



Australian Government

EDUCATION SERVICES FOR OVERSEAS STUDENTS (ESOS)

Review 2022



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The document must be attributed as the Education Services for Overseas Students Review.



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INTRODUCTION

About the ESOS Review

International education is one of Australia's great success stories, delivering education services to more than three million international students in the past 20 years. International education has increased its vital role in Australia's social, cultural and economic prosperity, generating almost a quarter of a trillion dollars for the Australian economy over the last ten years. In 2015, it contributed \$19 billion to the Australian economy and by 2019 this had more than doubled to \$40.3 billion.

The last decade has seen both a rise in student numbers and a concentration of students from a narrow band of countries. While these students are welcome, the lack of diversification puts the sector at risk from market shocks and hampers sustainability. As international student numbers increase, Australia needs to seek a greater diversity of students entering the country. The importance of diversification also includes encouraging study across a broader range of courses aligned with Australia's skilled workforce demands.

Australia also needs to consider expansion and transformation in modes of delivery of education to keep pace with competitor countries' innovations. Globally there has been rapid adaptation, growth and innovation in online delivery, with the global online e-learning market predicted to grow from US\$200 billion to more than US\$370 billion by 2026.¹

Risks to the international education sector's sustainability, changing bilateral relationships with key partner countries, innovations in education delivery and the skills needs of a rebounding Australian economy have been transforming the delivery of international education, even before

the impact of the COVID-19 pandemic. The effects of COVID-19 accelerated many of these challenges and highlighted the need to embrace new ways of engaging with students locally and overseas for Australia to remain globally competitive.

The *Australian Strategy for International Education 2021-2030* (the Strategy) released on 26 November 2021 responds to this changing environment by setting an ambitious agenda for the future of the Australian international education sector. The Government is seeking to ensure that policy and regulatory frameworks keep pace with global developments and support the delivery of the Strategy's objectives. Therefore, as part of the Strategy, the Government is undertaking a Review of the *Education Services for Overseas Students Act 2000* (ESOS Act) and the associated legislative framework. The Review will support the Strategy's priorities of diversification, meeting Australia's skills needs, placing students at the centre, sector growth and global competitiveness.

Aim of this paper

Forming a central part of the Review's sector and public consultation process, this paper explores how the sector can remain competitive by ensuring the legislative and policy frameworks underpinning international education support diversification and growth into the future and continue to be a world-leading regulatory framework. The refreshed framework will support education providers to deliver an optimal Australian education experience to current and future students.

¹ Valuates Reports (2021) [Global eLearning Market Report, History and Forecast 2016-2027](#), accessed 20 January 2022.



Consultation

The Department seeks expertise from sector stakeholders to share insights on how the legislative framework can be improved to allow for innovation in the international education sector and feedback on the proposed policy options identified within this paper. The paper and submissions will be considered as part of the Review and the final report to Government. Please use the submission template available on the DESE website for your response. Responses should be emailed to ESOS-PolicyTeam@dese.gov.au. Submissions close 29 April 2022, at COB, AEST. The Department will also hold targeted workshops with key stakeholders and seek guidance from the Expert Members of the Council for International Education.

Next steps

Following consultation, the Department will develop a report to Government with identified proposals to address key issues that takes into consideration any feedback received as part of this process. The Department will hold additional consultation sessions to gain feedback from industry experts on the draft proposals before providing advice to Government in the second half of 2022.

Indicative timeframes

Consultation papers released

February 2022

Consultation period, including targeted consultations

February-April 2022

Final review delivered to the Minister

Mid 2022

Scope

In scope

The paper aligns with the objectives of Action 4.1(b) of the Strategy, which focuses on a strong quality framework to ensure continued growth through innovation within the sector, provision of high-quality education online and offshore and an optimal experience for all students. To stimulate consideration of these objectives the paper asks stakeholders to consider the following broad topics: innovation, diversification, and growth of Australian education offerings; high-quality education experiences including online and offshore; and optimal student experience.

