

Submission to the
Senate Education
and Employment
Legislation
Committee

July 2024



THE UNIVERSITY OF
MELBOURNE

ESOS Amendment (Quality and Integrity) Bill 2024

Executive Summary

The University of Melbourne welcomes the opportunity to respond to the Senate Education and Employment Legislation Committee on the *Education Services for Overseas Students Amendment (Quality and Integrity) Bill 2024*.

Australia's international education sector has been a cornerstone of the nation's economy, representing its fourth-largest export and generating \$47.8 billion in 2023. This revenue included \$30.5 billion spent on goods and services within the broader economy, bolstering local businesses and supporting 250,000 jobs nationally. International students add to the diversity on campus and in our communities and provide a workforce for local businesses. In addition, international education has significant soft diplomacy value, with many of our alumni becoming leaders in the region and acting as ambassadors for Australia once they return home.

The University welcomes the integrity measures contained in the Bill (Parts 1-6) as they are necessary to protect students and maintain Australia's reputation as a high-quality education destination. However, the University strongly opposes the measures in the Bill that would grant the Minister broad powers to cap enrolments and cancel or suspend the registration of courses deemed to be low priority (Parts 7-8). The rationale for these measures is flawed and their implementation could harm both international and domestic students, jeopardise the sector's reputation and long-term sustainability, and lead to significant job losses. International education provides much needed resourcing for Australia's underfunded universities, which also benefits domestic students. At a time when the Accord is seeking a massive increase in the number of Australians gaining a post-secondary education, this is not the time to be cutting resources to the sector.

Flawed Assumptions Underlying the Caps

The Bill suggests that international student enrolments should better align with Australia's skills needs. Yet only 16% of international students remain in Australia post-graduation. For those who stay, there are established mechanisms like the skilled migration lists that already address skills alignment. Furthermore, the assumption that capping enrolments in certain courses will redirect demand to other courses is unfounded. The Job-Ready Graduates program demonstrated that such measures do not significantly alter student choices; international students will simply choose to study in a different country. Similarly, the idea that capping enrolments in metropolitan universities will boost regional university enrolments is flawed – most international students prefer to live in major cities. As a case in point, more than half of those enrolled at regional universities are studying at capital city campuses in 2022.

The narrative that international students contribute significantly to Australia's housing shortage is misleading. They constitute only 4% of renters nationwide and in many local government areas, they represent less than 1% of the rental market. The recent surge in international student numbers is a temporary anomaly, largely attributed to the pandemic's lag effects and analysts suggest it has peaked. The number of student visas granted has already decreased dramatically, with a 34% drop in March 2024 compared to the previous year. Penalising the sector and students for this short-term spike through the introduction of caps is therefore unnecessary.

Consequences for the Sector and the Australian Economy

The proposed legislation would empower the Minister to impose or alter enrolment caps with minimal notice, introducing significant uncertainty for universities. This unpredictable and inefficient approach is likely to reduce international student enrolments more than intended, leading to significant income losses, job cuts, and course cancellations as early as 2025. Reduced funding would hinder efforts to expand domestic tertiary attainment and boost research, as envisioned by the Universities Accord, noting that universities are already underfunded for teaching, infrastructure, and research. In fact, higher education expenditure as a share of total Australian government expenditure is at historic lows at just 1.6%, despite higher education attainment being at historic highs.

Caps may also negatively impact universities' credit ratings, as warned by S&P Global Ratings. Moreover, caps risk deterring investment in student accommodation. The long lead times required to develop large-scale accommodation projects requires predictability in forward estimates. The uncertainty created by fluctuating student numbers dictated by ministerial decisions will discourage investment.

The caps could have severe repercussions for Australia's GDP. In 2023, spending by international students accounted for more than half of the nation's economic growth. This means that curtailing this source of revenue could significantly harm the broader economy at a time when it is already experiencing softer growth.

Recommendations to the Committee

The University strongly recommends removing Parts 7 and 8 of the Bill entirely. If these Parts are retained, amendments should be made to ensure the Bill is workable, embeds procedural fairness and Ministerial accountability, and gives providers and students more certainty:

