

**Senate Standing Committees on Education and Employment**

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

**QUESTION ON NOTICE**

**Date of hearing: 02 October 2024**

**Outcome: International, Research and International**

**Department of Education Question No. IQ24-000085**

Senator Sarah Henderson on 02 October 2024, Proof Hansard page 66

***List of providers who's allocation is under review and associated corro***

**Question**

Senator HENDERSON: Okay. On notice, to both departments: can you provide a list of providers whose allocation is under review as a result of their representations, and can you provide the correspondence to the committee.

**Answer**

The Department of Education is engaging with providers on the data underpinning their indicative allocations. In the case of providers with no current enrolments, the department is undertaking further discussions on their indicative allocation. There are no providers whose allocation is under review.

The determination of final allocations is subject to passage of the *Education Services for Overseas Students Amendment (Quality and Integrity) Bill 2024*, and issuance of a final determination by the Minister for Education.

The department is unable to provide suitably redacted correspondence to the Committee within the timeframes set by the Committee for return of questions on notice.

## **Senate Standing Committees on Education and Employment**

### **Education Services for Overseas Students Amendment (Quality and Integrity) Bill 2024 [Provisions]**

#### **QUESTION ON NOTICE**

**Date of hearing: 02 October 2024**

**Outcome: Higher Education, Research and International**

**Department of Education Question No. IQ24-000086**

Senator Sarah Henderson on 02 October 2024, Proof Hansard page 70

#### ***Exemption numbers***

##### **Question**

Senator HENDERSON: What's your estimate of the total number of new overseas student commencements, taking account the exemptions—so schools, higher degree by research, non-award students, foreign government scholarship holders and the like? All of those categories are exempt.

Mr Cook: For next year? Is it 2025 you're asking for?

Senator HENDERSON: That's right.

Mr Cook: Okay.

Mr Rimmer: By definition, if something is exempt, it's not a new overseas student commencement, and we haven't been tracking that data through our systems in the same way. There is Home Affairs information which I believe was tabled in response to a QON about visa numbers for, for example, school students. We can look on notice at what information we do have about the exemptions, but for some of them we don't have perfect information, because they're not currently tracked in the system. But, on some of the clear categories like schools and higher degree by research, we can probably give you some information.

Senator HENDERSON: That's my concern. My concern is that universities in particular will use the exemptions to try and bring lots of students into the country and get around the cap. I'm particularly referring to foreign government scholarship holders and transnational education students. I asked you last time whether you had a definition for those students. Are you able to inform the committee of how you define transnational education students and foreign government scholarship holders?

Mr Rimmer: As I think we talked about last time, there's a process within government to resolve some of those questions. There are now two fact sheets published on our website in relation to some of the matters that you've raised—one about foreign government scholarship holders and one about the Pacific and Timor-Leste. There are just very basic details of what counts as the Pacific and suchlike. The TNE one is not currently on the website, but it's a matter of some urgency for us to get that resolved, and I imagine that we will be resolving that with government over the next few days to a week.

Senator HENDERSON: If you can provide all the relevant information in relation to those exemptions, particularly those two exemptions. Does that mean that a foreign government scholarship holder can include a scholarship holder from any other country?

##### **Answer**

Commencements per exemption category for international students covered by the *Education Services for Overseas Student Act* are provided below. Data has been drawn from the Provider Registration and International Student Management System (PRISMS).

Exemption categories by sector:

<b>Sector</b>	<b>2023 Commencements</b>	<b>2024 July YTD Commencements</b>
ELICOS	89,186	45,143
Non-award	24,380	16,762
Schools	7,903	7,450
Higher degree by research	6,991	5,228
<b>Total</b>	<b>128,460</b>	<b>74,583</b>

Pacific and Timor-Leste exemptions

<b>Sector</b>	<b>2023 Commencements</b>	<b>2024 July YTD Commencements</b>
Higher Education	622	557
VET	4,613	3,092
<b>Total</b>	<b>5,235</b>	<b>3,649</b>

Foreign scholarship exemptions are covered in IQ24-000087.

Historical data on foreign government scholarship holders is not currently collected. This data will be collected in the future through the Provider Registration and International Student Management System. Further information on the criteria for foreign government scholarships is available in a Factsheet at the following link: <https://www.education.gov.au/international-education/resources/factsheet-foreign-government-scholarship-holders-exemption-national-planning-level>

The Government is currently consulting with higher education providers to finalise arrangements for transnational partnerships.

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#### **QUESTION ON NOTICE**

**Date of hearing: 02 October 2024**

**Outcome: Higher Education, Research and International**

**Department of Education Question No. IQ24-000087**

Senator Sarah Henderson on 02 October 2024, Proof Hansard page

#### ***Foreign Government Scholarship Holders***

##### **Question**

Mr Rimmer: There are three criteria for foreign government scholarship holders, one of which is effectively a prohibition on foreign government scholarship arrangements from countries which would cause damage to Australia's national interest. There are some countries that we currently have sanctions in place for. Ms Sandercock might be able to update us.

