could be inadvertently incentivised following the removal of the direct relationship between provider and the agent, resulting in a loss of the current safeguards and responsibilities that exist through the ESOS Framework. It would mean there is no visibility of this sort of exploitation, which would be conducted outside of the system. This could result in students' safety and wellbeing being put at risk and vulnerable to exploitation.

While we understand that the commission ban is being proposed to limit 'course hopping' and 'poaching', it could actually increase instances of this happening if unscrupulous providers feel they are no longer required to act within current contractual commission obligations. If fee discounts are deemed a problem, this may lead to them offering even more significant discounts directly to students, which would place downward pressure on tuition fees at the expense of quality education providers and the establishment of 'in-house' agencies to recruit students.

We also believe it is very important that other forms of onshore recruitment through agents (such as recruitment of non-student visa holders or following completion of a program – i.e. between undergraduate and postgraduate) are not unintentionally prohibited. It would be beneficial to understand how compliance and enforcement of a blanket ban would occur as it is not apparent how enforceable such an arrangement would be.

We note that the exemption of permanent full-time and part-time employees within a provider, but capturing casual workers and contractors, may incentivise the setting up of in-house teams to recruit international students.

IHEA recommends an alternative approach where bans are limited to transfers where students move to a course at a lower AQF level, effectively curbing so-called "poaching" from higher education to VET without undermining legitimate student mobility. It is this option that we expect will most directly meet the Government's core objective since it would effectively arrest any illegitimate outflow of students from higher education to VET.

It is worth noting that students have the right to unilaterally withdraw from a course and enrol somewhere else, including at a lower AQF level and usually as a direct outcome of 'poaching' by a VET provider. This has been known as an issue since 2021 and reported to regulators by quality providers, but without action.

Item 4, cross-ownership of a provider and an education agent

When determining whether a provider is fit and proper to be registered, ESOS agencies (i.e. TEQSA and ASQA) and Designated State Authorities (DSAs) must now consider ownership or control arrangements between providers and education agents (in Australia or overseas).

Agencies must consider whether the provider or an associate has direct or indirect ownership or control of an education agent, or vice versa, and the value or extent of that control. Providers must also notify their ESOS agency within 10 business days of any change in ownership or control arrangements between an education agent and the provider.

This will apply to applications for registration, sanctions where a provider is not fit and proper and automatic suspension of registration where a provider ceases to be fit and proper. The new provision requires ESOS agencies to *consider* ownership or control arrangements. This means that the existence or perception of such arrangements won't automatically trigger any fit and proper person provisions. This will be important in ensuring that legitimate arrangements are not inadvertently captured. Below are some scenarios that we believe should not be captured by the Bill:

- Scenario 1: Providers that partner with universities to deliver managed campus or joint venture arrangements: In some partner arrangements, independent providers act as a 'parent' or a 'master' agent with a university. This enables the university partner to efficiently access the independent provider's agent network. The alternative would require the university to partner individually with each agent that the independent provider engages with. The provider is likely to be undertaking a range of other activities

on behalf of the university, including managing the marketing, recruitment, campus facilities, admission of students and delivery of programs for the managed campus on behalf of the public university.

In line with the current requirements of the ESOS Act and National Code of Practice for Providers of Education and Training to Overseas Students 2018, the university partner will identify the independent provider as a partner agent, despite the independent provider not separately owning any independent recruitment agencies. Such an arrangement clearly does not meet IHEA's understanding of the intent of this measure.

