Office Of The Chief Executive
CANBERRA, AUSTRALIA

iteca
Independent Tertiary Education Council Australia

Ref: N4.13.20 – 13 November 2025

The Hon Senator Marielle Smith
Chair, Senate Standing Committees on Education and Employment
PO Box 6021
Parliament House
Canberra ACT 2600

Dear Chair,

Re: Submission Inquiry into Education Legislation Amendment (Integrity and Other Measures) Bill 2025

The Independent Tertiary Education Council Australia (ITECA) is Australia's peak body representing independent providers in higher education, skills training, and international education. ITECA has a strong track record of supporting initiatives that genuinely enhance integrity, transparency, and quality in the tertiary education sector, in both domestic and international education contexts.

ITECA's active support for genuine integrity and quality measures is based on transparency, which is central to maintaining the confidence of students, employers, and the broader community in Australia's high quality tertiary education system and the outcomes it delivers.

The Australian Government has advanced tertiary education regulatory reform through the **Education Legislation Amendment (Integrity and Other Measures) Bill 2025 (the Amendment Bill 2025)**. The Amendment Bill 2025 includes reform measures for the international education sector and for higher education providers. Broadly, these are reform measures which are either rebadged and poorly drafted measures from previous and discharged pieces of proposed legislation, measures of spurious origin, or both.

Regardless of their basis, the tertiary education measures in the Amendment Bill 2025 are afflicted by the issues outlined in this Submission, each of which could have been easily remedied had the simple step of engaging in a genuine and meaningful way – or in fact at all – with the sector been taken prior to its introduction in the Parliament on 7 October 2025.

ITECA continues to maintain the view that policy and legislative reform must be proportionate, coordinated, and based on evidence that is informed by the experience of sector participants, and proven by practice.

The Amendment Bill 2025 proposes wide ranging changes to the *Education Services for Overseas Students Act 2000* (ESOS Act). Many of these amendments are versions of measures put forward in the Education Services for Overseas Students Amendment (Quality and Integrity) Bill 2024 (the ESOS Amendment Bill 2024) which was examined by this Committee in the previous Parliament. While that

Bill was not passed by the Parliament, many of the findings of this Committee remain relevant and this Submission makes several comments on that basis.

This Submission will focus on areas of concern that remain in the Amendment Bill 2025, while also welcoming improvements the Government has sought to make from the ESOS Amendment Bill 2024.

For simplicity and clarity, discussion on he proposed amendments is highlighted in sequential Attachments by Schedule and Part to assist the Committee.

> Although not included among the recommendations included in the Attachments to this correspondence, ITECA strongly recommends that should the measures currently drafted in Schedule 1, Parts 1-9 pass the Parliament, they be subject to review by an external reviewer within two years of commencement of those provisions.

ITECA has sought to engage constructively with Assistant Minister for International Education, the Hon Julian Hill MP as he oversees the delivery of reforms to the international education sector, as well as with Department of Education which has policy responsibility for both the ESOS Act and the *Tertiary Education Quality and Standards Agency Act 2012* (TEQSA Act). While engagement on matters within this Bill has been challenging, ITECA has been unequivocal in lending support to measures that will genuinely enhance integrity objectives.

As you will appreciate, ITECA cannot lend such support in the absence of collaborative and open dialogue, especially when the sector is ambushed by the tabling of legislation in the Parliament.

Improved integrity must be delivered through improved integrity and transparency in government processes, decision-making and collaborative engagement with the sector.

ITECA thanks the Committee for the opportunity to contribute to its deliberations on the Amendment Bill 2025 and would welcome the opportunity to appear at any hearings the Committee may deem necessary.

Yours sincerely

[redacted]

Felix Pirie
Chief Executive Officer

Attachment A

Schedule 1; Part 1 — Education agents and commissions

Definition of 'agent'

The proposed amendments in Part 1 of the Amendment Bill 2025 have raised concerns across the international education sector. These concerns reflect duplication of regulatory effort, regulatory overreach, and likely damage to legitimate businesses as a consequence. The Government seeks to redefine the terms related to education agents and commissions they receive, and despite the limited discussion of these issues in the Committee's inquiry into the ESOS Amendment Bill 2024, there has been virtually no consultation or engagement from government to seek clarity on what policy problems these measures are attempting to solve, or how the proposed amendments will address existing legislative defects to improve the system.

