Review of the Education Services for Overseas Students (ESOS) framework

Joint submission
April 2022

Joint submission to the consultation on the Review of the Education Services for Overseas Student (ESOS) framework

Navitas, Kaplan and Study Group welcome the opportunity to respond to the Education Services for Overseas Students (ESOS) Review 2022 consultation paper. The following submission outlines our response to the key themes of the consultation paper and each of the discussion questions.

1. Context and key considerations for the ESOS framework

Navitas, Kaplan and Study Group are three leading independent providers of international education programs in Australia

Navitas, Kaplan and Study Group are three leading providers of international education in Australia. Each of the three organisations also operate globally, delivering programs across major competitor destinations including the United Kingdom, Canada, the United States, New Zealand, as well as in mainland Europe and Asia through managed campus arrangements.

Navitas has partnerships in place with nine universities across Australia to deliver pathway programs and managed campuses in Australia to both international and domestic students. It is also a leader in transnational education (TNE) and operates campuses on behalf of university partners in Singapore, Sri Lanka and the United Arab Emirates.

Study Group delivers pathway programs in Australia, in conjunction with the Australian National University and the University of Sydney, as well as operating campuses for Charles Sturt University in Melbourne, Sydney and Brisbane.

Kaplan delivers pathway programs through partnerships with both the University of Adelaide and the University of Newcastle. It also delivers ELICOS programs and operates the Kaplan Business School – a standalone higher education provider with 95% of students from overseas.

Given the role of our organisations in Australia's international education sector, we welcome the opportunity to provide our feedback to inform the update of the ESOS framework.

The ESOS framework is a key tenet of Australia's world class international education system and will need to stay responsive

The ESOS framework plays an important role in Australia's international education system. It represents a world leading example of consumer protection for international students and ensures that consistent standards are met across Australia's high quality international education system.

The ESOS framework is particularly important for three key reasons:

- **It supports student welfare,** through ensuring students are not exploited and have a positive experience with Australian education
- **It supports visa integrity,** ensuring that CRICOS providers meet their obligations to ensure students are there for the purposes of study and comply with their visa requirements
- **It provides critical consumer protections to students,** through protections related to refunds, agent management and the related Tuition Protection Service (TPS).

With Australia's borders recently reopened, this now provides an optimal time to consider how the ESOS framework can be best adapted to ensure it remains fully relevant, given the changes that have occurred in the international education industry over the course of COVID. This includes how to respond to the emergence of new delivery models, how to compare competing sector priorities and how the framework can best position Australia and support the recovery of its international education sector.

During this paper, when referring to the ESOS framework this is taken to include both the ESOS Act itself, and the accompanying National Code.

Proposed changes to the framework need to balance the interests of students, providers and the government

There are a wide range of issues that are discussed within the consultation paper. While we provide full responses to each in the subsequent section of this document, here we consider four key issues that arise from the consultation paper that we consider most significant. These are the inclusion of online and offshore study into the scope of the ESOS framework, consideration of the introduction of an independent assessment of English language proficiency, restrictions on online study for overseas students studying in Australia, and consideration of removal of the 6 month 'restrictive period' which aims to prevent onshore transfers (or poaching) of international students. Each is discussed in turn.

The ESOS framework should primarily support students studying in Australia not students online and offshore, but there are some grey areas that require clarification

Currently the ESOS framework is intended to support 'overseas students coming to Australia on student visas'. The consultation paper considers the expansion of the ESOS framework to include provisions related to online and offshore study – which is currently not in the scope of the legislation. The paper also considers barriers to sector expansion into online and offshore delivery, how students may move from ESOS regulated to ESOS non-regulated study, and safeguards to ensure the visibility and quality of online and offshore study.

Broadly, the organisations' view is that the scope of the ESOS framework should be for student visa holders who intend on studying onshore in Australia. Due to the circumstances of COVID-19, some consumer protections under the ESOS framework have been extended to 'intending' international students – those who have either applied for or are in the process of applying for a visa. This is a grey area in the current transitional arrangements. This is seen as a positive and should be retained in any model going forward.

Changes to the ESOS framework may be required to balance these consumer protections for 'intending' students who have started their studies overseas (for whatever reason that may be), with ensuring these students are not restricted by other aspects of the ESOS framework – such as attendance requirements or limitations related to online or distance study. The organisations would propose that the framework may require multiple stages, firstly with consumer protections being enacted once the student holds a student visa and commences their studies, and secondly, additional requirements (such as attendance and face-to-face study) relating specifically to once the student has arrived in Australia.

The organisations do not believe that there are other aspects of the ESOS framework that present barriers to the sector's expansion into online and offshore delivery, or indeed that changes to the ESOS framework are required to support blended study models (such as 2+2 programs or offshore articulation partnerships). Similarly, in terms of quality, existing regulatory oversight exists through the regulators (TEQSA and ASQA) and further changes to the ESOS framework are not required to support this.

The ESOS framework must balance the use of technology and flexibility in delivery, whilst maintaining high quality delivery and ensuring those studying in Australia are genuine students

COVID-19 has had a significant impact on how students learn and engage with their studies. Regulatory flexibility (required due to COVID-19 cases in Australia and travel restrictions into Australia) has meant that many students have engaged in their studies through an online environment. It is the view of the organisations that settings should not limit flexible delivery models (such as blended or multi-modal study) but that some of the existing requirements under the ESOS framework should be maintained. This includes restrictions on exclusive online or distance study and the existing limit of no more than one-third of units being online units. This ensures students are genuine students (as distinct from genuine temporary entrants) and remain committed to their studies for the duration of their program.

It is the view of the organisations that existing settings do not unduly limit flexible delivery of blended / multi-modal delivery – as restrictions are related to 'online learning' and 'distance learning specifically'. To support clarity in the ESOS framework, the organisations request that the ESOS framework explicitly acknowledges that units delivered through 'mixed mode' or 'synchronous' delivery methods are not restricted. This will support sector confidence and consistent regulatory interpretation both now and in the future.

Some levels of additional flexibility would also be beneficial for ELICOS and Foundation Studies students, noting that we propose that largely minimum contact hours, attendance requirements and face-to-face requirements are maintained. This is proposed to be no more than 20% and through synchronous delivery.

Independent English proficiency assessments should not be introduced, as this will not best prepare students for further study and will significantly damage the ELICOS sector

Currently only students who proceed through a non-streamlined SSVF process are required by government to undertake an independent assessment of their English proficiency (such as through IELTS). For other students, ensuring appropriate levels of English proficiency forms part of the admission process for the provider they are attending. This may include through alternate forms of English assessment or completion of ELICOS or Foundation Studies programs. The consultation paper raises some concerns with this existing approach and considers whether all students should be required to undertake an 'Independent assessment' prior to their first AQF course.

The organisations do not support the introduction of an independent assessment for all students as we believe that this will result in students opting for courses that aim to prepare students to maximise their scores in high-stakes tests as opposed to enrolling Academic English and Foundation Studies programs, which are carefully designed to prepare the student for their further studies in Australia. We foresee two negative outcomes from the introduction of an independent assessment. Firstly, students are likely to be less prepared and it may impact their success in their subsequent studies. Academic English and Foundation Studies programs provide a more well-rounded experience, ensure students are well-prepared before transitioning to award-level programs and adopt a more appropriate form of assessment of English language proficiency, through formative assessments. Academic outcomes from Bachelor level study also back this up, with students who study Academic English programs prior to their Bachelor studies consistently outperforming students that do not undertake these programs and are admitted through IELTS scores (or similar). Secondly, the negative impact on the ELICOS and Foundation Studies sector would be significant. Despite these courses better preparing students for their studies and being a better way to assess proficiency, it is highly likely students will choose high stakes assessment. This negative impact would be devastating for the sector following several difficult years due to COVID-19.

The six-month restrictive period should continue to be enforced for inappropriate course transfers and if it is removed there need to be changes to the SSVF and visa application system for onshore students

Finally, the consultation paper also proposes the removal of the six-month 'restrictive period' which prevents students from transferring to other programs within the first six months of their primary course. While this is intended to support student choice, the organisations believe this would have a negative impact on the sector and would prefer to see the active enforcement of the six-month restrictive period by the government. This existing component of the ESOS framework is important, it ensures students who come to Australia and do so for the primary purpose of study. It limits poaching by unscrupulous providers, discourages unscrupulous activities by agents, and it ensures the ongoing quality of the system by prioritising high quality education.

If the six-month restrictive period is removed, the organisations strongly recommend that further safeguards are built in to ensure that primary course providers are not unfairly penalised, and the integrity of the visa system is maintained. Firstly, the organisations propose that visa settings should be amended so that the students visa risk under SSVF do not remain with the original provider – thereby not representing a 'trailing risk' for the recruiting provider. Secondly, if the six-month period is removed, the organisations believe that it is important that SSVF and the student visa system is amended to consider when a new student visa application is required. Similar to students applying offshore for a student visa, we believe that a student should be required to apply for a new visa if they are transferring to a provider with a higher risk SSVF rating. This could be indicated to students through an online tool similar to the visa documents checklist. This is in line with the broader rationale of the student visa system (which considers the provider's risk rating) and would be important to prevent this proposed change being exploited by agents and non-genuine students.

Some of the proposed changes are directly related to the ESOS framework, while others focus on related but broader international education policy settings

The consultation paper acknowledges that the ESOS framework interrelates with broader regulatory matters in international education – including TEQSA, ASQA and migration policy. The consultation paper also identifies that 'views relating to this broader environment as it relates to the ESOS framework are welcome'. Given this, the organisations have provided such views as below. The recommendations put forward by the organisations are included in Figure 1 overleaf and are broken down into those that directly relate to the ESOS framework and those that are interrelated but are the responsibility of other parts of the sector.

The remainder of this submission addresses the specific questions put forward in the consultation paper, including responses to the proposals that may be considered by government.

