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International Education
Association of Australia

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Response to the Education Services for Overseas Students Amendment (Quality and Integrity) Bill 2024

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Introductory Remarks

The International Education Association of Australia (IEAA) appreciates the invitation of the Senate Education and Employment Legislation Committee's to make a submission to its inquiry into this important piece of legislation. Our comments that follow are, wherever possible, directed to the specific clauses in the Bill. We have also provided some concluding remarks at the end of this submission which highlight additional administrative burdens as well as a request for the Committee to recommend the abolition of other current regulatory measures that will be no longer appropriate if this legislation is enacted.

Response to the Bill

The Bill is focused on amendments to improve the 'integrity and sustainability' for the sector including:-

Part 1-Education Agents and Commissions

6BA Meaning of Education Agent

The definition of an education agent as proposed under this clause is too broad. This definition would appear to include every entity, other than an education provider's directly employed staff, that have pre-enrolment engagement with international students. If taken literally it could encompass Austrade, State Government offshore based staff, any offshore partner institutions offering joint course delivery arrangements, offshore university staff, companies engaged for website design, etc. At the administrative level, it will prove overly confusing for students and cumbersome for education providers if they are required to manage the entities listed above in the same manner they are currently expected to manage proper education agents. The definition needs to be much more targeted or, at the very least, include exemptions to exclude those who, in practical terms, are not education agents.

Recommendation 1: Incorporate into the Bill the current definition listed under Standard 4 of the National Code: "an entity the provider formally engages to recruit overseas students on its behalf and is obliged to monitor its activity and take action when the entity does not fulfil its responsibility under the ESOS Act" .

6BB Meaning of education agent commission

Our Association has previously written to the Education Minister about concerns with the banning of onshore commission payments. There are legitimate reasons, particularly if a student has been placed in a course not suited to their skills/aptitude for them to seek professional advice about a course change. Similarly if a student, on completion of their initial course of study, wishes to embark on a higher level AQF course (e.g undergrad degree to Masters) then they may well seek out expert advice. If all onshore commission payments were to be banned we still believe that unscrupulous agents will find ways around such a ban e.g by requiring cash payments as "fee for service". There is a real danger here that consumer protection of students might well be reduced. We would be more amenable to a ban on agent commission payments being limited to student transfers where the student is downgrading to a lower AQF level course or transferring to a substantially lower cost course.

Recommendation 2: That the Bill acknowledges the legitimacy of some onshore education agent commissions

Recommendation 3: The Bill includes a new clause that establishes a framework for an Education Agent Regulatory Body with the intent of identifying and supporting the quality and integrity of the education agent ecosystem (similar to OMARA)

After paragraph 7A (2)(g) and subsection 17A(4):

Our Association supports the need to put an end to cross-ownership of bad education providers and bad education agents. However, we have concerns about the unintended consequences and potential impacts of these clauses on some of Australia's highest quality education providers who also have some ownership arrangements with subsidiary and associated agent entities. For example, long established companies such as IDP, Navitas, UP Education, ECA, Kaplan, all act as agents for a large number of our nation's public universities. We seek assurances that these longstanding third party and direct delivery arrangements would not be negatively impacted by these proposed clauses.

Recommendation 4: That the Minister for Education, on advice from their Department, has the power to exempt certain corporate entities from the ban on cross-ownership between education providers and education agents

Part 2-Giving information to registered providers

After section 21A, 21B Giving information about education agent commissions

Just as our Association has highlighted concerns about the proposed definition of an education agent, we have similar concerns related to the definition of 'commission'. Our desire here would be for all payments to education agents to be effectively captured (e.g marketing support, incentives, payments for agents flights/accommodation) and not just what is specifically regarded as remuneration derived for students recruited. It should be noted that 'commission' payments have always been regarded as commercially sensitive information, which puts at risk often hard-earned provider-agent relationships. There remains a question as to whether access to this information would actually assist a provider in its decision making. In equal measure, we are unsure as to how such information access might achieve the Government's integrity ambitions. Instead, it could actually encourage more underhanded behaviour. While it might be unsurprising to discover, if this information were to be shared, that most quality education providers offer a very similar commission rate, in reality there might still be a vast range of other 'payments' being made to agents.

Recommendation 5: If this data is to be collected, agent commissions should not be shared amongst CRICOS registered education providers, only with the ESOS regulatory agency.