Ms Sandercock: The advice that's been settled by government in relation to foreign government scholarship holders provides that those scholarship holders must meet the following criteria: they have to meet university admission requirements and they must meet eligibility for a student visa—

Senator HENDERSON: Because I've got such limited time, I might ask you to put the rest of that answer on notice, please.

Ms Sandercock: Certainly.

Senator HENDERSON: I am looking at the visas granted in 2023-24 by sector not included in the proposed national planning limits. They total 83,885. Do you have any sense as to what the numbers will be for the scholarship holders and the transnational education students?

Ms Sandercock: As Mr Rimmer said, the government hasn't yet settled arrangements for transnational education exemptions. In relation to Pacific and Timor-Leste students, the number is some 3,000; I can give you the exact number of those students on notice. In relation to foreign government scholarship holders, we don't have precise numbers but the numbers are understood to be very small. There are a number of key government partners that fund scholarships, such as Indonesia and others, but these are not large numbers of students. We can provide that on notice, and, once arrangements for the TNE sector are made, we'll come back to you.

##### **Answer**

Foreign government scholarship holders must satisfy the following criteria to be exempt from the National Planning Level:

- Prospective students must meet university student admission requirements and meet Department of Home Affairs eligibility criteria for a student visa
- Tuition fees must be fully funded by the foreign government
- The exemption would not be contrary to Australia's foreign policy settings including sanctions regime and international obligations.

This information is publicly available at <https://www.education.gov.au/international-education/resources/factsheet-foreign-government-scholarship-holders-exemption-national-planning-level>.

Data on foreign government scholarships is currently not required to be collected when a Confirmation of Enrolment is created and is not systematically captured in the Provider Registration and International Student Management System (PRISMS). System changes will be made to capture this data in PRISMS for 2025 onwards.

In calendar year 2023 there were 5,235 commencements by higher education and vocational education and training students from Pacific countries and Timor-Leste (622 in higher education and 4,613 in vocational education and training).

The criteria for transnational education students to be exempt from the National Planning Level are currently being finalised.

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**QUESTION ON NOTICE**

**Date of hearing: 02 October 2024**

**Outcome: Higher Education, Research and International**

**Department of Education Question No. IQ24-000088**

Senator Sarah Henderson on 02 October 2024, Proof Hansard page 73

***Provide all relevant documents in relation to the exceptional circumstances test***

**Question**

Senator HENDERSON: On notice—because I've got only a couple of moments left—could you please provide all relevant documents in relation to the exceptional circumstances test that you're applying? Also, Mr Cook, could you do that with the Department of Education, to the extent—

Mr Cook: We're not changing methodology—just to be clear.

Senator HENDERSON: Are you applying an exceptional circumstances test?

Mr Cook: We're looking at any updated data. Some providers have provided us with some updated data, and we're taking that into consideration.

**Answer**

The Department of Education is not applying an exceptional circumstances test to any higher education providers.

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#### **QUESTION ON NOTICE**

**Date of hearing: 02 October 2024**

**Outcome: Higher Education, Research and International**

**Department of Education Question No. IQ24-000090**

Senator Sarah Henderson provided in writing.

#### ***Information and associated correspondence sought about each provider - student cap concerns***

##### **Question**

Coalition senators have sought information about each provider which has raised concerns about its proposed student cap including copies of the relevant correspondence. For each such impacted provider, please advise the individual student cap which is either proposed to be varied or has been varied including for:

- the pilot training sector;
- pathways colleges;
- providers which are delivering courses to support skills shortages;
- universities; and
- providers who have given evidence before the Employment and Education Legislation Committee (committee).

We reiterate that in order to assess the bill and its ramifications, this information is critically important.

##### **Answer**

Since initial indicative allocations were originally communicated on 27 August 2024, the Department of Education has provided 8 higher education providers with an updated or initial indicative allocation for 2025 new overseas student commencements (NOSCs).

- 5 higher education providers have been provided with an updated indicative allocation which resulted from a later estimate of 2024 new overseas student commencements that became available. Per the adopted methodology, 2024 activity is relevant for these providers as they had no higher education NOSCs in 2023. Other providers for whom this aspect of the methodology is relevant did not benefit from the later estimate of 2024 commencements.
- 1 provider received its initial indicative allocation on 19 September 2024 once the department was able to resolve questions about its 2024 NOSC estimate.
- 2 recently registered higher education providers with no estimated 2024 NOSCs were provided an updated indicative allocation of 10 minimum.

These updated allocations for 2025 NOSCs were reflected in the response to the Senate Order for Production of Documents (number 622) available at the following link: [https://www.aph.gov.au/Parliamentary\\_Business/Tabled\\_Documents/7455](https://www.aph.gov.au/Parliamentary_Business/Tabled_Documents/7455)

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**QUESTION ON NOTICE**

**Date of hearing: 02 October 2024**

**Outcome: Higher Education, Research and International**

**Department of Education Question No. IQ24-000091**

Senator Sarah Henderson provided in writing.

