

Draft International Education and Skills Strategic Framework Consultation

[Professor Simon Biggs](#)
Vice Chancellor and President
James Cook University
Cairns – Singapore – Townsville

T (07) 4781 4165
E vc@jcu.edu.au
W www.jcu.edu.au
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James Cook University (JCU) welcomes the opportunity to provide comment on the draft International Education and Skills Strategic Framework (Framework) and the associated legislative amendments proposed for the Education Services to Overseas Students Act 2018 as set out in the Education Services to Overseas Students (Quality and Integrity) Bill (Bill). Specific feedback on the Bill will also be provided to the Senate Committee on Education and Employment through the Senate submissions website.

The Framework has three objectives, A Sector Built on Quality and Integrity, A Managed System to Deliver Sustainable Growth Over Time and Taking Australian Education and Training to the World. This paper outlines JCU's responses to each of the objectives set out in the Framework. Where appropriate it provides a response to the questions raised in the Framework as part of the discussion below, rather than as a specific question and answer.

Introductory Comments

The proposed reforms and draft legislation would, if passed unaltered, provide wide-ranging powers to the Minister for Education unlike any seen previously or in any other equivalent jurisdiction. International education in Australia is already highly regulated through, for example, the Education Services for Overseas Students Act (ESOS Act), the National Code of Practice for Providers of Education and Training to Overseas Students 2018 (National Code) and the Simplified Student Visa Framework (SSVF). While some improvements may well be warranted, the extent of the proposed reforms is disproportionate.

The reforms are in response to the findings of recent Reviews as set out in the Framework. The Reviews identified serious issues in relation to quality and integrity in a small proportion of the sector. Action should be taken in relation to those providers. However, as currently proposed, with some limited exceptions, high-quality, self-regulating providers such as public Universities will be subject to exactly the same requirements as the “unscrupulous” providers referred to in the Reviews.

Further, the proposal to introduce enrolment limits in response to the Migration Strategy ignores:

- the impact of recent changes to student visa processing, which have already considerably reduced the number of new students commencing studies onshore, and
- that TEQSA already has the power to, and does, set enrolment limits for international students on a student visa at an institutional and location level through the provider's CRICOS capacity limit.

Finally, the Framework recognizes that an underlying principle of any changes must be the best interests of the student. JCU submits that the reforms, if passed, will have the effect of limiting student choice and consumer rights, which seems in opposition to the student's "best interests".

Australia is well-positioned to continue offering high-quality education to international students. With rising global competition, a managed approach is needed for sustainable growth, ensuring integrity and predictability for universities to plan, grow, and innovate. However, it is essential to send clear and positive signals to stakeholders to maintain Australia's strong global reputation built over many decades.

International education significantly contributes to the economic and social wellbeing of Australia and the region and international higher education attracts talented individuals who enrich our education system and can help boost national productivity.

Objective 1: A Sector Built on Quality and Integrity

JCU agrees that "*Australia's global reputation is built on our high-quality education and training systems*". Quality is assured through appropriate education and English language proficiency standards which are applied by providers, as required by the National Code and the Higher Education Threshold Standards. Providers are also, at their own expense, assessing prospective students against the Genuine Student requirements in the Migration regulations. While there may be a small number of unscrupulous providers, the overwhelming majority uphold and enhance the sector's reputation for quality and excellence.

In response to the statement that the international education sector needs to be better focused on how and where high-quality courses are delivered and their relevance to Australia's skills needs, JCU notes that a nuanced approach will need to be taken to ensure that a "one size fits all" solution is not applied. There are undoubted skills gaps across the country. However, as is demonstrated by the [Jobs and Skills Priority List](#) skills gaps are not uniform across the country. The profile in metropolitan Sydney or Melbourne will not necessarily be the same as those in regional, rural and remote locations, and not all regional locations have the same workforce profile. If directions are to be made requiring providers to teach, or not to teach, particular courses, care will need to be taken to ensure that courses which meet location specific needs remain available to international students and, preferably, are available to study within or close to the location. An example of the contribution JCU graduates can make to local workforce needs is Lili Shao. Lili graduated with a Masters of Social Work (Professional Qualifying) from JCU in 2018 and now works as a Clinical Social Worker in Innisfail in North Queensland. Lili's story is told here [International Student Profile - Lili Shao \(China\) - YouTube](#).

