



## **Education Services for Overseas Students (ESOS) Review University of Melbourne Submission**

Department of Education, Skills and Employment

**April 2022**

## Executive Summary

The University of Melbourne welcomes the opportunity to respond to the Department of Education, Skills and Employment's "Education Services for Overseas Students (ESOS)" Review.

The ESOS Framework – consisting of the ESOS Act and associated instruments – plays a key role in protecting students who come to Australia to study and in safeguarding the reputation of Australia's international education sector. The Review of this Framework is timely. The pandemic has had a massive impact on the number of students coming to Australia to study, and on the delivery of course programs to international students. It is appropriate that the Framework be reviewed to ensure that it helps maintain Australia's reputation as a leading study destination, and that it remains fit-for-purpose in view of the different operating context post-COVID.

While we welcome the Review, we are concerned that elements of the Discussion Paper address matters that fall outside of the remit of the ESOS Framework. One of the issues for consideration raised in the Discussion Paper is 'expansion and diversification' of the international sector: something which the Government has elsewhere identified as one of its priorities for the university sector. While ready to work with the Government to help advance this aim, the primary role of the ESOS Framework is to protect the interests of international students and the sector's reputation, not to diversify Australia's intake of students. Similarly, the ESOS Framework is not intended to achieve broader policy aims such as an alignment between international enrolments and Australia's labour shortages. The Review by definition should be limited to the Framework - its objectives and remit.

The following comments address each of the six issues for consideration identified in the Discussion Paper, along with a small number of additional issues. A key area for potential reform concerns the current restrictions on overseas students undertaking work-integrated learning activities while studying in Australia, and impediments to higher degree by research students pausing their candidature to take up an industry internship. These arrangements constrain the skills outcomes that Australian programs deliver for international students and diminish our competitiveness as a study destination. The Review provides an opportunity to address this.

The University would welcome the opportunity to further discuss these matters with the Government.

For further information, or to discuss the submission, Professor Michael Wesley, Deputy Vice-Chancellor (International) can be contacted at [dvc-international@unimelb.edu.au](mailto:dvc-international@unimelb.edu.au).

# Recommendations

## Expansion and diversification

The University of Melbourne recommends that the Australian Government:

- consider measures other than reform of the ESOS framework to help support international student diversification, including:
  - designated education portfolio postings in target markets.
  - support for labour-market analysis of relevant source countries.
  - increasing the number of scholarships for inbound and outbound students.
- consider allowing greater flexibility for onshore international students to study more of their course online.

## Meeting skills needs and graduate workplace readiness

The University of Melbourne recommends that the Australian Government:

- increase post-study work rights to an automatic four years for all Bachelor and postgraduate level graduates.
- aim for stability in the Skilled occupation list.
- amend the ESOS framework to exclude all WiL units from a student's maximum permitted work allocation of 40 hours per fortnight.
- amend the ESOS framework to extend the visa end-date by up to 12 months for international HDR students who pause their candidature to undertake an internship.

## Supporting the quality of third-party relationships

The University of Melbourne recommends that the Australian Government:

- support informed decision-making and risk assessments concerning third-party relationships by improving access to data already available to Government on agent performance.
- require written agreements between institutions and agents to improve accountability and protection for students.

## Course transfers

The University of Melbourne recommends that the Australian Government:

- ensure proper enforcement of the requirement for students to be released by the primary institution to facilitate a transfer within the restricted period.
- remove existing provisions for concurrent study enrolments.

## Written agreements

The University of Melbourne recommends that the Australian Government ensure that any model agreements developed by the Government are **not** mandated but are made available for voluntary adoption.

## English language

The University of Melbourne recommends that the Australian Government continue to monitor English language requirements through the TEQSA/ASQA audit process, rather than through the ESOS Framework.

## Additional issues

The University of Melbourne recommends that the Australian Government:

- consider revisions to the use of 'study period' in specifying the requirements.
- permit institutions to provide advice to students relating to post study work visas.

# Response to Consultation Paper

## Expansion and diversification

The University of Melbourne supports the aim of diversifying Australia's international student intake, by seeking to cultivate demand from historically under-represented source countries. However, reforming the ESOS Act is not the most appropriate mechanism to encourage international student diversification. The purpose of the ESOS Act is to protect the interests of international students on student visas and to protect the reputation of Australia's education sector. While embracing a strategic objective to achieve a more diverse mix of international students, it is not the role of the ESOS Act to advance this objective.