The lack of engagement over the past 12 months or more is more than disappointing, it leaves providers uncertain about the potential impact on their businesses, the sector and the broader economy.

> Current regulatory requirements for providers registered on Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) already include comprehensive fit-and-proper person assessments, with additional requirements for those offering education or training through Commonwealth or state-funded programs, under which there are rigorous fit and proper requirements. In addition, there are existing requirements for independent providers to meet under the *Corporations Act 2001* and other Commonwealth and state regulators.

The new definitions of "education agent" and "agent commission" significantly expand the existing scope of these definitions, raising concerns among industry participants of consequences that while possibly unintended, will be impossible to manage sufficiently. For instance, the broadened definition of "education agent" could include parents, employers, industry associations, and government bodies, creating confusion and new challenges, such as the regulatory capture of non-agent entities.

> The substantial legal ambiguity surrounding what types of organisations or individuals and relations that may or may not be captured by this definition render it either useless or oppressive, depending on its implementation. Regardless, it ensures there can be absolutely no certainty for business relationships.

These are matters that ITECA raised in the context of the ESOS Amendment Bill 2024. Unfortunately, the Department of Education has taken no initiative to discuss these issues, and the Government has taken no steps to refine the drafting. As a consequence, it is likely that in its current form the definition in Part 1 will include:

- Employees (however engaged either onshore or offshore) of an agency of a state or territory government or of the Commonwealth.
- An employee (however engaged) of an industry association, an entity including a company limited by guarantee recognised as representing registered providers in Australia (that is employer industry associations and education peak bodies).

Despite simple drafting solutions that may be taken to remedy these issues, the Government has not been willing to engage on these or other matters.

The Government has relied heavily on recommendations made in the Rapid Review into the Exploitation of Australia's Visa System undertaken by Ms Christine Nixon AO APM (the Nixon Review) and provided to the Government in March 2023, as a basis for its proposals for regulating education agents.

The Government's response to Recommendation 13 of the Nixon Review stated that the Minister for Home Affairs would consider:

> *...expanding the remit of the Office of the Migration Agents Registration Authority (OMARA) to include education agents as providers of visa advice. An expanded OMARA role would be complemented by increased accountability of education providers, without requiring separate regulatory infrastructure in the Department of Education*.

ITECA has supported this approach and provided a proposed approach that aligns with the Nixon Review recommendation, to the Committee's Inquiry on the ESOS Amendment Bill 2024. This was supported by the Law Council of Australia and other peak bodies.

To date, however, the Government has not provided any information or guidance on this matter, appearing instead to prefer the separate regulatory infrastructure and burden on all providers that the Nixon Review warned against developing and implementing.

Definition of "agent commission"

The expanded definition of "agent commission" also creates significant ambiguity and uncertainty, potentially labelling scholarship payments and membership fees paid to industry association and peak body as commissions, and that these would need to be declared to the Government via the relevant ESOS Agency.

While these may not be within the intended scope of a commission, the Amendment Bill 2025 allows for no exemptions or exclusions currently, which is a significant oversight. These are not matters than can be just made up as we go along on the run and they are most definitely not issues for randomised policy guidance issued from month-to-month.

The extensive and broad scope of these definitions could impose significant administrative burden on providers, especially those that form part of legitimate complex ownership structures or collaborations with foreign entities, including entities on foreign stock markets, leading to costly restructures.

> Compliance with what appear to be random regulation mechanisms lacking a clear purpose, is likely to have the effect of damaging business confidence and withdrawing capital investment, especially for smaller providers as costs and administrative load increase without clear regulatory rationale.
>
> The power in Part 1 to require agent commissions, loosely defined as they are, to be reported in instances **where such commissions have been paid before the Amendment Bill 2025 has come into force is inconsistent with regulatory best practice**. Implementing retrospective reporting requirements in this way, without any guardrails or oversight mechanism, combined with strict penalties for non-compliance, will have the effect of exacerbating concerns about the feasibility of the legitimate partnership between a registered provider and any other individual or organisation.

