

**Application for urgent interim and final
authorisation under s88(1) of the
*Competition and Consumer Act 2010 (Cth)***

Lodged by:

UniProjects Pty Ltd

on behalf of itself and participating universities

26 May 2021

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1 Summary

1.1 Application for authorisation

This application for authorisation relates to a proposed collaboration between New South Wales and Australian Capital Territory universities, with the support of the New South Wales and Federal Governments, to establish an international student travel corridor to facilitate the return of international students to universities located in NSW and the ACT (**Project**).

The Project is intended to:

- (a) support the NSW Government's objective for the return of international students (i.e. to continue to reap the benefits of cultural exchange and critically to help reinvigorate the economy);
- (b) inform offshore international students, their families, agents and key stakeholders of plans to return international students to physical campuses as soon as it is safe to do so;
- (c) facilitate a stress-free journey back by providing a suite of messages and materials that provide clarity and certainty around the return process, proposed timelines, information on prioritisation within the cohort, and information on what students need to do to participate and at key points in the return journey); and
- (d) maintain the NSW and ACT university sector's reputation as a great place to study, providing a positive student experience for all students, including through its support of students during the pandemic.

Given continuing Government restrictions on international arrivals into NSW and the ACT as a result of the COVID-19 pandemic (**Restrictions**), the Project involves a mechanism to allocate available seats on incoming international flights for use by international students at each participating university (see the Proposed Conduct described in section 3.1).

It is currently proposed that priority will be given to continuing students at NSW and ACT universities, including students that have been studying online over the past 12-18 months but need to return to NSW or the ACT to complete on-site or practical components of their course in order to progress their studies and/or graduate.

1.2 Parties to this application

This application is made by UniProjects Pty Limited (**UniProjects**), on behalf of:

- (a) itself;
- (b) participating universities in NSW and the ACT which may include:
 - (i) Australian Catholic University
 - (ii) Australian National University
 - (iii) Charles Sturt University

- (iv) Southern Cross University
- (v) Macquarie University
- (vi) University of Canberra
- (vii) University of Newcastle
- (viii) University of New England
- (ix) University of New South Wales
- (x) University of Notre Dame
- (xi) The University of Sydney
- (xii) University of Technology Sydney
- (xiii) Western Sydney University
- (xiv) University of Wollongong

(together, the **Parties**).

UniProjects is a company established by each of the 13 NSW and ACT-based public universities (except the University of Notre Dame). Its object is to conduct educational initiatives for the purposes of furthering the objects and interests of its member universities. Each of these public universities offers tertiary education courses to Australian and international students, and is an equal shareholder in UniProjects (excluding the University of Notre Dame).

The participating universities set out above will all have an ability to participate in the project as described in this application. They can each choose to do so (i.e. it is voluntary). However, at this stage, UniProjects expects that each university will participate. Collectively, in 2019, the 14 participating universities accounted for approximately 30% of international students studying at Australian universities.¹

UniProjects will, together with the participating universities, engage a travel services supplier to manage the Project.

1.3 The Proposed Conduct is necessary to give effect to a government-supported plan to bring international students back to NSW and the ACT

The tertiary sector is a significant contributor to the NSW, ACT and Australian economies, and a significant proportion of the sector's revenue is derived from international student fees. During the COVID-19 pandemic, the tertiary education sector has been severely impacted by the lack of international students coming into Australia due to the Australian Government's restrictions on foreign incoming travel. The reduction in international students has also had broader impacts on

¹ <https://www.dese.gov.au/higher-education-statistics/resources/2019-section-2-all-students>.

the wider NSW, ACT and Australian economies. Details of some of these key impacts are set out in **Attachments 1 – 3**.

With the pandemic largely controlled in Australia, there is an opportunity to restart the movement of international students back into NSW and ACT universities, in a safe, gradual, and carefully staged way.

To facilitate this, the Australian Government has revised its “Commonwealth Protocols and preconditions for international student arrivals” (**Protocol**)² to assist steps taken by State and Territory governments and educational institutions to re-open the education sector to overseas students. The Protocol sets out the steps for States, Territories and educational institutions to prepare for international student arrivals at scale, and requires them to work together to design a detailed “International Student Arrivals Plan” that aligns with the Commonwealth’s preconditions for international student arrivals and is approved by the State/Territory Chief Health Officer. One of the Commonwealth Preconditions is that students come from a diverse range of source countries and use of commercial flights where available, or Commonwealth approved charter flights.

Consistent with the Protocol, the NSW Government has asked the universities to work together to find and implement solutions for establishing an international student corridor to restart the flow of international students into NSW. The NSW Treasurer recently published an article in The Sydney Morning Herald emphasising the need to find a path to return international students to Australia (see **Attachment 3**).

Collaboration between the universities is critical both to give effect to the Government’s policy and, specifically, as a result of the continuing impact of Government Restrictions on international arrivals into NSW and the ACT in response to the COVID-19 pandemic. Without this collaboration, the Project is unachievable (see section 4.2 below).

In particular, the NSW Government proposes to set a cap on the number of international arrivals into NSW each week. This cap is required to manage risks to public health, hotel quarantine requirements, NSW Health and Border Security resources, logistics and the broader implications of accommodating people returning or coming into NSW. Currently this cap is anticipated to begin with 250 students per fortnight for two months, followed by an evaluation before scaling to larger intakes.³

Given these Restrictions – and the limited number of seats on incoming international flights that will be available for use by university students – the Proposed Conduct involves a mechanism to allocate available seats for use by students at each participating university. This mechanism is intended to provide a fair and reasonable method for sharing both the benefits and the risks of bringing international students into NSW/ACT and to comply with the Protocol.

As set out above, it is currently proposed that priority will be given to continuing students at NSW and ACT universities. This includes students that have been studying online but need to return to

² Australian Government Protocols and preconditions for international student arrivals, version 2, dated 5 January 2021, <https://www.dese.gov.au/covid-19/resources/protocols-and-preconditions-international-student-arrivals>.

³ The NSW Government’s allocations involve allocating 90% of the proposed intake to public universities, and 10% to independent higher education providers (e.g. Navitas, Redhill, Study Group etc.). These independent providers are not involved in the Project.

NSW or ACT to complete on-site or practical components of their course in order to progress their studies and graduate, and with whom universities have a contractual and ethical obligation in regard to facilitating completion of the degree for which they are already enrolled. Due to logistical reasons, the intention is to use a mix of commercial and charter flights from Asia and South Asia to hub through Singapore to Sydney for the Project. In future, other regions could be added to the planning.