- Scenario 2: Ownership of education agents by the parent company of a provider: For multinational organisations, a parent company of a provider may own education agents in offshore markets, but which do not have a focus on promoting - and recruiting for - higher education providers in Australia. Clearly this type of arrangement should not be captured by the changes.
- Scenario 3: Legitimate ownership and operation of an education agent and advisory business by a provider that is registered on the Australian Stock Exchange. An exemption of such an arrangement should be ensured as it is low-risk where:
    - The parent company is listed on the Australian Stock Exchange, which ensures a high level of transparency.
    - The revenues generated from the arrangement are small, i.e., say, 5 per cent of the gross revenue.
    - The ownership structure means there is a high level of transparency and governance focus from directors and senior executives of the independent provider.
    - The independent provider has sufficient funds to invest in a quality student recruitment experience, which removes any potential for pressure to be placed on employees to participate in unscrupulous behaviours.
    - Only, say, 10 per cent of the international students the agent recruits are enrolled into courses with the independent provider and students are not poached from other Australian education providers. This would impact their sector reputation and diminish their capability of generating 90 per cent of the revenue.
    - The agent recruits international students from its offices in established and low risk markets.

Schedule 1, Parts 1 and 2 of the ELA Bill

Items 9 and 20, reporting on education agent commissions and sharing with providers

This provision requires a registered provider to give information about education agent commissions if requested to do so by the Secretary of DoE, who may require registered providers to supply information on:

- Total dollar amounts paid to each agent.
- Non-monetary benefits and their value.
- Number of students recruited per agent.

The request must specify reporting period, form and deadline (minimum 30 days after notice). Requests may cover past reporting periods and failure to comply (including false or incomplete reporting) attracts a penalty of up to 12 months imprisonment. The collected information about education agent commissions will be able to be given to registered providers to support transparency of education agent practices and behaviours.

IHEA has called for and supports increased transparency around agent performance data and we welcome this approach. The existing arrangements severely impact the ability of providers to actively and effectively manage their agent network. The inability for agent performance data to be shared, to date, has been detrimental to understanding - and having visibility of - the broader field of agents' actions, performance and inappropriate behaviours. This has made it challenging for a provider to assess new potential agent partners.

However, we draw a critical distinction between sharing information among regulators and providers versus public release of commercial-in-confidence data, for example education agent commissions. This would have the potential to negatively impact individual providers as well as Australia's competitiveness in the global market. The likely outcome is that quality agents will turn away from Australia as a destination in favour of our major competitors in the United Kingdom, the United States of America and Canada.

That said, in-confidence sharing of agent information with providers is supported and has long been called for by IHEA and the sector.

While this increased level of transparency is a welcome inclusion, we recommend that it can go further with the agent performance data that is collected and shared to include:

- Visa success rates that would provide information to providers to make informed decisions in a form that is familiar to all providers.
- Information on visa rates for individual agents for the whole sector, acknowledging that an agent that has a good visa rate for one provider, may not necessarily have a good visa rate overall, but should be considered in decisions.
- Transparency on agent agreements that have been terminated. This should include information on the reasons for termination, with this information not currently available to providers.
- Access to agent performance measures for not only agents in existing relationships with a provider, but also other agents. This will support decision-making for providers when signing new agent partnerships.
- Details on agents that are on the migration agent list and any breaches/negative performance. This includes where agents are dual-sector agents, visa rejection rates for other visa types and when agents have been struck off the migration list.

We also recommend that commercial-in-confidence information such as commission amounts should only be shared between regulators and registered providers, not made public.

Schedule 1, Part 3 of the ELA Bill, Management of Provider Applications

Item 32, Ministerial control of registration processing

This provision enables the Minister for Education, with consultation and written agreement from the Minister for Skills and Training, to issue legislative instruments to:

- Suspend the making of applications for CRICOS registration and/or
- Suspend the processing of such applications by ESOS agencies.

revoked earlier.

IHEA is concerned about the breadth and subjectivity of this Ministerial power. No objective criteria, evidence thresholds, or mandatory consultation requirements are specified to guide a Minister's decision, creating the risk of arbitrary suspension of legitimate applications.

The impact of denying the making or processing of applications has the effect of denying the entry of new providers, who will already be otherwise registered by the national regulator for higher education (TEQSA) or VET (ASQA) to operate domestically, which is unreasonable. Both regulators are charged with ensuring the integrity and quality of providers that they register and this additional bureaucratic overlay serves only to undermine their role and place unnecessary and anticompetitive barriers on providers.

