



INDEPENDENT  
HIGHER EDUCATION  
AUSTRALIA

## **IHEA SUBMISSION**

**SENATE INQUIRY INTO THE  
EDUCATION SERVICES FOR  
OVERSEAS STUDENTS AMENDMENT  
(QUALITY AND INTEGRITY) BILL 2024**

26 September 2024

## **IHEA Submission**

# **Senate Inquiry into the Education Services for Overseas Students Amendment (Quality and Integrity) Bill 2024**

### **Introduction**

Independent Higher Education Australia (IHEA) welcomes the opportunity to provide additional input to the Senate Inquiry into the Education Services for Overseas Students Amendment (Quality and Integrity) Bill 2024 (ESOS Bill), for which submissions are due by 26 September 2024.

On 1 July 2024, IHEA made a submission to this inquiry, which should be read alongside this submission. The focus of this submission is to provide feedback on the inequity of the allocation of the Indicative International Student Profile (ISP) in 2025, which will take effect once the ESOS Bill comes into effect, which is proposed to be from 1 January 2025.

On 27 August 2024, the Australian Government announced that, subject to the passage of legislation before the Parliament (the ESOS Bill), it will set a National Planning Level for new international student commencements of 270,000 for the 2025 calendar year.

The announcement stated that public universities will receive around 145,000 new international student commencements, or an Indicative ISP, in 2025, which is around 2023 levels, with other (private/independent) universities and non–university higher education providers, in aggregate, receiving around 30,000 new international student commencements in 2025. The latter also includes the Indicative ISP for 2025 at TAFE, which we understood would also maintain their 2023 levels.

The announcement also stated that, subject to the passage of the ESOS legislation, Ministerial Direction 107 will be repealed from 1 January 2025. We welcome this announcement, given that it has been a blunt instrument and its impacts have been severe, uneven and have reduced student visa grant rates to 2018 levels and below in some circumstances. However, it will be important to understand the detail around what will replace Ministerial Direction 107, as IHEA's view is that the application of Ministerial Direction 107 by the Department of Home Affairs has been arbitrary, inconsistent and particularly damaging for the independent higher education sector. It is imperative that the negative impacts of Ministerial Direction 107 are halted as soon as possible. This is having a harmful and deleterious effect on the higher education sector more broadly, including the 125 per cent increase in the non–refundable visa application fee to \$1,600, from 1 July 2024, which is already further deterring students from choosing Australia as a study destination.

### **Consideration of Issues**

#### **A: IHEA opposes the ESOS Bill**

From the outset, IHEA has been opposed to the ESOS Bill and the capping of international students, given the limitations they place on both providers and students. IHEA maintains this position. The ESOS Bill represents a direct attack on, and will irreparably damage, Australia's fourth largest – and largest services and non–resources – export industry. The impact could be significant, leading to job losses, provider closures and further collapsing the international education market. At a time when Australia's economy needs a stimulus, the impact will be significant as the economic benefit of the international education sector was reported as \$50.5 billion in 2023–24. Further, Australia's economy has posted its worst performance since 1991–92, excluding the first year of the COVID–19 pandemic. This included a rise in Gross Domestic Product (GDP) of just 0.2 per cent in the April to June 2024 quarter. It therefore defies logic that the ESOS Bill will hurt the industry that is so important to Australia's economy and which was responsible for more than half (0.8 per cent) the 1.5 per cent growth in GDP in 2023.

That said, we fully understand that if the Government and Coalition reach a joint position on the ESOS Bill, it will come into effect. While we do not support capping the international education sector, we do have a position on the form a capping regime should take to ensure that does not disadvantage independent higher education providers. Unfortunately, what is proposed does exactly that. As a key principle, the ESOS Bill must be provider neutral in its approach and not disadvantage particular types of providers, such as independent higher education providers. The only exception to this approach should be in respect of setting limits on the proportions of international students a provider can enrol. This should apply only to the publicly funded universities to ensure they are prioritising their core mission of educating Australian students.

Given the importance of independent higher education providers in delivering quality education to international students, it is imperative that these providers be able to commence more international students than the 30,000, including TAFE, currently proposes. This will ensure a fairer and more equitable arrangement and provide opportunity and choice to international students, who are so critical to the Australian economy and culture.

