

EXPLANATORY STATEMENT

Education Services for Overseas Students Act 2000

Education Services for Overseas Students Amendment Regulation 2016

Authority

Section 177 of the *Education Services for Overseas Students Act 2000* (ESOS Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the ESOS Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the ESOS Act.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Outline

The ESOS Act sets out the legal framework governing the delivery of education services to overseas students studying in Australia on a student visa.

The *Education Services for Overseas Students Regulations 2001* (ESOS Regulations) support the implementation of the ESOS Act by prescribing essential reporting requirements, including:

- information that must be entered on the register about the provider and each course by location
- student details that providers must include on the Provider Registration and International Student Management System (PRISMS)
- information on student visa conditions
- penalties and infringement notices
- student records that a provider must keep (such as the student's personal details and course details).

Purpose and operation

The purpose of the *Education Services for Overseas Students Amendment Regulation 2016* (Amendment Regulation) is to complement amendments made to the ESOS Act by the *Education Services for Overseas Students Amendment (Streamlining Regulation) Act 2015* (Amendment Act).

One of the principal objects of the ESOS Act is to complement Australia's migration laws by ensuring providers collect and report information relevant to the administration of the laws relating to 'student visas'. The Amendment Regulation will amend the definition of 'student visa' to align it with the definition of 'student visa' in the *Migration Regulations 1994*.

The Amendment Regulation will remove redundant provisions that impose an unnecessary regulatory burden on education institutions to report data. In particular, it removes the requirement on providers to report data such as details of the Immigration office where the overseas student's application for a student visa was made and providers' fax numbers. The Amendment Regulation will no longer require information to be collected on Overseas Student Health Cover, as this data is

already collected under Department of Immigration and Border Protection (DIBP) data collection processes as a condition of the student's visa.

The Amendment Regulation will also improve the collection of data relating to changes to the location of a course by requiring a provider to report to the ESOS agency any changes in course location. This change will ensure that course location data is up-to-date and assists agencies to accurately monitor the education provider and the student to ensure compliance with the requirements under the ESOS Act.

Consultation

Consultations on reforms to the ESOS framework occurred in 2014-15 and stakeholders expressed concerns about duplicative and burdensome data reporting requirements that are not commensurate with the risk they seek to manage or mitigate. These concerns are reflected in the changes to the ESOS Regulations. The Tuition Protection Service, the Tertiary Education Quality and Standards Agency (TEQSA) and the Australian Skills Quality Authority (ASQA) have been consulted and support the changes.

DIBP was consulted and agrees with amendments relating to Overseas Student Health Cover.

FINANCIAL IMPACT STATEMENT

There is no financial impact concerned with this amendment.

REGULATION IMPACT STATEMENT

The Office of Best Practice Regulation (OBPR) has agreed that a Regulation Impact Statement is not required (OBPR ID 20445). The changes ensure the ESOS Regulations only collect essential data, and result in a small regulatory saving of approximately \$5.5 million per year for education institutions.

Statement of Compatibility with Human Rights

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

Education Services for Overseas Students Amendment Regulation 2016

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 Amendment Regulation 2016* (the Amendment Regulation) amends the *Education Services for Overseas Students Regulations 2001* (ESOS Regulations) to:

- align references and definitions with the amendments to the *Education Services for Overseas Students Act 2000* (the ESOS Act) made by the *Education Services for Overseas Students Amendment (Streamlining Regulation) Act 2015* that commence on 1 July 2016
- align the definition of ‘student visa’ with the definition of ‘student visa’ in the *Migration Regulations 1994*, as amended by the *Migration Legislation Amendment (2016 Measures No. 1) Regulation 2016*
- remove the requirements on providers to report data such as the Immigration office where an overseas student’s application for a student visa was made and institutions’ fax numbers as this is now redundant, as well as the requirement to report information on Overseas Student Health Cover as this is already collected under Department of Immigration and Border Protection (DIBP) data collection processes
- improve data collection relating to changes to the location of a course by requiring a provider to report to the ESOS agency any changes in course location. This amendment will ensure that course location data is up-to-date and assist agencies to accurately monitor the education provider and the student to ensure compliance with the requirements under the ESOS Act.

