Australian Chamber of Commerce and Industry

Education Services for Overseas Students (Quality and Integrity) Bill 2024

ACCI Submission

1 July 2024

Australian Chamber of Commerce and Industry

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Executive Summary

International education is vital to Australian society and our economy. As the country's largest service export, valued at $48 billion, it serves as a crucial soft diplomacy tool both regionally and globally. International students significantly contribute to the workforce, both while they are students, and later if they remain beyond graduation. These aspects are immensely important to Australia's business sector.

The Education Services for Overseas Students (ESOS) Amendment (Quality and Integrity) Bill 2024 introduces several changes intended to enhance transparency, improve conduct standards, and address issues within the international education sector. While these objectives are commendable, the Australian Chamber of Commerce and Industry (ACCI) has identified several areas where these amendments could inadvertently harm legitimate education providers and the broader sector. Damage to the international education sector in this country will lead to job losses and economic disruption, not only for the sector itself, but to businesses in many other sectors given the far-reaching spillovers of this important industry.

Enhancing Transparency and Managing Relationships

The amendments in Part 1 of Schedule 1 aim to redefine the roles of education agents and their commissions to increase transparency and reduce collusive behaviour. The new requirements for ESOS agencies to consider the fit and proper status of providers and their associates are designed to uphold high standards. However, the broad definition of 'associate' may pose logistical challenges for providers, potentially deterring valuable investments and complicating compliance. To mitigate these issues, it is crucial to carefully consider the unintended consequences of these broad definitions before progressing the Bill.

The requirement to disclose education agent commissions, while intended to improve transparency, risks pushing unscrupulous activities underground, removing existing protections under the ESOS Framework. These complexities necessitate a thorough review of the proposed measures to ensure they achieve their intended outcomes without adverse side effects.

Improving Information Sharing and Protecting Commercial Interests

The government's initiative to increase transparency around third-party relationships is commendable, as it allows providers to make more informed decisions. However, the publication of commercial-in-confidence information on education agent commissions could undermine competition and potentially breach privacy laws. It is essential to explore these implications thoroughly to balance transparency with commercial and privacy concerns.

Streamlining Application Processes and Supporting Small Providers

The amendments in Schedule 1 Part 3 grant the Minister significant power to delay processing applications for new providers and courses. While the intent is to maintain integrity during peak periods, such delays could adversely affect small and emerging providers, contradicting the government's commitment to support small businesses. Instead of this slow-down mechanism, ACCI recommends creating surge capacity within ESOS agencies to handle application spikes, ensuring genuine providers are not unfairly disadvantaged.

Registration Requirements and Market Entry Challenges

The new registration requirements in Schedule 1 Part 4 mandate that providers offer courses to domestic students for two years before registering to teach international students. While aimed at preventing exploitation of international students, these requirements could hinder new independent providers from entering the market and limit student choice. Given the significant time and financial investment required to achieve FEE-HELP registration, most new providers rely on the international market to build their reputation. Thus, ACCI suggests either removing these amendments or introducing exemptions for quality providers.

Automatic Registration Cancellation and Realistic Timeframes

Part 5 of Schedule 1 allows for automatic cancellation of registration if a provider does not offer a course for 12 months. While ACCI supports this in principle, the proposed timeframes are impractical. Retrospective application and short extension periods could unfairly penalise providers. ACCI recommends starting this amendment from 1 January 2025 and extending the total allowable extension period to 24 months to account for legitimate operational delays.

Investigations and Maintaining Regulatory Integrity

The amendments in Schedule 1 Part 6 target non-genuine providers, an essential step for maintaining the sector's integrity. However, ACCI emphasises the need for clear investigation criteria and advocates for national regulators to conduct these investigations, ensuring transparency and fairness.

Enrolment Limits and Sector Viability

The proposed enrolment limits in Schedule 1 Part 7 could harm providers' economic activities and Australia's reputation as a welcoming destination for international students. Existing Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) limits already address enrolment concerns, making additional restrictions seem unnecessary and burdensome. ACCI recommends making enrolment limit notices subject to merit review, requiring consultation with providers, and postponing limits until at least 2026 to allow adequate planning and adjustment.

Furthermore, clauses allowing the Minister to vary enrolment limits at any time undermine providers' ability to plan and could damage Australia's reputation. Enrolment limits should be set for a maximum of two years, ensuring periodic review and renewal to maintain fairness and stability.

Course Cancellation Criteria and Public Interest Concerns

Part 8 of Schedule 1 gives the Minister power to cancel courses deemed of limited value to Australia's skills needs or public interest. This provision is highly subjective and could lead to ideological biases in course offerings. ACCI urges the removal of these provisions, advocating instead for targeted actions against non-genuine providers without broadly penalising specific courses or fields.