Figure 1 | Summary of recommendations made by Navitas, Study Group and Kaplan

Theme	Recommendation	Responsibility
Expansion and diversification	**Recommendation 1.** TEQSA should provide additional guidance on the process to permanently transition accredited courses to online and offshore delivery.	**TEQSA**
	Recommendation 2. The ESOS framework should explicitly clarify that appropriate forms of multi-modal / blended learning models are not restricted under ESOS. If clarified, existing limits on online and distance study should be maintained.	**ESOS framework**
	Recommendation 3. For Foundation Studies and ELICOS programs, minor changes should be made to enable some flexibility for students.	**ESOS framework**
	Recommendation 4. The ESOS framework should be amended to ensure consumer protections apply to 'intending students' studying online and offshore, but that this does not result in restrictions on these students related to online study or attendance requirements.	**ESOS framework**
	Recommendation 5. Home Affairs should consider positive visa application assessments for students who have commenced studies offshore with Australian providers, as these students have demonstrated a commitment to studying in Australia.	**Home Affairs**
Meeting skills needs and graduate workforce readiness	**Recommendation 6.** Home Affairs should: • consider the appropriateness of the GTE given the labour market situation and government objectives around international education. • provide guidance to providers on what information can be shared related to labour market outcomes and areas of skills shortage without breaching existing obligations.	**Home Affairs**.
	Recommendation 7. Changes should be made to the ESOS framework, so WIL does not count towards the 40 hours per fortnight limit, with further consideration to safeguards required so this change is not exploited.	**ESOS framework**
	Recommendation 8. Home Affairs should provide additional and new pathways to temporary and permanent migration for international students.	**Home Affairs**
Supporting the quality of third-party relationships	**Recommendation 9.** The department should not mandate that agent commission levels are publicly reported.	**ESOS framework**
	Recommendation 10. Home Affairs should make available additional information to CRICOS providers on the performance of third-party arrangements.	**Home Affairs**
Course transfers	**Recommendation 11.** Loopholes to avoid the six-month restrictive period should be actively addressed by the department.	**Department Education, Skills and Employment**
	Recommendation 12. The 'restrictive period' should be retained to ensure visa integrity. Home Affairs should remove the 'trailing risk' that providers hold under current SSVF settings for students who have transferred to another provider. If the restrictive period is removed, Home Affairs should make changes requiring students who are transferring to a higher risk SSVF level provider to re-apply for a new student visa.	**Department Education, Skills and Employment** **and** **Home Affairs**
Written agreements	*No recommendations*	
English Language	**Recommendation 13.** Home Affairs should change visa assessment practices to ensure students who choose longer-term ELICOS programs are not negatively assessed through the GTE assessment. Home Affairs may also consider changes to skilled migration points for 'high' level English proficiency.	**Home Affairs**
	Recommendation 14. The ESOS framework should not be amended to include a requirement for a student to undertake an independent assessment of English proficiency prior to their first AQF course.	**ESOS framework**
	Recommendation 15. The department should work with Home Affairs to reconsider how PRISMS data collection can appropriately capture how students meet English requirements for AQF programs.	**Department Education, Skills and Employment**
Broader areas for input	**Recommendation 16.** The department should work with Home Affairs to identify alternate approaches to visa assessment which supports the sector's broader objectives around diversification. This may include pilots or alternate mechanisms in new markets.	**Department Education, Skills and Employment**

2. Responses to discussion questions

Expansion and diversification

Summary of the organisations' position on 'expansion and diversification'

- The ESOS framework should not be extended to online and offshore students.

- TEQSA should provide further guidance on transitioning courses permanently to online and offshore delivery.

- The ESOS framework should clarify that appropriate forms of mixed mode or flexible delivery models are not limited under the National Code.

- Changes to the ESOS framework should ensure consumer protections for 'intending' overseas students while not enforcing other restrictions that are included in the framework (i.e., online study, attendance).

- For ELICOS and Foundation Studies programs, existing weekly contact hour requirements (20 hours) should be maintained, but some flexibility should be considered for teacher directed online learning.

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1. **What are the barriers in the current ESOS framework to the sector's expansion and diversification into online and offshore delivery?**

The organisations support the existing scope of the ESOS framework and do not believe that there are any aspects of the ESOS framework that present barriers to the sector's expansion and diversification into online and offshore delivery.

The organisations support offshore and online delivery where it is complementary to traditional delivery in Australia. While onshore delivery in Australia is the dominant model of the sector, the organisations do not believe that this is due to any barriers that exist in the ESOS framework settings, but rather this reflects operational challenges of delivering in alternate markets, policy implications in those countries and a range of other commercial factors.

Currently, the ESOS framework focuses on providers that deliver programs to overseas students – i.e., students who hold a valid student visa and are studying in Australia. The scope of the ESOS framework does not prohibit providers from expanding their programs (either new or existing) to other offshore markets either through online or face-to-face TNE delivery.

Separately, based on the experience of the organisations, there are broader challenges with expanding into online and offshore delivery, including:

- Some uncertainty on the regulatory requirements for delivering course online and offshore

- A lack of support in navigating the regulatory requirements for offshore delivery

- Uncertainty on the process to transition to permanent online and offshore delivery.

While these sit outside the ESOS framework itself, further clarification on the process to transition to online and offshore delivery of existing TEQSA accredited programs would be very valuable, in particular as providers consider their long-term strategies to online and offshore following the re-opening of Australian borders.

Recommendation 1 (other agency)

- TEQSA should provide additional guidance on the process to permanently transition accredited courses to online and offshore delivery. This should also consider synchronous delivery with students located in Australia.

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2. What lessons have we learnt through flexible delivery, online modes of study and others changes in response to the pandemic that could be incorporated into the ESOS framework?

Based on the experience of the organisations, we believe there have been four key lessons from flexible delivery during COVID-19, these include:

- **There is a wide range of quality of online delivery across the sector.** High levels of technical support are required for online delivery, and these have not been consistently offered by all providers. Similarly, effort and investment are required for curriculum and pedagogy to ensure high quality and appropriate online offerings.

- **Certain programs lend themselves better to online delivery than others**. ELICOS programs are arguably more effective when delivered in face-to-face mode than exclusively online as this allows full engagement and interaction with teachers and fellow students. Courses requiring practical components are also difficult to deliver fully online.

- **Flexibility is attractive to students and does not necessarily negatively impact attendance or engagement.** Some flexibility is appropriate for students as it provides them flexibility to respond to competing demands and other priorities. The organisations have also found that online study options did not negatively impact attendance, and in some instances positively impacted attendance. This is discussed further in question 3 below**.**

- **Student outcomes have been shown to be comparable or better when high quality online learning is delivered.** All organisations have delivered strong academic outcomes for higher education students despite delivery through an online setting. A summary of key outcomes is presented below for two of the three organisations.

Figure 2 | Outcomes delivered though flexible delivery models during COVID-19, Organisation 1
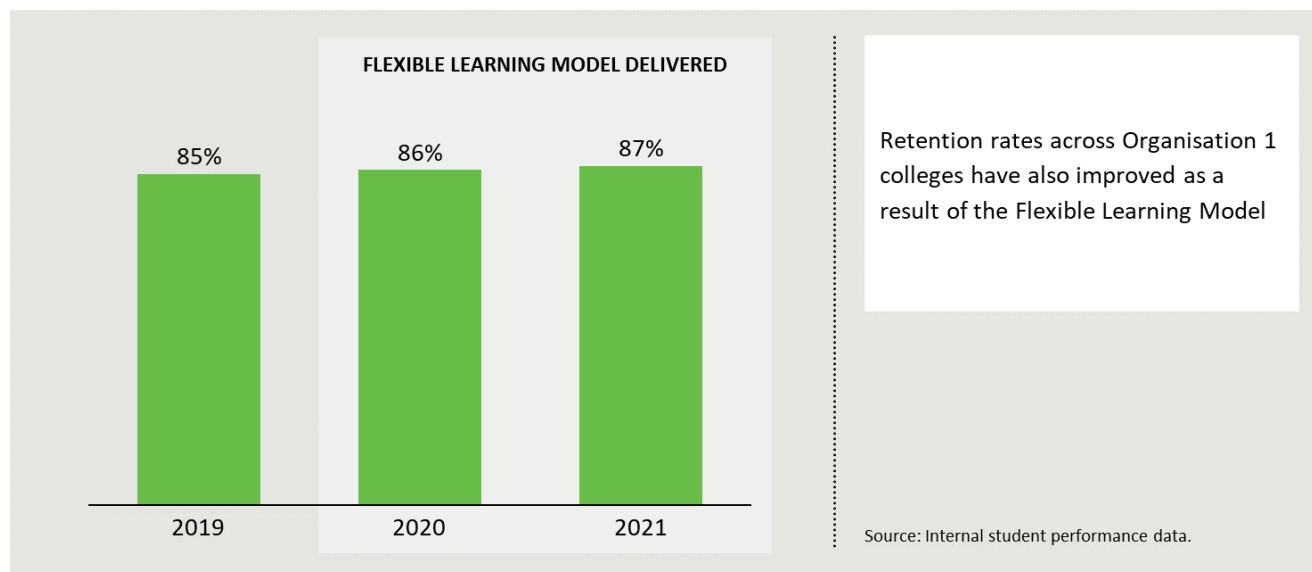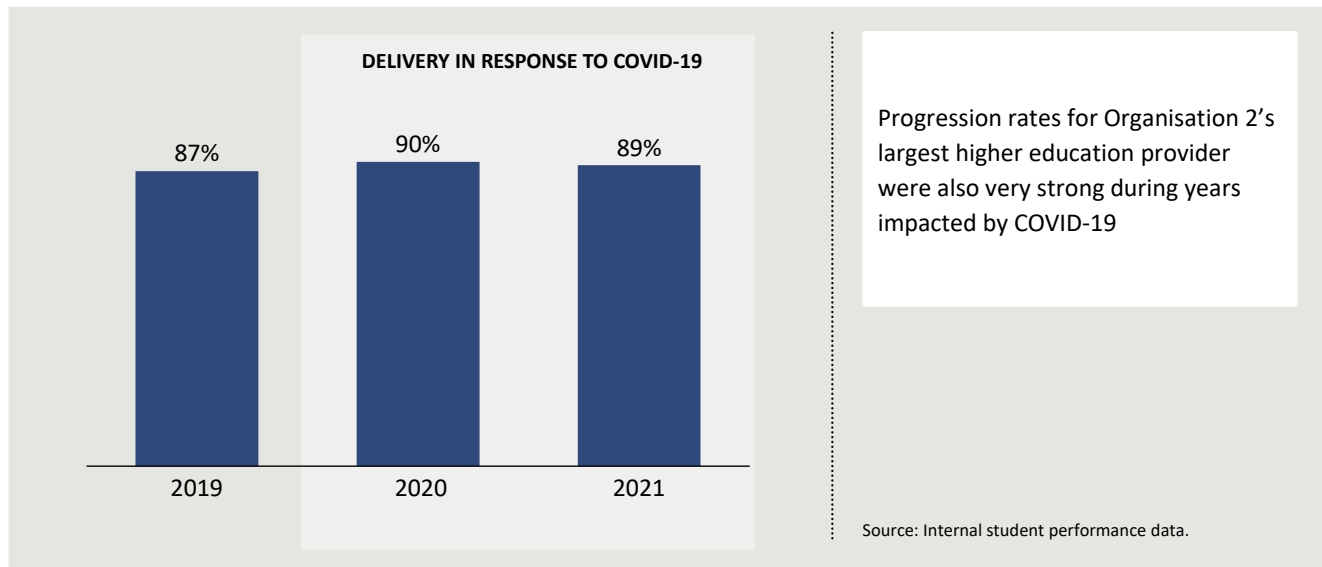

