

# Recommended Amendments

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

### Introduction —

In its submission to the Senate Standing Committee on Education and Employment Inquiry into the *Education Services for Overseas Students Amendment (Quality and Integrity) Bill 2024 (Cth)*, hereafter referred to as the “ESOS Amendment Bill”, the Independent Tertiary Education Council Australia (ITECA) has raised significant concerns regarding some of the proposed reforms. In this context, the following amendments are recommended.

Some amendments to the ESOS Amendment Bill are aimed at clarifying the proposed legislation; however, others are more substantial. One key recommended amendment is to remove the proposed definition of an education agent, citing its unnecessary expansiveness and potential unintended consequences. Instead, ITECA advocates the creation of an industry-based register of agent quality, developed with sector consultation and based on principles such as transparency, business integrity, and proactive engagement.

Additionally, ITECA suggests amendments to Part 1 of the ESOS Amendment Bill to avoid unintended consequences on agent commissions, particularly noting the extensive information already required under the *Education Services for Overseas Students Regulations 2019 (Cth)* with respect to education agents. ITECA proposes that information on commissions should only be required after an ESOS Agency's risk assessment of an education provider. This approach aims to maintain regulatory discretion and protect legitimate industry activities from being inadvertently captured by the current provisions in the Bill.

ITECA is making five priority recommendations concerning amendments and also submits for consideration a series of further amendments that would strengthen the proposed legislation.

### Priority Recommendation — Opposing Automatic Cancellation

### △ Priority Amendment

ITECA recommends that Part 5 of the ESOS Amendment Bill be removed from the Bill in its entirety.

An ESOS Agency has the authority under the ESOS Act to cancel a provider's registration or a single course where a provider has breached the ESOS regulatory framework or any condition of the provider's registration. This includes a fit and proper person requirement.

Providing an automatic cancellation mechanism in the manner proposed actively undermines the regulatory authority of each ESOS Agency.

Not only does the proposed Part 5 deny transparency, but it is also likely to have serious consequences for students and employees as well as genuine businesses through a raft of unintended consequences.

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**Priority Recommendation —  
Clarity in Defining an Education Agent**

**△ Priority Amendment**

That the ESOS Amendment Bill be amended to remove the proposed definition of an education agent as it is both unnecessarily expansive and likely to have consequences beyond those immediately sought.

In order to be consistent with Recommendation 12 of the Nixon Review, an industry-based register of agent quality should be developed with reference to the existing mechanisms in the ESOS Act, which can be specifically referenced in a later amendment to the ESOS Act. Such a register would be developed in consultation with the sector and based on principles of:

- Transparency
- Business integrity
- Proactive engagement with and monitoring of agent relationships
- Reliability and accuracy of information
- Demonstrated understanding of Australian education and workplace requirements

**Priority Recommendation —  
Removing Aspects Of The Bill That Are Likely To Damage Australia**

**△ Priority Amendment**

That Part 8 of the ESOS Amendment Bill which provides the Minister with the power to automatically suspend or cancel courses, be removed from the ESOS Amendment Bill on the basis that:

It disrupts and reduces to capacity of ESOS Agencies to act in an effective and appropriate way.

ESOS Agencies already have these powers for providers who have been found non-compliant or to have breached a requirement of their registration.

The power provided in Part 8 as currently draft to suspend or cancel a course or courses, on the basis of providing limited values to Australia's skills needs, demonstrates a fundamental misunderstanding of the purpose of international education globally and in Australia.

Passage of this is Part 8 likely to weaken Australia as a study destination and strategic partner country.

**Priority Recommendation —  
Ensuring An Appropriate Commencement Timeframe**

**△ Priority Amendment**

That the ESOS Amendment Bill be amended to commence on 1 January 2026 to enable all sector participants time to adjust to possible enrolment limits at either the provider or course level.

At the same time, the ESOS Amendment Bill should be amended to require that any Legislative Instrument or Notice from the Minister specifying enrolments (either at provider or course level) be made and published at least 6 months before coming into effect.

**Priority Recommendation —  
A Limited Timeframe For Untested Discretionary Powers**

That Part 7 of the ESOS Amendment Bill should be amended to include a sunset mechanism to ensure it does not operate more than 2 years beyond the initial commencement of the Amending Part 7.