- 1) Remove the power for the Minister to cap specific courses - The power to cap international student numbers at the course level should be removed so students are free to choose what they study based on their interests, skills, and career plans.
- 2) Introduce principles the Minister must consider when applying caps - Noting the significant damage caps could have on providers, students, and the broader Australian economy, the legislation should include principles (e.g. necessity, proportionality) that the Minister must consider (and explicitly address) when applying caps.
- 3) Introduce a sunset clause - Noting the temporary nature of the problem Part 7 seeks to address, a review mechanism and sunset clause should be introduced.
- 4) Narrow the reasons why the Minister can automatically suspend or cancel course registration - To prevent overreach, the power to cancel the registration of courses should be limited to courses with systemic integrity issues.
- 5) Increase the notice requirements for caps - Caps should commence no earlier than 2026. Providers should be advised of caps 18 months before students commence and over a three-year rolling average to allow providers to plan accordingly. Additionally, the Minister should only be able to *increase* the cap by variation.
- 6) Increase the consultation requirements for caps - The legislation should require the Minister to consult with impacted providers before imposing a cap and require the Minister to provide reasons for imposing the cap.
- 7) Ensure that all caps must be made through legislative instruments that are disallowable - All caps should have to be made through legislative instruments that are disallowable by Parliament to ensure that caps are transparent, the Minister is accountable and decisions are subject to scrutiny.
- 8) Ensure that caps can only apply to commencing students - Caps should only apply in relation to international student commencements to provide greater certainty for providers and to ensure that providers are not perversely punished for high retention rates.
- 9) Provide additional flexibility for providers that exceed caps - The legislation should include allowances (e.g. a tolerance band) for providers that slightly exceed their caps, noting they cannot precisely control or predict student enrolments or commencements.
- 10) Ensure caps apply at the campus level - Caps imposed on providers in specific locations should apply at the campus level. This would mean that *all* campuses in a selected location are subject to the same conditions, regardless of main campus location.

- 11) Remove the link between additional enrolments above caps and the creation of more Purpose-Built Student Accommodation - The Minister should not consider the supply or creation of more student accommodation when setting caps, given the impracticality of these measures.
- 12) Refine the education agent definition - The education agent definition should be amended so that it excludes an overseas institution (for example, an exchange partner) that promotes study at an Australian institution under a partnership agreement.

The proposed international student caps pose a considerable threat to Australia's higher education sector, the economy, and the nation's global standing as a premier education destination. The University urges policymakers to reconsider these caps in favour of measures that preserve the integrity and sustainability of international education, ensuring that it continues to thrive and contribute positively to the Australian economy. The Government is pursuing the introduction of an Australian Tertiary Education Commission with powers to manage compacts with each university. This is the mechanism through which mission-based activity should be negotiated.

For further information or to discuss the submission, Professor Michael Wesley, Deputy Vice-Chancellor (Global, Culture and Engagement) can be contacted at michael.wesley@unimelb.edu.au and Professor Gregor Kennedy, Deputy Vice-Chancellor (Academic) can be contacted at gek@unimelb.edu.au.

What policy issue is the legislation trying to solve?

The legislation contains two main components, each with sub-components. The first component (Parts 1-6) relates to integrity within the international education sector. The measures outlined in the legislation respond to the Migration Strategy, the Nixon Review, and the Interim Report into International Education by the Joint Standing Committee on Foreign Affairs, Defence and Trade (JSCFADT). The Policy Impact Statement clearly articulates the problem: there is evidence of exploitation of overseas students in Australia, particularly in the private VET sector. Further, there is evidence that some in the sector have taken advantage of loosened migration and education settings to enable people to enter Australia for purposes beyond study.

This component of the legislation seeks to put in place formal mechanisms to prevent inappropriate conduct by providers. These include improving information-sharing about education agents, tightening fit and proper requirements for providers, and increasing registration requirements for providers offering courses to overseas students. The University strongly supports these measures. Indeed, the University made a [submission](#) to the 2022 Education Services for Overseas Students (ESOS) review calling for a range of measures, including greater transparency over education agent management.

The second component (Parts 7-8) relates to enrolment limits and automatic cancellation of course registration. The Explanatory Memorandum suggests that these are needed to “deliver sustainable growth over time.” The draft International Education and Skills Strategic Framework argues that “unmanaged growth in international education has seen a rise in integrity issues and threatened the sector’s social licence and Australia’s reputation.”¹ It notes allocations will be based on “the university’s supply of purpose-built student accommodation, and the contribution of enrolments to meeting Australia’s skills needs.”² The Policy Impact Statement does not address this component of the Bill. That means that, unlike the integrity measures, no data or evidence is provided to quantify these problems. Each of these is discussed below.

Sustainable growth

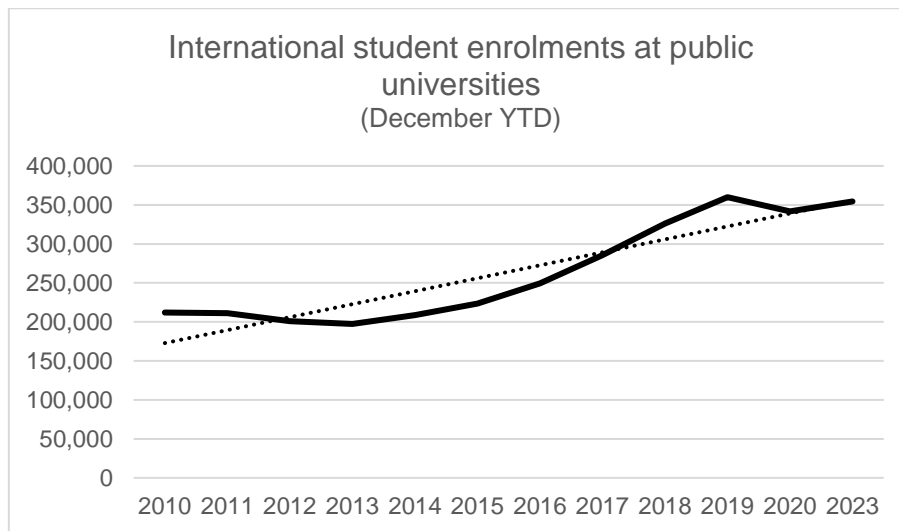
It is in universities’ interests to have sustainable growth in international student numbers over time. This has allowed universities to internationalise their campuses and plug large shortfalls in teaching, infrastructure, and research funding, which has improved the quality of delivery for domestic and international students. Most universities have developed diversification strategies to manage risks and grow in a sustainable, managed fashion.