FLEXIBLE LEARNING MODEL DELIVERED

2019: 85% 2020: 86% 2021: 87%

Retention rates across Organisation 1 colleges have also improved as a result of the Flexible Learning Model

Source: Internal student performance data.

Figure 3 | Outcomes delivered though flexible delivery models during COVID-19, Organisation 2

DELIVERY IN RESPONSE TO COVID-19

87%	90%	89%
2019	2020	2021

Progression rates for Organisation 2's largest higher education provider were also very strong during years impacted by COVID-19

Source: Internal student performance data.

3. **What percentage of a course should the ESOS framework allow to be studied online? How could the ESOS framework support delivery models such as mixed mode study where students move from ESOS non-regulated to ESOS regulated environment (for example, a student studying part of their degree offshore and part onshore)?**

This question considers two very distinct issues within the sector – firstly, limitations on online study for students studying in Australia and, secondly, mixed mode study from offshore (online) to onshore (face-to-face) study. Each is considered separately below.

Proportion of course studying online for onshore students

The organisations support the existing level of flexibility in Standard 8 of the National Code but believe the ESOS framework should clarify that this does not restrict genuine blended delivery models.

The National Code currently places some restrictions on online study and distance study. This includes that:

- No more than one-third of an onshore overseas students' course units is delivered online or through distance study
- There is at least one face-to-face unit during each study period.

The organisations are supportive of maintaining these settings with requirements around face-to-face study. This ensures that students are engaged with their studies, supports high quality education provisions, and ensure those studying in Australia are genuine students and are here for the primary purpose of education. The organisations do however see some opportunities to retain and clarify some elements of the flexibility that international students studying in Australia have been introduced to in response to COVID-19.

The organisations therefore put forward the following changes to the ESOS framework to ensure an appropriate level of flexibility is maintained for international students who are studying onshore in Australia – as outlined in Table 1. Specifically, the organisations recommend that the ESOS framework provides greater clarification that flexible delivery models (such as synchronous delivery) do not constitute 'online study' or 'distance learning' for the purpose of the ESOS framework. This does not represent a change in policy settings, but rather a clarification of existing settings.

Table 1 | Proposed changes to ESOS Act to support flexible delivery

Issue	Policy prior to COVID-19	COVID-19 flexibility	Proposed long-term policy
Exclusive online and distance delivery	8.18 A registered provider must not deliver a course exclusively by online or distance learning to an overseas student	**Online delivery flexibility.** Regulatory flexibility by TEQSA that programs could be delivered exclusive online (with mid-2022 review).	**Return to pre-COVID policy.** Supports restrictions on international students in Australia studying solely through online or distance study (see below regarding blended delivery).
Limits on number of units for online and distance delivery	8.19 A registered provider must not deliver one-third of units by online or distance learning to an overseas student	As above	**No proposed change.** Support this requirement, noting it does not limit delivery of flexible / blended learning models.
	8.20 A registered provider must ensure that in each compulsory study period the overseas student is studying at least one unit not by distance or online learning	As above	**No proposed change.** Supports this requirement, noting it does not limit delivery of flexible / blended learning model.
Online and distance for Foundation and ELICOS students	8.21 For school, ELICOS and Foundation programs, any online or distance learning must be in addition to minimum face-to-face teaching requirements	**Flexible attendance requirements.** Students were not required to attend 20 hour per week face to face teaching requirement or 80% attendance of scheduled course contact hours requirement.	**Some flexibility introduced.** Support maintaining the existing requirements on contact hours, but some flexibility in face-to-face attendance (for example, 4 hours out of 20 hours) for Foundation and ELICOS programs. *See commentary below.*
Supports for students studying online and distance	8.22 A registered provider is required to take all reasonable steps to support students disadvantaged by inability to access resources and engage with other overseas students while undertaking online study.	No significant change	**No proposed change.**
Definition of online and distance education	The National Code defines online study as "where the teacher and student primarily communicate through digital, technology and IT and does not require attendance of scheduled classes or contact hours. This does not include the provision of online lectures, tuition or other resources that supplement scheduled classes or contact hours."		**Clarification required.** The ESOS framework should explicitly clarify that multi-modal / blended learning models are not restricted under the ESOS framework and do not constitute 'online study' under the framework.

The understanding of the organisations is that the definition of online or through distance study and the restrictions in the ESOS framework do not prohibit the delivery of units that adopt blended, mixed-mode or flexible delivery models. While the organisations do not see barriers in the ESOS framework to ongoing delivery of mixed mode delivery models, it would be valuable for the ESOS framework (and regulators) to clarify that units delivered through **'mixed mode' or 'synchronous' (as opposed to 'asynchronous') delivery methods are not restricted under the ESOS framework**. This would provide certainty to providers in continuing to deliver these models and further investing in education technologies that support blended delivery. The organisations also believe that existing settings in the Standards related to 'progression' provide a sufficient safeguard against poor quality delivery or students who are not engaged in their studies.

Recommendation 2 (ESOS framework)

- The ESOS framework should explicitly clarify that appropriate forms of multi-mode / blended learning models are not restricted under the ESOS framework and do not constitute 'online study' under the framework.

- If this is clarified, existing limits (no more than one-third of units) on online study and distance education should be maintained.

Settings for ELICOS and Foundation Studies currently differ from higher education study. For these programs, the organisations believe that the current 20 hours per week face-to-face teaching requirement is appropriate and ongoing monitoring of attendance requirements are also appropriate. This reflects that these students are more likely to have recently arrived in Australia, less well equipped for exclusively online study and are more vulnerable (and typically younger) student cohorts. These are also important to ensure high quality of delivery for both ELICOS and Foundation Studies programs.

While the organisations fully support the rationale for the study hours and attendance requirements, it might be possible to introduce some flexibility in delivery mode. The organisations would recommend that 4 hours (out of the mandated 20 hours) can be delivered through teacher directed online learning sessions (for example, through videoconferencing) or asynchronous online class participation. This retains the safeguards in place on quality but provides some flexibility to both students and providers.

Recommendation 3 (ESOS framework)

- For Foundation Studies and ELICOS programs, minor changes are made to the ESOS framework to enable some flexibility for students (such as 4 hours can be delivered online out of the required 20 weekly hours)

Offshore delivery models

The organisations do not believe that there would be benefits to expanding the ESOS framework to cover students that are not and do not intend on studying in Australia: however, there are some areas that could be clarified. Currently 'intending students' – students who are intending on studying in Australia – are covered by the ESOS framework to ensure consumer protections are in place.[1] These protections that have been introduced through the COVID-19 period should not be removed.

A two-tier approach may be considered by government to the ESOS framework for overseas students that are coming to Australia on student visas. On the one hand, students that have commenced online in their home country and hold a student visa should have the consumer protections that sit within the ESOS framework available to them (for example, the TPS). However, on the other hand, these same students cannot and should not be held to the same requirements as students that are already studying in Australia (for example, restrictions on online delivery, distance learning and attendance). Instead of referring broadly to 'student visa holders' as is currently the case, this distinction may need to be made in the framework itself.

The organisations do not believe that further changes to the ESOS framework are required to support blended study models.

Current arrangements typically utilise credit recognition approaches and the organisations believe that these are appropriate and do not create barriers for providers delivering programs offshore.

To support consumer confidence, the government could provide support in the form of guidelines outlining how blended offshore / onshore programs interact with the ESOS framework and state that these forms of delivery are supported by government.

The organisations believe it is critical that flexibility is retained in TEQSA's arrangements to ensure that providers are able to continue to deliver existing programs to students who are located offshore. We also believe that increasingly students may choose to commence a course offshore before coming onshore to Australia to either complete the initial course or to commence a new program. Ensuring regulatory settings that support this flexibility are vital. This does not change the important role of TEQSA in ensuring quality delivery and compliance with the threshold standards of online offshore programs. Below we outline two changes that would clarify the requirements and regulator coverage for providers delivering flexible delivery models to new offshore markets through online education.

