

1 July 2024

Senate Education and Employment Legislation Committee

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

Dear Committee

Submission to the inquiry into the Education Services for Overseas Students Amendment (Quality and Integrity) Bill 2024 [Provisions]

This Bill proposes to amend the *Education Services for Overseas Students Act 2000* (ESOS Act) to support the quality and integrity of the international education sector while also giving Ministers powers to control growth in international student enrolments. Universities Australia believes this is rushed legislation, particularly the amendments that seek to control international student numbers, and is designed to deal with a political issue around migration ahead of the next Federal Election.

The legislative changes in the Bill are intended to underpin the Government's draft International Education and Skills Strategic Framework (the draft Framework). It is premature to consider legislation to support a piece of work that is yet to be finalised. Legislative and policy changes of this significance require further consideration and development. While Universities Australia has had some opportunity to consult with the Department of Education on the draft Framework, we believe it needs serious changes and have recommended the Government defer implementing the framework out to 2026 and task a properly resourced and experienced Australian Tertiary Education Commission to manage growth for both domestic and international students in line with the recommendation in the Australian Universities Accord final report.

Student recruitment happens over a long period of time, and adjustments to the system will take more time than this Bill provides. More time for planning and implementation is needed than what the Government has proposed to avoid universities having to withdraw existing enrolment offers which would cause significant damage to Australia's reputation as a world-class destination for international students and reduce the effectiveness of this powerful tool for soft diplomacy.

In our response to the draft Framework¹, noting its correlation with the ESOS Bill, we have also recommended the Government categorise universities and TAFE institutions separately, set caps at the provider level only and include a sunset clause in the legislation for the removal of ministerial powers. These recommendations are reflected in this submission.

Universities Australia asks the Committee to consider our responses to the draft Framework as well as the critical importance of international education to our nation and the impact these measures would have on the operation of our universities. In addition to our draft Framework responses, we ask the Committee to consider the following recommendations which are outlined in further technical detail at **Attachment A**:

- undertake a thorough investigation of the possible unintended negative consequences that may occur before progressing the Bill

¹ [Draft International Education and Skills Strategic Framework – response to the Department of Education](#)

- include a sunset clause in the legislation for the removal of ministerial powers, acknowledging the future role of the Australian Tertiary Education Commission as an independent steward for the tertiary system
- categorise universities and TAFE institutions separately, noting existing regulations, to achieve sustainable, managed growth in international student enrolments
- set caps at the provider level only, removing the ministerial power to set caps at the course level
- apply a buffer, as opposed to a hard cap, for providers which inadvertently exceed their student enrolment limit to reduce the likelihood of automatic suspension
- require the Minister to consult and seek agreement before issuing an instrument or notice, and
- keep the current definition of 'agent' with the addition of 'education' to maintain its original intent and remove the requirement to report and publish education agent commission data.

Our international education industry is a prized national asset, growing significantly over the past 20 years to become the country's largest services export. Last year, it generated \$48 billion in export revenue and contributed half of Australia's economic growth. International education underpins a higher standard of living and helps deliver essential services for all Australians, while also supporting universities to operate across the nation. Every effort should be made to continue growing this vitally important sector that makes our nation stronger and more successful.

The Bill, as drafted, puts at risk thousands of jobs, Australia's reputation as a welcoming destination, and the strength of a major economic driver for our nation and universities. These legislative changes do not provide universities with clarity or certainty but will leave them vulnerable to the Minister's, or future Ministers', discretionary powers with limited oversight and intervention through consultation or a review process.

A sector that supports Australia

International education is a great Australian success story. With bipartisan support and encouragement, Australia has grown to become a destination of choice for students from around 200 countries. These students make significant economic, cultural and social contributions to the nation. The sector:

- contributed \$48 billion to the economy last year, making it the second biggest export behind mining
- drove half of Australia's economic growth in 2023 (0.8 per cent of the 1.5 per cent increase in GDP)
- supports 250,000 jobs nationally in sectors spanning the whole economy
- generates 69 per cent of international tourism spend in Australia
- helps Australia meet its skills needs, including in areas of shortage, and
- plays a crucial role in boosting Australia's soft power.

In 2023, Australia's higher education institutions educated 435,000 of the 971,000 international students in Australia, generating \$31.8 billion of the overall \$48 billion in export revenue. On average, international university students contribute \$73,000 each year in export revenue.

The Government is well aware of international education's significant impact. In the wake of the pandemic, both the former and current Federal Government encouraged the return of international students to address critical workforce shortages and boost the economy. The Morrison Government offered visa rebates to international students who returned in early 2022,

while the Albanese Government made it a priority to clear the visa backlog to accelerate their return.

The university financial context

International education not only benefits Australia, helping to fund essential services and infrastructure, but it is an increasingly vital revenue source for universities. Over the last decade, as government funding for universities has decreased, the international education sector has grown. This growth has fuelled a reliance on international student fees to fund infrastructure projects, and core teaching and research activities.