In addition, a key principle is that International education is more than just international student recruitment. The idea that international education is a skills-shortage solution undervalues the primary purpose of international education.

Internationalisation of Australian university campuses has never been more important. Global perspectives, cultural diversity, robust mobility programs, sharing of knowledge, relationship development and immersive experiences are an expected component of graduate capability.

Internationalisation of curriculum and campuses prepares all of our students (domestic and international) for their futures, including developing their intercultural competencies and international employment potential.

Our graduates increasingly find themselves competing in an employment market with graduates who are multilingual and have diverse cultural backgrounds and experiences. Graduates with limited experiences and understanding of cultures other than their own may struggle to make meaningful contributions to the world of work and to society as a whole. They will need the capacity and capability to be productive in multicultural teams and groups.

There is a risk that having a focus on recruiting international students to address Australia's skills-shortage in certain fields may have unintended adverse consequences for our competitiveness and the diversity of our international student cohorts.

If we move to a model whereby international students are encouraged to only take up those programs that align with our national skills shortages, the flow-on effect may be to primarily attract overseas students from a select range of nationalities who enrol in a limited range of programs and providers.

Incentives for students to study in regional areas will also be important to ensure that those providers are not left out and importantly, that regional workforce issues are considered when enrolment limits are allocated.

The Framework also notes the changes to the ability to issue concurrent Confirmations of Enrolment (CoE) in 2023. This measure was requested by the sector for a number of years and is welcome. However, this alone will not stop providers from poaching students, and we are now seeing CoEs being issued for a commencement date which is one day after the six month "transfer restricted" period and not corresponding to a published course commencement date. Extending the no-transfer period to 12 months may go some way to further reduce this practice. JCU is in favour of this approach, but it needs to be coupled with the regulators (TEQSA and ASQA) taking decisive action against those providers who are doing the poaching. In addition, the trailing visa risk should transfer to the new provider once the original CoE is cancelled. That the visa risk remains with the original provider who, typically, has expended funds recruiting and reviewing the student for a limited return, is an unfortunate feature of the current SSVF.

JCU supports the requirement for new education providers to have a proven track record prior to offering courses to international students, noting that in consultations it has been confirmed that this restriction will not apply to providers who only offer programs which are solely for international students such as ELICOS and Foundations. This will address, to some extent, the phoenix providers.

The proposal to amend the National Code to ban onshore agent commissions is more problematic. JCU makes the following comments in this regard:

- There are instances where onshore agents provide a legitimate and valuable service to students and providers should be able to appropriately compensate agents for that service.
- The proposed definition of "education agent" in the Bill is, in our view, too broad. The inclusion of any "*entity [which] otherwise deals with overseas students or intending overseas students*" would capture a range of people and entities who would be subject to the entire regulatory requirements which apply now to agents. This is not appropriate or desirable. Further, it would include in-country representatives of providers who are, typically, under a contractual arrangement with the provider.
- We recognize that the proposed introduction of a new definition of "education agent commission" is an attempt to ensure that certain providers do not circumvent the underlying policy by the provision of non-monetary benefits, or benefits to related entities. In terms of enforcement, it is assumed that the proposed power in new section 21B to require a provider to give information about commissions will provide the basis for

enforcement of any ban on onshore commissions (as well as a more general benefit of transparency as to commission payments generally).

It is recommended that, to the extent that any ban is introduced, that its impact be targeted at the specific areas of concern, such as students changing to a lower AQF levels and downgrading from a higher education provider to a VET provider. But again, care needs to be taken as there will be students who legitimately, and for good reason, wish to change providers, particularly if policies are introduced to encourage enrolment in courses directed at filling skills gaps (such as aged care).

Objective 2: A Managed System to Deliver Sustainable Growth Over Time

The Framework states that unmanaged growth in the international education sector post- COVID has been accompanied by a rise in integrity issues, leading to a need to better manage the student visa system to return growth to a sustainable level. Measures were introduced in late 2023 and the first quarter of 2024 to address these issues including:

- Ministerial Direction 107 – prioritization of assessment of student visa applications, which has resulted in substantial delays for the majority of providers with an Evidence Level of 2 or 3
- Heightened scrutiny of visa applications leading to a significant rise in visa refusals for students with a profile that would previously have seen a visa grant, and
- Increased English language requirements.