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[1] See Sector update: Offshore students enrolled in CRICOS-registered courses | Tertiary Education Quality and Standards Agency (teqsa.gov.au); Definitions and acronyms (internationaleducation.gov.au) and Advice on International Student Offshore

Table 2 | Proposed changes to TEQSA to support offshore and online delivery

Issue	Policy prior to COVID-19	COVID-19 flexibility	Proposed long-term policy
Process for extending offshore online delivery	Programs had to be registered for delivery offshore.	Providers required to report *Material Change Notification* when delivering online programs.	**Clarification of requirements.** TEQSA to clarify requirements for ongoing and permanent online / offshore delivery in parallel to core. Develop a streamlined process for threshold standards assessment if required.
Clarification of ESOS framework coverage for offshore students	The ESOS framework did not cover students studying offshore.	Students with an Australian student visa studying offshore protected by the ESOS framework – incl. consumer protections and TPS.	**Maintain ESOS consumer protections for 'intending students.'** However, alternate consumer protections that do not create additional regulatory burden may be considered for offshore students.

The organisations' views are that there are not significant other regulatory barriers for programs that include elements of offshore delivery. Specifically, students will apply for a 'packaged visa' which commences once they come to Australia (having completed some units offshore).

Recommendation 4 (ESOS framework)

- The ESOS framework should be amended to ensure consumer protections apply to 'intending students' studying online and offshore, but that this does not result in restrictions on these students related to online study or attendance.

The organisations also believe that for students who have studied overseas with Australian providers (for a defined period), it would be sensible to consider this track record positively in visa applications. These students have a track-record of commitment to study which should be considered by Home Affairs in assessment of their student visas.

Recommendation 5 (other agency)

- Home Affairs should consider positive visa application assessments for students who have commenced studies offshore, as these students have demonstrated they are 'genuine students'.

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4. What safeguards could be used to increase visibility and assure the quality of online and offshore in the future?

The organisations do not believe that further safeguards are required within the ESOS framework to assure the quality of online and offshore delivery and believe that the existing regulatory mechanisms that are available to CRICOS regulators are appropriate.

Safeguards are already in place for Australian qualifications delivered online and offshore. Regulators (ASQA and TEQSA) are responsible for ensuring quality delivery of programs (whether delivered in Australia face-to-face or offshore). While there may be a need for regulators to have more oversight on how the online components of the programs are being delivered and the learning outcomes being achieved, the organisations believe these are existing powers of the regulator. Therefore, the assurance of quality in online and offshore programs should occur within existing regulatory mechanisms.

In addition to this, existing mechanisms, such as the QILT student experience surveys (SES), or a similar mechanism, could be extended to other sectors (aside from higher education). This would provide a transparent measure of student satisfaction if data could be made publicly available in a timelier manner.

Meeting skills needs and graduate workforce readiness

Summary of the organisations' position on 'skills needs and workforce readiness'

- Further guidance should be given to providers on promoting workforce shortages and labour market outcomes for students while balancing their student visa and ESOS obligations.

- Formal provider-approved WIL should not count towards the 40 hours per fortnight work restrictions.

- To better address workforce shortages in the medium-term, incentives should be provided through new pathways to temporary and permanent migration for international students through the visa system and Migration Program.
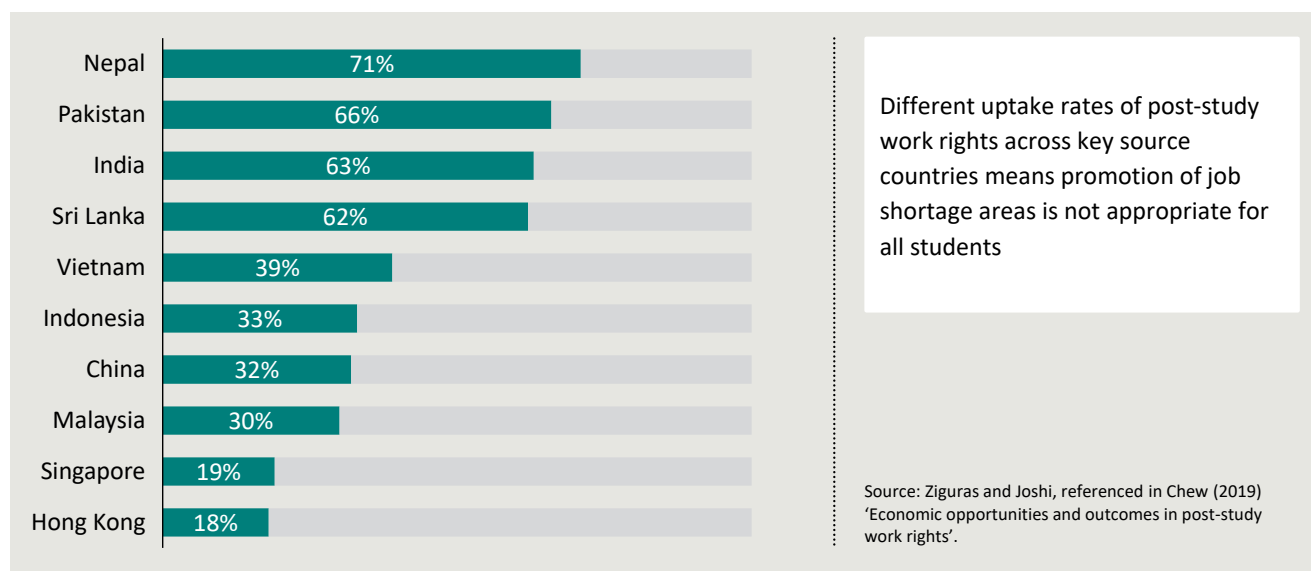
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5. How could providers support students to identify and undertake courses that align with Australia's priority employment fields?

The organisations do not believe that existing provisions within the ESOS framework should be amended to require providers to provide information on course alignments with skills needs.

Currently, restrictions in the National Code emphasise that providers should not emphasise the migration outcomes that the student may achieve (as per Standard 5). Similarly, the Genuine Temporary Entrant (GTE) assessment process requires students to state that they are coming to Australia temporarily to receive a quality education. A strong emphasis on student migration outcomes would appear to contradict Home Affairs' current GTE requirements. This would need to be addressed and clarified if providers were to focus on providing programs that align with Australia's priority employment fields and promoting these programs as such. Providing a guidance note to providers on this would be appropriate.

Many students will also return to their home country (or another country) following their studies – as shown in Figure 4 – so focus on Australia's skills needs should not be mandated and providers should be able to use their own discretion on the promotion of this within course materials. For some students, promotion of skills shortage areas meeting demand in their home country will be more appropriate.

Figure 4 | Post-study work outcomes for students studying in Australia, by source country

Country	Percentage
Nepal	71%
Pakistan	66%
India	63%
Sri Lanka	62%
Vietnam	39%
Indonesia	33%
China	32%
Malaysia	30%
Singapore	19%
Hong Kong	18%

Different uptake rates of post-study work rights across key source countries means promotion of job shortage areas is not appropriate for all students

Source: Ziguras and Joshi, referenced in Chew (2019) 'Economic opportunities and outcomes in post-study work rights'.

The organisations support greater access to labour market data, including through work on labour market employment forecast data and the recent work by the National Skills Commission (NSC). It would be beneficial for the government to confirm that promotion of the link between courses of study and skills needs are appropriate for a CRICOS provider given the restrictions that exist in Standard 8 of the National Code, our responsibilities to our students in confirming work and the current DHA requirements (and visa assessment process) around GTE.

The organisations also propose more substantial policy changes to incentivise students to study in areas of skilled shortage (see question 7 below).

Recommendation 6 (other agencies)

- Home Affairs should consider the appropriateness of the GTE given the labour market situation and government objectives around international education.

- Home Affairs should provide guidance on what information providers are able to share on labour market outcomes and areas of skills shortages in Australia, without breaching existing obligations.

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6. What changes could be made to the ESOS framework to support providers offering a wide range of work integrated learning opportunities?

The organisations believe that identified and formal provider-approved work integrated learning (WIL) should not count towards the 40 hours per fortnight work limit. This existing policy settings (with only 'elective' WIL programs not counting towards the 40 hour per fortnight limit) creates a disincentive for students to undertake WIL and gain experience in areas of skilled employment that relate to their studies.

The organisations believe that WIL is very important. It supports engagement between international students, Australian society, and the Australian business community. It provides meaningful work experience for international students that is important for their labour market success (whether in Australia, back in their home country or elsewhere). When done well, WIL programs are also mutually beneficial for both students and employers.

Despite supporting this change, the organisations do acknowledge that safeguards need to be introduced to ensure that this is not exploited, such as through exploitation of international students through excessive work hours, increasing the prevalence of non-genuine students and unscrupulous providers. Further engagement on this will be required.

The organisations have also previously advocated for changes to support WIL through changes to the Professional Year Program (PYP). This includes enhancements such as changes to visa points, expansion of occupations and other proposed changes. **Changes to the Temporary Graduate visa**, including through its temporary extension, changes to the visa name and promotion of the visa to employers would also be valuable in supporting work opportunities for international students after they have completed their studies.

Recommendation 7 (ESOS framework)

- Changes should be made to the ESOS framework so WIL does not count towards the 40 hours per fortnight limit, with further consideration to safeguards required so this is not exploited.

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7. What regulatory measures should be implemented to make study choices in occupations and areas of demand more attractive for overseas students?

The organisations propose that more substantial changes are made to incentivise study in areas of skills shortage which fall outside the scope of the ESOS framework.

As outlined by the consultation paper, there are currently 'few incentives' to support students to choose courses of study aligned with Australia's skill needs. The organisations have previously proposed a range of measures to incentivise international students to stay in Australia after their studies and support Australia's skills needs.[2] These include:

- **Setting a target for student-migrant transition**, through increasing the current levels of 16% to 25% in line with other major destinations.

- **Recognising that genuine higher education student visa applicants may have a migration intention**, and temporarily or selectively suspending the requirement of being 'temporary' while still ensuring applicants are 'genuine students.'

- **Targeted changes to the skilled migration points system**, including additional points for the 'Australian Study Requirement' to provide a more attractive pathway for talent that has studied in Australia to settle in Australia.

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[2] See Joint Standing Committee on Skilled Migration Inquiry submission.

- **Short-term extension of the Temporary Graduate Visa,** to address net overseas migration impacts and skills shortages and support student transition through to the Skilled Migration Program.