Recent changes to higher education policy have resulted in the following funding shortfalls for universities:

- \$3.95 billion lost in the closure of the Education Investment Fund
- A funding deficit of \$3 billion per annum in competitive grant research, equity support and compliance, and
- \$800 million per annum lost through changes to domestic funding arrangements under the Job-Ready Graduates Package.

This reduction in multiple revenue streams has led to a 40 per cent drop in real capital expenditure by universities between 2019 and 2022, putting it well below 2008 levels.

The COVID-19 pandemic put more pressure on universities already dealing with cuts. The Morrison Government's decision to exclude Australia's universities from the JobKeeper income support scheme made things worse, especially when international student revenue was significantly down. The effects of the pandemic are still being felt today, with most universities in deficit.

Compounding these problems are declining domestic enrolments, declining secondary school completions, lower retention rates and financial impacts from the Government's poorly implemented visa processing changes under Ministerial Direction No. 107. Universities are forecasting a collective shortfall of more than half a billion dollars in 2024 due to the changes.

The risks

Universities and the broader economy are already struggling under financial pressures without the added political headwinds driven by rushed policy changes. The Government should be aiming to grow the international education sector, particularly through universities, in recognition of the significant and extensive benefits it delivers for the nation.

Given the higher education sector's reliance on international student fees to fund teaching, research and infrastructure projects, in the absence of adequate government support, any further reduction in the international student intake could:

- result in significant job losses at universities (Universities Australia estimates the forecast \$500 million shortfall stemming from visa processing changes alone puts 4,500 jobs at risk)
- restrict the sector's ability to deliver on the Australian Universities Accord's priorities and other national priorities in partnership with government
- threaten the viability of smaller universities, particularly in regional areas, and
- limit universities' ability to fund housing projects to accommodate international students, in line with the Government's requirements.

The potential consequences of international education policy changes beyond university campuses include:

- job losses and aggravated skills shortages in the many and varied sectors that international education supports
- weaker economic growth
- less government investment in essential services and infrastructure, including in housing, and
- damage to Australia's international reputation and foreign policy agenda.

International education serves Australia's interests on various fronts and changes to the policies that underpin the sector must be weighed carefully against its significant and far-reaching impact. Universities Australia urges the Government to give more careful consideration to these reforms to ensure there are no unintended consequences. A longer consultation period would allow time to consider the full policy suite of domestic and international reforms proposed across government and allow newly imposed regulations to take effect before further decisions are made.

The Government has committed to growth in the international education sector. It is imperative that it honours this commitment – for the benefit of universities and the nation.

Yours sincerely

Luke Sheehy
Chief Executive Officer, Universities Australia

ATTACHMENT A

PROPOSED AMENDMENTS TO THE EDUCATION SERVICES FOR OVERSEAS STUDENTS ACT (QUALITY AND INTEGRITY) BILL 2024

Universities Australia (UA) supports the Government's intention to ensure that Australia's international education sector is supported by a robust mechanism that upholds the quality and the integrity of the sector. Since its introduction, the *Education Services for Overseas Students Act 2000* (ESOS Act) has remained largely fit-for-purpose, supporting students in the university sector, providing valuable guidance and protections for university providers and underpinning Australia's global competitiveness as a top-tier international education destination.

As written, the Bill appears to have little regard to the complexity of the ESOS Act and its substantial interconnectedness with the *Migration Act 1958*. Universities Australia cautions against amending the ESOS Act without thorough investigation and consideration of the possible unintended negative consequences that may occur. We also suggest that consideration be given to the future direction of the tertiary education system.

QUALITY AND INTEGRITY		
Proposed amendments	Issues	UA recommendation
Part 1		
<p>Section 6BA – Meaning of education agent broadened</p> <p><i>The revised definition of “agent” has been expanded to “education agent” and now includes activity of an entity, as opposed to the current definition which is relationship based.</i></p>	<p>The new definition is too broad and has the potential to add further red tape as providers may be required to report any entity that engages in marketing and promotion, support prospective overseas students or ad-hoc alumni engagement on their behalf.</p>	<p>UA recommends that the current definition of ‘agent’ remain in place with the addition of ‘education’ to maintain its original intent:</p> <p>“Education agent of a provider means a person (whether within or outside Australia) who represents or acts on behalf of the provider, or purports to do so, in dealing with overseas students or intending overseas students.”</p>
<p>Section 7A – Deciding whether a provider or registered provider is fit and proper to be registered</p>	<p>UA agrees collusive and deceptive practices are not acceptable and that transparency of provider-agent relationships is important but urges that further consideration is made to</p>	<p>UA agrees that to support the quality and integrity of the sector, a provider which does not meet the definition of ‘fit and proper’ should not be allowed to operate; however UA suggests a</p>