> This measure does not reflect an effective and reasonable way to manage actual risk for a thriving industry by modern regulators in a modern 21st century regulatory context.

The reforms in Part 1 are a startling regulatory overreach, adding layers of duplication without identifying, and addressing the core issues faced by the sector. As currently drafted, Part 1 will almost certainly harm the sector's ability to enhance integrity from within, increasing the compliance burden on quality providers and damage legitimate business relationships, and deter international collaboration and investment.

Recommendations —

1. Clarify the Definition of "Education Agent" to exclude:
   a. advisory, legal, and marketing services that do not directly recruit or enrol students
   b. employees (however engaged either onshore or offshore) of an agency of a state or territory government or of the Commonwealth
   c. an employee (however engaged) of an industry association, a company limited by guarantee recognised as representing registered providers in Australia (that is employer industry associations and education peak bodies).

2. The Government work transparently and constructively with sector peak bodies on delivering an outcome from Recommendation 13 of the Nixon Review as outlined above.

3. Introduce a clause to require the Minister to consult with peak bodies representing all education sectors on the introduction of a Proportional Compliance Model to be used by each ESOS Agency.
   a. Such a Model would better and explicitly reflect provider size, scale, delivery type, scope and geography and risk profile.

4. Require consultation with the education sector peak bodies prior to the issuing of any legislative instruments that define or alter provider obligations with respect to education agents.

5. Measures relating to agent governance and reporting be implemented over a 12-month period, with ESOS Agencies able to enforce those provisions from 1 January 2027.
   a. Reporting obligations commence only at such time as national data systems are capable of receiving that information and it be securely integrated with other relevant systems, including in the Department of Home Affairs.

Attachment B

Schedule 1; Part 2 — Giving information to registered providers

The measure proposed by Part 2 of the Amendment Bill 2025 poses significant concerns where there is a requirement placed on a provider to release potentially commercially sensitive information to other regulated entities, including potential competitors.

ITECA opposes the proposal in Part 2 as currently drafted to require a provider to provide information that the Secretary may then publish, including any information relating to commissions paid to education agents and relating to student transfers between education providers. While there may be some intent behind this measure, it has not been made clear, and at no time has the Government engaged with the sector as to how such information may assist regulatory efforts, to what purpose, in what ways, and how the sector may assist in its provision.

> In other words, a 'needs case' has never been put forward as to the regulatory necessity regarding the need for provisions that require what is potentially commercially sensitive information to be given to the government for publication to competitors.

Were there to be such a need, information should only be provided annually, retrospectively, and at an aggregated level to protect the sensitivity of commercial arrangements between businesses and between businesses and students.

The information requested under these amendments is usually part of contractual agreements, particularly in international contexts, and revealing this data could damage the competitive position of CRICOS-registered providers. To have the Government seek to insert itself into commercial arrangements in this way is unreasonable, especially as the Government is then seeking to information in those commercial contracts with competitor providers. The Government proposes doing so without any oversight, potentially exposing sensitive business arrangements to competitors.

> The proposed amendments appear unnecessary, as existing regulations already mandate providers share agent-related information with ESOS Agencies. The proposed measures in the Amendment Bill 20205 therefore suggests the system's current tools are either underutilised or inadequate, or the Government has a lack of confidence in the ESOS Agencies.
>
> The demand for data that predates the commencement of the proposed amendments also complicates compliance and threatens to disrupt established, legitimate contractual relationships.

Recommendation –

1. Part 2 of the Bill should be amended to ensure that the provision of any information as outlined in Part 2 may not be published as public content, and that such requests for information only applies to information received by a registered provider after the commencement of Part 2, Schedule 1 of the Amendment Bill 2025.

Attachment C

Schedule 1; Part 3 – Management of provider applications

The amendments proposed by Part 3 of the Amendment Bill 2025 introduce very significant Ministerial powers to the ESOS Act. These expanded powers draw directly from similar amendments made to the *National Vocational Education and Training Regulator Act 2011* (NVETR Act) in 2024.