These changes will position Australia as a welcoming education destination that acknowledges the broader economic and social contribution that international students make to Australia. This is important with Australia competing globally with other education destinations – including the United States, United Kingdom, Canada, and New Zealand. Any attempts to limit student choice or promote exclusively areas of skilled shortage, without appropriately incentivising study in these areas (including through post-study work rights and pathways to permanent residence) could make Australia a less attractive destination.

Accessible pathways, including through post-study work rights is therefore important to prospective students. Indeed, the most recent Navitas Agent Perception Survey found access to post-study work rights remains a top 3 factor influencing students' choice of where to study. This research has shown a decline in perceptions of Australia as an attractive international education destination, particularly with regard to being 'open and welcoming'.

Figure 5 | Drivers of destination choice (Navitas agent survey, September 2021)

Ranking within region based on number of mentions — Top 3 rank — Bottom 3 rank

Factors influencing student choice of study destination	All Regions	Americas	Europe	Greater China	North Asia	South Asia	South East Asia	Central Asia	MENA	Sub-Saharan Africa
Cost of study	1	1	1		1	2	3	1	1	1
Access to Post Study Work Rights	2	3	3		1	1	2	3	3	3
Ability to travel to country	3			3		3	1			
Quality of education			2		3			2	2	
Ability to get a visa/ visa processing time		2				3				1
Safety and security				2						
Reputation of institution			3							
COVID-19 impact (number of cases and/or restrictions)				1						
Perceptions of destination country				13						
Vaccine roll-out (level of population coverage)			12	12					12	11
Relationship between own country and destination country	11		11			12	13	12	10	12
Access to healthcare	12		13		13	11	11	10		13
Provision of online delivery from home	13	13		11		13	12	12	12	

Any policy setting also needs to acknowledge that there will not always be a 'one-to-one' connection between study areas and employment fields. The recent work of the NSC should be considered in supporting appropriate and nuanced assessments of skill needs, based not only on industries or fields of employment, but also specific skillsets.

Recommendation 8 (other agencies)

- Home Affairs should provide additional and new pathways to temporary and permanent migration for international students.

Supporting the quality of third-party relationships

> **Summary of the organisations' position on 'third-party relationships'**
>
> - Publication of agent commission levels would have a negative impact and undermine Australia's competitiveness in a global market.
>
> - Additional transparency of agent performance outcomes to providers would be valuable in supporting providers manage agents and determine which agents to work with.
>
> - There would be benefits from greater guidance from the Department on what should be included in a written agreement. This could be included through the provision of an opt-in 'flexible template'.

8. What kind of measures increase the transparency of third-party arrangements could be effective in improving student choice and provider choice?

The organisations support transparency measures related to agent performance. For this reason, the organisations support the publication of robust and detailed education agent performance data.

International education agents play an essential role in ensuring international education providers are able to provide study opportunities for students from around the world. Around 75% of all students coming to Australia utilise an agent to support them find the right course, in the right city and navigate the complex application and visa system.[3]

It is also important to recognise that students and parents who are considering studying in Australia are highly informed consumers (including with access to measures on provider rankings and provider's ratings on student experience). We therefore do not believe that agents not acting in the best interests of students is a key issue, with consumers 'pushing back' where agents are not acting in their best interests. It is not clear there is evidence, for example from the Overseas Student Ombudsman, that this is a key issue and students are being misled by a lack of transparency about third-party arrangements.

However, there are some further areas where additional transparency could be provided and that support providers in managing their third-party partnerships which are outlined in response to question 10.

9. What are the effects of increasing transparency on agent commissions? Would transparency measures improve student and provider choice? Would they drive down high renumeration rates over time? What are the other potential outcomes from increasing agent transparency?

The organisations believe that any measure that aims to increase the transparency of agent commissions needs to balance commercial considerations and competition with other destination countries. The consultation paper outlines that there are concerns about the level of incentives that are being paid by providers and that this could lead to perverse incentives for agents who are acting in their own commercial interests, not the interests of students. Measures focused on transparency of agent commission levels is proposed as a potential solution to this.

The organisations do not believe there is any evidence to suggest that increased transparency of agent commissions would drive down commission rates over time (as suggested by the paper) and would risk undermining the competitiveness of the Australian international education sector. The logic of this policy change is not clear, and it is unclear how the introduction of this would improve student choice or provider choice based on transparency of commission levels.

In particular, the introduction of this type of approach may:

- **Negatively position Australian providers in a global marketplace**. Acknowledging that providers are not only competing against other Australian but also other universities and providers around the world. Changes that will apply only to Australian providers would severely risk undermining its global competitiveness.

- **Be very unpopular with agents and not position the Australia sector well.** This measure would be strongly opposed by agents and may impact the attractiveness of them promoting Australia as an education destination.

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[3] DESE (2019) 'International Education Agents'

- **Result in higher levels of competitive behaviour, not less.** Transparency of commission information could actually result in increased competition as providers have additional information on commission levels of competitors. This could result in both 'price-matching' and 'under-cutting' behaviours, without addressing high commission levels.

- **Require providers to share commercial in confidence information.** It is not clear that this information is in the public interest and is commercial in nature. We also note that there is not precedent in other industries where agents are required to disclose their commission levels.

Instead, the organisations believe that there are other regulatory instruments that effectively mitigate 'high commission and low quality' providers. This includes through existing mechanisms through the ESOS framework, TEQSA and ASQA regulatory responsibility and the Home Affairs visa system.

The organisations do agree that students should be made aware that there is a commercial arrangement between agents and providers, without sharing the actual commission level. This is important to ensure students and their families are aware of this and ensures they can consider this in their decision making. The organisations also believe that fees that agents charge to students (sometimes that are hidden) is more of an issue than commission levels and this should be prioritised to be addressed. None of the three organisations pay commission rates outlined in the consultation paper (30-50%).

Recommendation 9 (DESE)

- The department should not mandate that agent commission levels are reported or published publicly.

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10. What information, such as education agent performance outcomes, can the government make available to providers to help them decide the agents with which to engage?

The organisations support greater transparency of agent performance data with CRICOS providers having access to agent performance data for all agents, not just those they have a formal written agreement with. Currently, providers only have information available on the performance of agents that they have formal agreements with. Providing access to information on all agents will ensure providers are able to make effective and appropriate decisions through increasingly transparent information on agent performance. While the current arrangements support the provider to meet their obligations under the ESOS framework by providing information on performance of their own agents, providing access to information on all agents would allow providers to make informed decisions prior to entering into agreements with new agents. Considerations on the performance of agents – including in relation to visa integrity and other key measures – are critical in deciding on which agents to partner with.

As a broad rule, the organisations are of the view that government should provide all information available to it about agents' performance to providers (captured through the PRISMS system) to assist providers in working with only quality providers. This is particularly important given the obligations of providers (and the sector) in managing agents it has a relationship with.

Additional information may include:

- **Visa success rates,** through the introduction of a risk index similar to the provider and country risk index in SSVF. This would not be a formal part of the SSVF assessment but would provide information to providers to make informed decisions in a form that is familiar to all providers.

- **Information on visa rates for individual agents for the whole sector,** acknowledging that an agent that has a good visa rate for one provider, may not necessarily have a good visa rate overall, but should be considered in decisions.

- **Transparency on agent agreements that have been terminated.** This should include information on the reasons for termination, with this information not currently available to providers.

- **Access to agent performance measures for not only agents in existing relationships, but also other agents.** This will support decision-making for providers when signing new agent partnerships.

- **Details on agents that are on the migration agent list and any breaches / negative performance.** This includes where agents are dual-sector agents, visa rejection rates for other visa types and when agents have been struck off the migration list.

Recommendation 10 (other agencies)

- Home Affairs should make available additional information to CRICOS providers on the performance of third-party arrangements, including transparency on termination of agreements, performance measures for all agents and interaction with performance on the agent migration list.

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11. Should providers be required to have written agreements with all agents they accept students from, it could result in more information for students and improve data reporting on provider and agent activity. Are there any positive or negative outcomes for students in this change?

The organisations each have formal written agreements with all agents that we engage in line with ESOS framework requirements. The organisations believe that the current arrangements in place are satisfactory.

Instances where a provider may not have written agreements in place are very uncommon. One such instances, may be where the agent is representing the student directly (as opposed to representing the education provider). This instance may occur if a partner university refers the student to a pathway college or partner provider. Only very small numbers of students come through this channel, and we do not believe this is a significant sector issue.

12. What information should written agreements between agents and providers contain to protect providers and better inform students and government?

The organisations believe that there would be benefits from increased guidance from the Department on what should be included in a written agreement. This could include through the provision of a 'flexible template'.

A flexible agreement template that is provided should include core consistent elements, whilst also allowing providers to add or remove specific components based on their own specific circumstances. This would be particularly valuable to smaller CRICOS providers who may only recruit a small number of overseas students and would support greater consistency across the sector. This tool should be an opt-in resource.

13. What is the potential impact on providers regarding increased administrative activity if they are required to monitor all agents?

The organisations fully support that providers are accountable for oversight of all agents as is required currently under the ESOS framework. Providers play an important self-regulatory role in ensuring agents are supporting the best interests for the provider and the broader Australian sector. Providers hold contracted agents to account for the quality of all applications that are lodged through the contracted agent, including through commercial and contractual arrangements. Agents play an important role in ensuring students meet the requirements to study in Australia, including the requirements under the current GTE process. Providers do need to have an appropriate level of oversight to ensure agents are effectively fulfilling this function.

Course transfers

Summary of the organisations' position on 'course transfers'

- The 'restrictive period' on transfers is important to ensure students are genuine students that come to Australia for the purposes of study.

- The 'trailing risk' that exists for providers within the SSVF system needs to be removed to ensure providers are not inappropriately negatively impacted by students who have already transferred.

- If the 'restrictive period' is removed, there is a need to reconsider the visa assessment process for transferring students, including whether students should be required to apply for a new visa if transferring to a high-risk provider.

14. How can the ESOS framework enhance optimal student choice and safeguard providers ability to deliver a quality education experience?