1.4 Application for urgent interim authorisation

The restrictions on international travel and the resulting losses of international students have had a devastating impact on the tertiary sector, which has, in turn, had broader impacts on the wider NSW, ACT and Australian economies. The pandemic and restrictions have also had a significant personal impact on thousands of international students seeking to complete their university studies. While some studies can be completed online (and therefore offshore), there is a pressing need for many international students to return to Australia to undertake on-site or practical components that are necessary for them to complete their studies and cannot be done off-shore.

The Parties therefore request that the ACCC grants urgent interim and final authorisation under section 88(1) of the *Competition and Consumer Act 2010* (Cth) (**CCA**) in respect of the Proposed Conduct described in section 3.1 of this application. Interim authorisation will enable the Parties to progress detailed planning for the implementation of the Project, engage one or more travel services providers and to begin “unblocking” the pipeline of international students returning to NSW and ACT universities.

In this regard, while the precise commencement date varies between universities, second semester for 2021 starts in around July/August 2021.⁴ Urgent interim authorisation will enable the Parties to implement the Project so the first tranche of continuing international students can return to Australia for the start of the semester, with other students returning as soon as practicable after that (subject to the Restrictions and scheduling requirements).

2 Parties to the Proposed Conduct

2.1 Applicant

Name, address (registered office), telephone number and ACN	Contact person’s name, position, telephone number and email address	Short description of business carried out by applicant
UniProjects Pty Limited (ACN 054 581 609) C/o Nexia Australia Level 16, 1 Market Street, Sydney NSW 2000 02 9251 4600	Professor Barney Glover AO Chair of the Board, UniProjects Pty Limited [Confidential]	See below.

⁴ Universities Australia, *Summary of 2021 Principal Academic Dates for Australian Universities*, <https://www.universitiesaustralia.edu.au/wp-content/uploads/2020/08/Academic-Dates-2021-FINAL-as-of-31-August-2020.pdf>.

UniProjects was established in 1994 by the public universities set out in section 1.3 above (excluding the University of Notre Dame). In general, the purpose of UniProjects is to conduct various educational initiatives and/or enterprises to advance the objects and interests of participating universities.

2.2 Address in Australia for service of documents

Wayne Leach

Partner, King & Wood Mallesons

Level 61, Governor Phillip Tower, 1 Farrer Place, Sydney NSW 2000

Email: [REDACTED]

Phone: [REDACTED]

2.3 Other Persons who propose to engage in the Proposed Conduct

Name, address (registered office), telephone number and ACN	Contact person's name, position, telephone number and email address	Short description of business carried out by applicant
Australian Catholic University 40 Edward Street, North Sydney, New South Wales, 2060 ABN 15 050 192 660	Mr Chris Riley Pro Vice-Chancellor (Global and Education Pathways) [Confidential]	Australian university
Australian National University Canberra, Australian Capital Territory, 2601 ABN 52 234 063 906	Professor Sally Wheeler OBE Deputy Vice-Chancellor (International Strategy) [Confidential]	Australian university
Charles Sturt University The Grange, Panorama Avenue, Bathurst NSW 2795 ABN 83 878 708 551	Mr Tom Burton Pro Vice-Chancellor Community and Global Engagement [Confidential]	Australian university
Macquarie University Balaclava Road, North Ryde NSW 2113 ABN 90 952 802 237	Ms Nicole Brigg Pro Vice-Chancellor International [Confidential]	Australian university
Southern Cross University Vice Chancellors Office, Military Road, Lismore, New South Wales, 2480 ABN 41 995 651 524	Mr Monty Singh Chief International Officer [Confidential]	Australian university
University of Canberra	Professor Geoff Crisp	Australian university

Name, address (registered office), telephone number and ACN	Contact person's name, position, telephone number and email address	Short description of business carried out by applicant
Belconnen, Australian Capital Territory, 2626 ABN 81 633 873 422	Deputy Vice-Chancellor Academic [Confidential]	
University of Newcastle University Drive, Callaghan NSW 2308 ABN 15 736 575 735	Professor Tony Travaglione Interim Deputy Vice-Chancellor, Global Engagement and Partnerships [Confidential]	Australian university
University of New England Vice-Chancellor's Office, Armidale NSW 2350 ABN 75 792 454 315	Ms Ingrid Elliston Director, International [Confidential]	Australian university
University of New South Wales Vice-Chancellor's Office, Sydney NSW 2000 ABN 57 195 873 179	Professor Anne Simmons Provost [Confidential]	Australian university
University of Notre Dame 19 Mouat Street, Fremantle WA 6160 ABN 69 330 643 210	Professor Michelle Campbell Pro Vice-Chancellor, Academic Development [Confidential]	Australian university
The University of Sydney The General Counsel's Office, Level 3, 71-79A Arundel Street, Forest Lodge NSW 2037 ABN 15 211 513 464	Professor Pip Pattison AO Deputy Vice-Chancellor Education [Confidential]	Australian university
University of Technology Sydney City Campus, 15-73 Broadway, Ultimo NSW 2007 ABN 77257 686 961	Professor Andrew Parfitt Provost and Senior Vice President [Confidential]	Australian university
Western Sydney University Great Western Highway, Werrington, New South Wales, 2747 ABN 53 014 069 881	Associate Professor Linda Taylor Pro Vice-Chancellor (International) [Confidential]	Australian university
University of Wollongong	Professor Alex Frino	Australian university

Name, address (registered office), telephone number and ACN	Contact person's name, position, telephone number and email address	Short description of business carried out by applicant
Northfields Avenue, Wollongong NSW 2500 ABN 61 060 567 686	Deputy Vice-Chancellor (Global Strategy) [Confidential]	

2.4 Extended meaning of the Parties

In accordance with section 88(2) of the CCA, the Parties request that any authorisation granted by the ACCC is expressed to apply to any travel management services provider or providers appointed by UniProjects.

The parties also request that the authorisation applies to any other universities that have campuses in NSW and/or the ACT and who may in future choose to participate in the collaboration with UniProjects and therefore potentially become party to, or engage in the Proposed Conduct as described in section 3. This could include, for example, Torrens University, La Trobe University, Victoria University and/or University of Tasmania. As set out above, participation in the Project will remain voluntary.