Collaborative Approach and Visa Policies

A cohesive strategy between the Department of Education and the Department of Home Affairs is vital to manage international student numbers effectively. Current practices of broad visa refusals should be reconsidered in light of new enrolment caps, ensuring a balanced and fair approach.

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Recommendations

In its submission, ACCI makes the following recommendations:

1. Carefully consider the unintended consequences of proposed amendments before progressing the Bill.
2. Instead of allowing the Minister to create a legislative instrument to delay application processing, create surge capacity within the ESOS agencies so that staff can be redeployed from other areas into assessing applications by new providers and existing registered providers for new courses during periods of unusual or suspect activity.
3. Remove the Schedule 1 Part 4 amendments from the Bill and instead mandate site visits and desk audits for new providers within their first two years of operation; or, if Part 4 amendments are not removed from the Bill, introduce a special consideration mechanism, based on a provider's ability to demonstrate specific markers of quality education provision.
4. Commence the amendments in Part 5 of Schedule 1 on 1 January 2025 or later, removing the retrospective application of the amendment.
5. Adjust the language of 92B(6) to allow a total extension period of up to 24 months.
6. Remove the option for the Minister to send providers a written notice of enrolment limits; or, if notices of enrolment limits are not removed from the Bill, make them subject to merit review.
7. Require the Minister to consult with individual providers or peak bodies in addition to those currently listed before implementing limits. Change the language of 26B(11) to "must" rather than "may".
8. Clarify or rectify the provision at paragraph (b), subsection 26B(9) allowing the Minister to impose enrolment limits for 2025 up until 31 December 2024. Allow at least 12, but preferably 18 months between the Minister's declaration of enrolment limits and the timing for these to apply.
9. Postpone commencing enrolment limits until at least the 2026 academic year.
10. Remove clauses 26B(10) and 26E(9) which give the Minister the power to vary instruments at any time.
11. Set enrolment limits for up to two years only, ceasing at the end of this period unless renewed. Include a sunset clause to review amendments to the Act in 2027.
12. Allocate resources so that ESOS agencies can target non-genuine and unscrupulous providers specifically, rather than using particular courses or course types as a proxy for nefarious activity.
13. Remove the provision allowing the Minister to cancel courses not aligned with Australia's skills needs.
14. Remove the provision allowing the Minister to cancel courses not considered in the public interest.
15. Amend the language to specify that courses can only be suspended during the disallowance period, not cancelled, allowing reversals if the instrument is disallowed.

Introduction

The Australian Chamber of Commerce and Industry (ACCI) welcomes the opportunity to comment on the Education Services for Overseas Students (Quality and Integrity) Bill 2024 (the Bill).

ACCI is Australia's largest and most representative business network, representing hundreds of thousands of businesses in every state and territory and across all industries, including both public and private tertiary education providers. Australian businesses are key beneficiaries of the skilled migration system, of which international education is a significant component. Migrants' diverse skills and perspectives drive innovation, enhance productivity, and bolster the nation's economic resilience.

As the Minister for Education has pointed out, international education is critical to Australian society and our economy. It is our largest service export, worth $48 billion, and is a key soft diplomacy mechanism not only in our immediate region, but throughout the world. While they study with us, international students play a significant role in staffing Australian businesses, relieving the pressure of worker shortages. When they stay beyond their studies, they fuel Australia's skilled workforce, not only helping to bridge the critical skills gaps Australia is experiencing, but also bringing a built-in understanding of Australia into the workplace with them. These are factors that are of deep importance to Australia's business sector.

ACCI is entirely committed to ensuring the integrity and quality of the international education sector, providing long term certainty to both migrants to this country and to the tertiary sector, and to encouraging sustainable growth. Furthermore, the elimination of human trafficking and modern slavery is paramount to our democracy, ensuring the protection of fundamental human rights and fostering a society where every individual can live with dignity and freedom. These are principles that ACCI holds as fundamental.

There are aspects of the Bill that we believe will support these worthy goals. **However, we have significant concerns that others will not achieve their desired aim but will instead cause significant harm to the sector, and therefore the country**. Specifically, the provisions in Parts 3, 4, 7, and 8 present notable issues. The power in Part 3 to delay processing applications could significantly disadvantage small and emerging providers, impeding their ability to contribute to the sector. New registration requirements in Part 4 could prevent new independent providers from entering the market, thereby reducing student choice and stifling innovation. Proposed enrolment limits in Part 7 could severely impact providers' economic activities, lead to job losses, and harm Australia's reputation as a welcoming destination for international students. Lastly, in Part 8, criteria for cancelling courses based on perceived value to Australia's skills needs or public interest are overly subjective and risk ideological bias, potentially leading to the unjust cancellation of valuable courses. It is crucial that these provisions are reconsidered to avoid these detrimental impacts and to ensure the Bill effectively supports the international education sector.