***Definition of New Overseas Student Commencement (NOSC)***

**Question**

The term “New Overseas Student Commencement” (NOSC) is not defined in legislation, or within this bill. Please provide a definition for NOSC. Has the department proposed to include this definition in the bill or the relevant instrument?

**Answer**

The definition of New Overseas Student Commencement is available at:

<https://www.education.gov.au/international-education/resources/factsheet-implementing-provider-limits-prisms>.

Material consistent with this definition, and exemptions, will be included in the relevant instruments.



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**QUESTION ON NOTICE**

**Date of hearing: 02 October 2024**

**Outcome: Higher Education, Research and International**

**Department of Education Question No. IQ24-000092**

Senator Sarah Henderson provided in writing.

***Definition and methodology of "Reserve Pool" of allocated places as referenced at the 2 October public hearing***

**Question**

What is the definition of "reserve pool" of allocated places as referenced at the 2 October public hearing and what is the method or process which governs the allocation of places to the reserve pool? Has the department proposed to include this definition in the bill or the relevant instrument?

**Answer**

The first part of this question is referred to the Department of Employment and Workplace Relations as they referenced a 'reserve pool' at the 2 October public hearing.

In regard to the second question, a definition of 'reserve pool' is not required for the Bill or instruments.

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**QUESTION ON NOTICE**

**Date of hearing: 02 October 2024**

**Outcome: Higher Education, Research and International**

**Department of Education Question No. IQ24-000093**

Senator Sarah Henderson provided in writing.

***Department's interpretation of Part 5, 92A and clause (1b)***

**Question**

Some stakeholders have interpreted Part 5, 92A “Automatic cancellation if a provider does not provide a course in 12 month period”, clause (1b) to mean if a provider has not provided a course in a period of 12 consecutive months at any location their registration will be cancelled for all courses, across all locations as per 92A (2). Does the department agree with this interpretation and, if not, why not? Please confirm if the department has sought legal advice or advice from the Office of the Chief Parliamentary Counsel (Parliamentary Counsel) as to the operation or interpretation of these provisions. If so, please provide a copy of this correspondence including any legal advice or advice received from the Parliamentary Counsel and any proposed amendments being considered to remedy this apparent defect with the bill.

**Answer**

Paragraph 157 of the explanatory memorandum states 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.”

Providers who deliver a course or courses to one or more overseas students in a 12-month period will not have their registration cancelled.

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**QUESTION ON NOTICE**

**Date of hearing: 02 October 2024**

**Outcome: Higher Education, Research and International**

**Department of Education Question No. IQ24-000094**

Senator Sarah Henderson provided in writing.

***Confirmation of legal advice sort for interpretation of Part 7 of the bill***

**Question**

In relation to part 7 of the bill, “Automatic period of suspension for exceeding limits on enrolment” on pages 34-35, please confirm if the department has sought legal advice or advice from the Parliamentary Counsel as to the operation or interpretation of these provisions. If so, please provide a copy of this correspondence including any legal advice or advice received from the Parliamentary Counsel and any proposed amendments being considered to remedy this apparent defect with the bill.

**Answer**

The development of legislation by the Australian Government routinely involves the assistance of government lawyers and other legal advisers, and all bills introduced by the Government are drafted by the Office of Parliamentary Counsel, ensuring bills give proper legal effect to Government policy.

The Department of Education is not aware of any defects in these provisions.

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**QUESTION ON NOTICE**

**Date of hearing: 02 October 2024**

**Outcome: Higher Education, Research and International**

**Department of Education Question No. IQ24-000095**

Senator Sarah Henderson provided in writing.

***Confirmation of legal advice sort for interpretation of Part 5 of the bill***

**Question**

In relation to the suspension of providers under part 5 of the bill, please confirm if the department has sought legal advice or advice from the Parliamentary Counsel as to the operation or interpretation of this part of the bill. If so, please provide a copy of this correspondence including any legal advice or advice received from the Parliamentary Counsel and any proposed amendments being considered to remedy this apparent defect with the bill.

**Answer**

Part 5 of the Bill refers to automatic cancellation of registration. There is no suspension provision within this part of the Bill.

Please refer to IQ24-000094 concerning legal advice.

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**QUESTION ON NOTICE**

**Date of hearing: 02 October 2024**

**Outcome: Higher Education, Research and International**

**Department of Education Question No. IQ24-000096**

Senator Sarah Henderson provided in writing.

***Names of the participants arising from consultations held between the department and senior executives***

**Question**

Further to the department's response to question on notice IQ24-000033 at the Sydney hearing on 6 September 2024 in which the department provides a table of consultations held between the department and senior executives of sector stakeholders, please provide the names of the participants for each meeting.

**Answer**

It is not possible to answer this question in the time available for response, given the very large number of meetings involved, the number of participants in each meeting, and the fact that some meetings were hosted by external parties who therefore hold the relevant information.