Nor does the current ESOS framework represent a major barrier to diversification. As emphasised in the University's submission to DESE's recent 'International Student Diversity at Australian Universities' consultation<sup>1</sup>, the challenges to diversification are largely market related. China and India contribute a large share of overseas enrolments at Australian universities because they are the source of much of the global demand for higher education. They each make up around 20 per cent of the world's population, and China's rapidly growing middle class is fuelling demand for places at Australia's globally recognised universities. Notwithstanding this point, there is an opportunity for the Australian Government to partner with universities to increase student numbers from currently under-represented source countries. Rather than legislative reforms, Government-led measures may include designated education portfolio postings in target markets, support for labour-market analysis of relevant source countries, and an increase in scholarships for inbound and outbound students. These potential interventions are discussed in greater detail in the University's submission to the International Student Diversity consultation.

## Online and offshore delivery

The Discussion Paper identifies growth in online and offshore delivery as a potential source of greater diversity in Australia's international education sector, noting the rapid growth in online and offshore education in global terms and the relatively small contribution that online and offshore education makes to Australia's overseas enrolments. However, the Paper appears to conflate different cohorts of students with those who require visas to study, hence captured under the ESOS Act. The pandemic has required different forms of delivery for enrolled International students (with or applied for student visas). This has contributed to a blurring in language used. Students who study fully offshore programs through TNE should continue to be considered separately. Further work on definitions is required to provide suitable response to the extent of online and percentages of any offshore study for international students with student visas.

In relation to the amount of online study currently approved for students under the ESOS Act, Standard 8 sets out not more than one-third of the units can be online or distance learning:

8.19 A registered provider must **not deliver more than one-third of the units (or equivalent)** of a higher education or VET course by online or distance learning to an overseas student

8.20 A registered provider must ensure that in each compulsory study period for a course, the overseas student is studying **at least one unit that is not by distance or online learning**, unless the student is completing the last unit of their course (emphasis added).

We suggest that the Government consider a greater percentage than currently allowed for in Section 8. There may be a case for permanent changes that allow greater flexibility for onshore international students to study more of their course online. We note, however, that it is not clear how this would help to achieve greater diversification in Australia's student intake.

---

<sup>1</sup> [https://about.unimelb.edu.au/\\_data/assets/pdf\\_file/0027/337761/UoM-Submission-International-Student-Diversity-at-Australian-Universities\\_Final.pdf](https://about.unimelb.edu.au/_data/assets/pdf_file/0027/337761/UoM-Submission-International-Student-Diversity-at-Australian-Universities_Final.pdf)

In principle, the University welcomes Government-led initiatives to support providers seeking to expand programs delivered either offshore or wholly online. Even so, we note again that the ESOS Framework is of limited relevance here, since this framework applies to onshore students in possession of a visa. Potential policy interventions need to be considered in light of the current impediments to expanding growth in offshore and online education. The [Australian Strategy for International Education: 2021 – 2030](#) flagged the possibility of post-study work rights for those students who are interested in an education from an Australian higher education provider, but who are unable to travel to Australia to take up an onshore offering.<sup>2</sup> The University would welcome further discussion of measures that would assist the sector to capitalise on potential demand for programs delivered offshore or wholly online.

#### **Recommendations**

The University of Melbourne recommends that the Australian Government:

- consider measures other than reform of the ESOS framework to help support international student diversification, including:
  - designated education portfolio postings in target markets.
  - support for labour-market analysis of relevant source countries.
  - increasing the number of scholarships for inbound and outbound students.
- Consider allowing greater flexibility for onshore international students to study more of their course online.

#### **Meeting skills needs and graduate workplace readiness**

The Discussion Paper notes that “there are limited incentives for international students to choose courses of study that align with Australian skills needs” and suggests that providing students with more information might help to attract students to fields facing skills shortages. It is important to note that the main reason that there is little incentive for students to enrol in courses that address Australia’s skills needs is that most international students do not intend to remain in Australia after their studies. While there is a significant number who remain here following graduation, the majority are not seeking to do so. A 2018 report from the Treasury and Department of Home Affairs found that between 2000/01 and 2013/14, the share of onshore students that eventually transitioned to permanent residence was only around 16 per cent.<sup>3</sup> Since most international students return to their home countries after completing their studies, Australia’s skills needs are largely irrelevant to their study choices.

Notwithstanding this point, the Discussion Paper rightly recognises the contribution that international students make to Australia’s workforce, either by working while studying or by remaining in Australia following graduation. There are opportunities to better capitalise on the potential contribution that international students make to Australia’s skills mix, and to ensure that the learning outcomes promoted through work-based learning are available to international students. We identify policy reforms relating to post-study work rights, to work-integrated learning, to internships for HDR students, and to the rules on the provision of visa advice, each of which would improve the skills outcomes delivered by Australia’s international education sector and add to Australia’s attractiveness as a study destination.