Human rights implications

This legislative instrument engages the following human right:

Right to Education

The Amendment Regulation 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 service providers registered under the ESOS Act.

In particular, the Amendment Regulation will amend the definition of ‘student visa’ in the ESOS Regulations to align it with the amended definition in the *Migration Regulations 1994* and make minor technical amendments to align definitions and remove redundant data collection requirements. The Amendment Regulation will also require providers to notify the ESOS agency when the location of a course changes which is intended to protect students’ rights in cases where a provider defaults under the ESOS Act and ceases to offer a course to a student. Capturing the

change in location means students' consumer rights will be better protected under the ESOS Act. As the amendments are predominantly definitional and technical in nature, they are not expected to impact on or limit a student's right to education.

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.

EDUCATION SERVICES FOR OVERSEAS STUDENTS AMENDMENT REGULATION 2016 (AMENDMENT REGULATION)

NOTES ON CLAUSES

Clause 1 – Name

This clause provides that the title of the Amendment Regulation is the *Education Services for Overseas Students Amendment Regulation 2016*.

Clause 2 – Commencement

This clause provides for the commencement of all of the provisions of the Amendment Regulation on 1 July 2016, at the same time as relevant amendments to the ESOS Act made by the Amendment Act commence.

Clause 3 – Authority

This clause provides that the Amendment Regulation is made under the ESOS Act.

Clause 4 – Schedules

This clause provides that each instrument that is 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.

Schedule 1 – Amendments

Item 1

This item removes the words “the Secretary” from the definition of *confirmation of enrolment* in regulation 1.03 of the ESOS Regulations.

Subsection 19(3) of the ESOS Act was amended by the Amendment Act to provide that a registered provider must give the information required by that section by entering the information in the computer system established by the Secretary under section 109.

This amendment ensures that the definition of *confirmation of enrolment* – which means the information the provider must give under section 19 of the ESOS Act when a person becomes an accepted student of the provider – is consistent with the process of providing that information by entering the information in the computer system established under section 109.

Item 2

This item amends the definition of *PRISMS* in regulation 1.03 of the ESOS Regulations by replacing the words “to the Secretary in the form approved under subsection 19(3)” with the words “under section 19”.

The Provider Registration and International Student Management System (PRISMS) is the electronic system used to process information given to the Secretary under the ESOS Act. This amendment ensures consistency with the process of giving information under section 19 by entering the information in the computer system established under section 109.

Item 3

This item amends paragraph (a) of the definition of *student visa* in regulation 1.03 of the ESOS Regulations by replacing the words “(a) Subclass 576 (Foreign Affairs and Defence Sector) visa; or” with the words “(a) a visa granted to: (i) a Foreign Affairs student (within the meaning of the *Migration Regulations 1994*); or (ii) a Defence student (within the meaning of the *Migration Regulations 1994*); or”.

Subclasses of student visas (such as 576 visas) are no longer recognised by the *Migration Regulations 1994*. This amendment retains the exclusion of visas granted to foreign affairs students and defence students from the definition of *student visa* but removes the reference to redundant subclass 576 visas.

Item 4

This item amends the note in regulation 1.03 of the ESOS Regulations which refers to the definitions in section 5 of the ESOS Act by substituting the references to “approved provider”, “designated authority”, “Immigration Minister”, “national code” and “Secretary” with references to “authorised officer” and “ESOS agency”.

This amendment is consequential to reflect the changes made by the Amendment Act to the definitions and concepts in the ESOS Act.

Item 5

This item amends subregulation 2.01(1) of the ESOS Regulations which relates to the provider information which must be entered on the Register, by replacing the words “approved provider registered to provide a course or courses for a State” with the words “provider registered to provide a course or courses at a location or locations”.

This amendment is consequential as the ESOS Act no longer recognises the concept of being registered to provide a course “for a State”.