The combination of these factors has already produced a reduction in onshore student commencements which is expected to continue. Together with the closure of the concurrent CoE loophole, the measures have dampened demand for Australian education and, arguably, weeded out a number of non-genuine students. The impacts of these measures should be taken into account in determining the way forward and in particular, whether and, if so what, enrolment limits should be applied.

These measures have disproportionately impacted regional and remote universities, as outlined by information provided to the Government from bodies such as the Regional Universities Network. JCU welcomes the various acknowledgements in the Framework that work is required to ensure regional and outer-metropolitan universities are appropriately supported in any further changes.

The proposed amendments to the ESOS Act also give the Minister for Education power to limit or cease the ability of providers to deliver courses which the ESOS agencies determine have persistent quality and integrity issue. This is also supported by JCU. It is one way in which quality and integrity can be enhanced. It will require a proactive regulator to use the powers which are available.

JCU does not support the proposal to limit courses or enrolments in areas which the Government determines have limited value to Australia's critical skills needs. A key theme of the International Education strategy is diversity – students should continue to have the choice to study disciplines for which they have a passion, whether or not those disciplines directly align with a perceived skills gap within Australia. JCU notes that many such courses, while not necessarily having a linear relationship with an employment outcome, will in any event provide graduates with critical thinking, writing, communicating and analysis skills, all of which enable “job ready graduates” to have fulfilling and socially useful careers.

Similarly, the impact on the research profiles of institutions should not be ignored.

Turning now to the proposal to set limits on enrolments at a provider level, including within specific courses or locations, it has been suggested that it is unlikely that the Minister would set course specific enrolment limits for public universities. If this is the case, then JCU submits that there should be an express carve out in the legislation to that effect. Managing a course cap, particularly

with an automatic suspension of registration, is not only impracticable for complex providers with hundreds of courses, but the administrative burden of doing so makes it virtually impossible.

Further, the automatic suspension of enrolment due to a breach of a course level cap is a wholly disproportionate punishment for what may be due to, for example, student choice – such as in the case of a course transfer. Providers would be required to refuse transfer requests, resulting in student dissatisfaction and, perversely, potential provider-hopping to secure enrolment in the student’s preferred course.

JCU also submits that allocation of caps by course for any providers should not be overly prescriptive as attempts to address skills gaps at the course level have previously proved complex and unworkable, and often produced unintended outcomes. JCU suggests that, where course caps are used, there be a high-level allocation such 50% of courses are aligned with defined skills needs, with courses determined by the provider, rather than a granular specification of particular courses with reference to current CRICOS course registrations.

The Framework notes that the Government is mindful of the “*disproportionate impacts [the policy] may have on key student cohorts such as those from China and India*”. As the draft legislation does not refer to setting caps by a student’s country of origin, it is not clear how this will be effected.

The Government proposes to set international student profiles with individual Universities which, we understand, will be done as part of the mission-based compact. Individual consultations are expected to occur from late June 2024, with limits being set by around September and to come into effect on 1 January 2025. Other institutions and peak bodies have already raised the issue of timing – the international education pipeline is in many cases months or even years long. Offers for 2025 will already have been made and accepted, leaving providers with the prospect of provider default in the event that the enrolment limits as ultimately determined are less than acceptances. The reputational damage to the Australian education sector of this would be significant. However, more importantly, the impact on individual students would be simply unacceptable.

Accordingly, JCU submits that:

- The introduction of any enrolment limits be deferred to 1 January 2026 to allow sufficient time for universities and the Government to have considered negotiations as to the limits where universities are fully informed as to the overall targets which the Government has in mind, and for providers generally to have time to properly implement the necessary alterations to their recruitment and teaching activities to ensure compliance with such limits as are imposed;
- Alternatively, the Government provide a phased transition to the introduction of caps, focussing on the higher-risk providers for 2025, leaving the university sector to a later implementation.

In this regard, the visa integrity measures outlined above will, over the balance of 2024, already result in a reduction in the number of commencing students year on year, going some way to achieving the stated objective of reducing “uncontrolled” growth.