In our submission, we expand on the above concerns and others, taking each of the eight parts of the Bill in turn.

1 Education agents and commissions

The amendments in Part 1 of Schedule 1 of the Bill update the definition of an education agent, introduce a new definition of education agent commission, and also introduce a new requirement for ESOS agencies to consider when determining a) whether a provider is fit and proper to be registered, b) whether providers

or their associates have any ownership or control of education agent entities or c) whether education agent entities or their associates have any ownership or control of providers.

The intent of these amendments is to increase transparency in relationships between providers and education agents, reduce opportunities for collusive behaviour, and improve the standard of conduct required by providers to gain and hold registration under the ESOS Act. While ACCI supports these intentions, there are several clauses within these amendments that we believe will lead to unintended negative outcomes for legitimate providers.

Firstly, the inclusion of the term 'associate' in the amendments related to the updated fit and proper test will pose logistical challenges for providers. If the definition of associate remains consistent with the existing definition in the *ESOS Act 2000*, it captures all the following categories of people and organisations:

> *(a) the spouse or de facto partner of the person; or*
>
> *(b) a child of the person, or of the person's spouse or de facto partner; or*
>
> *(c) a parent of the person, or of the person's spouse or de facto partner; or*
>
> *(d) a sibling of the person; or*
>
> *(e) if the person is a company:*
>
> > *(i) an officer of the company; or*
> >
> > *(ii) an officer of a company that is related to the first-mentioned company; or*
> >
> > *(iii) a person who holds a substantial ownership interest in the company; or*
>
> *(f) if the person is an association or a co-operative—the principal executive officer or a member of the body (however described) that governs, manages, or conducts the affairs of the association or co-operative; or*
>
> *(g) if the person is a body corporate established for a public purpose by or under an Australian law and another body is responsible for the management or the conduct of the affairs of the body corporate—the principal executive officer or a member of that other body; or*
>
> *(h) if the person is any other kind of body corporate established for a public purpose by or under an Australian law—the principal executive officer or a member of the body corporate; or*
>
> > *(i) if the person is a partnership:*
> >
> > *(ii) the principal executive officer or an individual, or a body corporate, that is a member of the partnership; or*
> >
> > *(iii) an individual who is an officer of a company, or a member of any other body corporate, that is a member of the partnership.*[1]

This is problematically broad given the amendments proposed. For example, many education providers receive investment from offshore private investors. This is obviously good for the economy, bringing in capital and promoting international trade and economic integration. However, a provider has no control, or often even visibility, over the other organisations with which their investment partners are involved. While these amendments do only require ESOS agencies to *consider* factors like these when applying

[1] *ESOS Act 2000*, Part 1, Division 1, 6. *Meaning of associate*. Federal Register of Legislation - Education Services for Overseas Students Act 2000

the fit and proper test, we are concerned that the broad definition of associate may limit the legitimate and valuable associations providers are willing to make, for fear that it will affect their chances of registration.

We are also concerned that the requirement to give information about education agent commissions, and plan to eventually ban commissions from being paid by providers to education agents for onshore student transfers, may not have the intended affect. This amendment targets unscrupulous providers; however, these same providers may see this amendment as an opportunity to take their activities underground, thus removing the existing protections afforded to students and providers via the ESOS Framework. It could lead to unscrupulous providers offering students, directly, even more significant incentives to transfer.

We urge the government to consider the unintended consequences of their proposed amendments carefully before progressing this Bill.

Recommendation 1: Carefully consider the unintended consequences of proposed amendments before progressing the Bill.

2 Giving information to registered providers

ACCI commends the government on this amendment. We are aware that giving providers increased transparency around third-party relationships has long been a shared goal between the government, the Department of Education and the sector, allowing providers to make more informed decisions about the agents with whom they engage. It is also pleasing to see that this information will be provided via a secure channel, as providers were calling for during the ESOS Review 2022.

We do, however, hold concerns about the publication of education agent commissions. This information is commercial-in-confidence and therefore has the potential to undermine competition. We are also concerned that this may breach other countries' privacy and data collection requirements, and this should be explored before going forward with this amendment in the Bill.

3 Management of provider applications

ACCI has concerns about the powers that the amendments in Schedule 1 Part 3 give to the Minister to delay processing of initial applications for new providers as well as applications for new courses by existing registered providers. While we appreciate the intent of these amendments – allowing the ESOS agencies to focus on integrity measures at relevant moments – we do not believe that resource shortages within the ESOS agencies should have a negative impact on legitimate providers. These are, in many cases, small businesses either trying to get off the ground or attempting to diversify their offerings in what is unquestionably a challenging economic environment. A delay of up to 12 months is likely to leave these businesses unable to proceed with their activities. This seems counter to the government's commitments

to support small business, and its desire for Australian small business to bounce back from the downturns of COVID-19.