Part 3-Management of provider applications

As it stands this Part of the Bill is a contradiction to the purpose and intent of the current ESOS Act which is predicated on the principle of student and consumer protection. Under the Bill, the Minister will be entitled to suspend, cancel or terminate the ability of a provider to offer a course that a student might have already accepted. This will leave the student with little protection or ability to undertake their studies – particularly at a provider which they have selected due to the fit of that provider to their career and future aspirations. It also potentially leaves the provider in a position of default where they cannot offer the course. Such a default would negatively impact on a whole range of stakeholders and may result in significant calls by affected students on the Tuition Protection Service's funds.

In so far as the amendments proposed under Part 3 of the Bill provide the Minister for Education with far reaching new powers, our Association would prefer if the Minister 'must', rather than 'may', consult with the appropriate national regulator before utilising these powers. On the one hand, we understand that there has been a proliferation of courses and new providers (particularly in the Vocational Education sector) resulting in sub-standard quality outcomes that need to be effectively dealt with. On the other hand, our Association can see situations arising under this new head of power, where a Minister's subjective determination could result in unfair/inequitable restraints on trade. Given that the national regulators were established in order to offer advice 'at arms length' from the Minister of the day, we therefore prefer that the Minister 'must' consult.

Recommendation 6: That the Minister must consult with the relevant national regulator before utilising the proposed new powers detailed in Part 3 of the Bill

Part 4-Registration requirements

The advent across Australia of tuition free courses for public TAFE's domestic students make it very unlikely that any private education provider will, in future, be able to prove that they have delivered education programs only to domestic students for a minimum two year period. The Bill is also unclear as to the likely status of a provider that undertakes a name change - whether this might require them to start all over again just with domestic students. In addition, the current 20% HELP loan charge on private providers' domestic student enrolments severely inhibits their growth prospects.

It is possible to envisage a scenario in which a new provider designs an innovative course that has particular resonance with international students but not so much with domestic students. If they could not enrol sufficient domestic students in that course to balance out their costs over two years then these Part 4 powers might prove to be an overly restrictive restraint on trade.

Recommendation 7: Rather than having an automatic requirement of a minimum two years teaching domestic students, before being eligible to apply for CRICOS registration, allowance should be made for Ministerial discretion in certain cases such as innovative course design.

Part 5-Automatic cancellation of registration

As with the Part 4 new Ministerial powers, it is possible to envisage a situation in which a provider needs to be able to hibernate a particular course for more than a 12-month period. For example, if the course is highly technical in nature, construction of a required new laboratory could well exceed a 12-month period.

Recommendation 8: The relevant ESOS agency should have discretion to approve a course delivery hibernation period of longer than 12 months but no greater than a 24-month period.

Part 6-Investigation of offences

Nothing to add here

Part 7-Enrolment limits

Division 1 – Amendments

Our Association fundamentally opposes the premise of enrolment limits (the caps). We believe that they have been designed as a politically blunt policy instrument to address a spurious narrative that international students are the principal cause of the current 'rental crisis' in Australia. A recent Student Accommodation Council commissioned research paper by Accenture highlighted that only 4% of the current rental market is attributable to the international student cohort (6.5% for domestic students). Our preference would be for Government to initiate a public relations campaign that focusses on educating the wider Australian community on the many benefits that our dynamic international education sector brings to our nation. If Government is intent on introducing enrolment limits we also maintain that these should not be introduced until January, 2026. This would allow sufficient transition time for our education providers to better position themselves and communicate appropriately with their investors, offshore education provider partners, prospective students as well as their education agent networks. Additionally, our education providers are already recruiting overseas students for Semester One next year - on what basis should they curtail this normal way of going about their business? For these reasons, we urge the Senate Education Committee to recommend the insertion of a bi-partisan supported sunrise clause in the Bill with an implementation date of 1st January, 2026.

Clause 46 Section 15A sets out the primary new enrolment limits heads of power that are being proposed for the Minister of Education. We make the following observations about these proposed powers:

a) In the absence of an independent advisory body (such as the proposed ATEC) to preside over a system for allocating enrolment limits we believe that the Department of Education neither has the appropriate level of resources, nor the independence from the Government of the day, to provide sufficient assurances that separate provider-based issues will be fully resolved in their enrolment limits. Our Association also questions whether the requisite IT systems will be fit for purpose particularly when it comes to much needed interface with the Home Affairs Department's systems
b) While ATEC was always envisaged to have responsibilities for the 39 public universities, there is currently no similar body planned for the other 130 or so independent higher education providers (HEPs) or indeed for the app 1,200 other mainly VET CRICOS registered providers. At a minimum we would request that all higher education providers be attached to the proposed new ATEC (for the purpose of enrolment limits governance)
c) Given that there are a large number of dual sector providers (e.g 4 of Victoria's eight public universities) it remains unclear as to how such institutions will be dealt with under enrolment limit criteria. It would be inequitable for example if students wanting to articulate from a VET course into a related higher education program, within the

