

Submission on the proposed Education Services for Overseas Students Amendment (Streamlining Regulation) Bill 2015 and Education Services for Overseas Students (Registration Charges) Amendment (Streamlining Regulation) Bill 2015

EDUCATION SERVICES FOR OVERSEAS STUDENTS AMENDMENT (STREAMLINING REGULATION) BILL 2015		
PROPOSED MEASURES	SUPPORT/DO NOT SUPPORT/NEUTRAL	COMMENTS (MAXIMUM 300 WORDS)
<p>Schedule 1 – Streamlining the roles of government agencies</p> <p>Clearer roles for Commonwealth quality assurance agencies, and state and territory agencies through:</p> <ul style="list-style-type: none"> • creation of the ‘ESOS agency’ • redefining designated authority for schools as the ‘designated State authority’, including territory agencies • revised definition of ‘provider’. <p>Broader definition of ‘provider’.</p>	<p>SUPPORT</p>	<p>Navitas commends the Government for the strong and effective consultation process the Education Department has undertaken with the international sector in reviewing the ESOS framework.</p> <p>Navitas supports this amendment and makes the following comments.</p> <ul style="list-style-type: none"> • Navitas has been a strong supporter over a number of years of the need to provide strong quality assurance while reducing red tape. Making it possible therefore for a single government regulator (e.g. TEQSA) to manage all aspects of ESOS compliance for a multi-sector provider is strongly supported. Navitas entities have recently been in a situation where a CRICOS re-registration application was submitted to TEQSA and a \$5,000 fee was paid. TEQSA completed their assessment, and then transmitted the very same application documents to ASQA for assessment, which attracted another \$8,000 fee. Both regulators were assessing the same submission against the same legislation. The current process causes unnecessary duplication and cost. • With respect to the revised definition of ‘provider’ as it applies to an ELICOS provider Navitas shares the concerns of English Australia, namely: “Currently the definition of provider is: “provider means an institution or other body or person that provides or seeks to provide courses to overseas students” The proposed definition that relates specifically to ELICOS providers is: “preparatory course provider means a person or entity that provides: (a) an English Language Intensive Course for Overseas Students; (b) a Foundation Program.”

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		<p>35% of student visa holders undertake stand-alone ELICOS courses and do not pathway into further studies. All ELICOS courses/providers cannot therefore be defined as 'preparatory'. This term is therefore misleading and inaccurate.</p> <p>Another query with regards to this definition relates to whether there is a need to separately define ELICOS providers – for the purpose of defining how the application of the ELICOS Standards is determined. There are numerous references in the Act to what will happen “if the ELICOS Standards or Foundation Program Standards apply in relation to the provider”, however this is not defined anywhere. There is currently a loophole whereby the ELICOS Standards are not applied to certain providers of English language programs on CRICOS when they should be, with the ELICOS sector believing that this is a priority area requiring clarification.”</p> <p>Navitas supports two separate definitions as follows: <i>“ELICOS provider means a person or entity that provides an English language course which is registered on CRICOS for delivery to overseas students.”</i> <i>“Foundation Program provider means a person or entity that provides a Foundation Program.”</i></p>
<p>Schedule 1 – Streamlining registration processes</p> <p>Providers will apply directly to their ESOS agency for:</p> <ul style="list-style-type: none"> • initial registration • renewal of registration • adding courses at locations to an existing registration. <p>The ESOS agency must use a risk management approach when making a decision.</p>	<p>SUPPORT</p>	<ul style="list-style-type: none"> • Navitas would welcome consideration of further streamlining for multi-sector providers that cross over ESOS agencies (e.g. dual RTO and HEP providers should be able to apply/manage CRICOS through one regulator, e.g. TEQSA). • Navitas has advocated a risk management approach by government agencies for a number of years and is pleased to see that the ESOS agency is required to use such an approach when making decisions.

