



Committee Secretary
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IRU submission on the *Education Services for Overseas Students Amendment (Quality and Integrity) Bill 2024*

The Innovative Research Universities (IRU) welcomes the opportunity to provide feedback on proposed amendments to the *Education Services for Overseas Students Act 2000*. The ESOS Act is a critical component of the policy and regulatory framework that has been developed over many years to ensure the quality of Australia's international education system and the protection of students.

International education is an Australian success story – it benefits individual students and it delivers significant social, cultural and economic benefits for communities across the nation. Partnership between universities and governments has supported the development of an export industry worth \$48 billion in 2022-23 and has strengthened Australia's position in its region and the world.

The Australian Government is now proposing changes to policy (through the new *International Education and Skills Strategic Framework*) and to legislation (through amendments to the ESOS Act) that would fundamentally alter the way that the international education system works.

Earlier this month, the IRU provided feedback on the draft *Strategic Framework* (submission available [here](#)) based on the shared priorities and distinct international profile of its member universities. The IRU response below to the proposed amendments to the ESOS Act should be read in conjunction with this feedback, which sets out broader IRU priorities for international education.

It should also be read in conjunction with the IRU submissions to the Australian Universities Accord process (see [here](#)). There are critical interdependencies between proposed legislative change for international education and new measures currently being introduced by government to implement key recommendations from the Accord final report – in particular, the commitment from government (announced in May) to implement a new Australian Tertiary Education Commission (ATEC) and a new “managed growth” system for universities.

The specific changes proposed to the ESOS Act should not be rushed but should be carefully designed to align with these broader changes to the policy framework. The IRU supports measures to further improve quality and integrity in international education, but these must be evidence-based, targeted and proportionate to risk. The IRU also supports the principle of “managed growth”, with universities negotiating sustainable future growth targets for both domestic and international students with the ATEC.

We recommend that amendments to the ESOS Act that are not consistent with these principles should not proceed, and that the Bill as written **should not be passed**. We highlight three specific areas below where changes are required to the *ESOS Amendment Bill 2024*.

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1. New Ministerial powers to set enrolment limits for international students

The draft *Strategic Framework* for international education identifies a need for “managed growth” to address issues with “unpredictable international student numbers onshore” and to deliver a more “balanced system”. The proposed amendments to the ESOS Act would give the Minister for Education new powers to set limits on the total number of international students enrolled in a particular provider or course.

The IRU supports the principle of a more managed and balanced system, reflecting a genuine partnership between government and universities. It is important to note at the outset that the international education system is already managed by government regulation – for example, there are already limits on the number of international students that universities can enrol through the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) which is managed by the Tertiary Education Quality and Standards Agency (TEQSA).

The creation of the new ATEC is specifically designed to improve coordination across the university sector and to provide stewardship of the new “managed growth” funding system. The government’s consultation paper on the design of the ATEC (available [here](#)) references the need for long-term planning and strategy to address “fragmented changes to policy”.

International education is an integral part of what Australian universities do, not an add-on that can be kept separate from the teaching of domestic students and research. Managed growth in international education must be seen as an integrated part of long-term planning and strategy, agreed between universities and the new ATEC.

The IRU agrees with the proposition in the draft *Strategic Framework* that each university’s international student profile be included as part of its mission-based compact agreement, negotiated with the ATEC. But this is inconsistent with the proposed changes to the ESOS Act, which would give the Minister new powers to set institution- and course-level limits for the number of international students in universities.

Planning for sustainable growth in universities to meet the ambitious targets of the Accord and to maximise the benefits of international education will require differentiated strategies for each university – a one-size fits all approach will not deliver the desired outcomes. A system in which universities negotiate their mission-based compacts with the ATEC will allow for this diversity and differentiation, while also providing government with a more holistic and transparent view of the system as a whole.

The IRU opposes the amendment to the ESOS Act that would give the Minister the power to set limits at the level of individual courses in universities, or to cancel individual courses in universities. This is counter to the principles of university autonomy and student choice. It would be incredibly bureaucratic to implement and would stifle innovation and flexibility for universities, which allows them – as self-accrediting institutions – to adapt and evolve the curriculum to meet new knowledge and workforce needs.