Item 6

This item removes the phrase “, facsimile number” from paragraph 2.01(1)(d) of the ESOS Regulations which relates to provider information which must be entered on the Register, reflecting the fact that fax numbers are no longer a key piece of contact information for providers.

Item 7

This item amends paragraph 2.01(1)(h) of the ESOS Regulation, which relates to provider information that must be entered on the Register, specifically the maximum number of approved overseas students to whom a provider may provide a course, by replacing the words “designated authority” with the words “ESOS agency for the provider”.

This amendment reflects the new concept of the ESOS agency of a provider in the ESOS Act which covers the Secretary, TEQSA and ASQA as well as any other agency prescribed by legislative instrument.

Item 8

This item substitutes paragraph 2.01(2)(a) of the ESOS Regulations, which relates to course information that must be entered on the Register, with new subparagraphs 2.01(2)(a) “the level and field of study of course” and 2.01(2)(aa) “the duration of the course, including any holiday breaks”.

This amendment is intended to ensure that providers fully disclose any holiday breaks when calculating the duration of a course.

Item 9

This item repeals the words “fax number (if any)” from subparagraph 2.01(2)(e)(iii) of the ESOS Regulations which relates to course information which must be entered on the Register.

Item 10

This item repeals paragraph 3.01(k) of the ESOS Regulations, which requires providers to provide information about whether health insurance premiums have been paid by accepted students.

The requirement for a student to obtain Overseas Student Health Cover falls under the *Migration Regulations 1994* and is a condition of a student visa. Accordingly, this information is already collected by DIBP.

Item 11

This item amends paragraph 3.01(l) of the ESOS Regulations, which requires providers to provide information about any English comprehension tests undertaken by accepted students, by inserting the words “specified in a legislative instrument made for paragraph 476.213(a) or 485.212(a) of Schedule 2 of the *Migration Regulations 1994*” after the words “a test”.

This amendment ensures that the details of any English comprehension tests undertaken by accepted students which providers are required to enter into PRISMS are those used by DIBP at any given time.

Item 12

This item removes paragraph 3.01(m) of the ESOS Regulations which requires providers to provide information about the office of the Immigration Minister’s Department where an accepted student’s application for a student visa was made or was expected to be made.

This amendment is to remove unnecessary reporting requirements, as this information is no longer required.

Item 13

This item removes previous examples of English comprehension tests in regulation 3.01 of the ESOS Regulations.

This amendment is consequential to the amendment in item 11 of this Amendment Regulation because these examples are now redundant.

Item 14

This item removes the words “to the Secretary” from paragraph 3.02(1)(a) of the ESOS Regulations which outlines the prescribed information which providers must enter into PRISMS about accepted students who do not begin courses when expected.

This amendment is to align with the process of providing the information required by section 19 of the ESOS Act by entering that information in the computer system established under section 109.

Item 15

This item amends paragraph 3.02(1)(b) of the ESOS Regulations by replacing the word “provider);” with the word “provider).”

This grammatical amendment is necessary because the subsequent paragraph is deleted by item 16 of this Amendment Regulation.

Item 16

This item repeals paragraph 3.02(1)(c) of the ESOS Regulations, which requires providers to provide information about the office of the Immigration Minister’s Department where an accepted student’s application for a student visa was made in circumstances where the accepted student does not begin the course when expected.

This amendment is to remove unnecessary reporting requirements, as this information is no longer required.

Item 17

This item removes the words “to the Secretary” from paragraph 3.03(1)(a) of the ESOS Regulations which outlines the prescribed information which providers must enter into PRISMS about accepted students who terminate their studies before the course is completed.

This amendment is to align with the process of providing the information required by section 19 of the ESOS Act by entering that information in the computer system established under section 109.

Item 18

This item amends paragraph 3.03(1)(b) of the ESOS Regulations by replacing the word “provider);” with the word “provider).”

This grammatical amendment is necessary because the subsequent paragraph is deleted by item 19 of this Amendment Regulation.