3 Proposed Conduct

3.1 Description of conduct for which authorisation is sought

The Parties seek authorisation to discuss, enter into and/or give effect to any contract, arrangement or understanding, and to engage in conduct, in each case to the extent necessary to implement the Project. Specifically, the Proposed Conduct involves, and is limited to, the Parties:

- (a) jointly appointing one or more travel management services providers for the Project;
- (b) collaborating with each other (including establishing a working and/or operations group) to identify and implement solutions to establish the international student travel corridor referred to in this application – and make and manage aircraft, airline and seat bookings – to bring international students into NSW and ACT, either via commercial or charter flights;
- (c) implementing an arrangement to allocate available seats for international students on commercial or charter flights as between participating universities in response to Government Restrictions, in the manner set out in section 3.2 below. This includes the process for “re-allocating” or swapping unused seats as between participating universities as described in section 3.3 below to ensure, to the maximum extent possible, that all available seats are used;
- (d) exchanging any information that is reasonably necessary for the purposes of paragraphs (b) and (c) above, including discussing any impact of changes to Government Restrictions on the Project; and

- (e) communicating independently and collectively, directly and via third party providers of the travel services, with students seeking to avail themselves of the opportunity to return to Australia in accordance with the Project described in this application.

(Proposed Conduct)

3.2 Proposed contractual arrangements

Arrangements with the travel management provider

UniProjects is currently negotiating a travel management services agreement with a potential travel management services provider (**Travel Agreement**) for the provider to procure seats and manage student bookings on commercial flights. UniProjects is also negotiating a charter agreement with a supplier (**Charter Agreement**) to procure charter flights, if required, for student bookings.

Under the Travel Agreement, it is intended that the travel services provider will be responsible for procuring seats on commercial flights subject to the number of seats made available to universities under the government cap, managing student bookings (i.e. through a custom-built portal that is similar to other online booking systems for air travel), ticketing, invoicing, and accepting payment from students. Returning students will be responsible for making and paying for their flight bookings with the travel management provider (once seats are made available to them as allocated by UniProjects).

Under the Charter Agreement, the supplier will be responsible for chartering any flights that may be requested by UniProjects, and the implementation and delivery of those travel management services to UniProjects as charterer.

The Parties will agree a Schedule of commercial and chartered flights, subject to the number of seats allocated to universities under the NSW Government's cap. The Parties currently anticipate that there will be approximately one chartered flight per fortnight for the first two months.

UniProjects will also enter into back-to-back contracts with each participating university (**Back-to-Back Contracts**). The Back-to-back Contracts will, among other things, set out how the universities will:

- (a) contribute to the travel management fees payable by the universities through UniProjects to the travel services providers;
- (b) share the costs of the Project; and
- (c) manage the process for allocating available seats on incoming commercial and charter flights, and the process for "re-allocating" or swapping unused seats as between participating universities to ensure, to the maximum extent possible, that available seats are used.

Arrangements with international students

Securing competitively priced airfares for returning students has been central to the planning of the Project. This is important for both students (i.e. to obtain low-priced airfares), and the participating universities, given that they are effectively underwriting the costs of the seats.

As set out above, the travel management provider has undertaken a large amount of work to explore three possible models to achieve this in respect of each source country:

- (a) Chartering aircraft;
- (b) Group bookings on commercial flights to charter (also known as “hub and spoke”); and
- (c) Group bookings on commercial flights.

[Confidential]

If a student has obtained a travel restriction exemption from the Department of Home Affairs, there is no requirement for them to book through the travel management provider. They are free to attempt to obtain airline seats through any other available channel. However, given the Commonwealth Government’s restrictions on air travel into Australia, the very limited availability of seats and the capacity limit set by the NSW Government, UniProjects considers it very unlikely that continuing students would be able to secure lower-priced airfares without the benefit of the Project. This is one of the main reasons for, and key benefits of, the joint Project.

To this end, the Project is being implemented with the specific purpose of ensuring that continuing students have a clear pathway back into the country, and to help them obtain competitively priced airfares from their country. The appointment of the travel management provider is essential to provide this benefit to students (i.e. a means and ability to book travel into Australia at prices lower than might otherwise be the case).

To enable students to access these airfares (and to facilitate payments from, and refunds to, students), the travel management provider will effectively operate as a travel agent for students and will provide an online booking system as described above. Students can use this system to book seats on the flights – and at the prices secured by – the travel management provider.

3.3 Proposed processes for allocating seats among university students

(a) Seats on flights are identified, capped and allocated to universities by Government

To manage international student arrivals (and the associated quarantine arrangements, logistics etc.), the NSW Government proposes to set a cap on the number of international arrivals into NSW each week. This is currently anticipated to be 250 students per fortnight for two months, followed by an evaluation before scaling to larger intakes.⁵

Given the Restrictions, the Proposed Conduct involves a mechanism to fairly allocate the limited available seats for use by students across each participating university.

(b) Allocation of seats for students across participating universities

The Proposed Conduct will initially prioritise continuing (i.e. current) international students who are required to return to NSW or the ACT to complete on-site or practical components of their studies in Australia. To be as fair and equitable as possible, the Parties propose to allocate available seats among the participating universities as equally as possible and aligned proportionally to both (a) the schedule of commercial and charter flights from source jurisdictions across time periods for the life of the Project, and (b) the historical (2019) student enrolments at universities from those jurisdictions.

⁵ Based on this cap, UniProjects estimates that the Project will facilitate approximately 9,000 continuing students in total arriving over 31 weeks, out of a cohort of approximately 50,000 currently enrolled international students.

A well-established algorithm (iterative proportional fitting) will be used for these allocations. The algorithm will deliver an aggregate outcome that, after rounding, is proportionally very closely aligned to the overall pattern of 2019 student enrolments from the source jurisdictions to each participating university. Total 2019 student enrolments at each university are set out in Table 1 below.

Table 1 – Overseas Student enrolments - 2019

Institution	Overseas Students 2019 enrolments	
	Temporary entry permit (headcount)	%
Australian National University	10,214	7.91%
Charles Sturt University	8,498	6.58%
Macquarie University	11,893	1.22%
Southern Cross University*	1,577	1.22%
University of Canberra	3,571	2.77%
University of New England	1,337	1.04%
University of Newcastle	4,458	3.45%
University of Notre Dame*	62	0.05%
The University of Sydney	29,592	22.93%
University of New South Wales	24,816	19.23%
University of Technology Sydney	14,747	11.42%
University of Wollongong	8,339	6.46%
Western Sydney University	7,893	6.11%
Australian Catholic University*	2,084	1.61%
Total	129,081	100%

*Multi-state universities - adjusted for enrolments at campuses within the geographical confines of NSW and the ACT.

This 2019 international student enrolment data is publicly available on the Commonwealth Department of Education's website,⁶ and is historical (i.e. based on 2019 enrolments), transparent, verified, and cannot be changed or manipulated. Using this data to allocate the limited number of available seats also avoids any need for universities to exchange potentially commercially sensitive information such as projected international student numbers.