At the Australian Financial Review Higher Education Summit on 20 August 2024, the Minister for Education, the Hon. Jason Clare MP, reflected that a cap on new international student commencements will be a better mechanism than Ministerial Direction 107, which it will replace. While a capping regime certainly has the potential to be fairer and more transparent and visible, we have significant concerns about the proposed allocation that has been made for independent higher education providers.

#### [B: Higher caps for independents needed](#)

With the recent publication of data on a provider basis, we understand that public universities, as an aggregate, will receive an indicative ISP for 2025 of 145,200, which is 15.2 per cent greater than their 2019 New Overseas Student Commencements (NOSC) and similar to their 2023 NOSC (reduced by 0.7 per cent). Other than one exception, all public universities experienced either an increase in their 2019 NOSC or 2023 NOSC, with 20 experiencing an increase compared to both.

For private universities and non-university higher education (private/independent) providers, the indicative ISP for 2025, as an aggregate, is 31,020, which is 3.2 per cent less than 2019 and 26.9 per cent less than 2023. The allocation of 31,020 is 17.6 per cent of 176,220 to the whole of the higher education sector. On a percentage basis the NOSC in 2023 for private/independent providers was 22.4 per cent (42,268 of 188,488) of the total NOSC in higher education. While the allocation for public universities is consistent with 2023 levels, the percentage share for independent higher education providers is well down on 2023 levels.

IHEA believes this represents a significant discrimination against independent higher education providers and needs to be remedied. Provider neutrality in formulating international student profiles is paramount to a fair and equitable system. IHEA proposes that independent higher education providers receive 22.4 per cent of the 176,220 indicative ISP for 2025, equating to 39,473 students in total, which is an increase of 8,453 on what is proposed in 2025.

In addition to a greater share of the allocation in 2025, no individual independent higher education provider should receive an ISP for 2025 that is lower than their 2019 NOSC. This will ensure stability and support the growth of independent providers and is particularly important as the Indicative ISP for 2025 is lower than the 2019 NOSC for many independent providers.

Further to both of these measures, IHEA also proposes a guarantee that a proportion of any unused Indicative ISP at non-Group of Eight universities be redistributed to independent providers in the following year's allocation. This ensures maximum opportunities for international students and supports the significant contribution of independent providers to the international education market. We are fully expecting that caps of these universities may not be met, given expected student choice, which is a critical element in where and what an international student studies.

IHEA believes the indicative 2025 capping regime disadvantages independent higher education providers, which the proposals above seek to address. International students deliver significant economic and social contributions to Australia, including injecting billions of dollars into the Australian economy, supporting local businesses and creating employment opportunities. Many independent higher education providers create these opportunities off their own back and at their own expense, which public universities do not incur. This includes paying taxation and paying for the construction and/or rental of appropriate infrastructure and facilities, which they do in the absence of Government funding, such as Commonwealth Supported Places. While these are additional costs for independent higher education providers that public universities do not need to meet, independent providers are being more adversely impacted by the proposed capping regime, following disproportionately harsh treatment through the application of Ministerial Direction 107.

Independent higher education providers are a significant part of the diversity that attracts students to study at these providers. Further, independent providers lead the way in the annual Quality Indicators for Learning and Teaching (QILT) student experience surveys. Students at independent providers are receiving quality education, which exceeds their peers' assessment of their experiences at most public universities. Unfortunately, this is being placed at risk for both students and providers.

### C: Proposed amendments

While IHEA is opposed to the ESOS Bill, if it is passed, we propose a number of amendments to ensure a fairer and more equitable approach for independent providers. These six amendments are attached, but in summary they are:

#### *Allow new independent higher education providers to enter the market*

- Amendment to schedule 1, part 4, item 38: Proposes to remove the requirement for new providers to offer courses to domestic students for consecutive study periods totalling two years, in order to be eligible to apply for registration to provide courses to overseas students. An alternative is to limit this requirement to new RTOs. As drafted, in the Bill will prevent the entry of new independent providers to the market through a catch-22 scenario whereby access to FEE-HELP, to teach domestic students, requires three years of operation as a higher education provider, which would usually come from offering courses to international students.

#### *Delay commencement until 2026*

- Amendment to schedule 1, part 7, item 53: Delays the commencement of the Bill until 2026 to ensure that providers have appropriate time to transition to the new arrangements, in particular, capping requirements. This is specifically important given the time it takes to enrol students and for 2025 providers will have already put in place arrangements and contracts for the commencement of new international students.