The organisations support the current settings that students are not able to transfer to a new provider before completing six months of their program without approval by the primary course provider. The organisations believe that the existing guidance provided to the department on instances where there is an 'appropriate' course transfer provides sufficient guidance to providers and enables student choice where it is in their best interest to change course.

In discussion of this issue, there is a need to distinguish between 'appropriate transfers' and 'inappropriate transfers'. Appropriate transfers are where students may need to choose an alternative study that is better aligned to their academic level or individual requirements. In contrast, inappropriate transfers should be considered where the student does not gain approval of release and may not be visa compliant. The organisations strongly believe there is a need to manage these inappropriate transfers as this impact providers and the integrity of the visa system.

The organisations also believe there is a wealth of information available to students and their parents through performance and transparency measures released by the Australian Government and other third parties. This includes measures related to student satisfaction (through QILT SES and GES), student outcomes and retention rates from the department and global university rankings. Access to this information makes it far less likely that a genuine student will choose to study with a low-quality provider.

15. How can the framework and providers ensure course packaging requirements are transparent to students and support student choice and wellbeing?

The organisations would support transparency measures that require providers to explain when they would be able to transfer to an alternate provider based on the way their visa has been 'packaged'.

The organisations also agree a student's visa obligations throughout all components of their packaged enrolment could be made clearer to international students.

16. What are the benefits to providers and students in restricting a student from changing providers within the first six months of their primary course, and what would be alternatives to support student choice?

The organisations support the current settings that students are not able to transfer without primary provider discretion before completing six months of their program. This setting is critical to support the integrity of the visa system and ensure that students are genuine students who have come to Australia for the purpose of study.

From our perspective, onshore recruitment, or 'poaching' within the first six months does not support the industry's position as a provider of high-quality education, with students often recruited to lower priced and lower quality programs. The organisations would like to see strong enforcement of this requirement, not the removal of it.

The six months period is important for students also. It ensures that they remain engaged in their studies with the institution they originally intended on studying with. Students changing providers mid-course also lose continuity of study, which could diminish their learning experience. This can also impact student progression rates and their welfare. We acknowledge that there are many valid reasons why a student may choose to change provider during the first six months and the more 'detailed guidance' that the Department has provided in the past few years supports decisions aligned with these reasons.

17. Should 'concurrent study' as an option remain within PRISMS and, if so, what provisions should be made to ensure they are not abused?

'Concurrent study' is one of many loopholes in the existing PRISMS systems which need to be addressed to ensure the active enforcement of the already mandated six-month restrictive period.

Other loopholes, which the organisations believe are more prevalently used in the sector, include:

- Registering students as 'new' students and creating duplicate files, thereby avoiding the need for a 'release' by the original primary course provider

- 'Deferral of studies' which results in the student not being 'restricted' or requiring a release in PRISMS as they are not studying with their current provider.

The organisations believes that the 'concurrent study' option should be retained, but that restrictions could be placed to ensure this mechanism is not exploited by providers. There are certain scenarios where the use of 'concurrent study' in PRISMS is appropriate and can be utilised. This includes delivery of ELICOS programs to students in parallel with study in other sectors (such as higher education) as well as skill-specific short courses which are supplementary to broader studies. This is important to support high-level English skills for students that are studying in Australia throughout the course of their studies.

However, the organisations would like the government to consider ways to restrict the use of this variable only in appropriate circumstances, for example:

- Restricting concurrent study to certain programs, levels, or sectors only (i.e., those that represent a reasonable 'concurrent' program of study)

- Allowing concurrent programs only when formally approved by the primary program provider (in essence, providing veto powers for use of concurrent study)

- Providing visibility of concurrent study to the primary program provider to ensure awareness of its use and ensure it aligns with the intent of the approval where given.

Access to PRISMS and HEIMS record files are particularly important where the provider still holds the risk through the SSVF system.

Recommendation 11 (DESE)

'Loopholes' to avoid the six-month restrictive period should be actively addressed by the Department.

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18. What restrictions, if any, should there be on the transfer of adult international students where they wish to transfer between providers?

The organisations support the current settings that students are not able to transfer without primary provider discretion before completing six months of their program. This setting is critical to support the integrity of the visa system and ensure that students are genuine students who have come to Australia for the purpose of study. Maintaining this setting is necessary to support visa integrity, given the assessment process under SSVF / GTE relates to the rating of the provider.

The organisations also believe that it is necessary to reconsider existing visa settings to ensure that the risks of a student under SSVF do not remain with the original provider(s) – thereby representing a 'trailing' risk for the recruiting provider. The organisations believe that this is an important change, regardless of if there are changes to the 'restrictive period' but is critical if restrictions on transfers within the first six months of the primary program are lifted.

Finally, if the six months 'restricted period' is lifted, the organisations believe it is important that SSVF and the student visa system is amended to reconsider when a new student visa application is required. The current visa system acknowledges and is designed to reflect that students are required to demonstrate a different evidentiary requirement when they are studying with providers that do not have a strong record of visa integrity (i.e., SSVF Level 3 providers) or are coming from a country that represents a higher visa integrity risk. Once a student transitions onshore this rationale is not maintained. Students are currently only able to transfer to the same AQF level. In the same way, the organisations believes that students that transfer to a provider with a higher SSVF rating should be required to apply for a

new student visa. This setting would ensure that students do not take advantage of the SSVF rating of a provider with the intent of transferring once onshore, given the student would have required a higher evidentiary threshold requirement if they first applied to the institution they are transferring to. This change also ensures that the integrity of the visa system is maintained and the intent of the SSVF process is applied appropriately to students once onshore.

Recommendation 12 (Department and other agencies)

- The 'restrictive period' should be retained to ensure genuine students and visa integrity

- Home Affairs should remove the 'trailing risk' that providers hold under current SSVF settings for students who have transferred to another provider

- If the 'restrictive period' is removed, Home Affairs should make changes requiring students who are transferring to a higher risk SSVF level provider to re-apply for a student visa

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Written agreements

Summary of the organisations' position on 'written agreements'

- Written agreements with students work effectively in the three organisations.

- Any changes that support consistency of approach across the sector (whilst maintaining flexibility and provide choice) would be beneficial for the sector overall.

19. How effective are written agreements in consistently setting our and protecting the rights and obligations of students and providers?

The organisations experience is that written agreements with students currently work effectively in each of their own respective organisations. Our experience has been that if providers' written agreements directly follow the National Code Standard 3, they are very effective.

More broadly across the sector, the organisations do not have a view on the consistency of written agreements or challenges that poor quality written agreements may create for students.

20. What measures could be introduced to increase transparency of written agreements for the benefit of students and providers?

The organisations would be supportive in principle of the provision of model clauses or model written agreements, so long as they were not prescriptive and mandated. This would support a degree of consistency across the sector, while supporting flexibility for providers where this may be required for the written agreements to reflect their own specific circumstances.

This would also support reduced drafting costs for smaller CRICOS providers and ensure consistency around rights and obligations for students.

Some key considerations may include:

- Tailoring the language for lower-level English language students to ensure they fully comprehend the agreement

- Providing a best practice note for letters of offer and written agreements to drive consistency across the sector

- Encourage providers to share their own standard written agreements publicly on their website.

21. If model clauses or model written agreements are introduced, what would they look like and how can they be leveraged to reduce the regulatory compliance costs and promote best practice in the area of refunds, deferrals and transfers?

As outlined above, the organisations are supportive of the provision of model clauses and/or model written agreements by the department. This will support consistency and ensure that providers are meeting their obligations under the ESOS framework, the National Code and broader consumer law. These would be valuable in the areas of refunds, deferrals and transfers which can attract inappropriate behaviour by both agents and providers and non-genuine students. Greater consistency would be welcomed.

In addition to the provision of model clauses and/or model written agreements, the department may consider establishing the model terms through industry consultation. Terms should be fair, clearly written, and allow for some flexibility to permit their applications to changing circumstances and different provider contexts.

Specifically, the following aspects may be considered for inclusion in the model terms:

Refunds

- Providing guidance on best practice approaches to refund scenarios and outlining what a student can expect

Deferrals

- Providing clearer rules on changes to agreement conditions due to compassionate grounds, and clearer guidance on the implications of this related to GTE checks and changes in financial circumstances.

Transfers

- Good practice guidance on scenarios that students can transfer to another program to ensure students understand their obligations and there is clarity on under which circumstances an appropriate transfer may occur.

The organisations believe that it is important that these are not mandatory or enforced by the department but provide guidance to the sector.

22. How could refund regulations be revised to ensure consistency between providers and better reflect the different circumstances in which they may be required?

The organisations strongly object to agent charges being passed on to the student via non-tuition costs if this occurs or refunds not being paid directly to students. This is not something that any of the three organisations utilise, instead adopting a transparent approach to refunds and charges.

The organisations believe in principle that providers should be required to pay refunds directly to the account the payment was received (for the purposes of anti-money laundering) which should be that of the student or close family member. This will ensure students, or their families, are actually receiving those funds (and not agents). This change may require a transition for some providers to amend existing processes and practices.

English language

> **Summary of the organisations' position on 'English language'**
>
> - Academic English ELICOS programs are the most appropriate way to ensure students have appropriate levels of English proficiency to study award-level programs in Australia.
>
> - The introduction of an 'independent assessment' (assumed to be as per existing visa requirements for non-streamlined students), would undermine the competitiveness of the ELICOS sector and result in worse learning and English proficiency outcomes for international students.
>
> - Existing requirements under both the ELICOS and Foundation Standards provide sufficient oversight to ensure students are well prepared and have sufficient English language proficiency for their further studies.

23. How can the ESOS framework better support students' English language skills to match their course requirements on the start of enrolment and ensure an optimal student experience for all students?

The organisations all agree that English language proficiency is a critical enabler of international student success in the Australian higher education system. Strong English language proficiency also provides the basis for community engagement, employment, and social cohesion.