Out of scope

The Review will prepare advice to Government for consideration. Specific legislative amendments will be a decision for Government and considered after the Review.

The Review will not consider issues outside of Australia's legal jurisdiction.

While the focus and scope of this paper is the ESOS regulatory framework, the Department acknowledges the framework's interrelation with broader regulatory matters in higher education, vocational education and training (VET), and international education, including regulatory activities of the Tertiary Education Quality and Standards Agency (TEQSA), the Australian Skills Quality Authority (ASQA), state and territory regulatory agencies, and the connections with migration policy, including student and temporary graduate visa issues. Views relating to this broader environment as it relates to the ESOS framework are welcomed but are not within the Review scope.

Current regulatory settings

Australian education courses are subject to rigorous quality assurance and regulation.

The ESOS framework has a specific focus to protect and enhance Australia's reputation for quality education, provide tuition protection and support the integrity of the student visa program. The ESOS Act establishes the regulation requirements and standards for education and training providers offering Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) registered courses to student visa holders.

The ESOS framework allows international students access to an Australian education by operating in conjunction with domestic education frameworks, including:

- the Australian Qualifications Framework (AQF);
- the *Higher Education Support Act 2003*;
- the *National Vocational Education and Training Regulator Act 2011*;
- the *Tertiary Education Quality and Standards Agency Act 2011*;
- the *Australian Education Act 2013*;
- the *Higher Education Standards Framework 2021*; and
- other state and territory school legislation.





ISSUES FOR CONSIDERATION

Expansion and diversification

As Australia looks to the future of its international education sector, diversification and innovation, including in course offerings, will be key to sector sustainability. Exploring new opportunities for growth and enhancing the experience of domestic and international students is a key goal of the Australian Government going forward.

Online and offshore education is a rapidly growing sector of the international student market. These online and offshore models, delivered as either standalone or mixed-mode offerings, enable students to choose their educational experience, preferred location and style of learning.

While Australia's online and offshore footprint currently forms a small portion of the total international student market, there is opportunity to grow Australia's market share by expanding and diversifying Australian high-quality education offerings to online and offshore markets at different price points and into new markets. This will enable the sector to become more resilient, create new opportunities for growth and support an optimal student experience.

The legislative and regulatory frameworks governing the Australian international education sector have a primary focus on face-to-face delivery in Australia. The existing ESOS framework is silent on online and overseas study apart from Standard 8 of the *National Code of Practice for Providers of Education and Training to Overseas Students 2018* (National Code), which explicitly limits online study by international student visa holders to no more than one third of their course, and at least one face-to-face unit in each study period. Standard 8 was relaxed as a temporary measure to allow the delivery of online courses during the COVID-19 pandemic.

Questions

1. What are the barriers in the current ESOS framework to the sector's expansion and diversification into online and offshore delivery?
2. What lessons have we learnt through flexible delivery, online modes of study and other changes in response to the pandemic that could be incorporated into the ESOS framework?
3. What percentage of a course should the ESOS framework allow to be studied online? How could the ESOS framework support delivery models such as mixed-mode study where students may move from ESOS non-regulated to a ESOS regulated environment (for example, a student studying part of their degree offshore, and part onshore)?
4. What safeguards could be used to increase visibility and assure the quality of courses delivered online and offshore in the future?

Meeting skills needs and graduate workplace readiness

International students form a key part of the Australian workforce by undertaking employment during their active studies, through post-study work rights, and continuing employment of those who may stay on to meet Australia's skills needs.

Australia is facing a skills shortage in many sectors. The National Skills Commission lists 153 occupations currently in shortage nationally.² Employing international students and graduates may help address this shortage, but this will require graduates who are equipped with the relevant knowledge and experience to meet Australian skills requirements.

Currently there are limited incentives for international students to choose courses of study that align with Australian skills needs. Students could be given more information on the link between the courses they consider and Australia's skills needs to attract and deliver more job-ready graduates in disciplines and in regions where they are most needed.

