

Sen. Tony Sheldon
Chair
Standing Education & Employment Legislative Committee
PO Box 6100 – The Senate
Parliament House
CANBERRA ACT 2600

By email: eec.sen@aph.gov.au

Dear Senator

Re: Education Services for Overseas Students Amendment (Quality and Integrity) Bill 2024 [Provisions]

The Council of Small Business Organisations Australia (**COSBOA**) welcomes the ability to comment on the *Education Services for Overseas Students Amendment (Quality and Integrity) Bill 2024 (the Bill)*. COSBOA is the voice representing Australia's 2.5 million small businesses.

Small businesses are the backbone of the Australian economy. They provide employment and training opportunities, contribute richly to the diversity and culture of our local communities, and ensure the Australian economy continues to grow. Staff shortages and a decreasing influx skilled migrants and international students following COVID-19 have heavily impacted the productivity of small business workforces in recent years.

Having canvassed our membership, the view is that the outcomes of this Bill will be detrimental to small businesses not only in the international education sector, but also more broadly.

The number of international students coming to Australia must align with a well-considered migration strategy to ensure the sustainability of education infrastructure and broader social outcomes. The approach outlined in the Bill seems odd in this context, as it may introduce arbitrary limits or restrictions, potentially undermining Australia's global competitiveness and the long-term benefits of skilled migration tied to education pathways.

Regulatory Duplication and Overreach

The proposed requirements in the *Education Services for Overseas Students Amendment (Quality and Integrity) Bill 2024 (Cth)* represent a clear case of regulatory overreach. CRICOS-registered providers are already subject to broad obligations under the *Education Services for Overseas Students (ESOS) Regulations 2019*, including extensive record-keeping and reporting on agent details. Introducing these new requirements suggests either a recognition by the Australian Government of regulatory failure by ESOS agencies or a lack of understanding of how the existing system is designed to operate and be enforced.

Regardless of the underlying cause, these amendments appear to be a poorly conceived solution that could cause more harm than good to the international education sector, particularly for small businesses. The additional regulatory burden will likely hinder the operations of independent providers, adding complexity without clear benefit. Small businesses that play a key role in international education could face significant challenges in compliance, impacting their ability to contribute effectively to the sector.

Small Businesses in the International Education Sector

Independent tertiary education providers, the vast majority of which are small businesses, play a crucial role in supporting Australia's international education sector, accounting for 57.4% of the 975,229 international student enrolments in 2023. This includes an impressive 96.6% of enrolments in skills training programs and 19.0% in higher education. The 559,704 international students enrolled with independent providers in 2023 set a new record, contributing significantly to the sector's overall growth.

Despite this achievement, the total number of international student enrolments in 2023 was only 2.4% higher than pre-pandemic levels in 2019. The steady recovery highlights the resilience of independent providers, the majority of which are small businesses. These businesses drive international student engagement, delivering high-quality skills training and education, which is vital to Australia's global reputation and economic strength in the education sector.

Definition of Migration Agent

The proposed new definition of migration agent in section 6BA significantly broadens the current scope to include 'providing information or advice in relation to enrolment and otherwise dealing with students.' This expanded definition seems to encompass not just education agents, but potentially parents, friends, and others connected to prospective students. It is unclear what specific issue the Australian Government aims to address with this change, but it introduces numerous challenges for various stakeholders, particularly small businesses and independent providers in the international education sector.

For instance, the limited exemptions for permanent employees do little to ease concerns. This broader definition may inadvertently capture COSBOA Members that include member-based organisations and industry associations that collaborate onshore or offshore. These changes could complicate the role of small businesses in supporting international students and hinder their engagement in critical skill areas such as defence and infrastructure.

Disclosure Of Commissions

The proposed section allows the Secretary to request information from any CRICOS-registered provider regarding agent commissions given by or on behalf of the provider to one or more agents over a specific period. Given that some providers work with over 100 agents, the expanded definition of an agent could make compliance with these requests nearly impossible, particularly for small businesses. The administrative burden for small businesses and independent education providers in trying to meet these requirements would be overwhelming and likely untenable.

Additionally, the requirement to report information for a potentially retrospective period, such as 2017-2020, adds further complexity. Providers may be required to report under new agent definitions that didn't apply during that time, making compliance even more difficult. Failure to meet these obligations results in a strict liability penalty of \$18,780 per instance. To address these challenges, a broad consultation with sector participants is essential, followed by clear guidance through a Legislative Instrument or Regulation to ensure transparency and certainty for all involved.