The newly proposed powers will enable the Minister overseeing the ESOS Act make a legislative instrument to suspend various processes, including applications for CRICOS registration or additions for courses to the scope of registration of an existing registered provider. These powers are framed so they may apply broadly to all applications, certain classes of applications, or applications made within specific timeframes (including before the relevant legislative instrument is made).

> These suspensions could affect applications already submitted, increasing uncertainty for educational providers and students. For example, it appears that such a legislative instrument may be framed so as to direct an ESOS Agency *not to process any applications already lodged and accepted* for certain qualification types or in particular geographies.

Given this expansive power already exists under the NVETR Act as noted above, it may be that the Government intends Part 3 to be focussed **more directly on schools, higher education, and English language providers**, all of which already face rigorous accreditation standards.

> It is difficult to be certain of this, however, as there has been no consultation on what the intent is or what the regulatory necessity of these measures is.

In the context of enhancing the integrity of the sector, there has been no case put forward that indicates these measures will have a positive effect. There seems to be little or no evidence-based foundation for these new powers in terms of improving quality or integrity. The ESOS framework already includes robust regulatory tools for ESOS Agencies to assess education quality, making the proposed additional Ministerial intervention duplicative and unnecessary and suggests a lack of confidence on the part of the Government in the capability of the ESOS Agencies.

The proposed Part 3 highlights a lack of trust by Government in the capability of the ESOS Agencies that is evident throughout the Amendment Bill 2025. These new powers in Part 3 will ensure diminished confidence in the international education sector from the perspective of independent CRICOS-registered providers and students as well as international partners.

The proposed powers under Part 3 of the Amendment Bill 2025 risk causing long-term damage to Australia's reputation, the international education sector, businesses, and our strategic partnerships. Regulatory interventions such as these are based on flawed reasoning and are less likely to enhance the overall standing of the sector and more likely to impose unnecessary administrative and financial burdens on sector stakeholders including regulated entities.

Recommendations –

1. ITECA recommends that Part 3 be removed as the power is duplicative, demonstrates a lack of confidence in the capability of the ESOS Agencies and will damage confidence in Australia's international education sector.

2. Noting the primacy of Recommendation 1 above, ITECA suggests that the powers specified in Part 3 of the Amendment Bill 2025 be subject to Disallowance.

3. Amend Part 3 to ensure that any Legislative Instrument made under Part 3 may only have prospective effective and cannot have a retrospective application or apply to historic actions or processes.

Attachment D

Schedule 1; Part 4 – Registration requirements

It is understood that the intent of Part 4 of the Amendment Bill 2025 is to ensure that a provider must have a history of delivering one or more courses to domestic students in Australia (for at least two consecutive years) before they can be considered for delivery to student visa holders. As an integrity measure, this may make some surface sense.

However, the measure in Part 4 does not consider the ability for independent higher education institutions to enter the market, or their business model and the regulatory mechanisms that are placed upon them by the Federal Government. These are implemented at such a pace that places immense pressure on staffing, students and capital investment.

For instance, it is common that an education provider seeking to register as a higher education institution will **invest between $2.5-$3 million in preparing an application to submit to TEQSA**. For this to be submitted, staffing will be in place, building certification must be in place, course design, relevant and necessary equipment must be up-to-date and in place as well as any industry certification. Before an application is lodged to deliver to domestic students.

Registration and initial accreditation from TEQSA typically can take 2 years for an independent institution (for the institution and any courses they are seeking to offer upon commencement). However, to be accredited to offer domestic students an income-contingent loan to subsidise their study (that is, FEE-HELP loans), the newly registered institution will then have to submit to a new and different registration & accreditation process which may also take 2 years ***after*** they are registered with TEQSA.

This often equates to 4 years with no revenue for the business, save for any income from full-fee paying students. This is why independent higher education institutions often to seek CRICOS-registration at the same time as domestic registration; it offers the opportunity of some kind of revenue to pay staff, recoup investment losses and keep the business afloat until access to FEE-HELP is available.

The current drafting of Part 4 is likely to be akin to resulting in no new independent higher education institutions in Australia. That outcome would be antithetical to the recommendations made in the Universities Accord and would make the Government's ambition of greater degree-level attainment almost impossible to achieve from the start.

Recommendation –

1. ITECA recommends that independent higher education institutions be included as a category of exempt providers for the purpose of Part 4 of the Amendment Bill 2025.