The organisations do not believe specific changes to the ESOS framework are required to ensure optimal student experience for all students. Academic English programs and Foundation programs have been designed to support students who may require additional support to develop their English language proficiency (or in the case of Foundation Studies, broader academic skills). Our organisations work closely with our partner institutions to identify students who would be better prepared by undertaking these programs as opposed to directly entering university study.

The organisations do however believe that changes in visa practices, separate from the ESOS framework, would also support students' English language skills through reconsideration of existing visa settings for students who choose to study ELICOS for longer than 10 weeks. This should be encouraged where it is required, as it supports higher level English language skills and students have appropriate language skills before commencing their studies. This is particularly important following COVID-19, where education will have been disrupted for many students.

The government may also consider how students are incentivised to maintain their English language proficiency over the course of their study, acknowledging that a student's proficiency may regress over the course of their studies. The organisations have previously advocated for **changes to skilled migration points,** to provide an increased number of points for applicants with a confirmed 'high' level of English. This would encourage further development of English language skills over the course of a student's studies. It would also support the ELICOS sector.

> **Recommendation 13 (Other agencies)**
>
> - Home Affairs should change visa assessment practices to ensure students who choose to study longer-term ELICOS programs are not negatively assessed through the GTE assessment.
>
> - Home Affairs may also consider changes to skilled migration points for 'high' level English proficiency to incentivise ongoing development of English language proficiency during a student's studies.

24. Would it be beneficial to introduce an independent assessment of international students' English proficiency before they commence their first AQF course?

The organisations do not believe that it would be beneficial to introduce an independent assessment of international students' English language proficiency before they commence their first AQF course. It is the strong view of the organisations that introduction of such a test (for example, in the form of an IELTS test), would limit the attainment and proficiency developed by international students as they would opt for IELTS preparation programs, as opposed to engagement in high quality Academic English (ELICOS) and Foundation Studies programs.

Currently, only students who go through the non-streamlined SSVF process are required to undertake a formal assessment of their English language proficiency through a recognised visa assessment process (such as IELTS or TOEFL). For all

other students, the higher education (such as a university) or VET provider will make an assessment through their admissions practices that the student has appropriate levels of English language proficiency to study at that level. This is distinct from English waivers in the university sector which are not supported by the organisations.[4] In many instances, this will result in the student studying in an Academic English ELICOS course or a Foundation Studies course prior to study in their first AQF program.[5]
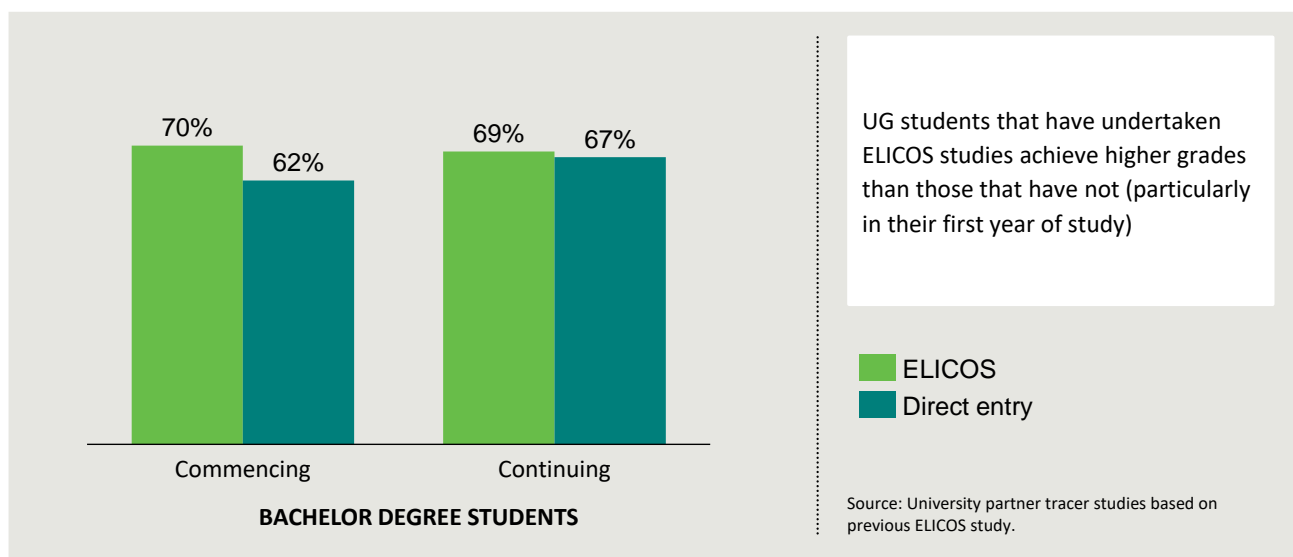
Within Academic English and Foundation Studies programs there are several practices that ensure that the student is prepared for further studies. This includes:

- Benchmarking courses for English language requirements using IELTS/CEFR which are independent assessments (and are recognised by the universities for students applying for university study).

- Ongoing and formative assessment approaches which ensure an appropriate assessment of student's English language proficiency and their readiness to transition to further study at an AQF level.

- For Foundation Studies, specific arrangements are in place to ensure oversight and academic governance – including processes with university partners to support joint course development, formal requirements around course accreditation, joint academic governance structures, course review practices and monitoring of recruitment and admission data to ensure they meet requirements of university partners.

The organisations strongly believe that students that undertake Academic English ELICOS and Foundation Studies programs are significantly more prepared than they would be through high stakes testing approaches such as IELTS/TOEFL/PTE. Assessment through Academic English and Foundation studies programs is formative and more fulsome. This is more appropriate than a single one-off IELTS test. Adopting single one-off tests have several limitations – specifically it is not well suited to all learners and results in rote learning as opposed to authentic and applied proficiency. Academic English and Foundation Studies programs enable a holistic assessment of the student's English language proficiency and readiness to transition to further study. These programs not only develop students' English proficiency but also improve their general study and research skills. They also provide a period for students to acclimatise to studying and living in Australia, culturally adapt, and prepare for their upcoming studies.

Academic results for students studying Academic English and Foundation Studies also demonstrates this. An example is shown below based on data from an Organisation A's university partner. As shown, students that study ELICOS programs outperform students that entered directly for Bachelor level study. This is despite lower initial levels of English overall.

Figure 6 | Weighted average mark (WAM) comparison for direct entry (no previous study sector) students and ELICOS studies students, anonymised university partner A, 2020, Organisation A

Commencing: 70% (ELICOS), 62% (Direct entry)
Continuing: 69% (ELICOS), 67% (Direct entry)

BACHELOR DEGREE STUDENTS

UG students that have undertaken ELICOS studies achieve higher grades than those that have not (particularly in their first year of study)

ELICOS
Direct entry

Source: University partner tracer studies based on previous ELICOS study.

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[4] TEQSA (2020) 'Communication on English Waivers'

[5] As outlined in question 25, it is the view of the organisations that in part this reflects the PRISMS data structure as opposed to levels of un-preparedness on behalf of the students or inappropriate admissions practices by providers.

For Organisation B that delivers Bachelor and PG degree programs, tracking studies demonstrates consistently each trimester that students who progressed through an Academic English ELICOS pathway have more successful student outcomes that those that enter through a formal English assessment test – such as IELTS. Encouraging students to prioritise a high-stakes testing approach will therefore not only have a negative impact on students' English language proficiency and attainment, but also negatively impact their subsequent success in degree-level study.

The organisations believe that the introduction of an 'independent assessment' will have a negative impact on the ELICOS sector. If this is introduced, it is likely to result in high levels of students ceasing to enrol in Academic English that prepare them for tertiary study and instead opt towards English programs that are targeted to maximising scores in proficiency tests. This would be highly damaging to the ELICOS sector following the significant impacts of COVID-19 on the sector.

If independent assessments are considered further, the department should also include Academic English and Foundation Studies programs as appropriate forms of independent assessment. This would strengthen these study areas, result in better educational experiences and preparation for students and are shown to deliver better results that students than those who enter university through high-stakes English proficiency assessments.

Recommendation 14 (ESOS framework)

- The ESOS framework should not be amended to include a requirement for a student to undertake an independent assessment of English proficiency prior to their first AQF course

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25. How can PRISMS data entry be adjusted to make it easier for providers to demonstrate a students' English proficiency?

The department has expressed some concerns that data regarding English language proficiency can be improved and that 70% of admissions were recorded as either 'No test' or 'Other form of testing which satisfies the institution'. The paper also outlines that TEQSA has identified concerns about this practice.

However, the organisations believe that this represents the structure of the questions in the PRISMS system, as opposed to this number of students not appropriately demonstrating English proficiency levels. The PRISMS questions currently ask two key questions:

- Question 1: "Is the student exempt from providing evidence of English language proficiency?"

- Question 2: "Has the student undertaken an English test?"

This then results in a drop down which asks which 'English Test Type' the student has undertaken 'to meet Migration English requirements.' This list is limited to English test types that are formally recognised by Home Affairs.

As a result, any students that goes through the 'streamlined' SSVF process (including all SSVF Level 1 source country students, and some Level 2 and 3 students) are not required to meet Migration English requirements and therefore have not undertaken a test that meets the Migration English requirements. These students will therefore answer 'No' to the question of whether they have undertaken an English test. The organisations believe that this accounts for the very high levels of 'No test' being recorded in PRISMS, despite alternative and appropriate forms of admissions assessment being used by higher education providers – including achievement of school qualification in English language, as well as other forms of assessment such as through Academic English ELICOS programs and Foundation Studies programs.[6]

The organisations support changes to the PRISMS questions to ensure that providers with English language requirements are required to record how the students met those English language requirements once they commence that program. This is likely to include some minor changes to the questions asked and making the fields mandatory to fill in. There may also be opportunities to link data across PRISMS and TCSI related to 'English language proficiency' and 'basis for admission' which are currently separate, such as through the TCSI modernisation process. This would enable a fuller assessment of admissions practices considering both previous study experience and English language proficiency.

Recommendation 15 (other agencies)

The department should work with Home Affairs to reconsider how PRISMS data collection can appropriately capture how students meet English requirements for AQF programs.