In making such an instrument, the Minister would be required to consult with specified entities. This may include TEQSA and ASQA. However, failure to do so will not void the Minister's legislative instrument. This is unreasonable, confusing and lacks transparency in a Bill that purports to increase transparency in the

international education sector. As such, we believe that failure of the Minister to undertake consultation should void the legislative instrument.

IHEA does not support such discretionary powers that lack transparency and predictability, as they will create significant uncertainty for students, providers and investors. We recommend that in tabling a suspension instrument, the Minister must include:

- Transparent criteria and a statement of reasons outlining the risk factors being addressed.
- Mandatory consultation with TEQSA and ASQA, with the failure to consult rendering the legislative instrument invalid.

Schedule 1, Part 4 of the ELA Bill, Registration Requirements

Item 37, requirement for new providers to deliver to domestic students first

Under this arrangement, for newly TEQSA registered providers to be eligible for CRICOS registration, a provider must have delivered one or more courses in Australia to students other than overseas students over consecutive study periods totalling at least two years.

It is noted that this applies to new applicants only and where the application for CRICOS registration was made on or after commencement of the Bill (i.e. Royal Assent).

In addition to existing CRICOS providers, we note that exemptions to this arrangement also apply to Table A providers under HESA (public universities), existing CRICOS providers, standalone ELICOS providers, standalone Foundation Program providers, or those delivering both.

Currently, once a provider is registered with TEQSA, they are able to apply to DoE for approval to offer Higher Education Loan Program (HELP) loans, such as FEE-HELP. The provider can do this immediately after receiving TEQSA approval. However, under section 16-25(1)(fb) of the *Higher Education Support Act 2003*, DoE may consider if the provider has sufficient experience in the provision of higher education. Further to this, in assessing an application for FEE-HELP under section 16-25(2A) of the Act, DoE may consider whether the body/provider has been a registered higher education provider for three or more years. It is our understanding that it is DoE's practice to take these matters into consideration.

The effect of this, when combined with the proposed new arrangements under the ESOS Bill is that for the first three years of operation, an independent higher education provider will need to operate without enrolling students with access to FEE-HELP or international students. During this period, they would only be able to enrol domestic students paying full fees - who cannot access a loan for those fees - and competing against providers who can offer loans, which makes their operation unsustainable and effectively puts a stop to new independent higher education providers entering the market. The arrangement is discriminatory, anti-competitive and disadvantages independent higher education providers.

The presumption that all new higher education providers - since this is a blanket arrangement - are non-genuine is completely false. It is perplexing that after receiving registration from the national regulator, unreasonable hurdles would be put in place to prevent the provider from operating. This completely undermines the role and decision making of TEQSA, which has registered the provider. Further the delivery of higher education courses to domestic and international students differs, and these arrangements do not recognise the benefits of providers who are specialists in a field as being important and beneficial.

It is confusing as to why Table A and ELICOS providers have been singled out for exemption. This apparent inequity further illustrates the arbitrariness of this arrangement and that it is not premised around risk-based decision making - in fact it goes against a decision made by the national regulator. Given the majority of ELICOS providers are also higher education and/or VET providers it raises the question of how such an exemption can work in practice. As such, IHEA does not support this amendment, which at an absolute minimum should provide

a mechanism for exemption of other providers, including independent higher education providers, to meet the same benefit that is afforded to all Table A and all ELICOS providers.

Schedule 1, Part 5 of the ELA Bill, Automatic Cancellation of Registration

Item 39,automatic cancellation of CRICOS registration for non-delivery

This allows for the automatic cancellation of CRICOS registration for non-delivery, whereby a provider that has not delivered any CRICOS-registered course to any overseas student at any onshore location for 12 consecutive months will have its registration automatically cancelled for all courses and locations.

We welcome the clarification, noting that previous drafting in the ESOS Bill could have been interpreted as requiring continuous enrolment across all campuses and courses. The revised provision removes that potential ambiguity.

It is worth noting that dormancy may not be just an indicator of unscrupulous conduct but can result from factors such as undertaking business restructuring or campus relocations and from natural disasters, such as fire, flood and pandemic. In these cases, automatic cancellation could unfairly penalise compliant providers and deter small or niche institutions from maintaining flexibility.