The Protocol stipulates that student arrival plans must include students from a diverse range of source countries. Based on logistical and travel advice, the universities will focus on the following source regions with a view to potentially extending the Project to more regions in the future:

- Mainland China;
- India;
- Singapore;
- Hong Kong;

⁶ <https://www.dese.gov.au/higher-education-statistics/resources/2019-section-7-overseas-students>,

- Malaysia;
- Republic of South Korea;
- Taiwan; and
- Vietnam.

Each university will be responsible for deciding independently which of its continuing students will receive priority access to that university's allocation. This internal prioritisation may take into account a range of factors, including the requirements of individual courses offered by that university, the need to complete practical components on campus, graduation schedules and the readiness of students within the relevant courses to return to Australia.

(c) **Process for re-allocating unused seats**

To minimise the number of unused seats within the quota granted by Government to the university sector, if a university is not able to fill its allocation of seats, those seats will be made available to other participating universities for a limited time, up to their proportional allocation limit (as set out in Table 1). Specifically, a participating university may advise through the operations group for the Project that it does not wish to use all or part of its allocated seats on a given flight (e.g. based on its own requirements and demand and readiness of students). The unallocated seats will be offered back into the pool and redistributed among the participating universities as per the proportional allocation limit (see Table 1 above).

Under the proposed arrangements, universities may choose to relinquish and re-allocate (or "trade") seats on flights up to 8 weeks before the start of the relevant fortnight. At 8 weeks prior to the start of the relevant fortnight any seats that have been "traded" will be considered as final and the receiving university will have responsibility for filling the traded seats.

- **Relinquishing seats early:** Each university can also choose to relinquish some or all of its allocation in a given fortnight up to 12 weeks prior to the commencement of the fortnight. The receiving university will take on responsibility for filling the re-allocated seats.
- **Relinquishing seats late:** Each university will also be able to choose to relinquish some or all of its allocation in a given fortnight between 8 and 12 weeks prior to the commencement of the fortnight, as set out above. The process can be repeated as long as there is interest in an additional allocation by at least one university. However, any unallocated seats will remain the responsibility of the university to which the seats were originally allocated.

In addition, UniProjects will remain liable to pay the travel services provider for any unsold seats on chartered or commercial flights and, under the Back-to-Back Agreements, each university will be liable to indemnify UniProjects for the unsold seats allocated to it. Accordingly, each university and UniProjects will have a strong financial incentive to ensure that, to the extent possible, unused seats are made available for use by other universities.

3.4 Duration of authorisation sought

The Parties seek authorisation to engage in the Proposed Conduct until June 2022. This 12-13 month term reflects the uncertainty surrounding the ongoing impacts of the COVID-19 pandemic (including the length of the Restrictions) and the need for the Parties to make decisions about and plan for student enrolments over the coming semesters. The typical planning cycle for preparation of teaching staff / course work is 12 months in advance of the relevant semester.

The Parties only intend to engage in the Proposed Conduct for as long as is necessary to respond to the challenges created by the Restrictions (i.e. until such time as Australia's borders reopen to all international travellers). Once restrictions are lifted and there is no longer a cap on international arrivals, international students will be free of travel restrictions and able to travel to Australia under their own arrangements.

3.5 Application for interim authorisation

The Parties consider that immediate action is required to avoid the significant ongoing adverse impacts resulting from the Restrictions and are therefore seeking interim authorisation on an urgent basis. Interim authorisation is sought because:

- (a) the Proposed Conduct inherently benefits continuing international students, and will help to re-enliven the tertiary sector (which continues to be intensely competitive notwithstanding the impacts of the pandemic, with universities continuing to actively compete for new enrolments);
- (b) the Parties need to finalise commercial agreements setting out how they will work together to arrange flights and manage bookings for students as soon as possible;
- (c) without interim authorisation, there will be ongoing uncertainty and financial harm, given delays in the ability for the Applicants to plan the chartering of flights and allocation of available seats among their students; and
- (d) interim authorisation will not give rise to permanent changes which would prevent the market returning to its pre-authorisation state if final authorisation is not granted, particularly in circumstances where the sector remains in a state of disruption and there are very limited numbers of international arrivals in NSW and the ACT.

In addition, as set out above, while the precise commencement date varies between universities, second semester for 2021 starts in around July/August 2021. Urgent interim authorisation will enable the Parties to implement the Project so the first tranche of continuing international students can return to Australia for the start of the semester, with other students returning as soon as practicable after that (subject to the Restrictions and scheduling requirements).

As the Proposed Conduct is entirely reversible, will have no material impact on competition for students among universities, and is expected to result in significant public benefits, there can be no risk associated with the grant of interim authorisation. This is particularly the case as the Proposed Conduct will initially prioritise continuing international students for whom competition has already taken place, and for which there is very limited (if any) continuing competition between universities. In addition, the Proposed Conduct will not involve any restriction on

international students switching or transferring between universities once they have returned to Australia should they choose to do so.

However, the Parties acknowledge that if, during the interim authorisation period, the ACCC identifies concerns about the Proposed Conduct, the ACCC may review and revoke that authorisation at any time.

3.6 Provisions of the CCA which might apply to the Proposed Conduct

As the universities compete for the students (international and Australian) to undertake their respective tertiary courses, there is a risk that, absent authorisation, the Proposed Conduct may contravene sections 45AF, 45AG, 45AJ, 45AK, and/or 45 of the CCA.

However, as set out above, the level of competition between the universities in respect of the Proposed Conduct is limited as:

- the Proposed Conduct will initially prioritise continuing international students for whom competition has already taken place as between the universities (and other universities globally);
- there is no restriction on students changing universities once they return to Australia if they choose to do so; and
- the universities do not, outside of the Project, typically organise travel arrangements on behalf of international students. Accordingly, the participating universities would not, in the absence of authorisation, typically compete with each other in relation to the supply or acquisition of any other services relevant to the Proposed Conduct.

4 Public benefits

4.1 Overview

Section 4.2 below sets out the current and ongoing impacts of the Restrictions on international students, the sector and the broader economy. Section 4.3 sets out public benefits that would likely flow from the Proposed Conduct and would reduce these ongoing impacts.