In 2023, international student enrolments at public universities had almost recovered to pre-pandemic levels seen in 2019 (see below graph). Data from March 2024 suggests that year-to-date enrolments have now surpassed pre-pandemic levels (354,500 in March 2023 compared to almost 341,900 in March 2020, representing a 3.7% increase).³

¹ Department of Education. (2024). [Draft International Education and Skills Strategic Framework](#). p. 15

² Ibid. p.16

³ Department of Education. (2024). [International student monthly summary and data tables](#).



The number of international student visas granted has grown significantly post-pandemic, with over 300,000 higher education student visas granted in 2022-23, compared to roughly 175,000 in 2019-20.⁴ However, this figure reflects the pent-up demand from the pandemic years, as students deferred their studies or returned to Australia after studying offshore. This trend is not expected to continue as the number of student visas granted has already begun to drop off sharply since mid-2023 (see below graph). Between July 2023 and March 2024, student visa grants were down 34% compared to the same time a year ago.⁵ Treasury expects net overseas migration to have peaked in 2023.⁶

It must be noted that this growth over time has been supported by government policy. The *National Strategy for International Education 2025* set growth in Australia’s market share as a measure of success. It noted projections for onshore enrolments to grow by around 45% by 2025, arguing that “this growth presents significant opportunities.”⁷ Similarly, the *Australian Strategy for International Education 2021-2030* outlined the Australian Government’s intention to “work with the sector to ensure visa settings continue to support diversification and growth.”⁸ Post-pandemic, both the Albanese and Morrison Governments encouraged international students to return onshore for their studies and to fill workforce shortages, which supported economic recovery.

⁴ Department of Home Affairs. (2024). [Student visa and Temporary Graduate visa program report – December 2023](#).

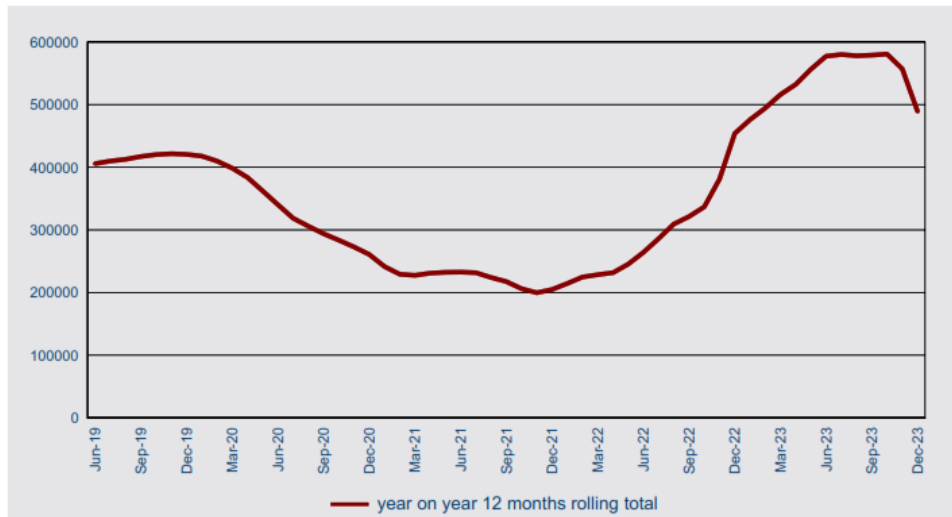
⁵ Department of Home Affairs. (2024). [Student visas granted at 2024-04-30](#).

⁶ Dr Steven Kennedy, Secretary of the Treasury, Commonwealth. (2024). *Budget Estimates (Hansard Proof Copy)*, Senate, 3 June 2024, p. 6.