Australian employers have expressed their concerns about the employability (i.e. the ability to perform and innovate in the workplace) of graduates from Australian universities, including international students.³ Students can gain these job-ready skills through enriching experiences off campus, such as internships, placements and other work integrated learning (WIL) programs. WIL programs strongly correspond with positive employment outcomes as university graduates with work experience are between 15 per cent and 32 per cent more likely to find a high-skilled job by the age of 25.⁴ WIL programs have been confirmed as a priority for international students, yet they can face challenges in accessing such programs.⁵

The nature and quality of WIL experiences are also important in delivering value to participants. Opportunities that allow students to contextualise education by applying what they have learned and to adjust, integrate and become resilient in the workplace can make a real difference to their skills and capacity. Not all opportunities may deliver equally on students' potential. Innovative and work-relevant WIL experiences take many different forms, such as micro placements, online projects and competitions like hackathons that may not easily reconcile with the timing and structure of students' courses.⁶ Settings must provide flexibility to ensure that the broadest range of opportunities can be offered, with connection-building and work relevance the key measures of effectiveness.

There is currently tension between some valuable WIL opportunities and the current regulatory constraints placed on WIL: student visa holders are generally only permitted to work a maximum of 40 hours per fortnight while undertaking active study. While WIL programs that form part of a student's registered course do not count towards this limit, elective WIL units, which might be used to offer less structured WIL opportunities, do. This can have the effect of limiting access to effective WIL opportunities, including emerging approaches that have been identified as being effective in building linkages between students, universities and industry.⁷

In response to current pandemic conditions, the 40-hour restriction is waived to address workforce shortages, but this waiver has not been announced as being permanent.⁸

2 National Skills Commission (2021) [Skills Priority List June 2021](#), accessed 23 December 2021.

3 Quality Indicators for Learning and Teaching (2020) [ESS National Report](#), accessed 21 December 2021.

4 P Hurley et al. (2021) [Industry experiences and their role in education to work transitions](#), accessed 21 December 2021.

5 J Kay et al (2020) [Final report, WIL to Work: enhancing international student capacity through Work - Integrated Learning](#). Accessed 22 December 2021.

6 J Kay et al. (2019) [The emerging future: Innovative models of work-integrated learning](#), accessed 20 January 2022.

7 Ibid.

8 Home Affairs (2022) [Temporary relaxation of working hours for student visa holders](#), accessed 20 January 2022.

Questions

5. How could providers support international students to identify and undertake courses that align with Australia's priority employment fields?
6. What changes could be made to the ESOS framework to support providers offering a wider range of work integrated learning opportunities?
7. What regulatory measures could be implemented to make study choices in occupations and areas of demand more attractive for overseas students?

Supporting the quality of third-party relationships

There is no requirement for providers or students to engage education agents. However, many providers and students choose to engage agents because of their international reach, experience in country of origin, and provision of various services for students. As education agents are often the first point of contact for students with Australia's education systems, they can influence student decisions and have a long-term effect on the student's experience in Australia.

There is little transparency about the transactional relationships between providers and agents. Notably, there is a lack of transparency on the use of sub-agents, where agents outsource recruitment, including those located in other jurisdictions. Providers may not always be aware that an agent has outsourced some or all its services.

While the agent commissions paid by providers are a commercial matter and not disclosed to Government, media reports cite commissions up to 30 per cent or, in some cases, up to 50 per cent of a student's tuition fees and note they may include cash bonuses of \$300,000 for the recruitment of 100 students.⁹ Agents may pressure providers to 'price-match' agent remuneration from 'competing' providers, driving up rates. High agent remuneration puts pressure on provider resourcing and can lead to higher tuition fees for students.

Students may not be aware of remuneration received by agents from providers, which could lead to agents receiving double payment for services from both providers and students. Remuneration-driven agent behaviour may lead them to direct students to courses with high commission rates, rather than to courses that best suit the students' needs. This environment can erode student experience and hinders the ability of students to exercise informed choice.