4.2 Current impact of the Restrictions on students, university sector and the economy

The Proposed Conduct will reduce the significant ongoing detrimental financial, social and economic impacts of the Restrictions and the COVID-19 pandemic on students, universities, and the tertiary sector. Without the Proposed Conduct:

- international students who need to complete on-site, practical components will be hindered or delayed in completing their studies and graduating, creating a significant backlog;
- universities will continue to lose prospective and continuing student enrolments (including to universities overseas such as in the United Kingdom, United States and

Canada), with the flow-on effects of lost revenue from fees, and reduced ability to recruit and pay teaching staff;

- there is likely to be significant financial and reputational damage to the university sector in Australia as education is a key export; and
- businesses which rely on international student numbers (e.g. local cafes, shops, rental accommodation providers and businesses in and around university campuses or student living areas) will continue to be adversely impacted by reduced student numbers and business sales. By extension, this will continue to impact the broader economy.

As set out in section 1.3 above, without collaboration between participating universities in relation to the Proposed Conduct, the Project is unachievable. Without collaboration between participating universities, there will be very limited certainty about the availability of seats for continuing students. This will have a very significant impact on the ability for each university to communicate clearly with students and to facilitate their return to Australia. It will also have a significant adverse impact on the ability for each university to plan the delivery of its courses and to provide resources for continuing students. Both of these matters have the potential to further harm the reputation of Australian universities in the services (and care) that they provide for students.

The Proposed Conduct will also help ensure that competitive airfares remain available to continuing students, given the increased volume of air ticket purchases that will be facilitated and managed by the travel management services provider engaged by the participating universities. Without this combined volume, it is likely that airfares would be higher for returning students.

In addition, the appointment of the same travel management provider as used by the NSW Government will help to ensure, from a logistical perspective, that students transition smoothly through the various government agencies that handle international arrivals (e.g. DFAT, DHA, NSW Police and NW Health). These agencies, themselves, have limited resources and significant capacity constraints. Accordingly, the appointment of the travel management provider will significantly assist in reducing the burden on those agencies, compared to a situation where they are required to deal with each student individually.

(a) Current impacts on international students and student numbers at universities

International students comprise approximately 30%⁷ of NSW universities' enrolments in any non-COVID impacted year. As a result of the pandemic, university student numbers significantly reduced and new modelling indicates international students living in Australia will drop by 50% by mid-2021 if Australia's borders remain closed.⁸ Applications for student visas for individuals outside Australia are approximately 80–90% below what they were at the same time in 2019.⁹

The longer the travel restrictions remain in place, the greater the losses associated with the international education sector. If the travel restrictions remain in place until July 2022, the

⁷ Department of Education, Skills and Employment - Higher Education Statistics Data Cube (uCube), <http://highereducationstatistics.education.gov.au/>.

⁸ Peter Hurley "Coronavirus and international students" Mitchell Institute October 2020, available: <https://www.vu.edu.au/sites/default/files/international-student-update-2020-mitchell-institute.pdf>

⁹ Ibid, p.4.

modelling suggests about 165,000 international students will remain inside Australia, a reduction of over 410,000 compared to October 2019.¹⁰

As highlighted in **Attachment 2**, as at 10 May 2021, there were 317,134 student visa holders studying in Australia and a further 153,892 studying outside of Australia. NSW had the largest cohort of students studying outside of Australia at 33% (56,073). The majority of students studying offshore are higher education students (128,691) from mainland China (85,868), with smaller numbers of offshore students in India, Nepal, Indonesia, and Vietnam, etc.

The Restrictions also impact some students to a greater degree than others. For example, some Higher Degree Research students have not been able to complete their courses which require that they must return to Australia in order to complete their studies and to access laboratories and / or clinical placements. If Restrictions remain in place for some time, without the Proposed Conduct, it will be impossible for some students to complete courses online or offshore. The Proposed Conduct will enable more international students to complete their courses.

(b) Current impact on the student pipeline in the tertiary sector¹¹

International student enrolments function like a pipeline. Many international students begin in a pathway or English language course before progressing to a formal VET or higher education course. The process can take several years. As some international students finish their courses, new international students commencing their courses replace them.

The pandemic has severely disrupted this pipeline. It is unclear how many international students elected to defer their universities studies in 2020 as the data has not been made public.¹²

There was a compromised intake for semester one 2020 and missed intakes for semester two 2020 and semester one 2021 with the earliest possible resumption of onshore commencements, now estimated for Semester 1, 2022. Moreover, currently enrolled international students continue to leave Australia as they complete their studies, hastening the reduction in onshore international students. The Proposed Conduct will help to stem the flow of declining international student numbers.

(c) Current broader economic impacts

The Restrictions and consequent reduction in international student numbers have resulted in, and will continue to have, adverse impacts for not only universities but the businesses which rely on international students more broadly – e.g. local cafes, shops, rental accommodation providers and businesses in and around university campuses or student living areas which rely on student foot traffic. These impacts are not evenly spread throughout the ACT, NSW or within Sydney. There are approximately 80,000 fewer international students living in NSW because of COVID-19. The Mitchell Institute estimates this will equate to approximately 72,000 fewer international students living in the Greater Sydney area.¹³

¹⁰ Ibid.

¹¹ Id 19.

¹² <https://www.smh.com.au/politics/federal/very-concerning-indian-students-abandon-australian-universities-20210304-p577uz.html>.

¹³ Id 13.

Approximately 57%, or \$21.4 billion, of the \$37.5 billion in annual revenue associated with international education comes in the form of goods and services spent in the wider economy. The reduction in international students living in Australia will affect the many Australian jobs and businesses that rely on international education.¹⁴ The University of Sydney alone, for example, in a non-COVID year (2019) contributed \$5.3 billion in economic output and 31,270 full-time equivalent employment to the NSW economy.¹⁵

The Proposed Conduct will minimise the ongoing impact of the Restrictions upon the universities as well (and by extension the businesses which rely on international student trade) by maximising and fairly allocating the number of international students that can come to NSW and ACT universities under the Government cap during the period in which the Restrictions apply. In the absence of the Proposed Conduct, the ongoing impact of the Restrictions will continue to be significant for students, universities and the NSW and ACT economies more broadly.