It is also concerning that the instrument that would need to be created by the Minister in this amendment would not be disallowable, but the amendment also does not require any process of consultation with the sector to determine the impacts of suspending processing at a particular time.

Instead of this slow-down mechanism, we recommend creating surge capacity within the ESOS agencies, allowing staff from other divisions within the Australian Skills Quality Authority (ASQA), the Tertiary Education Quality and Standards Agency (TEQSA) and the Department of Education to be redeployed into assessing applications by new providers and existing registered providers for new courses during periods of unusual or suspect activity. This will maintain the Bill's intent to ensure that unscrupulous, non-genuine providers do not slip through due to increased pressures on the ESOS agencies, without punishing the genuine providers who are attempting to run legitimate businesses that contribute to Australia's economy. This recommendation can also be achieved with minimal additional resourcing to the ESOS agencies.

Recommendation 2: Instead of allowing the Minister to create a legislative instrument to delay application processing, create surge capacity within the ESOS agencies so that staff can be redeployed from other areas into assessing applications by new providers and existing registered providers for new courses during periods of unusual or suspect activity.

4 Registration requirements

The amendments in Schedule 1 Part 4 impose a new registration requirement on providers to deliver one or more courses to domestic students (that is, not overseas students) for consecutive study periods totalling two years, in order to be eligible to apply for registration to provide courses to overseas students under the ESOS Act.

ACCI supports the *intent* of these amendments to dissuade non-genuine providers from luring vulnerable international students to Australia for nefarious purposes. However, we do not believe the amendments themselves support the government's stated goal to provide international students with excellent student experiences, given these amendments limit their choice of provider (and combined with the amendments in Part 7, would additionally limit their choice of course to those meeting the Minister's definition of Australia's skills needs). We also do not believe it will provide fair and reasonable outcomes for legitimate providers and will almost certainly preclude new independent providers from launching at all.

It can take up to three years and millions of dollars for a new independent provider to be registered for FEE-HELP (noting that independent providers are not eligible for the Commonwealth Grant Scheme) once they have been approved by their regulator (TEQSA or ASQA) to begin offering courses. In that three-year period, these providers are not competitive in the domestic market – they are new, so still building their reputation, and they cannot offer their students loans or Commonwealth support. It is hard to imagine why an Australian student would choose a new provider under these circumstances when they can go somewhere else where they will not have to pay up front. Therefore, most independent providers look to the international market during that crucial initial three years to build their reputation as a quality provider, while also remaining solvent. These amendments would prevent new providers from utilising this business model without providing an alternative, thus precluding new providers from entering the market.

It should also be noted that when providers offer courses solely to international students, it is not unilaterally, "an indicator of poor quality".[2] Domestic students often differ in interests and desires from international students. This is fundamental to business development – to identify what different people want and attempt to meet the specific needs of those different types of people. We therefore question the appropriateness of restricting legitimate providers – again, many of whom are small, family businesses – to only offering education to one category of potential students who may have limited interest in that offering.

Given that providers need to be assessed and then registered by TEQSA or ASQA before they can be registered on CRICOS, we believe the mechanisms for reducing risk in this area should sit within the existing structures. We fundamentally disagree with the amendments laid out in Part 4 and ultimately recommend that they be removed from the Bill and replaced with a mechanism that does not unfairly disadvantage legitimate providers. This could involve a reintroduction of annual site visits and desk audits for new providers in the first two years, for example. Alternatively, there are provisions in the amendments in Part 4 to exempt ELICOS and foundation course providers (as well as Table A providers) from these new requirements. Another provision could be made to exempt an additional category of provider from the requirements, such as independent providers who can provide specified markers of quality education provision.

Recommendation 3: Remove the Schedule 1 Part 4 amendments from the Bill and instead mandate site visits and desk audits for new providers within their first two years of operation; or, if Part 4 amendments are not removed from the Bill, introduce a special consideration mechanism, based on a provider's ability to demonstrate specific markers of quality education provision.

5 Automatic cancellation of registration if a provider does not provide a course in a 12-month period

Schedule 1 Part 5 enables the automatic cancellation of a provider's registration under the ESOS Act, by force of law, in circumstances where the provider has not delivered a course to overseas students in a period of 12 consecutive months.

ACCI is supportive of this measure in principle. However, logistically, we do not believe the timeframes proposed are feasible. The Explanatory Memorandum states that the measurement period for this amendment begins on 1 January 2024 and applies retrospectively to providers who were registered on that date, which means that providers who were not offering a course to international students at 1 January this year have until 1 January 2025 to either reinstate that course, regardless of their reason for suspending it, or apply for an extension. However, the amendment also provides that, "an application must be made at least 90 days before the measurement period would otherwise end".[3] This would mean providers needing to apply for their extensions by September this year, which may in fact be before these amendments pass.