⁷ Commonwealth Government. (2016). [National Strategy for International Education 2025](#). p. 7

⁸ Commonwealth Government. (2021). [Australian Strategy for International Education 2021-2030](#). p. 20

2.01 Number of student visa applications granted by month - year on year 12 months rolling total



Source: Department of Home Affairs, [Student visa and Temporary Graduate visa program report – December 2023](#)

Supply of student accommodation

International students make up only 4% of renters in Australia. In most local government areas, international students make up less than 1% of the rental market.⁹ In its interim report on international education (which is cited as evidence for this legislation), the JSCFADT made this point:

“[High cost of living and the availability of affordable housing] of course are issues right across the Australian community at present given the cost of living crisis confronting developed economies post-COVID and the Committee is concerned that international students are not unfairly scapegoated or blamed for broader pressures in the housing market. In aggregate, international students add enormously to Australia and their contribution to housing demand is modest as compared to the population at large, noting also the contribution of Purpose Built Student Accommodation to meeting demand.”¹⁰

Net migration does impact housing demand, but it is a small part of a broader picture (the Treasurer recently acknowledged that it adds to it “at the margins at best”).¹¹ For example, the Reserve Bank of Australia identified fewer people living in each household as a key driver of demand, as more older couples and singles live alone and preferences shift toward more living space per person. Meanwhile, supply of dwelling completions has trended down in recent years, constrained by supply chain disruptions and shortages of materials and skilled labour.¹²

Pushing universities to construct additional purpose-built student accommodation (PBSA) in order to enrol more students would only divert finite building materials and workers that are currently building domestic housing to instead build student-only accommodation. This is not necessarily the most efficient use of resources when housing supply is not currently meeting domestic demand. S&P Global noted that it is

⁹ Property Council of Australia. (2024). [International students not to blame for housing crisis](#).

¹⁰ Joint Standing Committee on Foreign Affairs, Defence and Trade. (2023). ‘Quality and Integrity – the Quest for Sustainable Growth’: *Interim Report into International Education*. p. 90-91.

¹¹ Rosie Lewis. (2024). [Budget 2024: Coalition will prioritise reducing international student numbers at Go8 universities to cut migration](#). The Australian.

¹² Reserve Bank of Australia. (2024). [Housing Market Cycles and Fundamentals](#).

unlikely universities will be able to meaningfully boost PBSA supply, in part due to the overstretched domestic construction industry.¹³

International student caps may also perversely lead to less growth in the (generally private) PBSA sector. Building largescale PBSA takes several years from conception to completion. For a university, or private investor, to invest in PBSA it will need to be certain about what its cap will be in, for example, 5 years' time if it does *not* build new accommodation, and what the cap will be if it *does*. As currently drafted, the Bill provides the Minister with the power to set caps, essentially with the stroke of a pen, meaning that certainty about future caps is impossible. This increases sovereign risk associated with PBSA. Thus, rather than incentivising universities and private companies to invest in student accommodation, the Bill creates so much uncertainty around future student numbers that it *disincentivises* investment.

Alignment with skills needs

The Bill argues that international student enrolments should be better aligned with skills needs but the reality is that only 16% of international students stay on in Australia after their studies.¹⁴ International students who will predominantly work overseas should not be required to study courses which do not align with their own interests and skills, nor their home country's skills needs. Additionally, there is already a mechanism to ensure those graduates who stay on meet Australia's skills needs, as the migration system generally favours occupations with skills shortages.

According to the most recent QILT Student Experience Survey, the top reason international undergraduates chose their current institution was because the institution offered the course they wanted to study.¹⁵ Applying caps to courses in certain disciplines will not lead to greater demand for courses in other disciplines. We know from the domestic context of Job-Ready Graduates that blunt measures to incentivise students to study courses aligned with skills needs do not work to change student preferences. International students will simply choose to study in a different country. In this way, course-level caps will mean perversely that universities are unable to reach their provider-level cap. There will be courses with unfilled student places, and other courses with demand that cannot be met due to the course cap.

The same is true for caps applied to metropolitan universities in the hopes of increasing enrolments at regional universities. There are already numerous incentives for international students to study in regional areas (lower fees, migration incentives). If a student is unable to enrol with their preferred provider in their preferred course, there is no guarantee they will still choose to study in Australia. The Government had previously supported the Destination Australia scholarship program as one way to attract international students to regional Australia. We note the Government ceased funding to this program in the 2024-25 Budget.

There are also ethical questions involved in increasing enrolments in these priority courses without commensurate increases in permanent migration numbers – Australia has a limited number of permanent residency places available, resulting in an excess number of international graduates applying for these places. Consequently, even students in priority courses may be forced to leave Australia after graduation due to insufficient residency opportunities. International students also report difficulties, referenced in the Migration Strategy, finding skilled employment after graduating during their permitted post-study work period even in areas of skills shortages such as engineering and IT.¹⁶

¹³ S&P Global Ratings. (2024). [Australian Universities: Would International Student Caps Spur A Course Correction?](#)

¹⁴ The Hon Jason Clare MP. (2022). [Post-study work rights for international students to boost skills.](#)

¹⁵ QILT. (2023). [2022 Student Experience Survey.](#)

¹⁶ Commonwealth Government. (2023). *Migration Strategy*. p. 62

What impacts will the legislation have?

Weaker economic growth

Given the significant penalties for institutions if they exceed their cap, the inefficient allocation of places across providers and courses and the broader impact on Australia's reputation as an education destination, caps will likely reduce enrolments more than intended. This could have a disastrous impact on Australia's GDP (spending by international students accounted for more than half of Australia's economic growth in 2023¹⁷), with ripples across the broader economy. This will not only hurt universities and other providers but also the various businesses that rely on this income, noting that international students spent \$30.5 billion on goods and services in the broader economy in 2023.¹⁸ The Treasurer has stated that the Government is looking to achieve a "soft landing on a narrow runway" by managing inflation without bringing on a recession.¹⁹ However, a sudden dip in our fourth largest export could tip a weak economy into recession.