As education agents do not deliver services on behalf of the Australian Government and are often operating overseas and outside of Australian jurisdiction, the Government does not undertake a regulatory role. Instead, the Government directly regulates providers and requires them to take legal and effective responsibility for any third parties to which they outsource their services, including education agents.

The National Code only requires providers to enter into formal agreements with agents who formally represent them and is silent on requirements in situations where providers are approached directly by agents. Where providers have not formalised an arrangement with an agent through a written agreement, providers cannot guarantee the student is receiving accurate information about the institution and providers have little recourse for corrective action.

⁹ A Patty & N Gladstone, [Private colleges pay student recruiters up to \\$300,000 in bonuses](#), *The Sydney Morning Herald*, 15 March 2021, accessed 20 December 2021.

As providers are not required to record these informal arrangements in the Provider Registration and International Student Management System (PRISMS), there is no Government oversight, and it is difficult to identify patterns of unethical behaviour.

In addition to their own enquiries, providers rely on advice and information from the Department, peak bodies, and other contacts to manage their agent relationships. However, as providers only have access to information on the performance outcomes of their own agents in PRISMS, there is an information gap when they are looking to partner with new agents. Greater data transparency could reduce this gap.

Even with sufficient data, not all education providers take a proactive approach to monitoring agent behaviour that would require them to terminate the relationship with the agent. While education providers are required to outline their processes for monitoring agent behaviour in their agent agreements, standards vary between providers.

Questions

8. What kinds of measures to increase the transparency of third-party arrangements could be effective in improving student and provider choice?
9. What are the effects of increasing transparency of agent commissions? Would transparency measures improve student and provider choice? Would they drive down high remuneration rates over time? What are other potential outcomes from increasing agent transparency?
10. What information, such as education agent performance outcomes, can the Government make available to providers to help them decide the agents with which to engage?
11. Should providers be required to have written agreements with all agents from whom they accept students, it could result in more information for students and improve data reporting on provider and agent activity. Are there any other positive or negative outcomes for students in this change?
12. What information should written agreements between agents and providers contain to protect providers and better inform students and government?
13. What is the potential impact on providers regarding increased administrative activity if they are required to monitor all agents?



Course transfers

An objective of the Strategy and the Review is to ensure the framework supports an optimal student experience. A student's ability to exercise control over their chosen pathways of study, including the ability to change study or providers, is part of an optimal experience.

Under Standard 7 of the National Code, a student may request a transfer within the 'restrictive period' (the first six months of study of their principal course), but the decision to allow release and transfer is at the discretion of the provider. The restriction on transfers appears to be an important issue for students with transfer requests making up 16 per cent of student complaints to the Commonwealth Ombudsman in the 2020-2021 financial year.¹⁰

Despite claims by some providers that they are losing significant numbers of students to other providers, international students transferring between providers is not common over the length of their study. This is illustrated by a consistently low transfer rate across the sector since 2019 of around five or six per cent (as a percentage of all international student enrolments).

Recent work by the International Students Transfers Working Group found existing settings, particularly the effect of packaging a sequence of courses and the operation of transfer restrictions under Standard 7 of the National Code, may be creating unanticipated barriers to students' ability to exercise choice. Course packaging can have the effect of increasing the amount of time that a student is restricted, sometimes significantly. While many students are only transfer-restricted for six months, 43 per cent of VET students are restricted for at least one year and 11 per cent are restricted for more than two years. 15 per cent of higher education students are restricted for one year or more.

The same working group has queried the prevalence of providers recording non-genuine 'concurrent study' enrolments in PRISMS to enrol students in the transfer restricted period. Concurrent study is a functionality of PRISMS and is not currently codified in the ESOS framework. Its original purpose was to enable students to undertake complementary academic study during the restricted period, such as further ELICOS courses or short courses such as Responsible Service of Alcohol (RSA). This allows a receiving provider to enrol a student, who may remain 'unreleased' from their first provider under the condition of Standard 7.

The need to record concurrent enrolments in many short courses such as RSA and Construction White Cards has largely been addressed since the recent introduction of ESOS-exempt supplementary courses that support students' employability.