The Government has not, as yet, indicated what it envisages will be the total enrolment limit for 2025. Publishing the total allowable student numbers, or allowable student numbers by sector, to universities is essential to a meaningful consultation at an individual level. Nor has there been any indication as to whether the international cap will be set as a percentage of total enrolments.

Further, the draft legislation does not contain provisions detailing the matters which the Government will take into account in determining enrolment limits. However, the Framework proposes a clear link between enrolment limits and purpose-built student accommodation for both international and domestic students. It also states that providers wanting to enrol international

students above the cap will be required to establish additional student accommodation. This does not take into account differences between universities and regions when it comes to accommodation and in particular, the very real difficulties some institutions face in securing additional, university operated, accommodation. State and local government approvals and financial realities will mean that for some, this is simply not possible. If enrolment limits are to be linked to the availability of new student accommodation, the analysis must be nuanced to take into account local circumstances, rental availability, and student preference (not all students will want to live on campus or in student specific accommodation).

The Framework also notes that enrolment limits may be set with regard to the capacity of the provider to appropriately support students, including with additional learning support, and opportunities for students to engage with domestic students. The ability of a provider to do so requires a strong financial foundation and a secure domestic cohort pipeline.

Measures which reduce international student enrolment, without other accommodations, will adversely affect the ability of the smaller, regional universities to deliver these very important services to their international student cohorts.

Proposed section 26B(4) provides that the Minister may exempt certain courses from an enrolment limit. JCU supports this approach – courses in critical skill areas, for example, Nursing, could be excluded from any cap. Higher degree by research courses should also be excluded, as should non-award courses such as study abroad and exchange where students, typically, are onshore for shorter periods and are required to return to their home institution at the completion of their Australian study.

Students coming to Australia from offshore campuses should also be exempted from the cap. This would support the Government's Transnational Educational agenda. Schools should also be excluded from the operation of any enrolment limits and there should be no restrictions on the ability of schools to enrol students on a student visa.

Finally, it is important that there is clarity as to what any enrolment limits relate to. As the limits will be imposed under the ESOS Act, it would be sensible to align them with the existing CRICOS capacity limits – i.e. measuring CoEs with a status of Studying.

Objective 3: Taking Australian Education and Training to the World

Realising this objective will require increased support for Australian universities to enable them to provide opportunities for students to study an Australian qualification in the student's home jurisdiction. The establishment and operation of branch campuses is a long-term strategy and one that requires stability and certainty both in Australia and in the location of the branch campus.

Government can foster the development of transnational education (TNE) opportunities by continued support of mutual recognition of qualifications, closer working relationships between regulators diplomatic and trade relationships. However, TNE requires investment – in infrastructure, course design and delivery and teaching staff. None of these will be possible unless universities have a solid financial footing.

An appropriate Government funding model which recognizes and supports the need for investment is therefore essential.

Recommendations:

1. In order to facilitate meaningful sector or individual consultation about proposed enrolment limits at the institutional level, there should be transparency as to the total number of enrolment places available within the overall cap of new student visas before any negotiations with providers take place.
2. There should also be transparency as to the approach which will be taken – will the enrolment limits be determined relative to domestic student numbers, e.g. that international student numbers not exceed a certain proportion of domestic student enrolments? If so, will this be at the institutional, sector or national level?
3. If enrolment limits are to be introduced, then:
 - a. the power to set enrolment limits at course or institution level be expressly stated in the ESOS legislation to exclude the following:
 - Higher Degree by Research students
 - Students coming to Australia from providers' offshore campuses
 - Study Abroad and Exchange students and
 - School students
 - b. the power to determine enrolment limits at the course level not apply to public and private Universities.
 - c. any linkage of enrolment limits at the course level to skills gaps be nuanced to reflect the realities of local, regional and remote skills gaps, not a blanket national approach.
 - d. the requirement to provide new purpose-built student accommodation as a condition of any application to increase enrolment limits should be removed. Alternatively, the requirement be amended such that the availability of accommodation as one of the factors which may be taken into account by the Minister.
 - e. the introduction of any enrolment limits be deferred to 1 January 2026 to allow an orderly transition and
 - f. the proposed automatic suspension of registration for breach of an enrolment limit be removed from the legislation and replaced with a power to suspend only after appropriate notice and an opportunity for the provider to remedy the breach.
4. The proposed ban on onshore commission payments to education agents apply only where students are downgrading AQF levels.