For Victoria, capping student enrolments could have a disproportionate impact and lead to severe job losses. Victoria contributed 31% of international education revenue nationally, generating \$14.8 billion in 2023. Department of Jobs, Skills, Industry and Regions analysis estimates that the international education sector contributed around 63,000 FTE jobs to the Victorian economy in 2023, an increase of 48% on 2022. The impact of caps on States like Victoria that are more reliant on services exports could therefore be profound. For example, modelling undertaken by SPP²⁰ suggests that restricting international student enrolments by 30,000 students per annum would reduce the sector's contribution to the Victorian economy by \$6.7 billion over three years with a loss of 14,000 jobs.

Reduced competitiveness globally

There is a need for consistent and coherent policy across all government agencies, with alignment between visa processing and education policy, for example. Negative narratives about international education and ongoing policy uncertainty could cause lasting damage to Australia's reputation as an education destination of choice and make international students feel increasingly unwelcome. For example, Canada's decision to cap international students in January has already seen it drop from the equal first-choice destination for international students last year to fourth this year.²¹ Australia may see similar impacts, with global rankings agency QS warning that caps could hurt Australian universities' competitiveness.²² This will ultimately reduce the sector's sustainability and undermine efforts to diversify Australia's international student cohorts.

Reduced funding for teaching, infrastructure and research

For universities, imposing caps would significantly reduce funding for teaching, infrastructure for staff and students, and research, undermining the Universities Accord's goals of expanding domestic enrolments and enhancing Australia's research capabilities. Currently, these critical areas are already underfunded by the Government, leaving universities to bridge the financial gap through alternative revenue sources. A quarter

¹⁷ National Australia Bank. (2024). [Thematic – International students drove growth in 2023](#).

¹⁸ Department of Education. (2024). [Education export income - Calendar Year](#).

¹⁹ The Hon Dr Jim Chalmers MP. (2024). [Address at the Morgan Stanley Australia Summit, Sydney](#).

²⁰ SPP. (2024). *Economic impact of Victorian public universities, independent calculations on the impact of Victorian public universities on the economy*.

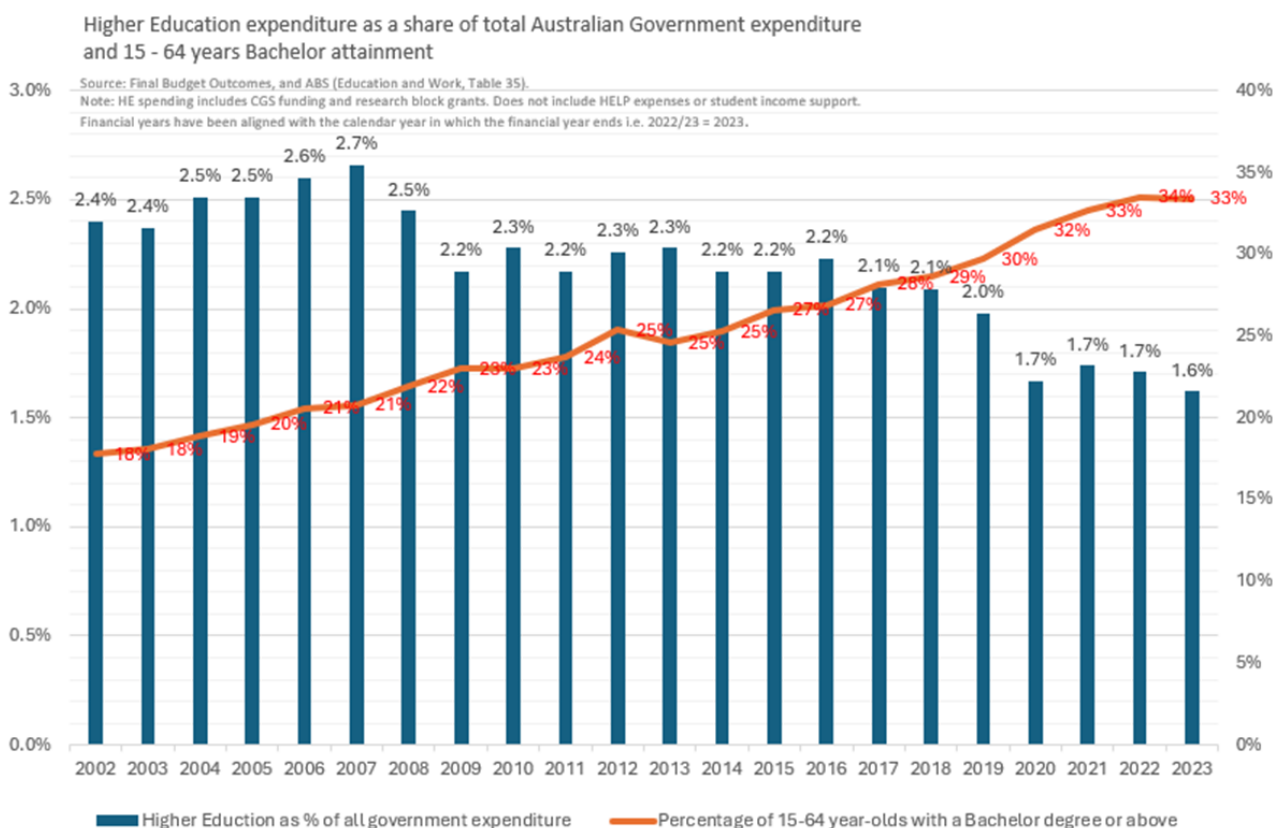
²¹ IDP Education. (2024). [US takes pole position in the eyes of international students](#).