Attachment E

Schedule 1; Part 5 – Automatic cancellation of registration

Under the ESOS Amendment Bill 2024 as considered by this Committee previously, the proposed amendments for automatic cancellation of registration seemed similar to the measures put forward in the Education Amendment Bill 2025.

However the previous proposed amendments were perhaps the most destructive longer-term measures in that ESOS Amendment Bill 2024.

In the course of discussion on the ESOS Amendment Bill 2024, the Department of Education assured ITECA and other stakeholders that the drafting of that Bill was sound and that concerns raised by stakeholders suggesting that the Bill as drafted would lead to the *automatic cancellation* of all courses at all locations for providers captured by that Part, were unfounded.

However, the drafting of that Part has now been changed, and that is something that ITECA welcomes.

In changing the drafting, however, ITECA and other stakeholders were not consulted, and the release of the text in the Amendment Bill 20205 has been a surprise for the sector. A demonstration of trust and engagement with the sector by working collaboratively on an exposure draft for example, would have enabled sector stakeholders to highlight to the government that the new drafting also poses challenges and is not likely to assist the Government in delivering its intent.

> Specifically, by stating that the provisions of Part 5 of the Amendment Bill 2025 relate to circumstances where a **'...provider does not provide any courses at any locations to any overseas students'** the Government has virtually guaranteed that non-genuine providers will circumvent the intent of Part 5 and will do so with ease.

Remaining consistent with the current wording, a provider with multiple campuses may only need to have one student enrolment in a single course at one campus for a short period (for example, two months) to avoid the automatic suspension provision of this proposed measure. This highlights two critical concerns for ITECA.

First, non-genuine providers will likely be enabled to proliferate as *ineffective automatic provisions are relied upon to regulate a complex system*, without enhancing the capability of ESOS Agencies.

Second, the absence of engagement with the sector on the Amendment Bill 2025 is highlighted as resulting in worse-than-current legislative outcomes should Part 5 be legislated in its current form.

Recommendation –

1. ITECA recommends that Part 5 of the Amendment Bill 2025 be redrafted to ensure that any cancellation of a course at a location is subject to risk-based examination by the relevant ESOS Agency under the existing powers.

Attachment F

Schedule 1; Part 7 – Automatic cancellation of specified courses

Genuine measures that will enhance the integrity of the international education sector will be openly supported by ITECA. The support that ITECA lends to those measures will be particularly open and vocal when they are measures that have been thoroughly considered, scrutinised, and subject to sector consultation and engagement.

As the Committee may appreciate, Part 7 of the Amendment Bill 2025 enjoys none of these features. It is not sufficient to base a claim of "consultation" on a previous failed Bill through a Committee process, or a lecture tour as being sufficient sector engagement, especially when every person who spoke on the topic was opposed to it.

The measures specified in Part 7 of the Amendment Bill 2025 have the brazen desire to centralise regulatory powers under the Minister, and to effectively remove existing functions from sector regulators.

This is demonstrably counterproductive to building a sector with greater levels of integrity and quality delivery for students. It is yet another element of this Bill that actively undermines the role of ESOS Agencies. The ESOS Agencies are essential in ensuring compliance with regulatory standards across CRICOS-registered providers.

> **Instead of enhancing the critical role these Agencies perform, the Amendment Bill 2025 diminishes their capacity for effective oversight, shifting instead to a model of unilateral Ministerial decision-making.** In doing so, the Bill reduces the capacity for oversight, particularly by the Parliament. Of course, this weakens governance and integrity, and the authority of democratic institutions.

There are numerous aspects to Part 7 of the Amendment Bill 2025 that remain unclear.

- The Minister's ability to make a legislative instrument specifying courses that may be suspended or cancelled where:
  - There are 'systemic issues in the standard of delivery'. This directly overrides the express authority of both TEQSA and ASQA, and unless the Minister has evidence that either agency (or both) is expressly incompetent or the Government has lost confidence in their ability to carry out their legislated functions, it is not clear why the powers are at all necessary.
  - It is also not clear what might constitute systemic issues in the standard of delivery and how this will be assessed, especially given the fact in some qualification areas the standard of delivery is assessed by industry organisations.