While there may still be some legitimate cases for concurrent study, such as complementary ELICOS, current provider practice indicates that the PRISMS 'concurrent study' functionality is being perversely adapted to sidestep Standard 7. A review of PRISMS data on enrolments using the 'concurrent study' functionality between 2018 and 2021 showed a significant difference between the proposed and actual concurrent study durations. In 54 per cent of cases, the initial enrolment was not continued after one month of enrolment and the student instead continued only in the second 'concurrent' course.

10 Commonwealth Ombudsman, 'Annual Report 2020-21', accessed 20 January 2022.

Questions

14. How can the ESOS framework enhance optimal student choice and safeguard the ability of providers to deliver a quality education experience?
15. How can the framework and providers ensure course packaging requirements are transparent to students and support student choice and wellbeing?
16. What are the benefits to providers and students in restricting a student from changing providers within the first six months of their primary course, and what would be alternatives to support student choice?
17. Should 'concurrent study' as an option remain within PRISMS and if so, what provisions should be made to ensure it is not abused?
18. What restrictions, if any, should there be on the transfer of adult international students where they wish to transfer between providers?

Written agreements

Under Standard 3 of the National Code, registered providers must formalise their enrolment of overseas students through written agreements. Written agreements protect the rights and set out the responsibilities of each party, as well as the courses and related education services to be provided, tuition and non-tuition fees payable, and refund policies.

The use of written agreements, which serve as both a regulatory tool and commercial agreement, seeks to provide clarity, certainty, and support to international students, complementing education quality and enhancing the student experience. To achieve these aims, written agreements need to be transparent, robust, and appropriately flexible to deliver an optimal student experience.

The Government has no direct oversight of written agreements and each individual provider is responsible for creating their own, with no obligation to publish their written agreements. However, written agreements have consistently been the subject of the highest proportion of complaints to the Commonwealth Overseas Students Ombudsman each year: in 2020-21, 42 per cent of the 1,079 complaints to the Ombudsman focused on written agreements, suggesting that written agreements vary significantly in quality between providers.¹¹

The Department has been made aware of instances where information mandated under the National Code was not included, and others where clauses were included that were not compliant with Australian Consumer Law, or severely restricted students' rights. Even when agreements comply with regulation and legislation, the high degree of variation between providers may mean students' experiences, and the information provided to them, vary greatly.

11 Commonwealth Ombudsman, '[Annual Report 2020-21](#),' accessed 20 January 2022.

The creation of optional draft clauses or a model written agreement could benefit both students and providers, by reducing drafting costs and providing greater certainty and consistency around rights and obligations.

Alternatively, mandatory templates for written agreements could provide universal standards to protect the interests of overseas students. Mandated components would need to be limited to those requirements that are common across all sectors and types of provider. Providers still need to retain the ability to exercise flexibility in respect of specific and additional requirements particular to the provider and the course. Providers are also entitled to have flexibility to determine their own refund provisions in respect of students who terminate their course. Mandated uniform provisions already exist for instances of provider or student default in relation to visa cancellation.

There are also concerns regarding providers' unmediated discretion to set their refund policy in cases of student default, which may arise due to circumstances beyond student control (such as visa refusals) and the differences between the terms of the refunds available to students where the provider has defaulted.¹²

Revisiting the terms of refund provisions could provide an opportunity to consider definitions of tuition and non-tuition fees to ensure clarity for students and providers and increase consistency across the sector. For example, some providers may have sought to rely on written agreements to exclude agent commissions from refunds payable in the case of student default.

Questions

19. How effective are written agreements in consistently setting out and protecting the rights and obligations of students and providers?
20. What measures could be introduced to increase transparency of written agreements, for the benefit of students and providers?
21. If model clauses or model written agreements are introduced, what would they look like and how can they best be leveraged to reduce regulatory compliance costs and promote best practice in the areas of refunds, deferrals and transfers?
22. How could refund regulations be revised to ensure consistency between providers and better reflect the different circumstances in which they may be requested?