#### *Courses not cancelled because they don't align with Australia's skills needs*

- Amendment to schedule 1, part 8, item 96B: Omits the requirement to cancel courses that provide limited value to Australia's current, emerging and future skills and training needs and priorities or where there is public interest to do so. Prescribing the courses that international students can study and which specific providers are able to offer those courses, presents as a deep, over-reaching and unnecessary micromanagement of the international education system. As previously mentioned, the approach will almost certainly drive students to study their preferred course at a destination country other than Australia, to Australia's detriment. History shows that even if international students do study courses that are aligned to Australia's skills needs, the vast majority will return home at the end of their study.

### *Ensuring a provider neutral approach to determining enrolment limits*

- Amendment to schedule 1, part 7, item 46: Addresses the differential formula that are being applied to public versus private providers, which will take effect once the Bill comes into effect. While the ESOS Bill does not articulate the formula for determining provider level Indicative ISP for 2025, this cannot be left to administrative implementation, which we have already seen puts independent higher education providers at a significant disadvantage. A safeguard needs to be included in the ESOS Bill to ensure the formula for determining provider enrolment limits is applied equally and neutrally across provider categories. Such a safeguard is necessary to preserve independent higher education providers' percentage share of the international student market. The only exception to this approach should be in respect of setting limits on the proportion of student enrolments that are international enrolments at Table A providers. This should apply only to the publicly funded (Table A) universities to ensure they are prioritising their core mission of educating Australian students.

### *Publication of guidelines first, including a mandatory Regulation Impact Statement*

- Amendment to schedule 1, part 7, item 45: In the interests of transparency and genuine engagement, the Minister should be required to release guidelines, criteria and the proposed formula for setting limits in any given year. This should also include a Regulatory Impact Statement regarding the implementation of the new limits. This will ensure early communication with the sector and provide an opportunity and mechanism for feedback to be received by the Minister on any issues that may not have been considered, and which may have a deleterious impact on students and providers. The period of consultation should be at least 4 weeks.

### *Sharing ministerial decision-making*

- Amendment to schedule 1, part 7, item 45: Providing sole discretion to one Minister in determining international student enrolment limits is unprecedented and places enormous control in one person's hands. It has been remarked that such level of control and discretion is highly irregular for matters not considered to involve national security. There is concern that such control, for instance, has the potential to be exploited through lobbying. We are therefore requesting that a decision on enrolment limits be made jointly by the Minister for Education, the Minister for Skills and Training and the Treasurer. The Treasurer is specifically identified because this Minister has responsibility for the economy, including the economic importance of international education.

### *Changing notification date of caps*

- Amendment to schedule 1, part 7, item 26B: The Bill specifies that the Minister needs to set provider enrolment limits and course enrolment limits by 1 September to take effect from 1 January in the year immediately following. Given the planning, recruitment and certainty required by providers and students, 1 September is too late to be putting limits in place. It is evidently unworkable and sends a very negative message globally that will further damage Australia's reputation for international education. While IHEA is opposed to the setting of limits, it is imperative that sufficient time is allowed before the limits take effect, especially as there are significant penalties for breaching limits. A transition period of more than 12 months is appropriate for the first year, with timing for the announcement in subsequent years to occur no later than 1 September two years before they take effect.

### *Independent review mechanism of caps*

- Amendment to schedule 1, part 7, item 53: The Bill does not provide for a general right of review on the merits of determining providers' international enrolment caps. However, the Minister's decision could be appealed through judicial review on some specific grounds, such as whether the discretionary power was exercised without regard to the merits of a particular case. While this puts a level of responsibility on the Minister, it puts the onus on ensuring a fair outcome on the provider. Undertaking a judicial review is

costly and time consuming to reach an outcome, all the while the Minister's original decision has been in place. We believe a fairer outcome is to insert a clause to allow for an independent review of ministerial decisions regarding enrolment limits.

