

The University of Sydney

Submission on the proposed Education Services for Overseas Students Amendment (Streamlining Regulation) Bill 2015 and Education Services for Overseas Students (Registration Charges) Amendment (Streamlining Regulation) Bill 2015

EDUCATION SERVICES FOR OVERSEAS STUDENTS AMENDMENT (STREAMLINING REGULATION) BILL 2015		
PROPOSED MEASURES	SUPPORT/DO NOT SUPPORT/NEUTRAL	COMMENTS (MAXIMUM 300 WORDS)
<p>Schedule 1 – Streamlining the roles of government agencies</p> <p>Clearer roles for Commonwealth quality assurance agencies, and state and territory agencies through:</p> <ul style="list-style-type: none"> • creation of the <i>‘ESOS agency’</i> • redefining designated authority for schools as the <i>‘designated State authority’</i>, including territory agencies • revised definition of <i>‘provider’</i>. <p>Broader definition of <i>‘provider’</i>.</p>	Neutral	<ul style="list-style-type: none"> • Clearer definitions of authority appear to be sensible and relevant.

PROPOSED MEASURES	SUPPORT/DO NOT SUPPORT/NEUTRAL	COMMENTS (MAXIMUM 300 WORDS)
<p>Schedule 1 – Streamlining registration processes</p> <p>Providers will apply directly to their ESOS agency for:</p> <ul style="list-style-type: none"> • initial registration • renewal of registration • adding courses at locations to an existing registration. <p>The ESOS agency must use a risk management approach when making a decision.</p>	Support	<ul style="list-style-type: none"> • No further comments to add.
<p>Schedule 1 – Meeting registration requirements</p> <p>The ESOS agency for a provider must be satisfied that the provider is complying, or will comply, with the ESOS Act and the National Code, and the ELICOS or Foundation Program Standards (as relevant).</p> <p>The ESOS agency should have no reason to believe the provider has not been providing or will not provide education of a satisfactory standard to overseas students.</p>	Support	<ul style="list-style-type: none"> • No further comments to add.

PROPOSED MEASURES	SUPPORT/DO NOT SUPPORT/NEUTRAL	COMMENTS (MAXIMUM 300 WORDS)
<p>Schedule 1 – Imposing conditions on registration</p> <p>An ESOS agency will decide whether to impose, vary or remove conditions on a provider’s registration at any time during that registration.</p>	Support	<ul style="list-style-type: none"> • The University supports the notion that the ESOS agency may impose, vary or remove conditions at any time. Currently, this right applies only at the end of a registration period. The right to action <i>during</i> the registration period is supported to ensure that relevant action is performed in real time.
<p>Schedule 1 – Use of other relevant information</p> <p>Use of relevant information by the ESOS agency to assess applications for registration or reregistration or adding courses at locations where information has been received for other purposes but is relevant to the application under ESOS, for example registration under the TEQSA Act or NVETR Act.</p>	Support	<ul style="list-style-type: none"> • Relevant information from obtained other agencies such as the Department of Immigration and Border Protection (DIBP) to be used by the ESOS agency. Currently, there is little transparency about the transfer of information between relevant agencies on same issues. It would be useful for providers to know which agencies will in fact share information so as to avoid duplication for providers.
<p>Schedule 1 – Aligning registration periods</p> <p>Remove the minimum registration period and extend the maximum registration period to 7 years.</p>	Support	<ul style="list-style-type: none"> • Alignment of various registrations (institutional and CRICOS) is supported and will alleviate administrative burden for providers. Relevant sections of the National Code will also require updating as a result. • As a consequence, providers should be alerted to any change to periods for external audits (Currently required once every 5 years).