same institution, were denied the opportunity because they were not included in their dual sector institution's higher education limit. In a similar vein, what discipline might be applied to a provider that suddenly decides to prioritise a high value student tuition fee cohort over a lower value cohort where the students might already be enrolled in a pathway program that articulates into that institution? Such a scenario may well have skills implications as well - e.g favouring an engineering student over an Early Childhood Grad Diploma one. Also, the Bill is unclear as to whether a commencing student in one course, who might wish to change courses within the same institution, will thereby reduce that institution's overall cap by an additional student place

d) As the proposed institution wide enrolment limits are a wholly new policy construct, we strongly believe that they should only be negotiated for a one-year initial period (if it must be calendar 2025 but our preference remains for calendar year 2026). While some institutions, and indeed the Education Department, might prefer the certainty of 2 to 3 year negotiated provider-based enrolment limits our Association wants to see how these limits might work in practice over just a one year period

e) We oppose the automatic suspension of a provider for going slightly over their total cap. Instead, we would seek to amend the automatic suspension to allow for a period of six months to come back under the cap or face a sanction such as a 5% reduction of the following year's allocation. We understand that the Department of Education might be looking to create a hard stop, through PRISMS, on providers issuing more Confirmations of Enrolment (CoEs) than their annual enrolment limit. Unfortunately, we believe that this measure would actually cause providers to come under their limit because of visa refusals, student withdrawals, etc from within their CoE agreed envelope (which is Canada's experience to date)

f) Re: the additional new Ministerial power to limit the total number of enrolments of international students in a particular course delivered by a provider in a year. Our Association prefers here that the Minister "must consult" not "may consult" with the regulator before enacting any such course-based limitation

g) Requiring education providers to be straight jacketed into delivering skills for Australia carries with it major negative messaging for our Indo-Pacific neighbouring countries. These, and other student source nations, are keen for their young people to gain world class qualifications that might be more suited to their own countries' skilling needs. In the context of over 80% of Australia's international students returning home after study anyway this new power seems overly punitive. On this basis, we would prefer if it is dropped from the Bill entirely

h) The Government has been actively encouraging Australia's education providers to deliver more programs offshore. These Trans National Education (TNE) initiatives are often high cost for our providers with little financial return. Many such programs are contingent on the student being taught offshore and subsequently coming to Australia to complete their course of study. Clearly, these students will require certainty of qualifying for one of their institution's capped places in Australia if they are to enrol with confidence in such TNE programs

Recommendation 8: That an amendment be inserted into the Bill setting a sunrise clause such that enrolment limits not come into effect until 1st January, 2026.

Recommendation 9: That in the absence of agreement to insert such a sunrise clause, then enrolment limits only be approved for a maximum one year period in order to test the system's merits and demerits.

Recommendation 10: That the clause requiring automatic suspension of a provider who goes over their enrolment limit be amended to allow for a tolerance of enrolling up to 10% over the negotiated cap but with a sanction of up to a 5% reduction in that provider's enrolment limit to be imposed for the following one year. This is to acknowledge that initially many providers will enrol under their cap out of concerns for overly punitive action that may be taken against them.

Recommendation 11: That the proposed new Ministerial power to limit the number of overseas students that a provider can enrol in a particular course be dropped entirely from the Bill. At the very least, the Minister must be required to consult with the appropriate regulator on any such proposal.

Concluding Remarks

Managing enrolment limits is likely to create significant red tape for all education providers and increase costs particularly given both the potential complexity and the sanctions for getting the limits wrong.

The administrative burden is going to be immense – the management of what is suspended, and how that interacts with the provider's own management of CRICOS courses together with the additional commission reporting etc is going to be extremely difficult and manual for many providers. Each provider is required to have many different systems that require manual report and data extraction. This is because they are not only just reporting for the ESOS Act, but often are required to report on the same issue to at least 3-4 different government agencies with each report slightly different enough to require starting from scratch for each one. The resources required for this will take staff away from far more value adding activities around student support, amongst other things, and for smaller providers will be even more challenging. In equal measure, until the Government is willing to allocate sufficient new funding for IT upgrades, we have no confidence that the expectations of the current PRISMS system will be fit for purpose.

Our Association believes that contingent on the Bill passing through the Parliament then the Senate Education Committee should recommend that the Government removes Ministerial Direction 107 (which is a Home Affairs Minister imposed rule) and also end the provider risk framework (also Home Affairs imposed). Our argument here is that, with formal provider based enrolment limits in place, there will be no need to use these other mechanisms to reduce international student numbers and reject genuine students' visa applications.