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<p>Schedule 1 – Meeting registration requirements</p> <p>The ESOS agency for a provider must be satisfied that the provider is complying, or will comply, with the ESOS Act and the National Code, and the ELICOS or Foundation Program Standards (as relevant).</p> <p>The ESOS agency should have no reason to believe the provider has not been providing or will not provide education of a satisfactory standard to overseas students.</p>	<p>SUPPORT</p>	<ul style="list-style-type: none"> • Navitas supports this amendment as it will ensure that the credibility of Australian education, and competitiveness in the international education sector, is maintained and enhanced. • Navitas would welcome consideration of further streamlining for multi-sector providers that cross over ESOS agencies (e.g. dual RTO and HEP providers should be able to apply/manage CRICOS through one regulator, e.g. TEQSA). • Navitas strongly endorses the fact that compliance with the ELICOS Standards (if relevant) is now specifically referenced in the Act and that <i>“The proposed amendment will clarify that enforcement action may be taken by an ESOS agency for a breach of either the ELICOS Standards or the Foundation Program Standards. Similarly, the monitoring and searching provisions in the ESOS Act will be extended to apply to determining compliance with the ELICOS Standards and Foundation Program Standards.”</i> Navitas has shared the concerns of English Australia with respect to the current loophole whereby some English language providers are able to deliver programs that are not assessed against the ELICOS Standards. This amendment will ensure greater oversight of, and confidence in, the quality of provision of both English and Foundation Programs.
<p>Schedule 1 – Imposing conditions on registration</p> <p>An ESOS agency will decide whether to impose, vary or remove conditions on a provider’s registration at any time during that registration.</p>	<p>SUPPORT</p>	

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<p>Schedule 1 – Use of other relevant information</p> <p>Use of relevant information by the ESOS agency to assess applications for registration or reregistration or adding courses at locations where information has been received for other purposes but is relevant to the application under ESOS, for example registration under the TEQSA Act or NVETR Act.</p>	<p>SUPPORT</p>	<ul style="list-style-type: none"> • Navitas supports such efforts to lessen the administrative burdens on providers and to streamline processes, which in the past have involved considerable duplication. It will be important for the regulator to ensure that ‘relevant information’ is current and accurate. • Formally enabling TEQSA or ASQA to utilise materials already submitted would greatly reduce the burden on providers to supply documents multiple times. • Navitas would welcome consideration of further streamlining for multi-sector providers that cross over ESOS agencies (e.g. dual RTO and HEP providers should be able to apply/manage CRICOS through one regulator, e.g. TEQSA).
<p>Schedule 1 – Aligning registration periods</p> <p>Remove the minimum registration period and extend the maximum registration period to 7 years.</p>	<p>SUPPORT</p>	<p>Navitas supports this amendment and makes the following comments:</p> <ul style="list-style-type: none"> • Undertaking reregistration and course accreditation at the same time is desirable and efficient. At present many multi-sector providers have differing registration dates for their different sector approvals. PRISMS functionality should also be improved. Currently PRISMS only permits recording of a single registration expiry date even when the provider may have differing registration expiry dates across their differing sectors. • Navitas recognises and supports English Australia’s concern in relation to the application of long registration periods to a certain profile of ELICOS providers. <i>“Critical to the effectiveness of this perceived ‘relaxation’ of requirements will be how the relevant ‘ESOS Agency’ applies their ‘risk management approach’ appropriately to ensure more frequent monitoring of providers of concern.”</i>

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<p>Schedule 1 – Extension of registration</p> <p>The ESOS agency may extend a provider’s registration, using a risk management approach when making the decision, for the purpose of aligning domestic and international registrations.</p>	<p>SUPPORT</p>	<ul style="list-style-type: none"> Navitas strongly supports a transparent, proportionate risk management approach in the regulation, consumer protection and quality assurance that is consistent across the international and domestic education sectors.
<p>Schedule 1 – Exemptions for certain providers</p> <p>Continue to exempt certain providers from some ESOS Act requirements (e.g. fit and proper person).</p>	<p>SUPPORT</p>	

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<p>Schedule 1 – Continuation of a provider’s registration</p> <p>Allow providers to continue to teach students who had enrolled in a course before the registration expired, but clarify that the provider cannot recruit or enrol new students after the expiry date of its registration.</p> <p>If a provider applies to renew its registration, the registration will continue until the ESOS agency has made a decision on an application to renew a provider’s registration.</p>	<p>SUPPORT</p>	<ul style="list-style-type: none"> • Navitas supports this amendment as it ensures existing students are not unfairly disadvantaged and it enables the provider to continue to operate, while regulatory processes are in train. • Navitas notes that the PRISMS system is ageing and that this has resulted in issues with the currency of some data. Given the criticality of accurate data it important that there are processes in place to ensure that the data that is recorded on PRISMS and on eCoE extensions is correct.

