

Joint Position Statement On Onshore International Student Transfers

**Independent Tertiary Education Council Australia — TAFE Directors Australia
September 2021**

Purpose

This Joint Position Statement is made by the Independent Tertiary Education Council Australia (ITECA) and TAFE Directors Australia (TDA) to the Department of Education, Skills and Employment (DESE) as well as the national regulatory bodies in tertiary education, the Tertiary Education Quality and Standards Agency (TEQSA) and the Australian Skills Quality Authority (ASQA). It outlines the concerns of tertiary education sector representatives in relation to onshore transfers of international students where those transfers are motivated by or the result of inducements provided through excessively low fees and study expectations that may not satisfy educational or industry expectations. Through this Statement, ITECA and TDA also propose actions considered necessary to uphold the integrity, reputation and quality of the Australian international education sector.

The call to action

While sector representatives understand that these practices appear to be limited to a cohort of providers with a particular business model, the impacts of those practices compound across the sector. This compounding effect results in accelerated fee reductions among quality providers leading to viability challenges and the potential of provider closure, potentially harming students and tarnishing the reputation of Australian international education at a time when the sector is trying to rebuild through and out of the pandemic.

Feedback from TAFEs and independent providers indicates that these transfers are most often being facilitated by onshore agents. After accounting for agent's commissions, within that transaction the receiving providers will be delivering courses on an even further lower cost basis. Lower-priced programs and competition for students may demonstrate a well-functioning market, however, this is a market with obvious supply-side imperfections and the likely outcome instead is contravention of regulatory requirements such as study and attendance requirements.

Policy makers and regulators (DESE, TEQSA and ASQA) have a role in upholding conditions for fair competition, in a market that government has created and also regulates, as well as ensuring participants in that market fulfil their designated legislated entry obligations.

In noting consistent feedback from officials that the available administrative data does not reveal the rate or scale of transfers reported by the sector, and in the context of working collaboratively to rebuild the sector following the damage from the COVID-19 pandemic, both TDA and ITECA feel it is now crucial to develop a clear and comprehensive picture of the extent and trends of international student transfers across the sector. This work will require a deep-dive into all relevant data sources with government and sector experts working collaboratively to develop an evidence-base.

Failure at a policy and regulatory level to respond to instances of disregard for visa conditions or engaging in non-compliant delivery act only to diminish confidence in and among those providers that continue to the act lawfully under Australia's international education framework.

Background

Both TDA and ITECA support the right of international students to transfer education providers after arriving in Australia if they are not satisfied with the education service or find themselves not suited to the course.

However, reports from TAFEs and independent providers across the higher education and vocational education and training sectors indicates high rates of transfers connected to a number of providers offering courses with excessively low fees and low study expectations, often designed to enable students to maximise working hours beyond what might be facilitated under their student visa.

These are what can be termed non-genuine onshore transfers and they put providers who have brought these students to Australia at risk of not meeting the obligations placed on them to maintain students' visa status under the legislative framework for international education in Australia.

In view of the obligations placed on providers under both education and migration frameworks, these actions undermine the substantial investment by providers in systems and processes to assure themselves that students satisfy the Genuine Temporary Entry (GTE) requirements of the Student Visa program.

Risks to onshore market

The international student market relies on fair practices that facilitate the investment by registered providers in attracting legitimate students to Australia based on Genuine Temporary Entrant conditions. Instances of non-genuine onshore transfer mean that the objects of the ESOS framework – which include the need to protect and enhance Australia's reputation for quality education and training – are at risk of not being upheld.

The Providers Registration and International Student Management System (PRISMS), the system established by authority of S109 of the *ESOS Act (2000)*, acts as the official record of students' status. The ESOS Regulations (2019) requires students' passport number and visa number to be recorded and these records along with a students' Confirmation of Enrolment (CoE) with a provider are the critical elements in monitoring the legal status of international students.

Under the ESOS Act providers carry obligations on behalf of students and face penalties for contravening those obligations. PRISMS facilitates students enrolling with a second or third (or more) provider without the knowledge of the first provider which risks the first provider contravening Sections 19 (2) and (2A) of the ESOS Act and facing the relevant penalties. Feedback that transferring students are enrolling in the same course at a different provider (concurrently) or changing the level and field of study without recourse from the regulatory bodies also demonstrates that this condition is not being enforced, contrary to visa conditions and the expectations on the Commonwealth to assure the legal status of students.

Even though the practices outlined in this Statement appear to be limited to a cohort of providers with a particular business model, the impacts compound across the sector; high quality providers may be pressured into loosening their own standards to protect themselves from losing students and from financial loss. This practice alone may accelerate fee reductions, leading to viability challenges for providers and the potential of closures, tarnishing the reputation of Australian international education at a time when the sector is trying to rebuild out of the pandemic.

Any regulatory and policy response to these circumstances should be refined and nuanced; one that is informed by a comprehensive evidence base that has been collaboratively developed alongside sector peak body representatives.

Proposed next steps

1. That DESE, TEQSA and ASQA issue joint communications to all CRICOS-registered providers, agents and onshore student visa holders confirming:
 - expectations regarding student transfers in accordance with legislative provisions;
 - requirements to maintain course progress and attendance for all student visa holders.
2. That the policies relating to concurrent CoEs with different providers be given renewed consideration and emphasis in consultation with sector peak body representatives, and whether this functionality should be maintained given changes made in other policy settings.
 - This review be undertaken by a working group of DESE and representatives of sector peak bodies with a view to making recommendations as to long term solutions.
3. That a committee comprising sector peak body representatives, DESE, Homes Affairs and NCVER analyses data from PRISMS and other relevant sources (for providers and onshore agents) to determine the scale, patterns and impacts of onshore student transfer and to make recommendations to relevant Ministers on systems and data reporting enhancements targeted at eliminating the negative impacts of onshore student transfers.

Based on the evidence, this Committee also develop a suite of proposed policy responses for consideration by the Minister responsible for international education.

4. Sector representatives to collate evidence of malpractice in onshore transfers to provide to government and regulators to further assist with the ongoing development and prioritisation of risk assessment and analysis as well as broader quality assurance.