

English Australia

*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)

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<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>	<p>CONDITIONAL SUPPORT</p>	<ul style="list-style-type: none"> • Overall English Australia supports the proposed changes, with one comment. • It seems that the intent in providing a revised definition of the term ‘provider’ is to assist in defining the appropriate ‘ESOS Agency’ for different provider types. Whilst understanding the rationale behind this intent, English Australia would like to express some concern that the term proposed to define ELICOS providers is a misleading description of the nature of ELICOS provision. • Currently the definition of provider is: <i>“provider means an institution or other body or person that provides or seeks to provide courses to overseas students”</i> • The proposed definition that relates specifically to ELICOS providers is: <i>“preparatory course provider means a person or entity that provides:</i> <i>(a) an English Language Intensive Course for Overseas Students;</i> <i>(b) a Foundation Program.”</i> • English Australia notes that 35% of student visa holders undertake stand-alone ELICOS courses and do not pathway into further studies. All ELICOS courses/providers cannot therefore be defined as ‘preparatory’. This term is therefore misleading and inaccurate. • Another query with regards to this definition relates to whether there is a need to separately define ELICOS providers – for the purpose of defining how the application of the ELICOS Standards is determined. There are numerous references in the Act to what will happen “<i>if the ELICOS Standards or Foundation Program Standards apply in relation to the provider</i>”, however this is not defined anywhere. There is currently a loophole whereby the ELICOS Standards are not applied to certain providers of English language programs on CRICOS when they should be, with the ELICOS sector believing that this is a priority area requiring clarification. • An alternative would be to provide two separate definitions as follows: <i>“ELICOS provider means a person or entity that provides an English language course which is registered on CRICOS for delivery to overseas students.”</i> <i>“Foundation Program provider means a person or entity that provides a Foundation Program.”</i>

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"> •
<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"> • English Australia notes and strongly endorses the fact that compliance with the ELICOS Standards (if relevant) is now specifically referenced in the Act, with the understanding that this will assist the relevant ‘ESOS Agency’ with ensuring standards are met and that action can be taken where they are not. • It is noted specifically that: <i>“The proposed amendment will clarify that enforcement action may be taken by an ESOS agency for a breach of either the ELICOS Standards or the Foundation Program Standards. Similarly, the monitoring and searching provisions in the ESOS Act will be extended to apply to determining compliance with the ELICOS Standards and Foundation Program Standards.”</i> • English Australia would also use this section to reinforce the view expressed above that clarification is required as to the definition of which providers/courses the ELICOS Standards should be applied to.

PROPOSED MEASURES	SUPPORT/DO NOT SUPPORT/NEUTRAL	COMMENTS (MAXIMUM 300 WORDS)
Schedule 1 – Imposing conditions on registration An ESOS agency will decide whether to impose, vary or remove conditions on a provider’s registration at any time during that registration.	SUPPORT	•
Schedule 1 – Use of other relevant information 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.	SUPPORT	•
Schedule 1 – Aligning registration periods Remove the minimum registration period and extend the maximum registration period to 7 years.	SUPPORT	<ul style="list-style-type: none"> • Overall English Australia supports the proposed changes, with one minor comment. • Concerns have been expressed in relation to the application of such long registration periods to a certain profile of ELICOS providers. • Critical to the effectiveness of this perceived ‘relaxation’ of requirements will be how the relevant ‘ESOS Agency’ applies their ‘risk management approach’ appropriately to ensure more frequent monitoring of providers of concern.

PROPOSED MEASURES	SUPPORT/DO NOT SUPPORT/NEUTRAL	COMMENTS (MAXIMUM 300 WORDS)
Schedule 1 – Extension of registration 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.	SUPPORT	•
Schedule 1 – Exemptions for certain providers Continue to exempt certain providers from some ESOS Act requirements (e.g. fit and proper person).	SUPPORT	•
Schedule 1 – Continuation of a provider’s registration 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. 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.	SUPPORT	•

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<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	•
<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>	SUPPORT	•

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"> English Australia notes and strongly endorses the fact that compliance with the ELICOS Standards (if relevant) is now specifically referenced in the Act, with the understanding that this will assist the relevant 'ESOS Agency' with ensuring standards are met and that action can be taken where they are not. It is noted specifically that: <i>"The proposed amendment will clarify that enforcement action may be taken by an ESOS agency for a breach of either the ELICOS Standards or the Foundation Program Standards. Similarly, the monitoring and searching provisions in the ESOS Act will be extended to apply to determining compliance with the ELICOS Standards and Foundation Program Standards."</i> English Australia would also use this section to reinforce the view expressed above that clarification is required as to the definition of which providers/courses the ELICOS Standards should be applied to.
<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>	SUPPORT	<ul style="list-style-type: none">

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<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"> •

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<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>	SUPPORT	•
<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>	SUPPORT	•

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<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>	SUPPORT	<ul style="list-style-type: none"> •
<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"> • English Australia notes and strongly endorses this approach to streamlining provider reporting responsibilities whilst maintaining appropriate student protections.