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[6] There is the opportunity to include these in the following question, but requires an answer of 'no' to the previous question 'Has the student undertaken an English test?' There could also be some further changes to this response list – for example, the difference between 'medium of instruction' and 'language of instruction' is unclear.

26. What additional guidance do providers need to ensure incoming students meet English language requirements?

The organisations support additional guidance from the department around ensuring incoming students meet English language requirements. This will ensure consistency in assessment and ensure appropriate English language standards are met.

The department may also wish to provide guidance to the sector on the importance of cohort tracking measures to monitor performance of students meeting English proficiency requirements in different ways. This may include through Academic English programs, Foundation Studies or through IELTS exams. This would support the development of an evidence base on which student cohorts are best prepared for further study and which programs best prepare students. Post-entry diagnostic tests during orientation may also help identify students who require additional levels of support.

27. How can providers of ELICOS and Foundation Programs ensure that students have reached the required language of English proficiency to start their AQF course?

The organisations believe that the Foundation Standards and ELICOS Standards provide sufficient regulatory oversight in ensuring students have reached an appropriate level of English proficiency (and in the case of Foundation Studies, academic readiness) to commence their AQF course. As shown in the response to question 24 above, outcomes for Academic English ELICOS students are very strong once they commence their studies. The organisations have also previously demonstrated that outcomes for Foundation Studies students are comparable to those that did not undertake a Foundation Studies program (despite lower initial levels of English proficiency (i.e. lower IELTS score) before commencing studies in Australia).

This is summarised for two of the organisations below. There is limited information available in the public domain on student outcomes, however data provided by university partners demonstrates that Foundation Studies students perform as well or better than international students that have directly entered the university without undertaking a Foundation studies course prior – as shown in Figure 7 below.

Figure 7 | Grade point average (GPA) comparison for direct entry (no previous study sector) students and Foundation Studies students, anonymised university partner A, first semester, 2018, Organisation A

The GPA average is higher for Foundation graduates than direct entry students.

A higher proportion of students are also in good academic standing (GPA >3.5)

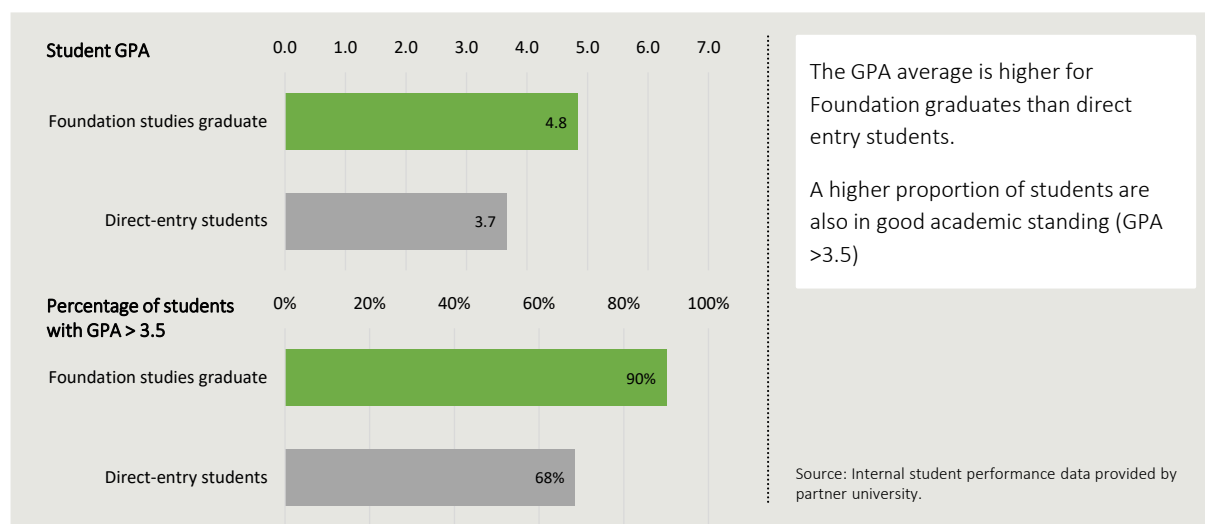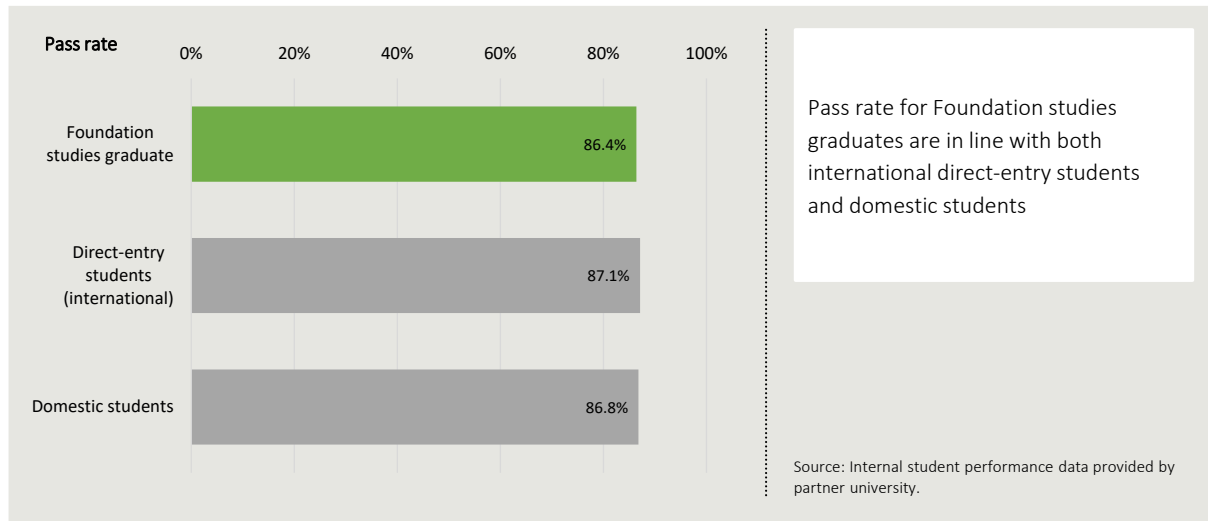Source: Internal student performance data provided by partner university.

Figure 4 shows that for students from an anonymised university partner of Organisation A, the average GPA of students that have undertaken a Foundation Studies program prior is higher than those that entered the university directly. A higher percentage of Foundation Studies students (90%) held a GPA above 3.5 than direct-entry students.

Another college operated by Organisation A shows similarly positive results. The weighted average mark (WAM) of Foundation Studies students is higher than direct-entry students. For this college, retention rates are also consistently higher for Foundation Studies graduates.

Similarly, the performance of Foundation Studies graduates from Organisation B also achieve favourable university outcomes compared to both direct-entry international students and domestic students – as shown in Figure 8 below. In previous years, the pass rates of Foundation Studies graduates have been higher than direct entry international students who have not studied ELICOS.

Figure 8 | Pass rate comparison for direct entry students and Foundation Studies students, anonymised university partner C, 2019, Organisation B

Pass rate for Foundation studies graduates are in line with both international direct-entry students and domestic students

Source: Internal student performance data provided by partner university.

Broader areas for input

28. How can the ESOS framework be strengthened and improved to deliver an optimal student experience?

The organisations note that there is a limited focus in the ESOS framework currently on delivery and student outcomes. Instead, the predominant focus is on the initial pre-commencement components of the student journey – in relation to engagement with agents and students, as well as visa process and visa integrity. There may be some benefits from placing a greater emphasis on aspects related to delivery and student outcomes – however, this should complement not duplicate the existing responsibilities of TEQSA and ASQA and the ELICOS Standards and Foundation Standards. This may include a focus on student welfare and wellbeing.

29. How can the framework resolve any regulatory barriers that prevent sector innovation, diversification, and growth of Australian educational offerings, including online and offshore?

The organisations welcome the government's focus on diversification as an important aspect of sector resilience and to enhance student experience. However, the organisations do not believe that changes to the ESOS framework are required to support increased diversification within the Australian international education sector.

In addition to policies already proposed by government, the organisations believe that there are additional things that government could do to support sector diversification and support providers with this. This includes changes to support policy alignment with diversification objectives, including:

- **Making amendments to visa settings to support market diversification,** including considering alternate mechanisms to the existing visa assessment processes for source countries without a significant 'track record' that would support sector objectives around diversification, such as through a pilot program with high quality providers.

- **Providing access to more granular visa data for high quality providers,** to support market diversification efforts, commercial decision making, and provide assurance around investment in new markets.

Further information on this is available in Navitas' submission on *International Student Diversity at Australian Universities* from February 2022. As outlined in the response to question 1, the organisations do not see barriers in the ESOS framework to online and offshore delivery or broader barriers to growth within the ESOS framework.

Government may also consider the establishment of a provider representative consultative committee on these issues. This would enable feedback to be provided to regulatory and other international education bodies and support overall alignment with the strategy.

> **Recommendation 16 (other agencies)**
>
> - The department should work with Home Affairs to identify alternate approaches to visa assessment which supports the sector's broader objectives around diversification. This may include pilot programs for high quality providers or alternate mechanisms to assess applications for students from source countries when it is challenging to assess track record.

30. How can the ESOS regulatory framework evolve to better support the sector to deliver a high-quality education experience?

The ESOS framework does not currently have a strong focus on academic quality or student experience. Broadly, these are covered through other regulatory mechanisms, such as oversight provided by both TEQSA and ASQA. The government may consider whether further guidance in this area would be beneficial for the sector to reemphasise a focus on quality delivery and strong student experience. Any actions should not duplicate activities by TEQSA and ASQA or the contents of the ELICOS Standards or Foundation Standards.

In addition to regular reporting on quality and student outcomes that occurs between providers and regulators, there may be additional benefit in the development of a set of guidance notes on best practice / good practice in international student experience. This would be similar to the approach adopted by TEQSA to support higher education providers but could be extended to other CRICOS sectors with a specific focus on approaches to support high quality international student experience and high-quality teaching.

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