Item 19

This item repeals paragraph 3.03(1)(c) of the ESOS Regulations which requires providers to provide information about the office of the Immigration Minister’s Department for accepted students who terminate their studies before their course is completed.

This amendment is to streamline reporting obligations because this information is no longer required.

Item 20

This item removes the words “to the Secretary” from paragraph 3.03(2)(a) of the ESOS Regulations which outlines the matters which providers are required to enter into PRISMS for accepted students who change their course or whose course changes in duration.

This amendment is to align with the process of providing the information required by section 19 of the ESOS Act by entering that information in the computer system established under section 109.

Item 21

This item amends paragraph 3.03(2)(b) of the ESOS Regulations by replacing the word “provider);” with the word “provider).”

This grammatical amendment is necessary because the subsequent paragraph is deleted by item 22 of this Amendment Regulation.

Item 22

This item repeals paragraph 3.03(2)(c) of the ESOS Regulations which requires providers to provide details of the office of the Immigration Minister’s Department for accepted students who change their course or whose course changes in duration.

This amendment is to remove unnecessary reporting requirements, as this information is no longer required.

Item 23

This item inserts a new subparagraph (2A) after subregulation 3.03(2) of the ESOS Regulations which requires providers to provide prescribed information (the information mentioned in paragraphs 3.01(a) to (h) of the ESOS Regulations and the student’s contact details) where the location at which the student’s course is provided changes.

This amendment is to ensure that the ESOS agency and DIBP are notified where there has been a change in location where a course is being delivered to a student.

Item 24

This item replaces the note in regulation 3.03A of the ESOS Regulations which refers to the requirement on providers in section 19 of the ESOS Act to give information about a breach by an accepted student of a prescribed visa condition by entering that information into PRISMS.

This amendment ensures consistency with the process of giving information by entering the information in the computer system established under section 109.

Items 25 and 26

These items amend regulation 6.02 of the ESOS Regulations, which relates to infringement notices, by replacing the word “Minister” with the words “ESOS agency for the provider” or “ESOS agency”.

These are consequential amendments reflecting the new concept of the ESOS agency of a provider in the ESOS Act.

Items 27 and 28

These items amend regulation 6.04 of the ESOS Regulations, which relates to applications for extensions of time to pay infringement notices, by replacing the word “Minister” with the words “ESOS agency for the provider” or “ESOS agency”.

These are consequential amendments reflecting the new concept of the ESOS agency of a provider in the ESOS Act.

Items 29 and 30

These items amend regulation 6.05 of the ESOS Regulations, which relates to making arrangements with providers to pay infringement notices by instalments, to ensure that this function will now be performed by the ESOS agency rather than the Minister.

These are consequential amendments reflecting the new concept of the ESOS agency of a provider in the ESOS Act.

Items 31 to 34

These items amend regulation 6.06 of the ESOS Regulations, which relates to the withdrawal of infringement notices, to indicate that this function will now be performed by the ESOS agency rather than the Minister.

These are consequential amendments reflecting the new concept of the ESOS agency of a provider in the ESOS Act.

Item 35

This item amends regulation 6.07 of the ESOS Regulations, which relates to the payment of a penalty if an infringement notice is not withdrawn, to indicate that this function will now be performed by the ESOS agency rather than the Minister.

This is a consequential amendment to reflect the new concept of the ESOS agency of a provider in the ESOS Act.

Items 36 to 39

These items amend subregulation 6.11 of the ESOS Regulations, which relates to evidence in hearings, by replacing the words “the Minister or an authorised officer” and “the Minister” with the

words “an authorised officer of the ESOS agency for the alleged offender”, and replacing the word “person” with the words “authorised officer”.

These are consequential amendments reflecting the new concept of the ESOS agency for a provider in the ESOS Act.

Item 40

This item repeals subregulation 6.11(3) of the ESOS Regulations, which defines *authorised officer*. The definition is redundant, as the term is already defined in the ESOS Act, and that definition applies in the Regulations (paragraph 13(1)(b) of the *Legislation Act 2003*).