4.3 The Proposed Conduct is likely to deliver significant public benefits

The Parties consider that the Proposed Conduct will likely result in the following public benefits:

- (a) **Reducing adverse impacts on current international students offshore:** many of the universities re-structured their courses in 2020 to enable current international students to continue their studies online. Approximately one in four international students are studying online. However, online learning is not sustainable for some courses. For example, courses in medicine, science, engineering, teaching, nursing and midwifery and Higher Degree Research necessarily require students to complete practical components, laboratory work and face-to-face learning in order to complete their studies and graduate. Without the Proposed Conduct, many international students will be delayed in the progress of, or unable to complete, their studies, which will have knock-on effects for the pipeline of student enrolments, graduates and jobs.
- (b) **A more efficient and cost effective way to facilitate the return of current international students:** As set out above, the Proposed Conduct will help ensure that competitive airfares remain available to continuing students, given the increased volume of air ticket purchases that will be facilitated and managed by the travel management services provider engaged by the participating universities. Without this combined volume, it is likely that airfares would be higher for returning students (i.e. if air tickets are purchased individually by returning students).
- (c) **Reducing the adverse impacts of the Restrictions on the university sector:** International student enrolments at Australian universities have so far declined by approximately 5% from 442, 219 in 2019¹⁶ to 418,168 in 2020¹⁷. Numbers will worsen dramatically in 2021 as the flow through of pipeline students dries up, and offshore enrolment trends become clearer. Enrolments from India and China (Australia's two

¹⁴ Ibid.

¹⁵ Economic Impact of the University of Sydney, April 2020, p.2-3, <https://www.sydney.edu.au/content/dam/corporate/documents/news-opinions/economic-impact-of-the-university-of-sydney-april-2020.pdf>.

¹⁶ <https://internationaleducation.gov.au/research/international-student-data/Pages/InternationalStudentData2019.aspx>.

¹⁷ <https://internationaleducation.gov.au/research/international-student-data/Pages/InternationalStudentData2020.aspx>.

largest markets for international students) have been impacted more severely. For example, Indian student enrolments at Australian universities dropped by more than 80% in 2020 – a market worth \$6.6 billion to the Australian economy in the 2019-20 financial year.¹⁸ At least three semesters' worth of student intakes have been compromised or missed due to the pandemic. Application data indicates these missed intakes have not yet accumulated, so there is unlikely to be three semesters' worth of international students arriving if/when Restrictions are lifted. Therefore, as currently enrolled international students finish their courses, the number of enrolled international students will continue to decline. The Proposed Conduct will help to re-establish the “pipeline” of international students to Australia, and help mitigate to some extent the estimated cumulative loss of \$10 - \$19 billion to the university sector between 2020 and 2023.¹⁹

- (d) **Protecting jobs at universities:** The return of international students to NSW and the ACT will send a strong signal to the international education sector that Australia is reopening for business and will serve to bring certainty to the education workforce.
- (e) **Benefit the broader economy, particularly businesses which rely on international students (the multiplier effect):** The Australian Bureau of Statistics reported that higher education contributed around 70% (or \$28 billion) of international education exports in 2019. Of that, approximately 53% of export income (\$14.84 billion) was international students spending on goods and services from Australian businesses and the remaining 47% (\$13.16 billion) was international student fees payable to higher education providers.²⁰ The reduction in international students living in Australia affects many Australian jobs and businesses that rely on international education – e.g. local cafes, shops, rental accommodation providers and businesses in and around university campuses or student living areas. The Proposed Conduct will allow more students to return to Australia to study in person and thereby support local businesses and the broader NSW, ACT and Australian economies through the spending of approximately \$60,000 per student, in addition to student fees. See **Attachment 1** for further economic context.
- (f) **Re-establishing the pipeline of students for workforce and migration planning:** International students also contribute significantly to NSW, the ACT and Australia's immigration numbers and population growth which is vital to the economy. As noted in recent media articles, there is a shortfall in graduating nurses, doctors, teachers, vets, as a result of the pandemic²¹ The Proposed Conduct will help to re-build this pipeline of students to support a future workforce.
- (g) **Re-establishing a COVID-safe, efficient and fair way of allowing current international students to return to NSW / ACT to complete their studies:** the proposed allocation mechanism apportions students to participating universities based

¹⁸ See for example: <https://www.smh.com.au/politics/federal/very-concerning-indian-students-abandon-australian-universities-20210304-p577uz.html>.

¹⁹ Peter Hurley and Nina Van Dyke “Australian Investment in Education: Higher Education” Mitchell Institute, pg 18 available: <https://www.vu.edu.au/sites/default/files/australian-investment-in-education-higher-education-mitchell-institute.pdf>.

²⁰ <https://www.universitiesaustralia.edu.au/wp-content/uploads/2020/11/200917-HE-Facts-and-Figures-2020.pdf>.

²¹ “International students receive exemptions to travel to Australia for study” 13 February 2021, *the Australian*, <https://www.theaustralian.com.au/breaking-news/international-students-receive-exemptions-to-travel-to-australia-for-study/news-story/ef436b9e557440652d82ed5d9715610f>.

on historical enrolments from 2019 (prior to the impact of the pandemic). This ensures no particular university “hoards” more of the available seats on flights than it reasonably requires, at the expense of other universities. The re-allocation mechanisms further ensure that allocations are exhausted so that every seat on every flight is filled, to the extent possible, to minimise costs and wasted capacity. The Parties consider that the re-allocation process is responsive to anticipated demand as the departure dates for scheduled flights draw nearer and is not open to ‘gaming’.

5 Public detriments

The parties submit that the Proposed Conduct will not give rise to any material public detriments. In particular, the Proposed Conduct:

- (a) is only required due to the cap on international arrivals imposed by the NSW, ACT and Federal Governments. If not for the cap, then international students would be able to freely and independently travel to Australia to attend universities in NSW and the ACT as they did prior to the Restrictions;
- (b) will initially be targeted at continuing, high priority international students (for which the universities have already competed) and is not targeted at prospective international students;
- (c) will not restrict the ability of students to transfer universities or change courses at any stage should they wish to do so;
- (d) will not involve collective decisions relating to the price at which the Parties acquire or supply goods or services, for example university course fees;
- (e) will not involve collective decisions relating to the arrangements between the Parties and their suppliers (except for the joint appointment of a travel management services provider), or the arrangements between the universities and their respective students/customers in relation to courses;
- (f) will not involve the sharing of competitively sensitive information beyond what is necessary to implement the Project. For example, the Proposed Conduct does not require, and will not involve sharing information about future marketing strategies to international students or which source countries universities may target, beyond what is necessary to charter or procure flights and fill available and allocated seats.
- (g) will not be compulsory and any participant can opt out of any proposed collaboration the subject of this application; and
- (h) is for a limited period of time (12-13 months until June 2022) and will form a temporary response to the difficulties which the Parties face as a result of the COVID-19 crisis and the Restrictions. The Parties only intend to engage in the Proposed Conduct for as long as is necessary to respond to the challenges created by the Restrictions. Once Restrictions are lifted, and international students can return in uncapped numbers to NSW and ACT it will not be necessary for the Project to continue. The Proposed

Conduct will not alter any market dynamics or how universities compete in a permanent way; and

- (i) is open to other universities with campuses in NSW and/or the ACT who may choose to join the Parties in the Project. Accordingly, no universities will be prevented from increasing their international student intakes if they wish to do so.