²² Tim Dodd. (2024). [QS warns student visa blitz could harm Australian university rankings](#). The Australian.

of this revenue comes from international student fees.²³ However, the Government has yet to propose any additional funding to mitigate this system reliance on international students. This persistent lack of funding will prevent the sector from growing in accordance with the Accord’s recommendations.

For instance, Government funding does not cover the full costs of teaching in some disciplines, including in STEM fields with skills shortages. However, a revamped funding model for teaching is not anticipated to start until 1 January 2026, further postponing critical financial support for universities.²⁴ Additionally, universities have not received dedicated Government funding for infrastructure since the abolition of the Education Investment Fund in 2019. The Universities Accord Final Report noted that this lack of funding “has led to a degrading of institutional infrastructure and a backlog of maintenance.”²⁵ Similarly, Government funding does not cover the full economic costs of undertaking research – in 2022, the University of Melbourne had to find from other sources approximately \$475m to meet the full costs of delivering grant-funded research. Yet, the strategic review of Australia's research and development system, initiated in the 2024-25 Budget, is expected to take up to 18 months, delaying any substantial commitments to research funding.²⁶

As a share of total Australian Government spending, spending on higher education has fallen from around 2.7% in 2007 to 1.6% in 2023. Meanwhile, higher education attainment levels have grown (see below chart). It is unrealistic to expect that the Accord’s tertiary attainment target of 80% of working aged people by 2050 can be achieved in the absence of a funding commitment to support this ambition.



²³ Department of Education. (2024). [2022 Higher Education Providers Finance Tables](#).

²⁴ Commonwealth Government. (2024). *Budget 2024-25 – Budget Measures – Budget Paper No. 2*. p. 64

²⁵ Commonwealth Government. (2024). *Australian Universities Accord Final Report*. p. 303

²⁶ Paul Smith, Tess Bennett and Nick Bonyhady. (2024). [‘Business spends bugger all’: what landmark R&D review aims to fix](#). Australian Financial Review.

Financial strain and job losses

The legislation could put secure jobs at risk. Since 2022, the University has been actively addressing as a priority the need to ensure a secure and supported academic workforce. New secure academic positions have been created and filled to meet increased student demand, including from international students, to ensure that the University is addressing growth in a sustainable manner. Placing caps on this student cohort may put those secure jobs at risk as early as 2025.

By providing the Minister with discretion over international student enrolments, the legislation could limit the University's ability to plan appropriately and sustainably for its workforce requirements. The recruitment phase for international students generally begins 18 months before students commence. Offers are generally made the year before. This process provides international students sufficient time to plan their move and go through the processes required to obtain a student visa (noting visa processing alone can take up to three months.²⁷) University workforce and budget planning can commence as early as April/May of the year before and significant effort is required across the University to ensure that student demand can be met appropriately. Imposing caps as late as 1 September of the previous year could therefore cause chaos.

International student caps in 2025 could have particularly disastrous consequences because many providers have already issued offers to prospective students for the coming academic year, in line with normal recruitment and admissions timelines. If providers discover as late as December 31 that these students cannot commence their studies due to newly imposed caps, they could be compelled to cancel contracts with thousands of students. This abrupt reversal would not only disrupt the plans of countless international students but also damage the reputation of the sector and government, affect the viability of some courses and result in significant financial strain on these institutions and job losses. Universities are still recovering from the impact of the pandemic on their operations with most universities running deficit budgets. For example, in Victoria five of eight universities reported net operating deficits in 2023.²⁸ S&P Global Ratings have warned that caps could even erode universities' credit ratings.²⁹ The reputational damage would be substantial and enduring.

Reduced institutional autonomy

Institutional autonomy is enshrined in legislation and is a fundamental principle underpinning universities. Under the *Higher Education Support Act 2003*, universities are required to have a policy that upholds freedom of speech and academic freedom. The legislation defines academic freedom as including "the autonomy of the higher education provider in relation to the choice of academic courses and offerings, the ways in which they are taught and the choices of research activities and the ways in which they are conducted."³⁰

The ESOS Amendment Bill represents a significant incursion into institutional autonomy and academic freedom. By providing the Minister with the power to impose limits on enrolments in specific courses and even automatically suspend or cancel registration of courses that "provide limited value to Australia's skills and training needs and priorities," the legislation effectively curtails providers' autonomy to choose their academic courses and offerings to meet student demand and preferences. The legislation has very few limits on this power. This means that future Ministers could suspend or cancel registration of courses that do not align, for example, with their political views by claiming they are not in the public interest or provide limited

²⁷ Department of Home Affairs. (2024). [Visa processing times](#).