### Conclusion

We urge the Senate Inquiry to ensure that IHEA's proposals, as outlined above, are adopted to ensure a fairer and equitable approach to independent higher education providers is achieved. While the ESOS Bill does not articulate the formula for determining provider level Indicative ISP for 2025, this cannot be left to administrative implementation, which we have already seen puts independent higher education providers at a significant disadvantage. A safeguard needs to be included in the ESOS Bill to ensure a provider neutral approach to allocating the ISP. Such a safeguard needs to preserve independent higher education providers' percentage share of the international student market; ensure that no individual provider is worse off than 2019; and provide a mechanism to allow a guaranteed proportion of unused ISP from non-Group of Eight universities to be redistributed to independent higher education providers. Anything less, will severely disadvantage and damage independent higher education providers, impact the economic benefit they bring to their communities; lead to job losses; and threaten their sustainability in the provision of international education.

This has already had a significant and adverse impact on independent higher education providers who make a significant contribution to their local economies through creating employment opportunities and demonstrating a dedication to serve students, staff and the wider community. Independent providers are often established with private funding and at personal risk and investment, without the Government support afforded to public institutions. Impacts on independent providers also impacts the diversity of providers and course offerings, which has been a strength of Australia's international education system. It also reduces the likelihood of providers delivering important, innovative and cutting edge, as well as niche programs of study.

In spite of this, Independent higher education providers have built a reputation based on quality and achieving excellent outcomes, however, the impost of the current measures is directly impacting these providers and the hard working Australians, and their families, who are behind these providers. This must be protected and supported.

**Attachment: Proposed amendments to the ESOS Bill**

**Amendment One: Part 4—Registration requirements, Division 1—Amendments**

**Item 38 At the end of section 11**

- (1) Schedule 1, part 4, item 38, page 18 (lines 23 to 27), omit the requirement that new providers are required to deliver to domestic students (i.e. not overseas students) for consecutive study periods totalling 2 years.

***[removing new provider requirement to first teach domestic students]***

OR

- (1) Schedule 1, part 4 item 38, page 18 (lines 23 to 27), amend the requirement that new providers are required to deliver to domestic students (i.e. not overseas students) for consecutive study periods totalling 2 years to apply only to registered training organisations, as follows.

- (2) A registered training organisation satisfies this subsection if they have provided one or more courses for consecutive study periods totalling at least 2 years at a location or locations to students in Australia other than overseas students.

Note: This requirement applies only to new registered training organisations and not new higher education providers.

For the definition of *study period*, see section 5.

***[amend so only new registered training organisations are required to first teach domestic students]***

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**Amendment Two: Part 7—Enrolment limits, Division 2—Application of Amendments**

**Item 53 Application and transitional provisions**

- (2) Schedule 1, part 7, item 53, page 40 (lines 3 to 6), amend the requirements to reflect a 2026 start date, as follows:

- (1) Subject to this item, Division 1AA of Part 3 and Division 1AA of Part 6 of the *Education Services for Overseas Students Act 2000*, as inserted by Division 1 of this Part, apply in relation to the 2026 calendar year and later calendar years.

And make consequential amendments throughout the Bill to replace 2025 with 2026 to reflect a 2026 start date.

***[amend to commence from 2026]***

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**Amendment Three: Part 8—Automatic cancellation of specified courses, Division 1AB—Automatic suspension and cancellation of courses specified by the Minister**

**Item 96B Minister may make instrument specifying courses**

- (3) Schedule 1, part 8, item 96B, page 42 (lines 20 to 23), omit (b) and (c) regarding cancellation of courses that provide limited value to Australia's current, emerging and future skills and training needs and priorities or where there is public interest to do so.

***[omit cancellation of courses on skills needs and public interest]***

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**Amendment Four: Part 7—Enrolment limits, Division 1—Amendments**

**Item 46 Section 15A (after the paragraph beginning “Division 1 contains”)**

- (4) Schedule 1, part 7, item 46, page 24 (lines 19 to 26), include (c) to ensure the formula for determining provider enrolment limits is applied equally and neutrally across provider categories. Part (d) is included to ensure that non-Table A providers are not subject to any cap applied to the proportion of total student enrolments that are international enrolments.
- (c) For the purposes of setting the limit, or International Student Profile, the Minister must take a neutral approach for the distribution of available places across each of the provider categories.
- (d) Non-Table A providers are not subject to any limit the Minister may apply to Table A providers to cap the proportion of total student enrolments that are international enrolments.