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<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"> English Australia notes and strongly endorses this approach to streamlining provider reporting responsibilities whilst maintaining appropriate student protections. There are concerns, however, that the exception specified for under 18 students needs to be examined more carefully to ensure that the more onerous reporting requirements will genuinely contribute to addressing any concerns around welfare.
<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>	CONDITIONAL SUPPORT	<ul style="list-style-type: none"> Whilst welcoming the changes that allow for students and third parties to request to pay more than 50% and remove the restrictions on the subsequent collection of fees, English Australia believes that these changes do not go far enough in delivering on the intent to remove any undue administrative/regulatory burden on low risk providers. The RIS itself refers to the following concern: <i>“Inappropriate approach to managing risk: Applying blanket regulation over the entire international education sector means that any benefits associated with the TPS measure under scope are likely to be outweighed by the costs associated with excessive regulatory burden on low and medium risk education institutions. There is widespread support for moderating current requirements to education institutions by a proportionality or risk managed approach.”</i> English Australia’s concerns regarding the blanket application of this restriction were raised in a detailed supplementary submission to the Department of Education and Training as part of the ESOS Review. English Australia has read the Regulation Impact Statement (RIS) and notes concerns with the accuracy of some of the data provided eg. the misleading and inaccurate attempt to profile different sectors and provider types in Section 3.2, specifically as the data relates to ELICOS. It is unclear as to whether the inaccuracy of the data used has impacted on the calculations made regarding the costs/risks of the various options under consideration. It is unclear from the RIS how exactly the intended application of a risk management approach has been applied to this particular constraint on business practice. Under the

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		<p>proposed changes there is still no differentiation between low risk and high risk providers.</p> <ul style="list-style-type: none"> • The RIS states that limiting the amount of pre-paid fees in % terms was aimed at reducing the potential refund liabilities of both the education institution and the TPS. This argument is fallacious. A provider offering a 3 year degree program at \$34K per year can theoretically accept 50% of the tuition fees in advance which could mean a potential default amount payable by the Fund of \$51,000. An ELICOS provider offering a 30 week English course with a value of \$9,600 in tuition fees is currently limited to accepting only \$4,800 in advance, theoretically saving the Fund \$4,800 if the college defaults. There is little financial rigour in the argument being made that 50% is a meaningful benchmark. • English Australia strongly urges further consideration of removing this restriction from the Act altogether and allowing the relevant ‘ESOS Agency’ to apply this as a condition on the registration of providers of concern (<u>Option 2</u> as identified in the RIS). • Another option we would favour would be <u>Option 3(iii)</u> which proposes an exemption from the 50 per cent limit for courses of up to 52 weeks duration. An alternative would be to exempt courses of up to 40 weeks duration. Even an exemption for courses of up to 30 weeks duration would be an improvement on the current proposed changes. • Whilst English Australia continues to stress the negative impact of this constraint, we welcome: <ul style="list-style-type: none"> ○ the removal of terminology and conditions related to artificial ‘study periods’; ○ the change to allow for a student or a third party to request to pay 100% of tuition fees in advance; ○ the removal of the restriction on the subsequent collection of fees. • With regards to Clause27 (Tuition Fees) which states that the 50% limit does not apply if “<i>a request is made by a person other than a registered provider</i>”, English Australia believes there would be value in reviewing the wording to alleviate concerns as to whether the term “request” could also be interpreted to cover examples where students pre-pay 100% but do not provide a formal written “request”.

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Schedule 5 – Removal of designated account requirement 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.	SUPPORT	<ul style="list-style-type: none"> English Australia notes and strongly endorses the removal of this requirement. Whilst perhaps not belonging in the legislation, we would urge the relevant 'ESOS Agency' to consider utilising this mechanism as a potential specific condition on the registration of providers that are deemed to be high risk.
Schedule 5 – Removal of the definition of 'study period' Remove the definition of and references to a 'study period' and associated requirements.	SUPPORT	<ul style="list-style-type: none">
Schedule 5 – Reminder notices for late payments of charges 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. New provisions are consistent with current arrangements for late payments of the TPS Levy.	SUPPORT	<ul style="list-style-type: none">

ADDITIONAL COMMENTS ON THE BILL (MAXIMUM 500 WORDS)
<ul style="list-style-type: none">• ENGLISH AUSTRALIA WELCOMES THE OVERALL INTENT OF THIS BILL AND THE PRACTICAL APPROACH IT TAKES TO ENSURING THE EFFICIENT AND EFFECTIVE OPERATIONS OF THE REGULATORS, WHILST REDUCING THE REGULATORY BURDEN ON EDUCATION PROVIDERS WITHOUT COMPROMISING STUDENT PROTECTION.

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>	SUPPORT	<ul style="list-style-type: none"> •