

## **EXPLANATORY STATEMENT**

Issued by the authority of the Hon Alan Tudge MP, Minister for Education and Youth

### ***Education Services for Overseas Students Act 2000***

### ***Education Services for Overseas Students Amendment (Deregulation and Other Measures) Regulations 2021***

#### **AUTHORITY**

Section 177 of the *Education Services for Overseas Students Act 2000* (the Act) provides the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or are necessary or convenient to be prescribed, for carrying out or giving effect to the 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. These amendments are made in reliance on this power.

#### **PURPOSE AND OPERATION**

The *Education Services for Overseas Students Amendment (Deregulation and Other Measures) Regulations 2021* (the Amendment Regulations) amend the *Education Services for Overseas Students Regulations 2019* (the Principal Regulations) to facilitate more effective administration of the Education Services for Overseas Students (ESOS) legislative framework and reduce regulatory burden on the international education sector.

The Amendment Regulations amend the Principal Regulations to:

- remove the requirement for providers to give information on the payment of tuition fees through the Provider Registration and Information Management System (PRISMS) when a calendar month ends; and
- remove the now redundant infringement notice scheme.

Part 1 of the Amendment Regulations give effect to the Government's broader Deregulation Agenda in the 2021-22 Budget by removing the requirement for providers to give information on the payment of tuition fees when a calendar month ends.

Part 2 of the Amendment Regulations repeals provisions which are redundant in the Principal Regulations. The *Regulatory Powers (Standardisation Reform) Act 2021* (the Regulatory Powers Reform Act) repeals provisions of the Act that allow an infringement notices scheme to be prescribed by regulation or legislative instrument, rendering the infringement notices provision of the Principal Regulations redundant.

## **REGULATORY IMPACT**

The Office of Best Practice Regulation (OBPR) has assessed the first amendment as representing a minor reduction in reporting requirements for private providers, reducing regulatory burden under the Act. The Regulation Impact Statement (RIS) is at Attachment A.

OBPR has assessed the second amendment as unlikely to have regulatory impact on business, individuals or community organisations and therefore, the preparation of a RIS is not required.

The OBPR ID for the first and second amendment is 43558.

## **COMMENCEMENT**

The Amendment Regulations commence on 1 July 2021, except for Part 2 of Schedule 1, which commences at the same time as Part 1 of Schedule 3 to the Regulatory Powers Reform Act. Part 1 of Schedule 3 to Regulatory Powers Reform Act commences on a single day to be fixed by Proclamation, or if the provisions do not commence within the period of 6 months beginning on the day the Regulatory Powers Reform Act received Royal Assent (which was on 26 March 2021), they commence on the day after the end of that period.

## **CONSULTATION**

Consultations for these amendments were not required as they are generally beneficial, of a minor nature and do not substantially alter existing arrangements.

The aspect of Amendment Regulations which removes the requirement for providers to give information on the payment of tuition fees through PRISMS when a calendar month ends is beneficial to providers and does not adversely impact students. Providers will continue to be required to keep financial records of tuition fees paid by students, however, they will no longer be required to duplicate these records in the PRISMS system. While this reduces the regulatory burden on providers, regulators and students can continue to request fee payment records from providers on a case by case basis, where required.

The amendments which remove the now redundant infringement notice scheme do not alter existing arrangements, but rather remove provisions which are made redundant by operation of another legislative provision.

## 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 (Deregulation and Other Measures)*  
*Regulations 2021*

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 (Deregulation and Other Measures) Regulations 2021 (Amendment Regulations)* amend the *Education Services for Overseas Students Regulations 2019* (the Principal Regulations) to remove the requirement for providers to give information on the payment of tuition fees through the Provider Registration and Information Management System (PRISMS) when a calendar month ends and remove the now redundant infringement notice scheme.

### **Human rights implications**

The Instrument engages the following rights:

- the right to education – Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), and Article 28 of the *Convention on the Rights of the Child* (UNCRC); and
- the right to work – Article 6 of the ICESCR.

#### Right to education

The Amendment Regulations engage the right to education, contained in Article 13 of the ICESCR, insofar as it relates to the provision of education and training services to overseas students. Article 13(1) of the ICESCR recognises each person's right to education, and that education is important to "*the full development of the human personality*", and enables "*all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups*". The protections afforded by the Act and Regulations to overseas students demonstrate Australia's commitment to upholding the right to education for overseas students in Australia.

Similarly, Article 28(1) of the UNCRC is relevant to children who are overseas students studying in primary and secondary schools in Australia, and recognises *the "right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity"*. The Act and Regulations, in conjunction with state and territory laws on school registration, young person and child protection and welfare, ensure there is a regulatory framework to ensure the quality of education experience for overseas students under 18 in Australian primary and secondary schools.

The Act and the Principal Regulations provide the regulatory framework under which education providers can be registered as providers on the *Commonwealth Register of Institutions and Courses for Overseas students* (CRICOS). This framework protects the integrity of Australia’s international education sector by ensuring CRICOS registered providers have an appropriate level of Australian Government regulation and oversight, including establishing obligations on registered providers to keep and give student information.