- Courses are in a class that provide limited value to Australia's current and emerging ***skills and training needs*** and priorities skills needs.
  - The sector needs some clarity from Government on whether, as appears to be the case, this appears to be directed only courses at level 7 and below of the Australian Qualifications Framework, and also how the Government will define "current and

emerging skills and training needs and priorities skills needs", given there are differing approaches and outcomes within and across levels of Government.

In terms of consultation on any Instrument, the Minister is required to consult with whomsoever the Minister wishes, before making a Legislative Instrument to cancel courses or providers. Again, this unfettered Ministerial authority demonstrates what has been perceived by sector stakeholders as an absence of care, due diligence and reasonable engagement with the sector on matters fundamental to the survival of many businesses and the jobs they support.

As currently drafted, Part 7 of the Amendment Bill 2025 damages Australia's reputation and reinforces the view that the operating environment for business is one of command and control and not one of collaboration and engagement.

More broadly, it is unclear why the existing powers of ESOS Agencies to suspend or cancel courses are deemed insufficient. No evidence has been presented as to why it might be the case that a separate Ministerial power is required to be established in such vague and uncertain terms.

Recommendation –

1. That Part 7 of the Amendment Bill 2025 be removed on the basis that it is unnecessary, there has been no needs case presented for these powers, and the powers further undermine the legitimate capacity of ESOS Agencies to act in an effective, proportionate and risk-based manner.

Attachment G

Schedule 1; Part 9 – TEQSA

The Amendment Bill 2025 includes, in Part 9, the requirement for registered higher education providers to seek authorisation from TEQSA before offering or conferring an Australian higher education award for Australian courses of study at an offshore campus.

Obviously, these proposed amendments seek to extend TEQSA's remit beyond domestic higher education registration, accreditation and quality assurance to include the approval, monitoring, and enforcement of offshore course delivery by Australian higher education providers.

There are a number of concerns with this proposed measure and aspect for which ITECA suggests the Committee seek greater clarity.

First, there has been no clear needs case for these measures provided to the sector for these enhanced functions of TEQSA. As it currently stands, the TEQSA Act requires all registered higher education providers to notify TEQSA of a material change (opening an offshore campus or delivering offshore would be a material change to operations).

> As TEQSA already receives notifications of these matters, it also has the authority to investigate any matters that might relate to offshore delivery. Further, it has the power to place a condition on a provider's registration or accreditation at any stage during the provider's period of registration.

This is a small indication of the myriad powers which TEQSA possesses to oversee offshore delivery.

Second, in the event these powers are legislated, Australia will be in the bizarre situation of having institutions that are authorised to self-accredit courses for delivery domestically, but which must seek approval to deliver at an offshore campus they own or in partnership with another institution/business partner. It seems like institutions are trusted to self-regulate in Australia but not trusted offshore.

Third, the regulatory overlay and overlap with other existing obligations on higher education institutions which these proposed measures detail ensure they are measures that have not been consulted upon at either a policy or a practical level.

> Currently, TEQSA is renowned for taking as long as any regulator across the Commonwealth for undertaking its core functions (provider registration and course accreditation), and to add another layer to that which in many instances is duplicative is perhaps unnecessary but certainly is a disincentive to market entry on one hand but certainly offshore delivery on the other.

Fourth, TEQSA is required to undertake a fit and proper person test on all applicants for registration. More specifically, the TEQSA Act requires that for the purpose of registration, each person who makes, or participates in making decisions, that affect the whole, or a substantial part of the registration applicant's affairs, be a fit and proper person.

Should the amendments which are proposed in Part 9 of the Amendment Bill 2025 be legislated, TEQSA would then appear to be required to undertake fit and proper assessments of individuals at offshore campuses, likely offshore residents and possibly foreign nationals.

While the problem that is sought to be solved through these amendments to the TEQSA Act remains mysterious, the capacity of TEQSA to undertake assessments such as these with the required veracity remains questionable.

Recommendation: -

1. That Part 9 be withdrawn from the Amendment Bill 2025 and a thorough 'needs case' developed and put forward for sector consultation prior to any legislative measures that may be progressed in 2026.