

EXPLANATORY STATEMENT

Education Services for Overseas Students (ESOS Agency – ELICOS and Foundation Programs) Determination 2016

Authority

The *Education Services for Overseas Students (ESOS Agency – ELICOS and Foundation Program) Determination 2016* is made by the Minister pursuant to subsection 6C(2) of the *Education Services for Overseas Students Act 2000 (ESOS Act)* as in force on and after 1 July 2016.

Purpose and operation

The purpose of this instrument is to determine, under subsection 6C(2) of the ESOS Act, that an entity is the ESOS agency for a provider or registered provider to the extent that the provider or registered provider is a person or entity that provides an English Language Intensive Course for Overseas Students (ELICOS) or a Foundation Program.

The ESOS agency has responsibility for registration, monitoring and regulation of providers of education services to overseas students.

Subsection 6C(1) of the ESOS Act sets out the ESOS agency for a provider or registered provider. Item 4 of the table in subsection 6C(1) of the ESOS Act specifies that, to the extent that a provider or registered provider is a person or entity that provides an ELICOS or a Foundation Program, the ESOS agency is the entity determined under subsection 6C(2).

Subsection 6C(2) provides that the Minister may, by legislative instrument, determine that an entity is the ESOS agency for a provider or registered provider that is a person or entity that provides an ELICOS or a Foundation Program.

Section 4 of the instrument provides that each instrument specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the instrument has effect according to its terms.

Section 5 of the instrument defines the term ‘Act’ as the ESOS Act. Section 5 defines ‘entry arrangement’ as an arrangement between the provider of an ELICOS and a registered higher education provider under which overseas students undertake an ELICOS conducted by the provider mentioned in paragraph (a) for entry to a higher education course or Foundation Program conducted by the provider mentioned in paragraph (b). These terms are used only in this instrument. All other expressions used in this instrument have the same meaning as they have in the ESOS Act.

Section 6 of the instrument determines that, for the purposes of subsection 6C(2) of the Act, the ESOS agency for a provider or registered provider, to the extent that the provider or registered provider is a person or entity that provides an ELICOS, is as follows:

- (a) if the provider or registered provider is a registered higher education provider, the ESOS agency is the Tertiary Education Quality and Standards Agency (**TEQSA**);
- (b) if the provider or registered provider is a registered VET provider, the ESOS agency is the National VET Regulator;
- (c) if the provider or registered provider is an approved school provider, the ESOS agency is the Secretary;
- (d) if the provider or registered provider is *not* a registered higher education provider, a registered VET provider or an approved school provider, and provides an ELICOS under an entry arrangement, the ESOS agency is TEQSA;
- (e) in any other case, the ESOS agency is the National VET Regulator. For example, for a provider or registered provider not described in (a) to (d) that provides an ELICOS as a standalone ELICOS course, the ESOS agency will be the National VET Regulator.

Section 7 of the instrument determines that, for the purposes of subsection 6C(2) of the ESOS Act, the ESOS agency for a provider or registered provider, to the extent that the provider or registered provider is a person or entity that provides a Foundation Program, is TEQSA.

Schedule 1 to the instrument repeals the *Education Services for Overseas Students (Designated Authority) Determination 2012 (No. 1)* with effect from 1 July 2016. That instrument will cease to have effect as a result of the amendments made by the *Education Services for Overseas Students Amendment (Streamlining Regulation) Act 2015 (the Amendment Act)*.

Commencement

This instrument commences on 1 July 2016.

Section 6C is inserted by the *Education Services for Overseas Students Amendment (Streamlining Regulation) Act 2015 (the Amendment Act)*. In accordance with the Amendment Act, Section 6C is taken to have commenced on 1 July 2016 when Schedule 1 to the Amendment Act commences.

This instrument is made prior to 1 July 2016 in reliance on subsection 4(2) of the *Acts Interpretation Act 1901*, which authorises the making of an instrument under amendments to an Act that have been enacted but have not yet commenced, so long as the instrument does not commence before the commencement of the amendment.

Consultation

Throughout 2014-15 the Government consulted extensively with international education stakeholders about priority areas for reform of the ESOS Act and its associated legislative framework. This consultation process led to the changes introduced by the Amendment Act. Changes taking effect on 1 July 2016 will introduce the concept of an ‘ESOS agency’ for a provider or registered provider. This instrument specifies the ESOS agency for providers or registered providers delivering an ELICOS or a Foundation Program. It is broadly consistent with the policy in the previous instrument made with respect to ‘designated authorities’ prior to the amendments made by the Amendment Act.

Regulation Impact Statement

This instrument gives effect to policy decisions flowing from enactment of the Amendment Act, for which a Regulation Impact Statement was undertaken (Office of Best Practice Regulation Reference No. 17028).

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Education Services for Overseas Students (ESOS Agency – ELICOS and Foundation Programs) Determination 2016* is made by the Minister pursuant to section 6C(2) of the *Education Services for Overseas Students Act 2000 (ESOS Act)*.

The purpose of the instrument is to determine that an entity is the ESOS agency for a provider or registered provider to the extent that the provider or registered provider is a person or entity that provides an English Language Intensive Course for Overseas Students (**ELICOS**) or a Foundation Program.

The ESOS agency has responsibility for registration, monitoring and regulation of providers of education services to overseas students.

The instrument sets out the ESOS agency for ELICOS as follows:

- (a) if the provider or registered provider is a registered higher education provider, the ESOS agency is the Tertiary Education Quality and Standards Agency (TEQSA);
- (b) if the provider or registered provider is a registered VET provider, the ESOS agency is the National VET Regulator;
- (c) if the provider or registered provider is an approved school provider, the ESOS agency is the Secretary;
- (d) if the provider or registered provider is not a registered higher education provider, a registered VET provider or an approved school provider, and provides an ELICOS under an entry arrangement, the ESOS agency is TEQSA;

(e) in any other case, the ESOS agency is the National VET Regulator. For example, for a provider or registered provider not described in (a) to (d) that provides an ELICOS as a standalone ELICOS course, the ESOS agency will be the National VET Regulator.

Foundation Programs are preparatory for entry into higher education. Accordingly, the instrument specifies that the ESOS agency for a provider or registered provider of a Foundation Program is TEQSA.

Human rights implications

This legislative instrument engages the following human right:

Right to Education

The legislative instrument engages the right to education, contained in Article 13 of the *International Covenant on Economic, Social, and Cultural Rights*, insofar as it relates to the provision of education services to international students by education providers registered under the ESOS Act.

In particular, the legislative instrument will ensure clarity and continuity of arrangements for the regulation of registered providers delivering ELICOS and Foundation Programs to overseas students by clearly articulating the ESOS agency for these providers. ELICOS and Foundation Programs are often key preparatory courses for international students seeking to further their education in Australia. The creation of an ‘ESOS agency’ for a provider is a consequence of amendments made by the *Education Services for Overseas Students Amendment (Streamlining Regulation) Act 2015*, which streamline registration and monitoring processes under the ESOS Act from 1 July 2016. The changes mean more efficient and effective regulation, which will enhance the quality of the international education sector and deliver better educational outcomes for students overall.

To the extent that the right to education is engaged, the measures contained in the Amendment Regulation are compatible with the right to education.

Conclusion

This instrument is compatible with human rights because it advances the protection of human rights.