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**Recommendation –  
Avoiding Unintended Consequences On Agent Commissions**

That Part 1 of the ESOS Amendment Bill be amended to ensure that information regarding commissions paid to a bona fide education agent may be made following the ESOS Agency undertaking a risk assessment of the education provider’s activities.

Such a request from an ESOS Agency to a provider be made following a risk assessment, and to further inform the Agency’s risk-based regulation, may include:

- the median commission provided to a bona fide agent, of amounts paid at the at the whole of course level;
- information be requested only for a single year in retrospect (i.e. the median amount for a course for the previous year); and
- a provider must comply with the request 90 days after the request is made by the ESOS Agency

To ensure this can be managed effectively, the currently proposed definition of agent commissions in the ESOS Amendment Bill is altered to ensure that legitimate membership fees paid by third parties for genuine and legitimate activities (such as industry associations and employer-provided partnerships) are not unintentionally captured.

**Recommendation –  
Removing Unintended Consequences From the Bill**

That the ESOS Amendment Bill be amended to ensure that an ESOS Agency maintains discretion and regulatory independence with respect to the mandatory provision of information regarding education agent–provider ownership forming part of the registration fit and proper test at the discretion of an ESOS Agency.

**Recommendation –  
Removing Ability To Publish Commercially Sensitive Information To Competitors**

That Part 2 of the ESOS Amendment Bill be amended to ensure that commercially sensitive information, including that which may be required by an ESOS Agency, cannot be made public. Doing so in the manner outlined in Part 2 would have serious consequences for providers and pose potentially serious competition risks for registered providers.

Part 2 of the Bill should also be amended to ensure that the provision of any information as outlined in Part 2 only applies to information received by a registered provider after the commencement of Part 2 Division 1 of the Bill. Such an amendment is consistent with the principle that legislative amendments should not require action by regulated entities in relation to historical actions.

**Recommendation –  
Removing Unintended Consequences And Unnecessary Duplication From The Bill**

That the Committee examine in the first instance how the existing information provision requirements in this area under the *Education Services for Overseas Students Regulations 2019* relating to education agents might be more effectively used before progressing with Part 2 of the ESOS Amendment Bill.

**Recommendation –  
A Legislative Instrument Should Only Relate To Possible Future Actions**

Part 3 of the Bill which enables the Minister to cease or suspend processing activity through a Legislative Instrument that is not subject to disallowance, should be amended:

- to ensure that any such Legislative Instrument made under this Part 3 is subject to Disallowance; and
- to ensure that a Legislative Instrument made under this Part can only apply prospectively.

These proposed amendments will remove substantial uncertainty, negatively affecting sector participants and investment, as well as unreasonable administrative and financial burdens on businesses that would otherwise be imposed should Part 3 remain unamended.

#### **Recommendation –**

##### **Ensuring Regulators Have Appropriate Ability to Regulate**

Proposed amendments under Part 4 of the ESOS Amendment Bill be redrafted to clarify the meaning of key elements including course types and cohorts, as well as to ensure relevant ESOS Agencies retain a degree of regulatory authority and discretion in determining these issues, noting fundamental sectoral differences.

#### **Recommendation –**

##### **Enhancing Regulatory Capability And Engagement**

The ESOS Amendment Bill should be amended to require that each ESOS Agency develop a transparent risk assessment and analysis framework in consultation with sector stakeholders and that using outcomes from these frameworks, decisions as to whether a single course in a single location may be removed from the register, rest with each ESOS Agency.

This is consistent with Recommendation 16 of the Nixon Review, and enhances rather than undermines the capability of the regulatory decision making authority.

#### **Recommendation –**

##### **The Need To first Develop A Transparent Risk Framework**

Part 6 of the ESOS Amendment Bill should be amended to ensure that the proposed amendments only relate to applications for re-registration received after the commencement of the Division.

That is, applications made historically but not yet dealt with, should be considered under the legislative arrangements in place at the time the application was made. This is consistent with the principle of not placing retrospectivity at the core of legislative amendments and affording a degree of certainty for regulated entities.

#### **Recommendation –**

##### **Ensuring Transparency On Enrolment Limits**

That Part 7 of the ESOS Amendment Bill be amended to require that any Notice given by the Minister to a provider that imposes enrolment limits for a year, be made available on the Register under Part 2, Division 4 of the ESOS Act.

This will ensure a comparable degree of transparency consistent with a Legislative Instrument made by the Minister under this Part.

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