Domestic Delivery Required Before Applying for CRICOS Registration

The Bill aims to ensure that providers must deliver courses to domestic students in Australia over two consecutive years to meet the requirements for CRICOS registration. While COSBOA supports the overall intent of this provision, it raises concerns about the potential for the amendment to undermine broader integrity efforts within the education sector. Exemptions for certain providers like schools and those offering only Foundation or ELICOS programs may create implementation challenges.

COSBOA emphasises that while the amendment's purpose is understood, several drafting issues need clarification. Specifically, terms in the Bill like "students in Australia other than overseas students" and "one or more courses" require clearer definitions to avoid confusion for both providers and regulators. Additionally, certain provider types may face challenges due to government-imposed operational requirements, which could limit market access for new independent providers entering the sector.

Broadly, COSBOA warns that the lack of clarity in the proposed Bill may cause instability and uncertainty for high-quality education providers. This uncertainty could negatively impact the sector, leading to market restrictions and employment instability. COSBOA urges the Committee to address these concerns to ensure a more precise and intelligible legislative framework that benefits all stakeholders.

Part 5 of the Bill proposes the mandatory cancellation of courses if a CRICOS provider does not deliver a course to an international student within a twelve-month period. This is intended to address integrity risks posed by dormant providers using their registration for non-genuine purposes. However, COSBOA highlights the misunderstanding of the sector's diversity, as it assumes non-delivery to student visa holders automatically implies nefarious activity, which may not be the case.

Automatic CRICOS Course Cancellation

The Bill's provisions are problematic, especially for providers offering multiple courses across various locations. If they fail to deliver a course at one location, all their CRICOS-registered courses could be automatically cancelled. This presents significant risks for reputable providers working with international partners, as they may take student cohorts every fourteen to eighteen months, resulting in unintended course cancellations. Such outcomes could damage Australia's international reputation and harm business relationships.

At least one COSBOA member has expressed concerns to the Department, emphasising the lack of consultation with the sector and the automatic nature of these provisions,

which reduce oversight and create uncertainty for students. COSBOA opposes the automatic cancellation mechanism as it lacks transparency, denies engagement with affected stakeholders, and adds burdensome regulatory requirements. These provisions highlight the need for exposure drafts to allow for better stakeholder consultation and feedback in the legislative process.

Student Caps and Workforce Shortages

Capping international students will severely impact small businesses facing workforce shortages, particularly in hospitality, tourism, and agriculture industries. These businesses rely on international students to fill crucial roles, especially during peak periods, and reduced access to this workforce will exacerbate staffing challenges, harming their operations and growth.

First and foremost, COSBOA acknowledges that international students are in Australia on student visas, with their primary commitment being to their studies. It is essential that their academic progress remains their top priority, and all efforts should be made to support them in maintaining their educational focus while they are in the country.

However, many international students face the high cost of living in Australia, and part-time work becomes necessary to meet these financial challenges. COSBOA members are dedicated to ensuring that international students are protected under employment law and are not subjected to unfair work conditions, recognising their dual commitments to work and study.

International students are also vital to the workforce in industries like tourism, hospitality, and agriculture, where staff shortages are common. Their participation helps businesses operate efficiently and meet customer demand, particularly in areas heavily reliant on seasonal workers, offering much-needed support to these sectors.

Over the Christmas and New Year period, when students are not engaged in their studies, international students play a critical role in meeting workforce demand. This is a time when businesses, especially in tourism and hospitality, face significant staff shortages. By allowing students to work during these breaks, they can contribute meaningfully to the economy while benefiting from additional work opportunities.

COSBOA submits that Issuing an exposure draft of the legislation before presenting the Bill to Parliament would have allowed our members to provide valuable insights to the Australian Government into how the proposed caps on international students would impact small businesses. Engaging stakeholders early in the process would have enabled the government to explore more effective ways to achieve policy objectives while minimising negative consequences for sectors reliant on international student labour. This collaborative approach would ensure the legislation is both well-informed and aligned with the realities faced by businesses.

We welcome any further consultation the Committee may wish to undertake on the proposed Bill.

Yours faithfully

Kind regards



Luke Achterstraat
Chief Executive Officer
COSBOA