The amendments will enable more effective administration of the Education Services for Overseas Students (ESOS) legislative framework and reduce regulatory burden on the international education sector.

To the extent the right to education is engaged, the measures contained in the Amendments Regulations are compatible with the right to education.

#### Right to work

The Commonwealth’s commitment to the delivery of quality education and training services to overseas students provides a solid foundation and opportunity for people to engage with and pursue quality work objectives after completing their studies. The promotion of the right to education inherently leads into the promotion of the right to work, as education is one of the pathways to employment.

The Regulations engage the right to work, contained in Article 6 (1) of the ICESCR; *“the right to work, which includes the right of everyone to the opportunity to gain [their]... living by work which [they] freely [choose] or [accept]”*. Australia’s high quality international education system provides a foundation on which overseas students may then pursue broader employment opportunities.

The Amendment Regulations are consistent with the Government objective of strengthening Australia’s international education system by bringing consistency to the regulation of private and public education providers, as well as consistency with other legislative instruments.

The pathway from the right to education to the right to work is supported by the international education system provided for by the Act and Regulations. To the extent that the right to work is engaged, the measures contained in the Amendment Regulations are compatible with the right to work.

#### **Conclusion**

The Instrument is compatible with human rights because the measures advance the protection of human rights.

**Alan Tudge, Minister for Education and Youth**

**EDUCATION SERVICES FOR OVERSEAS STUDENTS AMENDMENT (DEREGULATION AND OTHER MEASURES) REGULATIONS 2021**

**EXPLANATION OF PROVISIONS**

**Section 1: Name**

This section provides that the title of the Amendment Regulations is *Education Services for Overseas Students Amendment (Deregulation and Other Measures) Regulations 2021*.

**Section 2: Commencement**

The table in this section provides that the Amendment Regulations, except for Part 2 of Schedule 1, will commence on 1 July 2021.

Part 2 of Schedule 1 will commence at the same time that Part 1 of Schedule 3 to the Regulatory Powers Reform Act commences. Part 1 of Schedule 3 to the Regulatory Powers Reform Act commences on a single day to be fixed by Proclamation, but if the Part does not commence within the period of 6 months beginning on the day the Regulatory Powers Reform Act received Royal Assent (which was on 26 March 2021), it commences on the day after the end of that period.

The commencement provisions will operate so that the current infringement notice scheme that operates for the Act will be repealed once Part 1 of Schedule 3 to the Regulatory Powers Reform Act commences. At this point, the Regulatory Powers Act will itself provide an infringement notice scheme for the Act.

**Section 3: Authority**

This section provides that the Amendment Regulations are made under the *Education Services for Overseas Students Act 2000*.

**Section 4: Schedule(s)**

This section simply clarifies that the Schedule is effective to make amendments on the terms set out in the Schedule.

**Schedule 1 – Amendments**

**Part 1 – Amendments relating to giving information about accepted students**

Table item 13 of subsection 11(2) of the Principal Regulations requires registered providers to provide information at the end of each calendar month, if during that month, they

received student tuition fees for a course. The provider must provide information on the following:

- the amount of each payment,
- the day the payment was made, and
- the period to which the payment relates.

Item 1 repeals this requirement as this reporting obligation is no longer necessary. The requirement for providers to record post-commencement fee payments in PRISMS was established to inform the Tuition Protection Service (TPS) Director when calculating refund amounts. Analysis of the TPS Director's business operations when calculating refunds has identified no ongoing requirement to report fee payment data on a monthly basis in PRISMS.

The TPS Director uses alternative evidence submitted directly by students to support the calculation of refunds. The ESOS legislative protections for tuition fee refunds for students will be maintained. Providers will continue to be required to keep financial records of tuition fees paid by students, however, they will no longer be required to duplicate these records in the PRISMS system. Regulators and students can continue to request fee payment records from providers on a case by case basis where required.

## **Part 2 – Amendments consequential to the Regulatory Powers (Standardisation Reform) Act 2021**

Part 1 of Schedule 3 of the Regulatory Powers Reform Act repeals section 106 of the Act, which provides the ability to issue infringements notices as prescribed by regulations. As a result, upon commencement of Part 1 of Schedule 3 of the Regulatory Powers Reform Act, the infringements notice scheme in Part 4 of the Principal Regulations will no longer have legislative authority and will be redundant. As such, this amendment is a consequential amendment to the enactment of the Regulatory Powers Reform Act.

### ***Item 2 – Section 5***

The definitions of *infringement notice* and *infringement notice penalty* in Section 5 of the Principal Regulations are only relevant for the purposes of Part 4 of the Principal Regulations. Item 2 repeals these definitions at the same time as Part 1 of Schedule 3 to the Regulatory Powers Reform Act repeals the legislative authority for Part 4 of the Principal Regulations.

### ***Item 3 – Part 4***

Item 3 repeals Part 4 of the Principal Regulations at the same time as the legislative authority for this part is repealed by Part 1 of Schedule 3 to the Regulatory Powers Reform Act.