However, we welcome that there are grounds for the extension of the period in which a provider is dormant for up to 12 months in total. All decisions must be made consistently, transparently and with clear communication to providers.

Schedule 1, Part 6 of the ELA Bill, Providers Under Investigation for Offences

Items 41 and 42, providers under investigation for offences

The proposed provision relates to the fit and proper person test under the ESOS Act by extending the matters that ESOS agencies and Designated State Authorities (DSAs) must consider when determining whether a provider, or a related person, is fit and proper to be registered or to remain registered. This includes new requirements to consider whether a provider or related person is under investigation for a specified offence, including offences under the ESOS Act, Divisions 270 or 271 of the *Criminal Code Act 1995* (slavery, trafficking, debt bondage), section 590 of the *Corporations Act 2001* (offences by company officers), or any offence specified by legislative instrument made by the Minister.

These provisions relate to (fit and proper person) in the registration of providers, imposition of sanctions and automatic cancellation of registration. However, we note that being under investigation does not equate to a verdict of guilt or wrongdoing. It is important that the principles of procedural fairness provisions are not jeopardised based on potentially arbitrary decisions that would be prejudicial.

IHEA supports measures that actually target providers that are doing the wrong thing. However, it is important that such measures are based on evidence and transparency and delivered without prejudice or presumption of wrongdoing. As such, it will be important that only substantiated investigations or charges form the basis for adverse findings under the fit and proper person test, including appropriate notice and an opportunity to respond before a decision is made.

IHEA recommends embedding procedural fairness safeguards and mandatory consultation with TEQSA or ASQA before any determination is made under this ground.

Schedule 1, Part 7 of the ELA Bill, Automatic Cancellation of Specified Courses

Item 45, automatic suspension or cancellation of specified courses

The Minister for Education may specify classes of courses for automatic cancellation via legislative instrument where:

- Systemic delivery issues exist.

- The courses have limited value to Australia's skills needs.
- It is in the public interest.

We also note that Table A higher education providers are exempt from these powers on the basis that they present lower integrity risks. We would argue that a number of recent inquiries, such as the Expert Council's Final Report and Principles on University Governance (as well as a Senate Inquiry into the same issue) have been necessitated due to concerns within Table A providers. The Principles that were developed by the Expert Council are for implementation specifically by Table A providers to address a range of governance issues and concerns. The exemption of these providers, over independent higher education providers is discriminatory and unjustified in the context of Table A driven inquiries. It is also unjustified in the case of numerous independent higher education providers who have outstanding student satisfaction and outcomes that students themselves identify year-on-year in the Quality Indicators for Learning and Teaching (QILT) surveys. If exemptions are to be given, they should be based on actual performance, and not on an arbitrary basis, and should justifiably include independent higher education providers such as University Colleges and self-accrediting institutes of higher education since they have been afforded their privileged regulatory status expressly because they represent the lowest integrity risks in the sector.

The legislation gives the Minister the power to cancel courses en masse, across multiple providers simultaneously. Classes of courses can be cancelled based on i) the nature of the course; ii) the type of provider; iii) the location of the course or iv) any other circumstances applying in relation to the course.

This power creates uncertainty and the very real and high risk of arbitrary punishment of compliant providers based on the behaviour of a minority simply because they fit within the same "class" of provider. This is concerning and a significant departure from existing provisions of the ESOS Act, which allow TEQSA or ASQA to act on verified evidence of provider or course specific failings. This is greatly concerning and lacks the safeguards that are afforded under current arrangements.

In making such decisions, the Minister is not required to consult with TEQSA or ASQA, which was a provision in last year's ESOS Bill. Instead, the Minister must consult such persons or entities as considered appropriate from a list in a legislative instrument that the Minister makes. As such, consultation with the regulators is optional and at the discretion of the Minister, which is concerning given that a core function of these regulators is to ensure integrity. Furthermore, if the intent of this provision is to address systemic quality or integrity issues, we note that these matters already fall within TEQSA's and ASQA's existing statutory powers to suspend or cancel registration for both domestic and international students. Creating another cancellation process through a Minister – which would apply to international students only and not domestic students - introduces regulatory overlap and confusion.