[2] Education Services for Overseas Students Amendment (Quality and Integrity) Bill 2024, Second Reading – The Hon. Jason Clare, Minister for Education. ParlInfo - BILLS : Education Services for Overseas Students Amendment (Quality and Integrity) Bill 2024 : Second Reading (aph.gov.au). Emphasis added.

[3] ESOS Act 2000, Part 5, 92B(2). *Registered provider may apply for extension of measurement period*. Federal Register of Legislation - Education Services for Overseas Students Act 2000.

We recommend removing the retrospective application of this amendment so that it instead commences on 1 January 2025 or later, to allow providers time to adapt to the new requirements.

We would also like to see the timeframe for extensions of 12 months lengthened to account for additional mitigating circumstances.

For example, it is widely known that there have been skills shortages in the vocational education and training (VET) workforce in many states and territories. If a provider has only one expert in a particular area equipped to deliver a particular course, and that person takes an extended leave of absence (maternity leave, for example) it is conceivable that the provider may not be able to easily replace that expert, leaving them unable to run that particular course until the staff member returns. This may be longer than 12 months, yet this is still a legitimate reason not to offer a course during that period.

Thus, we would recommend adjusting the language of 92B(6) to, "The total period of all extensions of a measurement period in relation to a registered provider under subsection (4) must not exceed **24** months."

Recommendation 4: Commence the amendments in Part 5 of Schedule 1 on 1 January 2025 or later, removing the retrospective application of the amendment.

Recommendation 5: Adjust the language of 92B(6) to allow a total extension period of up to 24 months.

6 Investigation of offences

ACCI welcomes the amendments in Part 6 that target unscrupulous and non-genuine providers. This is a key measure for maintaining the reputation of our world-class international education system.

We look to the government for an understanding of the criteria that will be used in these investigations and stand ready to provide input into any consultation process undertaken to ensure these investigations are transparent and evidence based.

ACCI continues to uphold that regulation should be undertaken by the regulators, and that therefore investigations such as these should be undertaken by TEQSA and ASQA, the national regulators for higher education and VET.

7 Enrolment limits

ACCI has significant concerns about the amendments proposed in Schedule 1 Part 7 of this Bill. While we support efforts to maintain and increase the quality and integrity of the sector, we cannot see how the enrolment limits proposed, or the mechanisms for imposing them, will achieve this goal, or indeed benefit students, the tertiary education sector or the nation in any way. Instead, these amendments will limit providers' legitimate economic activities, ultimately leading to job losses and potential closures of legitimate providers, and importantly, will damage Australia's reputation as a welcoming destination for international students.

ACCI also notes that limits on international student enrolments already exist and are set during a provider's registration with CRICOS. Not only do additional restrictions seem unnecessary and overly

burdensome for providers with no clear benefit to any party, but it is also unclear as to how the CRICOS limits will interact with these new limits set by the Minister for Education.

In addition to these broad concerns, we wish to highlight a number of specific clauses within Part 7 for the government's attention.

Power to create a notice or instrument without merits review

The amendments give the Minister for Education the power to either create a legislative instrument to impose limits on international student enrolments, or to send providers a written notice of these newly imposed limits.

The legislative instruments in this case are disallowable, giving providers who are dissatisfied with the limits imposed on them 15 sitting days to engage in consultation with relevant parties and make arguments for why the limits do not take various factors into account.

However, it seems unlikely that a Minister would subject him or herself to this kind of public and parliamentary scrutiny when there is the option to instead simply issue a written notice of his or her decision to each provider. We therefore recommend that the option to issue a notice should be removed from the amendment. The Minister's actions and decisions about international student enrolments will have significant negative implications for many providers, and it is therefore important that the thinking behind his or her proposals is made clear to the parliament and that parliamentarians have the opportunity to discuss and potentially debate the merits of these decisions before they are made concrete.

If the option for the Minister to send a notice of enrolment limits is not removed, then we are concerned that these notices are excluded from merits review "as this could overturn the Government's delicate balancing of these resources".[4] While judicial review remains an option for providers, this precludes review based on the facts and appropriateness of the decision, taking into account the specific circumstances. This exclusion, coupled with the measure itself, gives the Minister of the day unprecedented power and control over providers who are left with very little recourse, despite most being autonomous institutions responsible for their own success.

Recommendation 6: Remove the option for the Minister to send providers a written notice of enrolment limits; *or,* if notices of enrolment limits are not removed from the Bill, make them subject to merit review.

Consultation requirements

According to 26B(11), before the Minister makes or varies an instrument, he or she *may* consult with any person or body, including any of the following:

- TEQSA;
- the National VET Regulator;
- the Secretary;
- if the Minister has determined that an entity (other than an entity mentioned in paragraph (a), (b) or (c)) is an ESOS agency for a provider or a registered provider under subsection 6C(2)—that entity;
- the Immigration Minister.

