

## **EXPLANATORY STATEMENT**

Issued by the Minister for Immigration and Citizenship

*Migration Legislation Amendment (Student Visas) Act 2012*

### Proclamation

Item 2 of the table in subsection 2(1) of the *Migration Legislation Amendment (Student Visas) Act 2012* (the Act) provides that Schedule 1 to the Act is to commence on a single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day the Act receives the Royal Assent, they commence on the day after the end of that period. The Act received the Royal Assent on 12 December 2012.

The purpose of the Proclamation is to fix 13 April 2013 as the day on which Schedule 1 to the Act commences.

The Act implements recommendation 24 of the independent *Strategic Review of the Student Visa Program*, conducted by the Hon. Michael Knight AO, and gives effect to the Government's policy to abolish the automatic cancellation of student visas for unsatisfactory course attendance or course progress.

Section 20 of the *Education Services for Overseas Students Act 2000* (the ESOS Act) requires registered education providers to send an "accepted student" a written notice if the student has breached a prescribed condition of their student visa. The *Education Services for Overseas Student Regulations 2001* prescribes condition 8202 (which relates to satisfactory course attendance and course progress), set out in Schedule 8 to the *Migration Regulations 1994*.

If a notice under section 20 of the ESOS Act is sent to a student visa holder, this engages section 137J of the *Migration Act 1958*. Section 137J provides for the automatic cancellation of a student visa for non-complying students. Automatic cancellation occurs by operation of law at the end of the 28<sup>th</sup> day after the day specified as the date of the notice unless the student complies with the notice or the student makes himself or herself available to an office of the Department of Immigration and Citizenship for the purpose of making any submissions about the breach and the circumstances that led to the breach.

Schedule 1 contains the operative provisions of the Act which amends the ESOS Act to provide that a registered education provider must not send a notice under section 20. In effect, student visa holders are no longer subjected to automatic cancellation. It is intended that non-compliance with condition 8202, following amendments to the *Migration Regulations 1994*, will be considered on a discretionary basis based on the merits of the case.

The Proclamation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.