Additionally, a class of courses can also be cancelled if they provide limited value to Australia's current, emerging and future skills and training needs and priorities. IHEA is concerned about - and opposed to - this. Directing international students to study courses that are aligned to Australia's skills needs, as opposed to the courses they want to study, which in many cases may instead pertain to areas of skill shortage in their home country is overreach. First and foremost, this diminishes student choice by aiming to direct students to study a particular course, and potentially in a location that is undesirable to them. The likely outcome of this is that students who can't study in Australia the course most aligned to either their interests or the skill shortages in their home country, will instead go to a competitor country where they can study the course of their choice. This hurts students, providers and undermines Australia's competitiveness and reputation as a destination for quality, student-centred education.

Further, the powers afforded the Minister in cases of "public interest", is deeply concerning and will create great uncertainty in the sector about how such powers will manifest in practice, in particular in the context proposed whereby the powers afforded a minister are void of strict safeguards, and have the potential for unsubstantiated

decisions. It also undermines the role and purpose of TEQSA and ASQA to exercise proportionate, transparent and risk-based compliance activity to uphold integrity.

IHEA recommends:

- Reinstating mandatory consultation with TEQSA and ASQA before any ministerial instrument is made, otherwise the instrument is void.
- Removing the exemption for Table A providers and/or include evidently high-quality independent higher education providers as also exempt.
- Defining "systemic delivery issues", "skills needs", and "public interest" to constrain discretion and substantiate significant decisions.
- Decouple international student courses from Australia's skills needs.
- Ensuring all legislative instruments are disallowable and subject to parliamentary scrutiny.
- Maintaining TEQSA and ASQA as the primary authorities for course-quality regulation.

This will ensure that there are guardrails and safeguards both now and into the future as any successive Ministers will also gain access to this unfettered ministerial control and power.

Schedule 1, Part 8, Internal Review

Item 48, time extension and interim stay for review

We note the extension of the maximum period for an ESOS agency to complete an internal review of a decision from 90 days to 120 days. It also introduces an interim stay provision, which allows an ESOS agency to temporarily suspend the effect of the original decision while the internal review is underway. This means that, where granted, providers can continue operating as they did prior to the original decision, subject to any conditions imposed by the agency. This provides procedural fairness to the provider while the review decision is pending.

However, we note that extensive delays that independent higher education providers face with respect to engagement with and decisions made by TEQSA risk being compounded by this new provision. This has a deleterious impact on the operations of providers so we extend that concern in this case where the review timeframe is also being extended.

As per our view with respect to all of TEQSA's functions, IHEA recommends that TEQSA should put in place regular progress reporting and performance targets for review decisions to promote accountability and timeliness.

Schedule 1, Part 9, TEQSA Measure

Item 71, TEQSA authorisation to deliver Australian courses offshore

Registered higher education providers must obtain and maintain TEQSA authorisation to deliver Australian courses offshore, which will be applicable at the provider level rather than individual course level. While we note that existing offshore providers delivering courses prior to commencement of the ELA Bill are automatically deemed authorised if TEQSA is formally notified within 60 days of Royal Assent of the ELA Bill, new offshore providers must apply to TEQSA from 1 January 2026, with it being stated that decisions will generally be made within 9 months.

At a time when the Australian Government is actively encouraging providers to deliver transnational education, it is counter intuitive that new providers would be subject to a 9 month delay. We would strongly encourage putting in place transitional arrangements for the next 2 years so that providers can adjust to the new requirement that commences in only 2 months, so there is continuity for providers seeking to deliver transnational education, as per the Government's stated ambition. TEQSA will no doubt state that this aligns with its other statutory decision-making timeframes. However, these timeframes often slip and we know that TEQSA is struggling to keep pace with its backlog of applications.