[4] Explanatory Memorandum, Education Services for Overseas Students Amendment (Quality and Integrity) Bill 2024, 2024. [265] ParlInfo - Education Services for Overseas Students Amendment (Quality and Integrity) Bill 2024 (aph.gov.au).

It is concerning that the providers subject to these instruments are not currently specified as a body to be consulted. It is ACCI's view that an additional amendment should be added to *require* the Minister to consult with individual providers, or at least their peak bodies, before implementing legislative instruments that will significantly affect their operations. We also believe the Minister should be required to consult with the other persons and bodies on the above list, rather than giving him or her the discretion to choose.

Recommendation 7: Require the Minister to consult with individual providers or peak bodies before implementing limits. Change the language of 26B(11) to "must" rather than "may".

Timing for limits to come into effect

Clause 26B(9) aims to allow time for affected providers to consider their current enrolments and plan for the limits that have been set. However, the time they refer to is four months – a fraction of the time required for providers to adequately plan for the limits in any given year. Furthermore, for 2025, the Bill proposes at 53(2) that the Minister has until 31 December 2024 to make an instrument to limit enrolments for the 2025 academic year, which starts the following day. This is assumedly an error that will be rectified prior to the Bill being passed, as it would be completely infeasible for a provider to rescind offers to international students who will already have booked flights, organised accommodation and may even already be in country by the date the limits come through. These students would be seriously disadvantaged if their offers are rescinded, impacting their future prospects when applying for visas or attempting to enrol at other institutions. Both providers and students need at least 12, but preferably 18 months of lead time between the day the Minister imposes the limits and the day they begin to apply.

Recommendation 8: Clarify or rectify the provision at paragraph (b), subsection 26B(9) allowing the Minister to impose enrolment limits for 2025 up until 31 December 2024. Allow at least 12, but preferably 18 months between the Minister's declaration of enrolment limits and the timing for these to apply.

One of the government's key stated concerns about enrolment numbers is around student accommodation, as addressed in the Explanatory Memorandum:[5]

> *Factors that the Minister may consider [when determining if there is a need for a specific provider to have a different course enrolment limit than the one specified for others] include Australia's skills shortages or future needs, the demonstrated quality of the course, the number of other providers servicing the geographical location of the provider and* ***the availability of student accommodation for both domestic and international students****.*

Among the factors listed, availability of student accommodation is the factor most under providers' control (excluding course quality, which is already assessed and approved by the relevant regulators). However, taking account of planning and approval times, as well as build times, it will likely take several years for any given provider to develop new student accommodation facilities, and this is assuming they have the financial resources available to action this. It is therefore unreasonable to impose enrolment limits on education providers due to insufficient student accommodation without first providing them with a reasonable period to develop the necessary housing infrastructure.

We appreciate that the government seeks to limit international student enrolments to ensure the growth trajectory of the last 12-24 months does not continue, and that therefore it will not serve the government's

[5] Explanatory Memorandum, Education Services for Overseas Students Amendment (Quality and Integrity) Bill 2024, 2024. [263] ParlInfo - Education Services for Overseas Students Amendment (Quality and Integrity) Bill 2024 (aph.gov.au).

purposes to postpone the setting of limits for several years. However, considering both the above factors – a) that providers need time to adjust to their new limits, and b) that it is reasonable that they be given time to attempt to address the government's student accommodation concerns before being penalised – we recommend that limits should be postponed at least until 2026, with the Minister making the instrument or sending notifications by 30 June 2025.

Recommendation 9: Postpone commencing enrolment limits until at least the 2026 academic year.

Providers will also be significantly disadvantaged by clauses 26B(10) and 26E(9). These state that, despite the clauses prior to each of these (which say that instruments must be made before 1 September of the year before they are to become operational), "without limiting subsection 33(3) of the *Acts Interpretation Act 1901*, the Minister may, at any time, vary an instrument if the Minister is satisfied that it is appropriate to do so".[6]

These clauses will diminish providers' capacity to plan for future years and give certainty to prospective students. Providers send out offers of enrolment many months ahead of the academic year commencing. If the Minister can change enrolment limits whenever he or she feels it is appropriate to do so, requiring providers to revoke their existing offers to some students, this will have a highly deleterious effect on Australia's reputation as a quality provider, while also making it very difficult for providers to plan and budget with any certainty.

Recommendation 10: Remove clauses 26B(10) and 26E(9) which give the Minister the power to vary instruments at any time.

Given the significant impact these amendments broadly, and specific enrolment limits, will have on the tertiary sector, we also believe that the limits should be time-bound. Currently, the Bill allows for limits to be set for "one or more specified years".[7] ACCI recommends that limits should be set for up to two years and then cease at the end of this period unless a new notice or instrument is put forward. Furthermore, we believe any of the proposed amendments that pass into law should be subject to a sunset clause and be reviewed no later than 2027.