PROPOSED MEASURES	SUPPORT/DO NOT SUPPORT/NEUTRAL	COMMENTS (MAXIMUM 300 WORDS)
<p>Schedule 1 – Extension of registration</p> <p>The ESOS agency may extend a provider’s registration, using a risk management approach when making the decision, for the purpose of aligning domestic and international registrations.</p>	Support	<ul style="list-style-type: none"> • This concept is fully supported.
<p>Schedule 1 – Exemptions for certain providers</p> <p>Continue to exempt certain providers from some ESOS Act requirements (e.g. fit and proper person).</p>	Support	<ul style="list-style-type: none"> • No further comments to add.
<p>Schedule 1 – Continuation of a provider’s registration</p> <p>Allow providers to continue to teach students who had enrolled in a course before the registration expired, but clarify that the provider cannot recruit or enrol new students after the expiry date of its registration.</p> <p>If a provider applies to renew its registration, the registration will continue until the ESOS agency has made a decision on an application to renew a provider’s registration.</p>	Support	<ul style="list-style-type: none"> • Whilst the concept is supported, there is recognition that PRISMS is clunky and does not allow for extension eCoE’s to be issued by providers to students where programs can be taught out after the expiration of registration. • It is noted that this is not an inherent issue with providers but more related to system issues that need to be addressed to accommodate.

PROPOSED MEASURES	SUPPORT/DO NOT SUPPORT/NEUTRAL	COMMENTS (MAXIMUM 300 WORDS)
<p>Schedule 1 – Automatic suspension and cancellation of registration</p> <p>If an ESOS agency is no longer satisfied a registered provider is fit and proper, the provider’s registration is automatically suspended for all courses at all locations.</p> <p>Where a higher education or VET provider’s registration under domestic frameworks is cancelled, the provider’s CRICOS registered courses will automatically be cancelled.</p> <p>For schools, if approval of the school by a state or territory ceases, CRICOS registered courses are automatically cancelled.</p>	Support with comments	<ul style="list-style-type: none"> • Whilst it is recognised that public universities will be less affected by this amendment, the theme provides consistency across the board to all education providers. • The automatic cancellation of CRICOS registration where registration is cancelled under domestic frameworks would appear to be ominous.
<p>Schedule 1 – Authorised officer</p> <p><i>‘Authorised officer’</i> replaces <i>‘authorised employee’</i> consistent with the TEQSA Act and NVETR Act.</p>	Neutral	<ul style="list-style-type: none"> • No comment to make

PROPOSED MEASURES	SUPPORT/DO NOT SUPPORT/NEUTRAL	COMMENTS (MAXIMUM 300 WORDS)
<p>Schedule 1 – Breaches of ELICOS Standards or Foundation Program Standards</p> <p>Enforcement action may be taken by an ESOS agency for a breach of the ELICOS Standards or Foundation Program Standards.</p>	Support	<ul style="list-style-type: none"> • No comment to make
<p>Schedule 1 – Publication of enforcement actions</p> <p>An ESOS agency may publish results of enforcement and monitoring actions taken (in a way set out by legislative instrument).</p>	Neutral	<ul style="list-style-type: none"> • No comment to make

PROPOSED MEASURES	SUPPORT/DO NOT SUPPORT/NEUTRAL	COMMENTS (MAXIMUM 300 WORDS)
<p>Schedule 2 – Internal review of certain decisions</p> <p>Providers will be allowed to seek an internal review of some decisions made by the relevant ESOS agency where previously only appeal to the Administrative Appeals Tribunal was available.</p> <p>Appealable decisions include:</p> <ul style="list-style-type: none"> • refusal of initial registration • refusal of registration renewal • refusal to add a new course at a location • decision to take enforcement action against a registered provider under section 83 of the ESOS Act. 	Support	<ul style="list-style-type: none"> • Process is consistent with alternative dispute resolution techniques; • Recommend that the internal review within the ESOS Agency be undertaken by a separate by a dedicated unit to ensure transparency of process. Without this, any legislative reference might serve as a token gesture.

PROPOSED MEASURES	SUPPORT/DO NOT SUPPORT/NEUTRAL	COMMENTS (MAXIMUM 300 WORDS)
<p>Schedule 3 – Ministerial directions</p> <p>The Minister responsible for the administration of the ESOS Act will be able to direct an ESOS agency in the performance of its functions.</p> <p>The Minister must not, however, give a direction about or in relation to a particular provider or registered provider.</p>	<p>Support with provisions</p>	<ul style="list-style-type: none"> • Concerns exist in relation to transparency. How does a Minister provide direction without any indication as to where he/she is obtaining advice from? Transparency must exist in relation to the source(s) of the Ministers advice.
<p>Schedule 4 – TPS Director to issue production notices</p> <p>Allow the TPS Director to issue production notices, consistent with powers given to ESOS agencies.</p> <p>The TPS Director will be assisted by a ‘TPS officer’, who will have defined roles and responsibilities.</p>	<p>Support</p>	<ul style="list-style-type: none"> • It is recommended that a Production Notice be issued by the TPS Director as a last resort measure.