This mismatch between policy intent and operational requirement risks deterring legitimate offshore delivery and there should be better alignment between the Government's Transnational Education Strategy to avoid unintended barriers to international expansion. IHEA recommends that this be achieved through implementing transitional arrangements for at least two years to allow adjustment to the new framework.

Conclusion

While the removal of caps on international student enrolments is a welcome omission from the ELA Bill, we oppose the Bill's overreach, insufficiently defined measures of consequence, and unprecedented Ministerial discretion. Centralising unprecedented discretion in the hands of a Minister without objective criteria and safeguards is concerning and lacks objectivity, and potentially reasonableness, in the decision-making process. In doing so, this undermines the purpose of the regulatory authority of TEQSA and ASQA. The blanket nature, rather than targeted compliance action by TEQSA and ASQA is likely to impose unintended regulatory barriers and impost on high-quality independent higher education providers.

Areas where we think there should be amendments to ELA Bill are as follows:

- **Education agent commission ban:** A blanket prohibition on onshore commissions could harm student welfare and drive agent activity underground. IHEA proposes a targeted ban on commissions only where students move to a lower AQF level.
- **Cross-ownership Rules:** Must distinguish between legitimate, transparent commercial partnerships and arrangements designed to circumvent the ESOS framework.
- **Transparency Measures:** Strongly support in-confidence data sharing on agent performance with providers, which should also include visa success rates, termination reasons, and migration agent performance. Commercial-in-confidence data, such as education agent commissions should not be made publicly available.
- **Remove discrimination based on provider type:** Exemptions afforded Table A higher education providers (for new providers to deliver to domestic students for two consecutive years before teaching international students and from the automatic cancellation or suspension of courses) should be removed and/or evidently high-quality Independent higher education providers be included as exempt. The premise that Table A providers, as a default, are low risk for integrity measures is iniquitous and not supported.
- **New Provider Requirements:** The two year domestic delivery requirement unfairly disadvantages new independent higher education entrants and should be removed or apply only to new registered training providers.

  An amendment to schedule 1, part 4, item37 is proposed in the Attachment: To remove the requirement for new providers to offer courses to domestic students for consecutive study periods totalling two years, in order to be eligible to apply for registration to provide courses to overseas students. An alternative is to limit this requirement to new RTOs. As drafted, the Bill will prevent the entry of new independent providers to the market through a catch-22 scenario whereby access to FEE-HELP, to teach domestic students, requires three years of operation as a higher education provider, which would usually come from offering courses to international students.
- **Protect student choice and market diversity:** Do not limit courses international students can study to Australia's domestic skills priorities, which misaligns with the objectives of international education, the more-relevant skill shortages in their home countries and reduces Australia's global competitiveness.

  An amendment to schedule 1, part 7, item 96B is proposed in the Attachment: It omits the requirement to cancel courses that provide limited value to Australia's current, emerging and future skills and training needs and priorities or where there is public interest to do so. Prescribing the courses that international students can study and which specific providers are able to offer those courses, presents as an

unreasonable, misaligned, over-reaching and unnecessary micromanagement of the international education system. As previously mentioned, the approach will almost certainly drive students to study their preferred course at a destination country other than Australia, to Australia's detriment. History shows that even if international students do study courses that are aligned to Australia's skills needs, the vast majority will return home at the end of their study.

- **Regulators and quality and integrity of providers:** TEQSA and ASQA must retain primacy with respect to the quality and integrity of international higher education and VET providers, respectively. They have established mechanisms, their purpose and core functions should not be usurped through open-ended and potentially arbitrary Ministerial discretion.
- **Ministerial discretion:** Require mandatory consultation with TEQSA and ASQA before any Ministerial determinations are made to cancel or suspend classes of courses. Decisions should apply only to providers or courses where substantiated evidence of wrongdoing exists, not collectively across an entire “class of courses.”