Recommendation 11: Set enrolment limits for up to two years, ceasing at the end of this period unless renewed. Include a sunset clause to review amendments to the Act in 2027.

A cross-portfolio approach

Finally, it will be important for the Department of Education and the Department of Home Affairs to collaborate to maintain a cohesive strategy regarding international student numbers. Since the Migration Strategy was released in December 2023, wide scale visa refusals appear to have been the means for reducing international student numbers. If, going forward, the management of these numbers is to be

[6] Education Services for Overseas Students Amendment (Quality and Integrity) Bill 2024. (2024). Schedule 1 Part 7 26B(10). https://www.aph.gov.au.
[7] Education Services for Overseas Students Amendment (Quality and Integrity) Bill 2024. (2024). Schedule 1 Part 7 26C(1). https://www.aph.gov.au.

regulated by the Minister for Education setting enrolment caps for each CRICOS provider, then Home Affairs must reconsider their current practice of broad visa rejections.

8 Automatic cancellation of specified courses

Schedule 1 Part 8 allows the Minister to suspend and cancel courses that he or she believes provide limited value to Australia's (or the Pacific's) skills and training needs and priorities, or believes are not in the public interest (in addition to courses that have systemic quality issues). ACCI considers these amendments to pose the most significant challenges of all those proposed in this Bill.

International education: Australia's fourth largest export industry

Our first concern relates to the value of international education as an export industry. The term 'export industry' inherently suggests that the services provided attract foreign revenue, indicating their value to individuals outside of Australia, rather than to Australian citizens alone. Although conceptualising education as a saleable service may be uncomfortable for some, it reflects the reality within our hybrid public/private education system, and international education is a vital part of this landscape. So, it is important that we consider the impact on international education as an export if the government limits the contributions providers are permitted to proffer to the market.

We are aware that the Joint Standing Committee on Foreign Affairs, Defence and Trade's interim report, emerging from their inquiry into Australia's tourism and international education sectors, raised concerns about specific courses being used to facilitate a migration outcome instead of an educational experience. We also note that they have specifically recommended:

> *Suspension of recruitment of international students to CRICOS VET courses identified with persistent quality and integrity issues and/or of limited value to Australia's critical skills needs, such as management and leadership courses.*[8]

Non-genuine providers should of course be prevented from operating – it is not in anyone's interests that they be allowed to continue. However, there are many high-quality VET providers offering management and leadership courses who would be unfairly targeted by the Joint Standing Committee's recommendation. Similarly, the Minister's new powers to cancel whole classes of courses will tar all related providers with the same brush, to the detriment of prospective students and Australia's economy.

Recommendation 12: Allocate resources so that ESOS agencies can target non-genuine and unscrupulous providers specifically, rather than using particular courses or course types as a proxy for nefarious activity.

Of course, there are also other advantages to international education as an export industry, putting aside the value to the economy. International education is a critical form of cultural diplomacy, in which the values and norms of nations are exchanged through interpersonal interactions. It is key to regional capacity building: Australia educates many of the region's future leaders, particularly from Asia and South

[8] Parliamentary Joint Committee, Joint Standing Committee on Foreign Affairs, Defence and Trade. (2023). *Quality and Integrity - the Quest for Sustainable Growth: Interim Report into International Education*. Canberra, Australia. https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/Tourismandeducation.

Asia (and therefore beyond the Pacific, which has been exempted in the proposed amendments). If we limit courses only to those that interest Australians and meet Australian skills needs, we risk losing the soft power opportunities that occur when the brightest minds in the region want to study on our shores.

International students, agency and autonomy

If international students wish to come to Australia to study courses that are not related to Australia's skills needs, this should have no bearing on whether the Minister wishes them to come to Australia. International students bring so much more to this country than the possibility of a future workforce, particularly given the reportedly low numbers of students who stay on in Australia and transition to permanent residence.[9] If they come to Australia to pursue courses that interest them—regardless of their popularity among Australians—and then return to their home countries equipped with new knowledge and skills, as well as an understanding of Australian culture and values, the original purpose of Australia's international education sector is fulfilled.

It should go without saying that if international students do wish to come to Australia and study specific classes of course that have been suspended or cancelled, the majority will simply look to another country to study the course they prefer, rather than being funnelled into courses that suit Australia's skills needs.

For those who do reconsider their course choice in order to study within the scope of Australia's skills requirements, ACCI is concerned that the government is unrealistically creating expectations of permanent visa outcomes. Any student who changes their life plans to meet the Australian Government's current priorities is highly likely to be anticipating that there would be a payoff for doing so.