PROPOSED MEASURES	SUPPORT/DO NOT SUPPORT/NEUTRAL	COMMENTS (MAXIMUM 300 WORDS)
<p>Schedule 4 – TPS Director recommendation to ESOS agency</p> <p>The TPS Director can make a recommendation to an ESOS agency that the agency take enforcement action under section 83(1A) of the ESOS Act.</p> <p>The ESOS agency must consider the TPS Director’s recommendation when deciding to take action against a provider.</p>	Neutral	<ul style="list-style-type: none"> • No further comment to make.
<p>Schedule 5 – Student default reporting</p> <p>Remove the requirement on providers under section 47C of the ESOS Act to report a student default to the Secretary and the TPS Director.</p> <p>Where there has been a student default, providers must still report that they have met their obligations to students in cases of visa refusal or where there is no compliant written agreement between the provider and the student.</p>	Support	<ul style="list-style-type: none"> • This change is fully supported.

PROPOSED MEASURES	SUPPORT/DO NOT SUPPORT/NEUTRAL	COMMENTS (MAXIMUM 300 WORDS)
<p>Schedule 5 – Information about accepted students (including student course variation)</p> <p>Reporting period extended to be within 31 days, except where the student is under 18 years of age, which requires reporting within 14 days.</p>	Support	<ul style="list-style-type: none"> • Whilst this proposal does not eliminate the reporting burden, it postpones the efforts to a later period of time and allows for consistency of reporting generally.
<p>Schedule 5 – Changes to the collection of tuition fees</p> <p>Students or third parties will be allowed to pay more than 50 per cent of tuition fees up front if:</p> <ul style="list-style-type: none"> • a request is made to do so (by the student or a third party), or • the course has a duration of 24 weeks or less (is a short course). <p>Removal of the restriction on the subsequent collection of fees (which also relates to a study period).</p>	Support with comments	<ul style="list-style-type: none"> • Scope should be given to education providers to limit payment amounts. Whilst the concept will serve ELICOS and small vocational education providers, the ability for students to deposit substantial sums into their university accounts may attract unscrupulous transactions and avoid the scrutiny of other Australian agencies tracking fraud.

PROPOSED MEASURES	SUPPORT/DO NOT SUPPORT/NEUTRAL	COMMENTS (MAXIMUM 300 WORDS)
<p>Schedule 5 – Removal of designated account requirement</p> <p>Remove the specific provisions requiring a designated account in which all non-exempt providers must hold tuition fees paid by students prior to commencement of a course.</p>	Neutral	<ul style="list-style-type: none"> No further comments to add.
<p>Schedule 5 – Removal of the definition of ‘study period’</p> <p>Remove the definition of and references to a ‘study period’ and associated requirements.</p>	Support with comments	<ul style="list-style-type: none"> The removal of the reference to ‘study period’ is endorsed however the consequence of doing so results in a compromise of Standard 9.4 of The National Code where the measure of distance/on-line study per ‘study period’ currently exists. As a result, greater clarification will be required in relation to Standard 9.4 of the National Code.
<p>Schedule 5 – Reminder notices for late payments of charges</p> <p>Providers to be sent reminder notices for the annual registration charge where they have failed to pay by the due date and automatic suspension would occur.</p> <p>New provisions are consistent with current arrangements for late payments of the TPS Levy.</p>	Support	<ul style="list-style-type: none"> No further comments to add.

ADDITIONAL COMMENTS ON THE BILL (MAXIMUM 500 WORDS)

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EDUCATION SERVICES FOR OVERSEAS STUDENTS (REGISTRATION CHARGES) AMENDMENT (STREAMLINING REGULATION) BILL 2015

PROPOSED MEASURES	SUPPORT/DO NOT SUPPORT/NEUTRAL	COMMENTS (MAXIMUM 300 WORDS)
<p>Schedule 1 - Charging arrangements</p> <p>As a result of removing the two-year minimum registration period, the entry to market arrangements are clarified to ensure a new provider is not charged twice if its initial registration period is less than two years and it seeks renewal.</p>	<p>Neutral</p>	<ul style="list-style-type: none"> • Irrelevant to the University of Sydney.