6 Conclusion

In the current circumstances, and without the Proposed Conduct, the universities face significant and ongoing reductions in international student enrolments, with associated ongoing revenue and job losses. This has adverse multiplier effects across the broader economy. By increasing student numbers to the extent possible under the cap, the Proposed Conduct will facilitate, rather than limit, the supply of tertiary education.

For this reason and the reasons set out above, the Parties submit that the Proposed Conduct will not give rise to any material public detriments (as described in section 5) and will result in significant net public benefits (as described in section 4).

The Parties therefore request that the ACCC:

- (a) grants interim authorisation as soon as possible; and
- (b) grants authorisation for a period of 12-13 months to June 2022.

Declaration by applicant(s)

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the Criminal Code (Cth).



Signature of authorised person

Name: Professor Barney Glover AO

Position title: Chair of Uniprojects Pty Ltd

Date: 26 May 2021

Attachment 1 - Economic context

Australia

In 2019, international education was Australia's largest service export, and third largest export overall, contributing over \$40 billion to the Australian economy (up from \$32.4 billion in 2017-2018²²). The Australian Bureau of Statistics reported that higher education contributed around 70% (or \$28 billion) of international education exports in 2019. Of that, approximately 53% of export income (\$14.84 billion) was international students spending on goods and services from Australian businesses and the remaining 47% (\$13.16 billion) was international student fees payable to higher education providers.²³

The 2020 Higher Education Facts and Figures published by Universities Australia reported that in 2018, 1,426,594 students studied at Australia's 39 comprehensive universities. Of these, 71% (or 1,014,027) were domestic students and the remaining 29% (or 412,567) were international students²⁴. International student numbers have been increasing over the past 10 – 20 years, and the Commonwealth Department of Education enrolment figures for 2019 show that there were 442,219 international students at Australian Universities.²⁵ China is the largest source of international students (37%), with India second (20.5%).

International education is a significant creator of jobs in Australia. Firstly, for universities, and secondly for primary and service industries such as construction, health, tourism and hospitality. Universities Australia estimated that Australian universities supported 259,100 full-time jobs in 2018, but this number has now reduced as a result of closed borders to approximately 128,000²⁶.

New South Wales

In NSW, international student education was estimated to be worth \$14 billion a year, making it NSW's largest service export up from \$12 billion in 2018²⁷. Each student is estimated to spend on average \$60,000 in NSW in addition to their tuition expenses.²⁸

In 2018, the Commonwealth Department of Education, Skills and Training estimated that, in NSW, international education employed 95,692 full time equivalent jobs.²⁹ The 13 public universities in NSW and the ACT directly employed approximately 41,250 staff (full-time and fractional full-time).³⁰

The NSW Auditor-General reports that in 2019, all ten public NSW universities were recorded as having a combined revenue of \$11.4 billion, with a total expenditure of \$9.9 billion annually. That expenditure is

²² Australian Bureau of Statistics, August 2020, International Trade: Supplementary Information, Calendar Year 2019, Cat. No. 5368.0.55.004, ABS, Canberra, Table 09.

²³ <https://www.universitiesaustralia.edu.au/wp-content/uploads/2020/11/200917-HE-Facts-and-Figures-2020.pdf>.

²⁴ <https://www.universitiesaustralia.edu.au/wp-content/uploads/2020/11/200917-HE-Facts-and-Figures-2020.pdf>.

²⁵ Department of Education, Skills and Employment international Student Data 2019 (<https://internationaleducation.gov.au/research/international-student-data/Pages/InternationalStudentData2019.aspx>).

²⁶ <https://www.universitiesaustralia.edu.au/wp-content/uploads/2020/11/200917-HE-Facts-and-Figures-2020.pdf> and based on the Universities Australia homepage as accessed on 16/3/2021 at www.universitiesaustralia.edu.au.

²⁷ NSW Treasury, NSW 2040 Economic Blueprint, https://www.treasury.nsw.gov.au/sites/default/files/2019-11/0909-02_EconomicBlueprint_Web.pdf, accessed 10 February 2020.

²⁸ <https://www.smh.com.au/national/perrotet-pushes-for-international-students-to-quarantine-in-hobart-20210308-p578ut.html>.

²⁹ Commonwealth Department of Education and Training, Jobs supported by international students studying in Australia, https://internationaleducation.gov.au/research/Research-Snapshots/Documents/RS_Job%20supported%202018.pdf, accessed 10 February 2020.

³⁰ Commonwealth Department of Education and Training, uCube, <http://highereducationstatistics.education.gov.au/>, accessed 10 February 2020.

mainly employee-related expenses, estimated to be 62% of the total operating expenditure.³¹ In 2019 32% (\$3.65 billion) of overall NSW universities' revenue was sourced from international student fees.³²

The universities and the international students who attend them, are vital to the NSW and Australian economy and community. Contributions from international students through social, cultural, political and trade ties are an integral part of the NSW and Australian economies.

In February 2020, in response to the COVID-19 pandemic, the Commonwealth Government first applied travel restrictions for foreign nationals coming from China. In March 2020, the Government then introduced broader travel restrictions, after the start of the first semester in higher education.

These restrictions have resulted in:

- (a) as at 10 May 2021, 128,691 (or approximately 43% of) international students enrolled at Australian universities are studying outside of Australia;³³
- (b) This is approximately 231,000 fewer higher education international students studying in Australia than would otherwise be expected;³⁴
- (c) a 12.3% reduction in currently enrolled international students (75,500 students) since late March 2020³⁵;
- (d) 17,000 of lost teaching jobs and redundancies due to reduced student numbers³⁶;
- (e) Universities Australia estimate \$1.8 billion in lost revenue to the Higher Education sector compared to 2019, a further \$2 billion in 2021³⁷;

The border restrictions are also likely to result in:

- (a) A projected \$16 billion in lost revenue between June 2020 and 2023 to the university sector, based on a conservative estimate. However, if the Restrictions continue, these losses are forecast to be \$19 billion;³⁸ and
- (b) \$3.5 billion to \$6 billion loss of income and the loss of up to 21,000 jobs for the NSW university sector.³⁹

³¹ Ibid 26, Page 20.

³² Audit Office of NSW, Universities 2019 audits, <https://www.audit.nsw.gov.au/our-work/reports/universities-2019-audits>.

³³ Commonwealth Department of Education, Skills and Employment, Monthly Timely Statistics shared with Peak Bodies, dated 26 April 2021.