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<p>Schedule 1 – Automatic suspension and cancellation of registration</p> <p>If an ESOS agency is no longer satisfied a registered provider is fit and proper, the provider’s registration is automatically suspended for all courses at all locations.</p> <p>Where a higher education or VET provider’s registration under domestic frameworks is cancelled, the provider’s CRICOS registered courses will automatically be cancelled.</p> <p>For schools, if approval of the school by a state or territory ceases, CRICOS registered courses are automatically cancelled.</p>	<p>SUPPORT</p>	<p>Navitas supports this amendment, which will assist in maintaining the reputation and credibility of Australia’s education sectors.</p> <p>Navitas makes the following comment:</p> <ul style="list-style-type: none"> Principles of due process and natural justice are important to be maintained. Navitas is confident from the Exposure Draft that there is a clear process and the matters that the regulator must consider in deciding whether there are reasonable grounds for suspension.
<p>Schedule 1 – Authorised officer</p> <p><i>‘Authorised officer’</i> replaces <i>‘authorised employee’</i> consistent with the TEQSA Act and NVETR Act.</p>	<p>SUPPORT</p>	

PROPOSED MEASURES	SUPPORT/DO NOT SUPPORT/NEUTRAL	COMMENTS (MAXIMUM 300 WORDS)
<p>Schedule 1 – Breaches of ELICOS Standards or Foundation Program Standards</p> <p>Enforcement action may be taken by an ESOS agency for a breach of the ELICOS Standards or Foundation Program Standards.</p>	<p>SUPPORT</p>	<p>Navitas fully supports this amendment, which would be improved by providing two separate definitions for the ELICOS and Foundation Program Standards in the legislation, namely,</p> <p><i>“ELICOS provider means a person or entity that provides an English language course which is registered on CRICOS for delivery to overseas students.”</i></p> <p><i>“Foundation Program provider means a person or entity that provides a Foundation Program.”</i></p>
<p>Schedule 1 – Publication of enforcement actions</p> <p>An ESOS agency may publish results of enforcement and monitoring actions taken (in a way set out by legislative instrument).</p>	<p>SUPPORT</p>	<p>Navitas supports this amendment and makes the following comments:</p> <ul style="list-style-type: none"> • Where a provider has conducted their business in a way that warrants enforcement action, then it is appropriate that this information be made available to stakeholders, and in particular, potential students. • However, it is imperative that the tenets of natural justice are applied, including due process, and right of reply. Schedule 2 – Internal review of certain decisions should support this principle. If an enforcement action is addressed by the provider then any review of the process should also be made public.

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<p>Schedule 2 – Internal review of certain decisions</p> <p>Providers will be allowed to seek an internal review of some decisions made by the relevant ESOS agency where previously only appeal to the Administrative Appeals Tribunal was available.</p> <p>Appealable decisions include:</p> <ul style="list-style-type: none"> • refusal of initial registration • refusal of registration renewal • refusal to add a new course at a location • decision to take enforcement action against a registered provider under section 83 of the ESOS Act. 	<p>SUPPORT</p>	<p>Navitas strongly supports this amendment. It is fundamental that appeals be considered as close to the source of the decision as possible. Such an appeals process is more accessible and therefore more viable for many providers to represent themselves, as opposed to the Administrative Appeals Tribunal which is more akin to a judicial process with the associated burden. It is imperative that the tenets of natural justice are applied, including due process, and right of reply.</p>
<p>Schedule 3 – Ministerial directions</p> <p>The Minister responsible for the administration of the ESOS Act will be able to direct an ESOS agency in the performance of its functions.</p> <p>The Minister must not, however, give a direction about or in relation to a particular provider or registered provider.</p>	<p>SUPPORT</p>	

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<p>Schedule 4 – TPS Director to issue production notices</p> <p>Allow the TPS Director to issue production notices, consistent with powers given to ESOS agencies.</p> <p>The TPS Director will be assisted by a ‘TPS officer’, who will have defined roles and responsibilities.</p>	<p>SUPPORT</p>	
<p>Schedule 4 – TPS Director recommendation to ESOS agency</p> <p>The TPS Director can make a recommendation to an ESOS agency that the agency take enforcement action under section 83(1A) of the ESOS Act.</p> <p>The ESOS agency must consider the TPS Director’s recommendation when deciding to take action against a provider.</p>	<p>SUPPORT</p>	