English language

International students create more diverse classrooms and bring valuable insights from around the world to enrich the classroom experience for all students. With English skills appropriate to the course they are undertaking, international students can take advantage of their Australian education experience and contribute to the classroom experience. Students are also better equipped to make a significant contribution to local communities, build intercultural understanding and contribute to the Australian economy as students and after graduation as skilled workers.

¹² Commonwealth of Australia, [Education Services for Overseas Students Act 2000](#), s 47 B(a) "...sets out the refunds requirements that apply if the student defaults in relation to a course..."; *Ibid* s 46D(6)

However, if students do not have the required English language skills for their AQF courses, it can lead to social isolation, stress, and poor education experiences for themselves and for their classmates. Recent research (July 2021) commissioned by the Department found a lack of adequate English skills in undergraduate classrooms affects all students. The research found that a quarter of domestic students accorded inadequate English language skills among their overseas classmates the highest negative ranking of the factors affecting classroom satisfaction. The concerns not only related to the detrimental impact on their own grading/assessment but were also expressions of empathy for the students struggling with limited English fluency. South Australian and NSW Independent Commission Against Corruption Reports and research by Scanlon in 2021 also highlight the impact of inadequate English language skills on students and classrooms.¹³ Downstream impacts of inadequate English language skills can contribute to perverse incentives to cheat, employ ghost writers and may increase pressure on academics to pass failing students.¹⁴

Data regarding students' English language proficiency at the point of admission can be improved. Data from PRISMS shows that in 2019, either 'No test' or 'Other form of testing which satisfies the institution' made up 70 per cent of international student admissions. TEQSA has noted its concern with the proportion of students admitted under the 'Other' category in a 2020 report, which notes that 'Universal use of the "Other Form of Testing Which Satisfied the Institution" limited visibility of a provider's records to ensure compliance with English language requirements.'¹⁵

Questions

23. How can the ESOS framework better support students' English language skills to match their course requirements on the start of enrolment and ensure an optimal student experience for all students?
24. Would it be beneficial to introduce an independent assessment of international students' English proficiency before they commence their first AQF course?
25. How can PRISMS data entry requirements be adjusted to make it easier for providers to record evidence of a student's English proficiency?
26. What additional guidance do providers need to ensure incoming students meet English language requirements?
27. How can providers of ELICOS and Foundation Programs ensure that students have reached the required level of English language proficiency to start their first AQF course?

13 Independent Commission Against Corruption South Australia (2020) [ICAC University Integrity Survey](#), accessed 20 December 2021; Independent Commission Against Corruption New South Wales (2015) [Learning the Hard Way: Managing Corruption Risks Associated with International Students at Universities in NSW](#), accessed 20 December 2021; Scanlon Foundation (2020) [Narrative No.4: Australia's Chinese lesson: The nation's urgent need to engage with international students from China](#), accessed 20 December 2021; Arkoudis, S, 'It's not rocket science: English language communication and international students', *Campus Morning Mail*, 31 May 2020, accessed 20 December 2021; Portfolio Committee No. 3, 'Future development of the NSW tertiary education sector', *Portfolio Committee No. 3 – Education No. 41*, 2021.

14 Y Gong and T Lee, 'Money for grades: inside the murky world of ghost-writers skirting Australia's anti-cheating laws', *SBS*, 13 December 2021, accessed 20 December 2021.

15 Tertiary Education Quality and Standards Agency (2020) [Compliance Report 2020](#), accessed 21 December 2021.

General questions

While this paper has explored issues and challenges in the current ESOS framework, the focus of the Review and consultation is towards the future. We invite views on these general questions to drive forward the objectives of the Strategy.

Questions

28. How can the ESOS framework be strengthened and improved to deliver an optimal student experience?
29. How can the framework resolve any regulatory barriers that prevent sector innovation, diversification, and growth of Australian education offerings, including online and offshore?
30. How can the ESOS regulatory framework evolve to better support the sector to deliver a high-quality education experience?