²⁸ Parliament of Victoria. (2024). *University Annual Reports* (Tabled documents, 1 May 2024).

²⁹ S&P Global Ratings. (2024). [Australian Universities: Would International Student Caps Spur A Course Correction?](#)

³⁰ Commonwealth Government. (2003). *Higher Education Support Act 2003, Schedule 1 – Dictionary*.

value. A similar situation arose when the Minister held the power to veto Australian Research Council grants; there were instances where this power seemed to be exercised based on ideological views.³¹ S&P Global advise that international student caps “would crimp universities’ financial performance and autonomy...”.³² The legislation therefore sets an alarming precedent, allowing significant ministerial overreach.

It should be noted that while the Universities Accord recommended that the Government ensure that providers have appropriate risk management strategies for international education, it did not recommend hard caps. Indeed, it argued that “heavy regulation of international student numbers may also lead to unintended consequences.”³³

What amendments should be made to the legislation?

As currently drafted, the legislation will create considerable uncertainty for the sector. This could have drastic impacts on universities, on students, and on the broader Australian economy. For this reason, Parts 7 and 8 of the Bill should be removed entirely. Instead, the Government should negotiate international education roadmaps with each provider through their mission-based compacts. These roadmaps would allow universities to manage the volume and profile of their international student cohort strategically over time.

Failing that, a number of amendments should be made to ensure the legislation is workable and to give providers and students greater certainty:

1) Remove the power to cap specific courses

The ability for the Minister to cap at the course level should be removed. The Minister said recently that he would refrain from using this power, referring to it as a “reserve power.”³⁴ However, such extraordinary powers should not be granted if they are not required by the Government.

As highlighted earlier in this submission, the overwhelming majority of international students do not remain in Australia long-term. International students should therefore be free to choose what they study based on their interests, skills, and career plans.

Course-level caps will in effect lead to much lower international student enrolments than provider caps. If a student is barred from enrolling in a specific course and does not wish to change their career plans by studying an entirely different course, this will lead to stranded places. Providers will be left with places they cannot fill, despite latent demand and an unmet provider-level cap.

2) Introduce principles the Minister must consider when applying caps

The legislation provides the Minister with broad powers to apply caps, with very few limits. Noting the significant damage caps could have on providers, students, and the broader Australian economy, the legislation should include principles that the Minister must consider (and explicitly address) when applying caps. For example, the Minister should consider whether a cap is necessary, whether it is proportionate, what impact it will have on operations, whether it is aligned with an institutions’ mission and whether it provides sufficient continuity.

³¹ Caitlin Cassidy. (2024). [Ministers will no longer approve Australian Research Council grants under bid to stop ‘political interference’](#). The Guardian.

³² S&P Global Ratings. (2024). [Australian Universities: Would International Student Caps Spur A Course Correction?](#)

³³ Commonwealth Government. (2024). *Australian Universities Accord Final Report*. p. 183-184

³⁴ Tim Dodd. (2024). [Education Minister Jason Clare won’t use full powers on student caps](#). The Australian.

3) Introduce a sunset clause

As highlighted earlier in this submission, the current post-pandemic bump in net migration is not expected to last. Arrivals are expected to ease and departures are expected to increase over the next few years as current international students finish their studies and depart. The Treasury Secretary made this point during Senate Estimates recently.³⁵ Noting the temporary nature of the problem Part 6 seeks to address, a review mechanism and sunset clause should be introduced.

4) Narrow the reasons why the Minister can automatically suspend or cancel course registration

Part 8 allows the Minister to automatically suspend or cancel the registration of courses in a legislative instrument. Under the legislation, the Minister would be able to do this if they are satisfied that there are systemic issues in the standard of the delivery of those courses, the courses provide “limited value to Australia’s current, emerging and future skills and training needs and priorities”, or if “it is in the public interest to do so.” This provides the Minister with very broad scope.

The Explanatory Memorandum provides examples of instances in which the Minister might exercise this power, but they all relate to systemic integrity issues. It is unclear why the Minister should have the power to cancel the registration of courses that do not relate to Australia’s skills needs, particularly where students are choosing to study courses relating to their home country’s skills needs. This power should therefore be limited to courses with systemic integrity issues.

5) Increase the notice requirements

Universities require significant notice if they are to manage student caps. The recruitment phase for international students generally begins 18 months before students commence. Workforce and budget planning is undertaken in April/May of the year before. To ensure providers have sufficient certainty to plan their budgets and workforce allocations and advise students of conditions on their offer, caps should commence no earlier than 2026. A later commencement date would also provide the Department of Home Affairs and the Department of Education with sufficient time to improve their data-sharing capabilities, a requirement noted in the Department of Home Affairs’ submission to this inquiry.³⁶

Providers should be advised of caps over a three-year rolling average 18 months before students commence to provide sufficient certainty and some flexibility.