PROPOSED MEASURES	SUPPORT/DO NOT SUPPORT/NEUTRAL	COMMENTS (MAXIMUM 300 WORDS)
<p>Schedule 5 – Student default reporting</p> <p>Remove the requirement on providers under section 47C of the ESOS Act to report a student default to the Secretary and the TPS Director.</p> <p>Where there has been a student default, providers must still report that they have met their obligations to students in cases of visa refusal or where there is no compliant written agreement between the provider and the student.</p>	<p>SUPPORT</p>	<ul style="list-style-type: none"> Navitas believes that this amendment will bring significant positive benefits to the provider while maintaining appropriate and robust student protections. At present, student default impacts several departments: admissions (failure to commence), administration (failure to re-enrol, withdrawal, transfer), and finance (refunds). Additionally, the bulk of default reporting occurs around student intake periods, which are the busiest time of semester. The change will provide efficiencies in reporting for providers.
<p>Schedule 5 – Information about accepted students (including student course variation)</p> <p>Reporting period extended to be within 31 days, except where the student is under 18 years of age, which requires reporting within 14 days.</p>	<p>SUPPORT</p>	<ul style="list-style-type: none"> Navitas believes that, similar to amendments to default reporting, this change will alleviate workload pressures applied at the busiest time in a semester. Instead of staff being allocated to ensuring that PRISMS is updated in the first few weeks of semester, this can be delayed in favour of providing greater support to students. Student protections are still maintained in a more efficient system. Navitas shares English Australia’s concern with respect to under-age students and agrees that the exception specified for under-18 students needs to be examined more carefully to ensure that the more onerous reporting requirements will genuinely contribute to addressing any concerns around welfare.

PROPOSED MEASURES	SUPPORT/DO NOT SUPPORT/NEUTRAL	COMMENTS (MAXIMUM 300 WORDS)
<p>Schedule 5 – Changes to the collection of tuition fees</p> <p>Students or third parties will be allowed to pay more than 50 per cent of tuition fees up front if:</p> <ul style="list-style-type: none"> • a request is made to do so (by the student or a third party), or • the course has a duration of 24 weeks or less (is a short course). <p>Removal of the restriction on the subsequent collection of fees (which also relates to a study period).</p>	<p>CONDITIONAL SUPPORT</p>	<p>Navitas welcomes the removal of terminology and conditions related to artificial ‘study periods’, the change that allows for the student or a third party to request to pay more than 50% of tuition fees upfront, and the removal of the restriction on the subsequent collection of fees.</p> <p>However Navitas believes that these changes do not go far enough in delivering on the intent to remove any undue administrative/regulatory burden on low risk providers. Navitas makes the following comments:</p> <ul style="list-style-type: none"> • While the intent of Clause27 (Tuition Fees), which states that the 50% limit does not apply if “<i>a request is made by a person other than a registered provider</i>”, attempts to address the considerable problems in the current legislation it will still cause difficulties on a number of fronts for students and providers. It will be difficult to prevent a student depositing greater than 50% of their tuition fees into the provider’s bank account, if, for example, the student wishes to take advantage of exchange rates. Also fluctuating exchange rates could lead to inadvertently breaching the 50% cap. Navitas believes there would be value in extending the definition of request to include acts that imply request, e.g., where students pre-pay 100% but do not provide a formal written “request”. • Navitas also shares the concerns of English Australia and endorses their position on this amendment. <p><i>“The RIS itself refers to the following concern: “Inappropriate approach to managing risk: Applying blanket regulation over the entire international education sector means that any benefits associated with the TPS measure under scope are likely to be outweighed by the costs associated with excessive regulatory burden on low and medium risk education institutions. There is widespread support for moderating current requirements to education institutions by a proportionality or risk managed approach.”</i></p>