---

<sup>2</sup> See p.20.

<sup>3</sup> *Shaping a Nation: Population growth and immigration over time*, p.21.  
<https://research.treasury.gov.au/external-paper/shaping-a-nation>

### ***Post-study work rights***

The *Australian Strategy for International Education 2021-2030* included a commitment to increase the length of temporary graduate visas from two to three years for Masters by coursework students, along with a suite of other measures that expand the work rights for higher education and vocational education students. While this is a welcome change, there is a case for further expanding post-study work rights, to help address the labour shortages and to add to Australia's competitiveness as a destination for international students. Consideration should be given to increasing post-study work rights to an automatic four years for all Bachelor and postgraduate level graduates.

We also recognise the role that Australia's Skilled occupation list plays in managing the intake of migrants intended to meet gaps in Australia's labour market, and in influencing the decisions of prospective international students. While it is of course necessary to review and update the list in response to changing market conditions, a level of stability in the list is desirable. Australia's attractiveness as a destination for international students will be undermined where there is little confidence that currently listed occupations will remain on the list in subsequent years.

### ***Work-integrated Learning***

Although currently there is greater flexibility, the upper limit of 40 hours' work per fortnight for visa holders impacts the extent to which they can undertake work-integrated learning opportunities as part of their study program. While WiL units that are core subjects within the student's degree are not counted as part of the student's 40 hours per fortnight, elective WiL units are counted. As the Discussion Paper indicates, this regulatory constraint stands in the way of valuable WiL opportunities for international students. Regardless of whether WiL units are undertaken as an elective or as a core unit, there is clear evidence that they deliver considerable benefits to the relevant students. Preventing international students from engaging in WiL by including the relevant activity in the number of hours that a student works effectively limits the learning outcomes delivered by Australian degree programs. It also limits the contribution that international students make to meeting Australia's skills needs, noting that some students will choose to forego paid work in order to enrol in WiL units. We also recommend that grants to support WiL should be permitted and should not be included as "income" for tax purposes.

### ***Internships for HDR students***

The ESOS Framework prevents many international higher degree by research (HDR) students from taking up internship opportunities within their PhD or Masters program. Visas for HDR students provide a time-based allocation for students to complete their qualification. The visa settings do not allow for students to pause their candidature (and extend the end-date of their visa) to take up an internship in industry or another external organisation.

This is a significant flaw in the visa settings. The Australian Government has recently made a series of policy interventions intended to increase the number of research students undertaking internships with industry, including [changes](#) to the Research Training Program allocation formula that aim to incentivise universities to place more PhD students in industry internships, and the inclusion of HDR students undertaking internships as one of the metrics in the new [National Priorities and Industry Linkages Fund](#) (NPILF) program. While industry-embedded internships help to facilitate knowledge-transfer and to utilise the skills delivered by Australia's research training system, these benefits are effectively forfeited for HDR students, who make up roughly 37 per cent of total HDR enrolments.<sup>4</sup> This can be addressed by extending the visa end-date by up to 12 months for international HDR students who pause their candidature to undertake an internship.

---

<sup>4</sup> Department of Education, Skills and Employment, *Higher Education Statistics* (U-Cube). <http://highereducationstatistics.education.gov.au/>

### **Recommendations**

The University of Melbourne recommends that the Australian Government:

- increase post-study work rights to an automatic four years for all Bachelor and postgraduate level graduates.
- aim for stability in the Skilled occupation list.
- amend the ESOS framework to exclude all WiL units from a student's maximum permitted work allocation of 40 hours per fortnight.
- amend the ESOS framework to extend the visa end-date by up to 12 months for international HDR students who pause their candidature to undertake an internship.

### **Supporting the quality of third-party relationships**

The University of Melbourne broadly supports the comments made in the Universities Australia submission relating to third-party relationships. Australia's higher education providers have well established frameworks for managing relationships with agents, including extensive mechanisms in place to monitor agent performance. Institutions that use agents should expect to invest in compliance activities: this is part of the cost of recruiting international students. Having said this, a considered approach is needed in the context of potential new regulations. There is a risk that this will impose additional administrative costs on the sector without improving outcomes for students.