The Minister should only be able to *increase* the cap by variation in consultation with the affected provider. Providing the Minister with the power to *reduce* caps at any time will create incredible uncertainty for providers and make planning virtually impossible.

6) Increase the consultation requirements

The Minister and the Department currently have limited access to recent data on student enrolments and provider capacity at the course level. This means it will be exceedingly difficult for the Government to determine reasonable caps without consulting providers. The legislation should therefore require the Minister to consult with impacted providers before imposing a cap and require the Minister to provide reasons for imposing the cap. This would improve transparency and support the Minister in considering the aforementioned principles of necessity, proportionality, impact on operations, alignment with institutions’ missions and continuity.

³⁵ Dr Steven Kennedy, Secretary of the Treasury, Commonwealth. (2024). *Budget Estimates (Hansard Proof Copy)*, Senate, 3 June 2024, p. 6.

³⁶ Department of Home Affairs. (2024). [Department of Home Affairs submission on the Inquiry into the Education Services for Overseas Students Amendment \(Quality and Integrity\) Bill 2024](#).

7) Ensure that all caps must be made through legislative instruments that are disallowable

Under the Bill, the Minister can make a legislative instrument specifying the cap for a class of providers, course, or class of course. The Minister can alternatively give a notice to a provider setting out its total provider enrolment limit and/or course enrolment limit. Given the significant impact these caps could have on providers, students and the broader Australian economy, all caps should have to be made through legislative instruments that are disallowable by Parliament. This will ensure that caps are transparent, the Minister is accountable and decisions are subject to scrutiny.

8) Ensure that caps can only apply to commencing students

Providers do not have full control over their international student enrolment numbers – only their offers to new students. Enrolment numbers are subject to changes outside of providers' direct control, including students deferring their offers, declining offers, reducing their study loads or discontinuing their studies. Caps should therefore only apply in relation to international student commencements. This will ensure that providers are not perversely punished for high retention rates, for example.

9) Provide additional flexibility for providers that exceed caps

As noted above, providers cannot precisely control or predict student commencement or enrolment numbers. Harsh provisions that automatically suspend providers' registration when they exceed their cap by even one enrolment will force providers to make fewer offers than they have places, meaning providers will likely enrol well below their caps. To address this, the legislation should provide allowances for providers that slightly exceed their caps. For example, a tolerance band or buffer of 5% could be included. Combined with a three-year rolling average, this would provide institutions with some flexibility.

10) Ensure caps apply at the campus level

Most universities have multiple campuses. A number of metropolitan-based universities have regional or rural campuses (such as the University of Melbourne). Likewise, a number of regional universities have metropolitan campuses. These sometimes operate across multiple States or Territories. As noted by the JSCFADT in its interim report on international education, some of these campuses are established in CBDs specifically to recruit international students and generate revenue, with teaching sometimes subcontracted to private providers.³⁷ Department of Education data suggests that more than half of the international students enrolled at regional universities in 2022 were studying at a CBD campus.³⁸ As the legislation is currently drafted, the Minister could apply caps to universities in Melbourne, for example, that do not apply to all campuses in Melbourne if the university's main campus is based elsewhere. Caps should therefore apply at the campus level.

11) Remove the link between additional enrolments above caps and the creation of more Purpose-Built Student Accommodation

The Bill itself does not mention student accommodation. However, the Explanatory Memorandum states that the Minister will consider the supply of PBSA when setting university limits. The Minister may also increase or remove a cap if satisfied that the provider "has demonstrated that they have developed, or otherwise made available, additional student accommodation to cater for an increase in student enrolments."

As noted previously, pushing universities to construct additional PBSA in order to enrol more students would only divert finite building materials and workers that are currently building new domestic housing

³⁷ Joint Standing Committee on Foreign Affairs, Defence and Trade. (2023). *Quality and Integrity – the Quest for Sustainable Growth: Interim Report into International Education*. p. 90

³⁸ Group of Eight. (2024). [Go8 submission to the Draft International Education and Skills Strategic Framework](#).

to instead build student-only accommodation. This would also force universities to take on additional risk, noting that student numbers could be arbitrarily cut at any time, potentially leading to stranded resources. Further, the long lead times involved in seeking local approvals and constructing additional PBSA make this provision impractical. It is therefore recommended that the link between enrolments and PBSA be removed.

12) Refine the education agent definition

As currently drafted, the definition for an education agent could include an overseas institution (for example, an exchange partner) that promotes study at an Australian institution under a partnership agreement, with no financial connection between the two. This could make reporting requirements challenging. The definition should therefore be amended to state that an education agent is not an education institution with whom an Australian provider has an agreement for the provision of education (that is teaching activities) unless the partner institution is remunerated by the Australian provider in a monetary or non-monetary way.

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