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		<p>English Australia has read the Regulation Impact Statement (RIS) and notes concerns with the accuracy of some of the data provided e.g. the misleading and inaccurate attempt to profile different sectors and provider types in Section 3.2, specifically as the data relates to ELICOS. It is unclear as to whether the inaccuracy of the data used has impacted on the calculations made regarding the costs/risks of the various options under consideration. It is unclear from the RIS how exactly the intended application of a risk management approach has been applied to this particular constraint on business practice. Under the proposed changes there is still no differentiation between low risk and high risk providers. The RIS states that limiting the amount of pre-paid fees in % terms was aimed at reducing the potential refund liabilities of both the education institution and the TPS. This argument is fallacious. A provider offering a 3 year degree program at \$34K per year can theoretically accept 50% of the tuition fees in advance which could mean a potential default amount payable by the Fund of \$51,000. An ELICOS provider offering a 30 week English course with a value of \$9,600 in tuition fees is currently limited to accepting only \$4,800 in advance, theoretically saving the Fund \$4,800 if the college defaults. There is little financial rigour in the argument being made that 50% is a meaningful benchmark.</p> <p>English Australia strongly urges further consideration of removing this restriction from the Act altogether and allowing the relevant 'ESOS Agency' to apply this as a condition on the registration of providers of concern (<u>Option 2</u> as identified in the RIS).</p> <p>Another option we would favour would be <u>Option 3(iii)</u> which proposes an exemption from the 50 per cent limit for courses of up to 52 weeks duration. An alternative would be to exempt courses of up to 40 weeks duration. Even an exemption for courses of up to 30 weeks duration would be an improvement on the current proposed changes.'</p>

PROPOSED MEASURES	SUPPORT/DO NOT SUPPORT/NEUTRAL	COMMENTS (MAXIMUM 300 WORDS)
<p>Schedule 5 – Removal of designated account requirement</p> <p>Remove the specific provisions requiring a designated account in which all non-exempt providers must hold tuition fees paid by students prior to commencement of a course.</p>	<p>SUPPORT</p>	<ul style="list-style-type: none"> Navitas strongly supports the removal of this requirement as it has placed an extremely burdensome financial and administrative requirement on many providers without providing a material level of additional protection for students. In Navitas’ case this single piece of regulation has required the company to retain up to \$100m of additional funding facilities than would otherwise be required. This has added a considerable annual cost in commitment fees to retain these accounts, in direct funding cost, increased debt servicing costs and lost opportunity cost of employing that capital for improved delivery services. While supporting the removal of designated accounts Navitas would support the relevant ‘ESOS Agency’ utilising this mechanism as a potential specific condition on the registration of providers that are deemed to be high risk.
<p>Schedule 5 – Removal of the definition of ‘study period’</p> <p>Remove the definition of and references to a ‘study period’ and associated requirements.</p>	<p>SUPPORT</p>	<ul style="list-style-type: none"> Navitas supports the amendment while noting that the removal of a fixed limit on study periods may be problematic depending on any changes to reporting metrics. An important element to note is how reporting on students may be impacted by how many study periods a provider runs in a particular calendar year. This issue is much broader than the ESOS act itself but is worthy of noting.

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<p>Schedule 5 – Reminder notices for late payments of charges</p> <p>Providers to be sent reminder notices for the annual registration charge where they have failed to pay by the due date and automatic suspension would occur.</p> <p>New provisions are consistent with current arrangements for late payments of the TPS Levy.</p>	<p>SUPPORT</p>	<p>Given the severity of the penalty, i.e., suspension, Navitas recommends that the regulator provides a notice of intended suspension following non-payment of the annual registration charge prior to actual suspension. A provider should be allowed an opportunity to remedy minor administrative infractions (e.g. staff member missing an email, delay in processing of an invoice).</p>

ADDITIONAL COMMENTS ON THE BILL (MAXIMUM 500 WORDS)

- **NAVITAS WELCOMES THE OVERALL INTENT OF THIS BILL AND THE PRACTICAL APPROACH IT TAKES TO ENSURING THE EFFICIENT AND EFFECTIVE OPERATIONS OF THE REGULATORS, PROVIDING THEM WITH APPROPRIATE AND SUFFICIENT REMEDIES TO TAKE ACTION WHERE NECESSARY, WHILST REDUCING THE REGULATORY BURDEN ON EDUCATION PROVIDERS WITHOUT COMPROMISING STUDENT PROTECTION. THE BILL WILL FURTHER STRENGTHEN THE CREDIBILITY OF AUSTRALIAN INTERNATIONAL EDUCATION.**

EDUCATION SERVICES FOR OVERSEAS STUDENTS (REGISTRATION CHARGES) AMENDMENT (STREAMLINING REGULATION) BILL 2015

PROPOSED MEASURES	SUPPORT/DO NOT SUPPORT/NEUTRAL	COMMENTS (MAXIMUM 300 WORDS)
<p>Schedule 1 – Charging arrangements</p> <p>As a result of removing the two-year minimum registration period, the entry to market arrangements are clarified to ensure a new provider is not charged twice if its initial registration period is less than two years and it seeks renewal.</p>	<p>SUPPORT</p>	

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