Attachment: Proposed amendments to the ELA Bill (for changes to the ESOS Act)

Amendment One: **Part 4—Registration requirements, Division 1**

Section 37, at the end of Section 11

(1) Schedule 1, part 4, section 37, page 17 (lines 23 to 27), omit the requirement that new providers are required to deliver to domestic students (i.e. not overseas students) for consecutive study periods totalling 2 years.

And make consequential amendments throughout the Bill

[removing new provider requirement to first teach domestic students]

OR

(2) Schedule 1, part 4, section 37, page 17 (lines 23 to 27), amend the requirement that new providers are required to deliver to domestic students (i.e. not overseas students) for consecutive study periods totalling 2 years to apply only to registered training organisations, as follows.

(2) A registered training organisation satisfies this subsection if they have 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.

Note: This requirement applies only to new registered training organisations and not new higher education providers.

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

And make consequential amendments throughout the Bill

[amend so only new registered training organisations are required to first teach domestic students]

Amendment Two: **Part 7—Automatic cancellation of specified courses, Division 1AB**

Section 96B, Minister may make instrument specifying courses

(1) Schedule 1, part 7, section 96B, page 22 (lines 20 to 23), omit (b) and (c) regarding cancellation of courses that provide limited value to Australia's current, emerging and future skills and training needs and priorities or where there is public interest to do so.

Who We Are

Independent Higher Education Australia Ltd. (IHEA) is a peak body established in 2001 to represent Australian independent (private sector) higher education institutions. Our membership spans independent universities, university colleges and other institutes of higher education, all of which are registered higher education providers accredited by the national higher education regulator, TEQSA or associate members seeking registration.

There is a long tradition of independent higher education providers in Australia, with the first provider created as early as 1815, only 27 years after the first British settlement in Sydney in 1788. In total, five providers were established between 1815 and 1845 and preceding the first public university. The fifth of these was St James College, which was created in 1845. The founders of St James College were then involved in creating Moore College in 1856 and remarkably Moore College, a University College, still exists and is Australia's longest continuously operating independent higher education provider.

Our Vision is that: students, domestic and international, have open and equitable access to world class independent higher education in Australia, built on the foundations of equity, choice and diversity.

Our Mission is to represent independent higher education and promote recognition and respect of independent providers as they contribute to Australian education, the Australian economy and to society in general. We achieve this by promoting continuous improvement of academic and quality standards within member institutions, by advocating equity for their staff and students and by delivering services that further strengthen independent providers' reputations as innovative, sustainable and responsive to the needs of industry and other relevant stakeholders in both higher education and vocational education and training. IHEA's commitment is to excellence, productivity and growth in independent higher education being delivered through a trusted Australian education system underpinned by equity, choice and diversity.

IHEA members have different missions, scales and course offerings across the full AQF range (Diplomas to Doctorates). IHEA has 87 higher education providers that are members, which rises to 124 if those providers' constituent colleges and subsidiaries are included.

IHEA's 87 higher education providers comprise:

- Five private Universities (Australian University of Theology, Avondale University, Bond University, Torrens University and University of Divinity).
- Six University Colleges (ACAP University College, Australian University College of Divinity, Alphacrucis University College, Excelsia University College, Moore Theological College and SAE University College).
- A further eight (Griffith College, International College of Management Sydney, Kaplan Business School, Marcus Oldham College, Morling College, Photography Studies College, The College of Law and Western Sydney University International College) self-accrediting institutes of higher education (nineteen in total including the Universities and University Colleges described above).
- Seventy-one not-for-profit and for-profit institutions of higher education (which includes three self-accrediting institutes); and related corporate entities.

IHEA members teach approximately 74 percent of the students in the independent sector (i.e., more than 130,000 students) and educate students in a range of disciplines, including law, agricultural science, architecture, business, accounting, tourism and hospitality, education, health sciences, theology, creative arts, information technology, human services and social sciences.

IHEA holds a unique position in higher education as a representative peak body of higher education providers. Membership in IHEA is only open to providers registered, or seeking registration, with the Australian regulator - TEQSA. However, some IHEA members are dual and multi-sector providers who also deliver VET and/or English Language Intensive Courses for Overseas Students (ELICOS) courses.

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