³⁴ Department of Education, Skills and Employment - Higher Education Statistics Data Cube (uCube), 2019 total HE enrolments 523,748, March 2021, total HE enrolments (on- and offshore) 291,933.

³⁵ Peter Hurley "Coronavirus and international students" Mitchell Institute October 2020, available: <https://www.vu.edu.au/sites/default/files/international-student-update-2020-mitchell-institute.pdf>

³⁶ UA Medial Release 03/02/2021 <https://www.universitiesaustralia.edu.au/media-item/17000-uni-jobs-lost-to-covid-19/>.

³⁷ <https://www.universitiesaustralia.edu.au/media-item/covid-19-to-cost-universities-16-billion-by-2023/> and <https://www.universitiesaustralia.edu.au/media-item/17000-uni-jobs-lost-to-covid-19/>.

³⁸ <https://www.universitiesaustralia.edu.au/media-item/covid-19-to-cost-universities-16-billion-by-2023/> and <https://www.universitiesaustralia.edu.au/media-item/17000-uni-jobs-lost-to-covid-19/>.

³⁹ NSW Government submission to the Committee on the Future Development of the NSW tertiary education sector, pg 12 available: <https://www.parliament.nsw.gov.au/lcdocs/submissions/68342/0035%20NSW%20Government.pdf>.

Student visa holders in and outside Australia



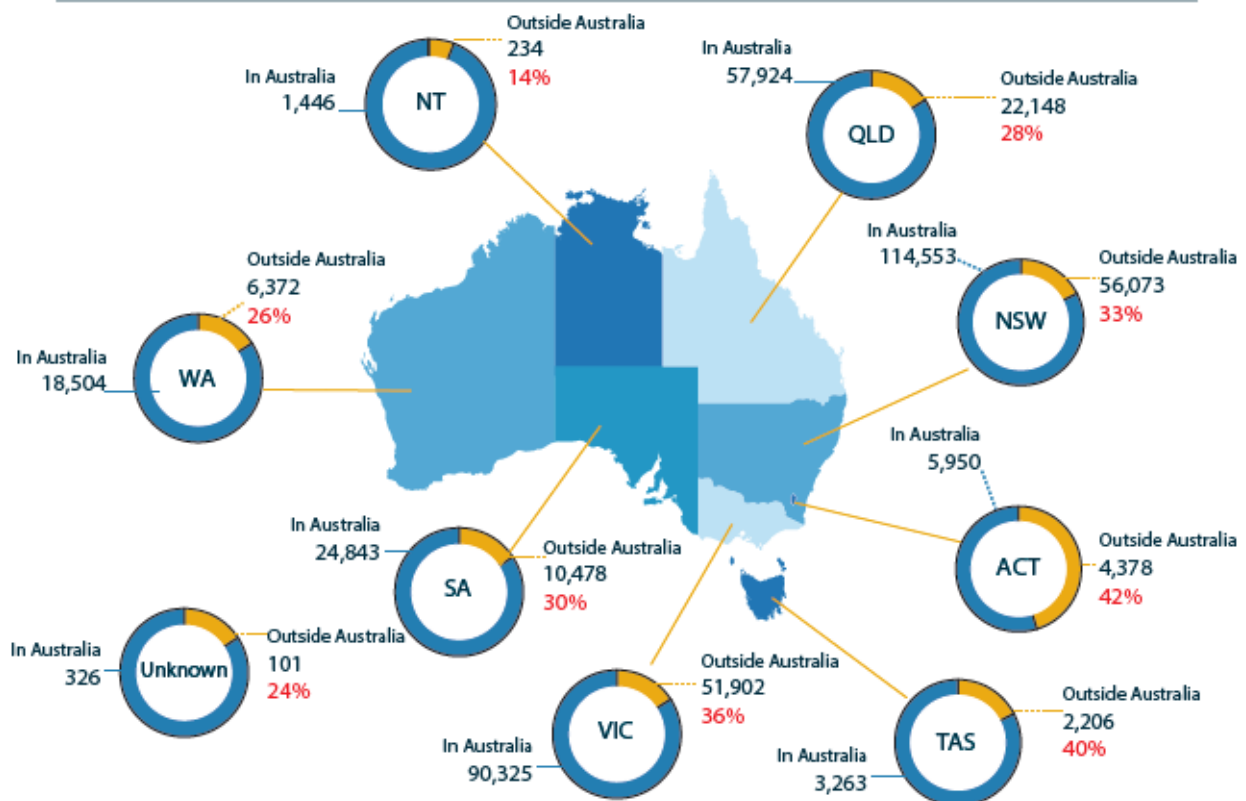
Australian Government
Department of Education,
Skills and Employment

International student visa holders who may be affected by COVID-19 related travel restrictions - 10 May 2021

Primary student visa holders , by visa subclass				
Visa subclass	In Australia	Outside Australia	Total	% Outside Australia
Higher Education	169,237	128,691	297,928	43%
Independent ELICOS	3,020	1,373	4,393	31%
Non-Award	42	66	108	61%
Postgraduate Research	13,111	6,220	19,331	32%
Schools	10,452	4,501	14,953	30%
VET	121,272	12,968	134,240	10%
Other	-	73	73	100%
Total	317,134	153,892	471,026	33%

Top 10 visa holders by citizenship			
Country	Outside Australia	Total	% Outside Australia
China	85,868	140,552	61%
India	16,379	79,704	21%
Nepal	3,129	35,890	9%
Vietnam	4,799	18,614	26%
Philippines	2,386	13,147	18%
Malaysia	3,014	13,139	23%
Colombia	781	12,858	6%
Brazil	1,004	12,662	8%
Indonesia	3,871	12,646	31%
South Korea	2,742	12,004	23%
Other	29,919	119,810	25%
Total	153,892	471,026	33%

Primary student visa holders by location of primary education provider



Source: Department of Home Affairs, 2021

Attachment 3 – Public comments from the NSW Treasurer

See attached Opinion piece by NSW Treasurer, the Hon. Dominic Perrottet MP
“We must find a path to Australia for International students”
published in the Sydney Morning Herald, 19 March 2021, and more recent reported comments from the
NSW Treasurer in the Australia on 13 May 2021.

Opinion 19 March 2021: <https://www.smh.com.au/national/nsw/we-must-find-a-path-to-australia-for-international-students-20210318-p57bvc.html>

Media report 13 May 2021: <https://www.theaustralian.com.au/higher-education/push-for-overseas-students-to-return/news-story/6401da2d1fc831433d66a2064f6e4509>