Earlier this year, the government implemented changes to the legislation for the Australian Research Council (ARC) to strengthen independent governance and limit the power of the Minister to veto individual research projects or grants in universities. We believe that these same principles should also apply here.

If there are other international education providers – or specific courses provided by those providers – that have significant quality and integrity issues, then government should focus there, with regulatory intervention that is based on clear evidence and proportionate to risk.

The IRU recommends that Ministerial powers to limit the number of international students in universities and individual university courses be removed from the *ESOS Amendment Bill*. The new ATEC would then assume responsibility for managing sustainable planned growth in university enrolments into the future. This will require an ATEC with a clear legislative mandate and the resourcing it needs to deliver on its role.

The consultation paper on the establishment of the ATEC states that it will be operational from 1 July 2025. If government requires an interim mechanism for managing international student enrolments in universities for 2025 (prior to ATEC taking on the role) it should first explore using existing powers, however the IRU opposes the continued use of Ministerial Directive 107 to manage student numbers.

Ministerial Directive 107 was introduced by the Minister for Home Affairs in December 2023 as part of the government’s Migration Strategy, to slow down visa processing. It has led to disproportionate and unfair impacts on IRU students and universities. The effect of Ministerial Directive 107 has been to further entrench inequities across the sector, undermine diversification and reduce enrolments in courses relevant to Australia’s skills needs.

The IRU recommends that Ministerial Directive 107 be revoked and that if government wants additional controls over international student numbers in universities for 2025, changes be made to the provisions in the *ESOS Amendment Bill* in line with the principles outlined above. The *ESOS Amendment Bill* should then include a sunset clause to make it clear that any new power for the Minister for Education to set limits for universities at an institutional level would then be phased out as soon as the ATEC is operational.

The submission on the *ESOS Amendment Bill* by the Department of Home Affairs (submission 3) states that using the ESOS Act would ensure “that the needs of education providers and students will be considered in a way that would not be possible if attempts were made to limit student visa numbers under immigration law”. However it also states that successful implementation of ESOS amendments will require “interagency sharing of data... which is likely to require significant development for both the Department and the Department of Education”. Unless new data systems can be put in place in time, and unless there is a guarantee of visa processing capacity for the number of international students agreed for 2025, there is no point rushing through legislative changes now.

Finally, the IRU supports the proposal in the draft *Strategic Framework* that specific priority groups (for example, postgraduate research students) be excluded from any limiting of places for international students. To the list in the draft, the IRU would also recommend that students in university exchange/study abroad/mobility programs, and students in TNE programs (for example, students articulating onshore and those participating in 2+2 degree programs with international partner universities) should also be excluded from any limits. This should be made clear in any new measures to manage or limit international student numbers, to avoid further damaging long-standing international partnerships.

2. Automatic suspension/cancellation of registration

The IRU opposes the proposal in the *ESOS Amendment Bill* that universities would have their registration automatically suspended for exceeding their allocation of places. Once any limits on the number of international students in each university have been set, there should still be some flexibility for universities (for example, to allow for students commencing/completing courses of different duration). The result of automatic suspension or cancellation would be that universities would under-enrol, which is at odds with the goal of maximising participation within sustainable growth plans agreed between universities and the ATEC. For universities, the institution-level limit on the number of international students should not be a hard target, but a +/- scenario to allow for some tolerance for flexibility.

3. Definition of education agents under the ESOS Act

The IRU notes the intention of the *ESOS Amendment Bill* to strengthen the fit and proper provider assessment and to increase the sharing of information between the Department of Education and international education providers. However the proposed amendment to the definition of an education agent is too broad. As drafted, it would include anyone (outside of a university's direct employees) who talked about studying in Australia or at a specific provider.

This could encompass offshore offices of Australian universities – for example, representatives who manage agents and partnership activities in that country. It could also extend to Australian federal, state and local government agencies who work to promote Australian international education (such as Austrade, State trade offices and study clusters), as well as third party service providers that assist universities with components of international student recruitment but do not operate as education agents or on a commission basis.

The IRU recommends that the definition in the Bill be revised to make it clear that an education agent is an entity that engages in the specified activities in relation to a provider *in exchange for a commission*, and that is listed as an education agent in the Provider Registration and International Student Management System (PRISMS).