However, empirical evidence indicates that it is not in students' best interests to tailor their study choices to match government-prioritised employment fields.[10] Given that qualifications can take many years to complete, areas with skills shortages can easily change between a student's commencement and their graduation, leaving them with a certification that is not as valuable to the Australian workforce as they were led to believe upon enrolment.

Furthermore, it is worth questioning how the Minister will determine Australia's skills needs. There are currently many skills lists in Australia operated by various actors including Jobs and Skills Australia, the Department of Home Affairs, the Australian Bureau of Statistics and the various state and territories. Not only are the skills on these lists not consistent, but we also hold concerns that they are not always optimally designed, as we described in our submission to the International Education and Skills Strategic Framework consultation. Therefore, it is not clear what criteria the Minister will use to best determine which courses are surplus to requirements.

ESOS is primarily a consumer protection measure; its purpose is not to channel students into specific employment fields. Any adjustments that take away from the core purpose of ESOS risk weakening a critical piece of Australian legislation.

Recommendation 13: Remove the provision allowing the Minister to cancel courses not aligned with Australia's skills needs.

[9] Treasury & Department of Home Affairs. (2018). *Shaping a nation: Population growth and immigration over time*. Commonwealth of Australia. (p. 21) Shaping a Nation (treasury.gov.au).

[10] Universities Australia. (2022). *Universities Australia ESOS Review 2022 Submission*. Universities Australia. (p. 10). https://universitiesaustralia.edu.au/wp-content/uploads/2022/05/Universities-Australia_ESOS-Review-2022_Submission.pdf

Who defines the public interest?

Part 8 also gives the Minister the power to cancel courses that he or she considers not to be in the public interest.

This is a deeply worrying insertion, given that what is in the public interest is highly subjective. ACCI is concerned that these amendments give future governments the power to cancel courses related to subjects they ideologically disagree with. Given the critical role education plays in upholding Australia's democratic values, any proposal to give ministers power to limit the distribution of knowledge in the name of public interest should be approached with the utmost caution.

Recommendation 14: Remove the provision for the Minister to cancel courses not considered to be in the public interest.

Requirement to reapply if cancelled

As the Bill is currently written, the Minister can cancel a class of courses by creating a legislative instrument that commences as soon as it is tabled in parliament. This suggests that the cancellation of a class of courses will come into effect immediately upon being tabled in parliament, even though the Senate may disallow the instrument within the 15 sitting days provided for a disallowable instrument. There is currently no provision within the legislation to reverse the cancellation; therefore, as it currently stands, providers who had courses cancelled would have to reapply to have them reactivated, costing them time and money. The legislation should be amended so that during the disallowable period, courses can only be suspended, therefore allowing them to be unsuspended. If the instrument is passed through the Senate, only then may be the courses be cancelled.

Recommendation 15: Amend the language to specify that courses can only be suspended during the disallowance period, not cancelled, allowing reversals if the instrument is disallowed.

Conclusion

The Education Services for Overseas Students (ESOS) Amendment (Quality and Integrity) Bill 2024 aims to enhance transparency, improve conduct standards, and address critical issues within the international education sector. While the intent behind these amendments is commendable, the Australian Chamber of Commerce and Industry (ACCI) has identified several areas where the proposed changes could inadvertently harm legitimate education providers and the broader sector.

The Bill's provisions to enhance transparency and support the quality, integrity and sustainable growth of the sector, though well-intentioned, is likely to lead to a wide range of unintended negative consequences. The use of the proposed far-reaching ministerial powers could deter valuable investments and partnerships, limit the ability of legitimate providers to operate effectively, and undermine Australia's reputation as a leading destination for international education. They will disrupt providers' business activities, leading to probably job losses and decreased educational quality. The amendments related to Australia's skills needs and the public interest are overly subjective and risk ideological bias, potentially resulting in the unjust cancellation of valuable courses.

To truly support the growth and integrity of the international education sector, it is essential that these provisions are carefully reconsidered. ACCI's recommendations aim to balance the Bill's objectives with the practical needs of education providers, ensuring that the sector remains vibrant, competitive, and capable of delivering high-quality education to students from around the world. By addressing these concerns and implementing the proposed recommendations, the government can better achieve its goals of maintaining a robust and reputable international education system in Australia.

Finally, it should be noted that the ESOS Framework has remained largely fit-for-purpose over its 24 years, while also providing valuable guidance and protections for providers and supporting the global competitiveness of Australian international education offerings. While amendments in the national best interest are worth exploring, ACCI cautions against change without thorough investigation of the possible unintended negative consequences that may occur.

Should any additional information or clarification of any points contained within be needed, please contact Dr Jodie Trembath, Director of Skills, Employment and Small Business at jodie.trembath@acci.com.au.

Australian Chamber of Commerce and Industry

ACCI Members

State and Territory Chambers

Industry Associations

Australian
Chamber of Commerce
and Industry