

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Education.

Subject: *Education Services for Overseas Students Act 2000*

National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007

Authority

Section 33(1) of the *Education Services for Overseas Students Act 2000* (the ESOS Act) provides that the Minister may make a National Code by legislative instrument expressed to commence on a day at least 28 days after it is registered on the Federal Register of Legislative Instrument. In accordance with section 36 of the ESOS Act, before making the National Code, the Commonwealth Minister must consult each nominee and person who, in the Minister's opinion, represents the interests of providers.

Purpose

The purpose of this legislative instrument is to amend the *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007* (*National Code 2007*) to give effect to recent amendments made by the *Education Services for Overseas Students Amendment (Re-registration of Providers and Other Measures) Act 2010* (the ESOS Amendment Act) to the ESOS Act.

Background

The ESOS Amendment Act provides, amongst other things, for the re-registration of all Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) providers by 31 December 2010. As part of this process, providers are required to demonstrate that

- their principal purpose is to provide education; and
- they have a demonstrated capacity to provide education of a satisfactory standard.

The amendments to the *National Code 2007* are intended to ensure that the state and territory designated authorities (as defined by section 5 of the ESOS Act) are able to implement the recent amendments to the ESOS Act under their respective state or territory legislative regimes. Specifically, the amendments to the *National Code 2007* will insert references to new sections 9A, 9B, 92A and 92B of the ESOS Act which give effect to the re-registration requirements.

Commencement

This legislative instrument commences 28 days after the day it is registered on the Federal Register of Legislative Instruments.

Consultation

Consultation on the amendments contained in this legislative instrument was undertaken with each state and territory education department via the International Quality Implementation Group (IQIG), of the Joint Committee for International Education. In the IQIG meeting of 19 August 2009 it was agreed that the most efficient way of enabling the re-registration process

to proceed was to amend the *National Code 2007* to reflect the two new re-registration criteria under the ESOS Amendment Act.

The Commonwealth Minister for Education wrote to the following state and territory Ministers for Education and/or Training to confirm her willingness to amend the *National Code 2007* to avoid the need for states and territories to change their respective legislation for the re-registration process to proceed:

- Andrew Barr MLA, Minister for Education and Training, ACT
- The Hon Verity Firth MP, Minister for Education and Training, NSW
- The Hon Dr Christopher Bruce Burns MLA, Minister for Education and Training, NT
- The Hon Geoff Wilson MP, Minister for Education and Training, QLD
- The Hon Michael O'Brien, Minister for Employment, Training and Further Education, SA
- The Hon David Bartlett MP, Minister for Education and Skills, TAS
- The Hon Bronwyn Pike MP, Minister for Education, Skills and Workforce Participation, VIC
- The Hon Peter Collier MLC, Minister for Training, WA

In February 2010, the Department of Education, Employment and Workplace Relations (the Department) contacted via written correspondence the following industry stakeholders:

- Mr Martin Riordan, Chief Executive Officer, TAFE Directors Australia
- Dr Glenn Withers AO, Chief Executive Officer, Universities Australia
- Mr Andrew Smith, Chief Executive Officer, Australian Council for Private Education and Training
- Mr Paul O'Halloran, Chair International Policy Committee, Council of Private Higher Education
- Ms Sue Blundell, Executive Director, English Australia
- Mr Dennis Murray, Executive Director, International Education Association of Australia
- Dr Felicity Fallon, President, ISANA
- Prof. Paul L. Beirne, Dean, Melbourne College of Divinity
- Prof. Diane Speed, Dean, Sydney College of Divinity
- Ms Caroline Miller, Policy Analyst, Independent Schools Council of Australia
- Dr William Griffiths, CEO, National Catholic Education Commission

The correspondence invited recipients to indicate their agreement and/or provide comments to the proposed amendments to the Department by no later than 17 March 2010. Recipients were notified that the absence of any comments by this date would be taken as support for the proposed amendments. No replies were received, and this was taken as industry agreement with the proposal.

Detailed explanation of the amendments

Item 1 inserts, under paragraph 2 of Part C of the *National Code 2007*, a statement noting that in 2010 all providers of education to overseas students are required to successfully undergo re-registration or their CRICOS could be cancelled.

Items 2 and 3 insert two references to new section 9A (under paragraph 3 and subparagraph f. of paragraph 6.1 of Part C) to ensure that the amendments refer to new section 9A of the ESOS Act to incorporate the principal purpose and capacity criteria into the CRICOS registration and application provisions of the Code.

Items 4 and 5 substitutes two references to new section 9B in paragraph 15.2 and in the Section titled Staff, educational resources and premises (Standards 14 to 15) (Preamble, second paragraph) of Part D. This amendment was made because the ESOS Amendment Act moved the fit and proper person criteria from subsection 9(6) to new section 9B.