Government efforts to support quality relationships between providers and agents should focus on transparency and improved access to data held by government. For example, while the 2017 ESOS reforms gave providers improved access to information on agent performance, access remains limited to data relating to agents with whom the relevant provider currently engages. The lack of access to performance data relating to agents engaged by other providers impedes informed decision-making and risk assessments concerning possible new third-party relationships. There is an opportunity for improved data collection and sharing through the Provider Registration and International Student Management System (PRISMS), covering agent performance and any identified offences committed by agents. Noting commercial considerations, the University does not support making this data publicly available.

It has been best practice in the sector for many years for institutions to have written agreements with all agents, even where the institution is approached directly by the agent. This should be a basic minimum requirement to protect students and to ensure institutions are taking responsibility for the actions of (their) agents.

### **Recommendations**

The University of Melbourne recommends that the Australian Government:

- support informed decision-making and risk assessments concerning third-party relationships by improving access to data already available to Government on agent performance.
- require written agreements between institutions and agents to improve accountability and protection for students.

### **Course transfers**

The requirement for students to be released by the primary institution to facilitate a transfer within the restricted period needs proper enforcement. While we recognise that flexibility for students is

important, allowing a new Confirmation of Enrolment (CoE) without a release from the primary institution undermines the intent of the ESOS Framework to prevent providers from actively recruiting students within the restricted period.

We also argue that the existing provisions for concurrent study enrolments should be removed. As indicated in the Discussion Paper, there is no clear rationale or need for concurrent study provisions within the current Framework.

#### **Recommendations**

The University of Melbourne recommends that the Australian Government:

- ensure proper enforcement of the requirement for students to be released by the primary institution to facilitate a transfer within the restricted period.
- remove existing provisions for concurrent study enrolments.

### **Written agreements**

The University acknowledges the importance of written agreements in providing clarity to students and in giving effect to the student protections contained in the ESOS framework. The Discussion Paper notes that there are cases where written agreements fail to include information that is required under the National Code, and other cases where agreements contain clauses that are in breach of Australian Consumer Law. It raises possible model agreements as a means of improving the quality and consistency in the written agreements used in the sector.

The University of Melbourne supports the proposed development optional draft clauses or model written agreements. This will support the quality and consistency of these agreements, offer greater clarity to providers on the requirements under the National Code and Australian Consumer Law, and reduce the administrative costs for smaller providers in need of guidance in the drafting agreements.

However, we emphasise that any model agreements be made available for voluntary adoption rather than being made mandatory. This will allow for a balance between consistency in agreements offered across the sector and provider autonomy and flexibility. It is important to note that a significant degree of variation between providers is both inevitable and appropriate, given the differing institutional policies and services offered to students. Mandating agreements will impose an administrative burden on the sector and impede best practice where providers have independently developed template agreements that are fit-for-purpose.

#### **Recommendations**

The University of Melbourne recommends that the Australian Government ensure that any model agreements developed by the Government are **not** mandated but are made available for voluntary adoption.

### **English language**

The University acknowledges concerns outlined in the Discussion Paper relating to the importance of students possessing the requisite English language skills to succeed in their intended program of study. While it is appropriate that institutions be accountable for ensuring that incoming students are sufficiently proficient in English, this should continue to be monitored as part of the TEQSA/ASQA audit process rather than through the ESOS Framework. This issue goes beyond international students, and therefore should be considered as part of the overall regulation of providers and their degree programs.

**Recommendations**

The University of Melbourne recommends that the Australian Government continue to monitor English language requirements through the TEQSA/ASQA audit process, rather than through the ESOS Framework.

**Additional issues*****Definition of 'study period'***

Consideration should be given to revising the definition of 'study period', with a view to increasing the flexibility of options for students to utilise non-traditional study periods e.g. summer and winter semesters. The existing definition is based on the traditional semester study pattern. This is out of step with current practice, in which teaching is increasingly delivered outside of standard semesters. Rather than using the study period to specify a student's enrolment requirements, an alternative approach is to use average the load over the duration of a degree program. This would facilitate greater flexibility and better accommodate online study options.

***Visa advice***

Under the *Migration Act*, education institutions are prohibited from providing visa advice on post study work visas. Consequently, many students seek out the services of migration agents, adding to the cost of applying for a post-study work visa and leaving some students vulnerable to exploitation (i.e. paying for services they don't need). Since for qualified students the post-study work visa application process is relatively straightforward, education institutions should be supported to help guide their students through this process. This would assist students in moving more quickly and safely into work after study.

**Recommendations**

The University of Melbourne recommends that the Australian Government:

- consider revisions to the use of 'study period' in specifying the requirements.
- permit institutions to provide advice to students relating to post-study work visas.