***[amend to ensure all provider types treated equally when setting provider limits]***

**Amendment Five: Part 7—Enrolment limits, Division 1—Amendments**

**Item 45 Section 5**

- (5) Schedule 1, part 7, item 45, page 24, insert a new section that requires the Minister to publicly release and consult on draft guidelines and criteria on the approach to setting enrolments limits.

Prior to setting enrolment limits for providers, the Minister will release for a period of no less than 4 weeks consultation, the proposed guidelines, criteria and formula for setting enrolments limits, inclusive of a Regulatory Impact Statement.

***[ensure transparency around the mechanism for determining enrolment limits]***

**Amendment Six: Part 7—Enrolment limits, Division 1—Amendments**

**Add a new Section 45**

- (6) Schedule 1, part 7, item 45, page 24, insert a new section that requires the decision on enrolment limits not be solely made by one Minister, but to be a joint decision between the Minister for Education, the Minister for Skills and Training and the Treasurer.

The setting of individual limits for providers will be a decision made jointly by the Minister for Education, the Minister for Skills and Training and the Treasurer.

And make consequential amendments throughout the Bill.

***[ensure the decision on provider limits is not just at the discretion of one Minister]***

**Amendment Seven: Part 7—Enrolment limits, Division 1AA—Limits on number of enrolments of overseas students**

- (7) Schedule 1, part 7, item 26B, page 27 (lines 1 to 4), amend the clause so that an instrument specifying provider enrolment limits must be made before 1 September two years prior to the before it takes effect.

*When instrument must be made*

- (9) An instrument under subsection (1) in respect of one or more years has no effect unless it is made before 1 September two years before the first year to which the instrument applies.



And make consequential amendments throughout the Bill.

***[ensure appropriate notice is given to providers regarding their enrolment limit]***

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**Amendment Eight: Part 7—Enrolment limits, Division 2—Application of Amendments**

- (8) Insertion under item 53 to schedule 1, part 7, page 40 to provide for independent review of ministerial decisions made in respect of enrolment limits.

Providers will have the right to seek an independent review of any decision made by the Minister in respect of determining enrolment limits.

***[allow providers to seek a review]***

## Who We Are

Independent Higher Education Australia Ltd. (IHEA) is a peak body established in 2001 to represent Australian independent (private sector) higher education institutions. Our membership spans independent universities, university colleges and other institutes of higher education, all of which are registered higher education providers accredited by the national higher education regulator, TEQSA or associate members seeking registration.

Our Vision is that: students, domestic and international, have open and equitable access to world class independent higher education in Australia, built on the foundations of equity, choice, and diversity.

Our Mission is to represent independent higher education and promote recognition and respect of independent providers as they contribute to Australian education, the Australian economy, and to society in general. We achieve this by promoting continuous improvement of academic and quality standards within member institutions, by advocating equity for their staff and students, and by delivering services that further strengthen independent providers' reputations as innovative, sustainable, and responsive to the needs of industry and other relevant stakeholders in both higher education and VET. IHEA's commitment is to excellence, productivity and growth in independent higher education being delivered through a trusted Australian education system underpinned by equity, choice, and diversity.

IHEA members have different missions, scales, and course offerings across the full AQF range (Diplomas to Doctorates). Members comprise:

- Four private universities (Bond University, Torrens University, University of Divinity, Avondale University).
- Six University Colleges (Alphacrucis University College, Moore Theological College, Australian College of Theology, Sydney College of Divinity, SAE University College and the Australian College of Applied Professions ).
- Six self-accrediting institutes of higher education (Griffith College, Kaplan Business School, Marcus Oldham College, Excelsia College, The College of Law, and the Australian College of Applied Professions).
- Seventy two not-for-profit and for-profit institutions of higher education; and related corporate entities.

IHEA members teach approximately 74 percent of the students in the independent sector (i.e., more than 130,000 students) and educate students in a range of disciplines, including law, agricultural science, architecture, business, accounting, tourism and hospitality, education, health sciences, theology, creative arts, information technology, human services and social sciences.

IHEA holds a unique position in higher education as a representative peak body of higher education providers. Membership in IHEA is only open to providers registered , or seeking registration, with the Australian regulator – TEQSA. However, some IHEA members are dual and multi-sector providers who also deliver VET and/or English Language Intensive Courses for Overseas Students (ELICOS) courses.

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