<p><i>The Bill proposes to consider whether the provider, or an associate of the provider, has any ownership or control (whether direct or indirect) of an education agent.</i></p>	<p>ensure that there are no unintended negative consequences when considering this inclusion.</p> <p>To deliver Australia's world-class education to a diverse group of international students both in Australia and overseas, universities may partner with reputable largescale organisations who are associates or have direct or indirect associations with an education agent, to support the delivery of their operations.</p>	<p>redrafting of 7A(2)(gaa) and 7A(2)(gab) to remove 'associate' and '(whether direct or indirect)'.</p>
<p>Section 21B – Giving information about education agent commissions</p> <p><i>Universities may be required to give the department details on the commissions they pay to education agents, both monetary and non-monetary.</i></p>	<p>Education agents are compensated in a variety of ways through contractual agreements, including through commissions, as well as based on quotas of students recruited.</p> <p>UA cautions that providing education agent commission data, both monetary and non-monetary, may impinge on commercial-in-confidence contractual agreements between a university and their education agent. UA does not agree with legislating the collection of agent commission data or publishing the data. Further consideration should be given as to how the Government can collect this data outside of a legislative amendment.</p>	<p>UA recommends removing this from the Bill.</p>
<p>Section 22 – Giving information to registered providers</p> <p><i>This will allow the collection and publishing of education agent data and statistics so universities can make an informed choice on which education agent they should engage to support their international student recruitment.</i></p>	<p>The Agent Code of Ethics (ACE), which sits beneath the National Code, stipulates what must be reported by education agents. Although bad actors may on occasion circumvent the ACE due to the challenges of regulating foreign nationals and entities, this is an issue that is better managed by including reports of unethical agent behaviour in the expanded reporting outputs on agents in PRISMS.</p>	<p>UA agrees with most of this inclusion and has previously called for the inclusion of comparative data on education agents, including reports made to ESOS agencies about unscrupulous behaviour, to be made available in PRISMS.</p> <p>UA does not agree that education agent commission data be made available on PRISMS.</p>

Part 8		
<p>Division 1AB – Automatic suspension and cancellation of courses</p> <p><i>This amendment goes beyond one of quality control by giving the Minister the power to automatically suspend or cancel a course that provides limited value to ‘Australia’s skills, training needs and priorities’ or if it is considered to not be of ‘public interest’.</i></p>	<p>The Bill does not provide a definition of “Australia’s skills, training needs and priorities” or “public interest”, which poses some serious concerns as there are many inconsistent skills lists currently in operation across Federal and State Government agencies. In addition, the definition of public interest is highly subjective and may be inconsistently applied by current and future Ministers.</p> <p>Also, Australian universities operate in a demand driven system underpinned by student choice, and this should not be jeopardised by legislation which may unduly impact business operations and a student’s freedom of choice. If a course has been suspended or cancelled due to the proposed reasons, a genuine student will most likely reconsider their study destination and look to another country rather than choosing an alternate course that meets Australia’s future skills need.</p>	<p>UA does not support this provision in the Bill.</p>
MANAGING SUSTAINABLE GROWTH		
Part 3		
<p>Division 5 – Suspension of applications for registration</p> <p><i>The proposed legislative amendment will allow the Minister to specify a period when new courses cannot be registered with ESOS agencies, consequently preventing new courses being registered on CRICOS which allows them to be open for enrolments by overseas students.</i></p>	<p>Universities are self-accrediting bodies and do not require ESOS agencies to approve new courses; however, universities would be limited to providing new courses to the domestic students only.</p> <p>The potential rigidity of this legislative power may impact on universities flexibility and agility to register new courses marketed at both domestic and international students, that support innovative and future-focused</p>	<p>UA has no immediate concerns with this proposed addition and understands it is a measure to support sustainable growth in the sector.</p>

	occupations that may be required to fill emerging skill needs.	
Part 7		
<p>Division 1AA – Enrolment limits</p> <p><i>As written, the Minister, and subsequent Ministers, would have the power to intervene and interfere with a university’s ability to operate autonomously by “proactively managing overseas student enrolments to deliver sustainable growth over time”. This is a significant overreach.</i></p>	<p>The proposed legislation does not and will not offer universities long-term certainty or stability. This amendment interferes with the demand driven system that Australian universities operate in by restricting enrolments and impacting on international student choice.</p> <p>A stable and secure long-term solution for managed growth of international student enrolments allows universities to adequately plan, diversify and support both their international and domestic cohorts.</p> <p>The mechanism and factors being considered when setting enrolment limits is unclear and may be outside of a universities immediate control - Australia’s skills shortages or future needs, number of other providers servicing the geographical location and availability of accommodation.</p> <p>The proposed timeframes between an instrument/notice being made by the Minister and implementation of the government-enforced cap is unrealistic and inappropriate, having little regard for a university’s extensive and exhaustive international student recruitment process. The suggested timeframe may have drastic implications for universities should they breach their enrolment limit the following year.</p>	<p>UA does not support this amendment in its current form.</p> <p>UA recommends limiting Ministerial intervention to the provider level only and does not agree that the Minister should have the power to set limits at the course level.</p> <p>UA recommends the Minister must consult and seek written agreement from TEQSA/ASQA, the department and another Minister before issuing an instrument.</p> <p>UA recommends that the provider is also consulted prior to the issuing of an instrument or notice.</p> <p>UA recommends that a buffer be applied, as opposed to a hard cap, for providers which inadvertently exceed their student enrolment limit to reduce the likelihood of automatic suspension.</p>