## Regulation Impact Statement

*Name of department/agency:* Department of Education, Skills and Employment

*OBPR Reference number:* 43558

*Name of proposal:* International Education Deregulation 2021

*Summary of the proposed policy and any options considered:*

This proposal seeks to reduce regulatory burden for privately operated international education providers registered on the *Commonwealth Register of Institutions and Courses for Overseas Students* (CRICOS) by removing a requirement to report post-commencement fee payments in the Provider Registration and International Student Management System (PRISMS).

The decreased regulatory burden under the *Education Services for Overseas Students Act 2000* (ESOS Act) will reduce privately operated CRICOS registered providers' administrative costs enabling them to redirect efforts elsewhere. The ESOS Agencies will continue to have access information necessary for compliance monitoring through PRISMS, while providers would not be required to report redundant information.

This proposal represents a total of \$7.1 million annual deregulatory savings across 1,180 private CRICOS education providers in the schools, vocational education and higher education sectors. It follows on from previous annual deregulatory savings under the ESOS Act in 2015 of \$48.6 million, in 2018 of \$2.2 million and in 2020 \$2.1 million.

The proposal seeks to:

- reduce regulatory burden on private CRICOS providers through the removal of unnecessary data collection
- standardise requirements for public and private CRICOS providers to report fee payments made by students
- be consistent with the ESOS Agencies' risk-based approach to compliance monitoring
- ensure the ESOS legislative framework is no more complex than necessary.

Amendments to the *Education Services for Overseas Students Regulations 2019* (ESOS Regulations), which are enabled by the ESOS Act will remove the requirement for private providers to record post-commencement fee payments from students when a calendar month ends. A change will be made to PRISMS to remove this requirement.

Private education providers will benefit from reduced reporting requirements. The ESOS Agencies will no longer be required to monitor this function.

The requirement for providers to record post-commencement fee payments in PRISMS was designed to provide data to inform the Tuition Protection Service (TPS) Director to support the payment of refunds to students, if an education provider is unable to meet its obligations. However, the data as collected is not used by the TPS Director in calculating refunds. Instead, the TPS Director relies on students' own payment receipts and the protected amount prescribed in the ESOS Act for this purpose.

The amendment will be made to the ESOS Regulations alongside other minor amendments to streamline and clarify information collected under the ESOS Regulations and ensure data collection is fit for purpose.

*What are the regulatory impacts associated with this proposal? Explain.*

This proposal represents a minor reduction in reporting requirements for private providers. Providers would no longer be required to report on a monthly basis when they have received fee payments from students.

*What are the regulatory costs/savings associated with this proposal? Explain and quantify.*

Reporting requirements will be reduced for an estimated 1,180 private providers who are required to report each month any fees received from students in a calendar month for 322,031 enrolments. Aligning with typical study periods, the regulatory savings are calculated based on the assumption that on average, the higher education sector collects student fees every semester and the other sectors collect every quarter.

This will save providers approximately 82.35 hours of compliance reporting, each year, saving average compliance costs of \$6,015.67 per year based on the labour rate per hour taken from the OBPR guidelines (\$73.05 per hour.) This represents an overall reduction in cost of compliance of \$7,098,231.98 per year.

Data from the 2019 calendar year has been used for the regulatory savings calculations, as it is the most recent, accurate data.

*Have offsets been identified for increases in regulatory costs? If not, why?*

Not applicable on advice from Prime Minister and Cabinet.



### Regulatory burden estimate (RBE) table

#### Average annual regulatory costs (from business as usual)

Change in costs (\$)	Business	Community organisations	Individuals	Total change in
Total, by sector	\$7,098,232			\$7,098,232

### Regulatory savings table

Sector	Number of fee payments reported	Hours of compliance (number of payments*5 minutes/60)	Cost of compliance (\$)	Average hours of compliance	Average cost of compliance
Higher Education (HE)	133592	11132.67	\$ 813,241.30	126.5075758	\$ 9,241.38
Vocational Education and Training (VET)	748854	62404.5	\$ 4,558,648.73	100.9781553	\$ 7,376.45
ELICOS (English Language)	222314	18526.17	\$ 1,353,336.48	161.0971014	\$ 11,768.14
Schools	34314	2859.5	\$ 208,886.48	8.032303371	\$ 586.76
Non-award / other	26960	2246.67	\$ 164,119.00	748.8888889	\$ 54,706.33
<b>Total</b>	<b>1166034</b>	<b>97169.5</b>	<b>\$ 7,098,231.98</b>	<b>82.3470339</b>	<b>\$ 6,015.45</b>

Number of privately operated CRICOS providers 2019:

Sector	Number of Providers
Higher Education	88
VET	618
ELICOS	115
Schools	356
Other	3
<b>Total</b>	<b>1180</b>

Overseas student enrolments by sector 2019:

	Calculated <sup>^</sup> Full Enrolments	Calculated Half Enrolments	Calculated Quarter Enrolments	Calculated Enrolments
HE	51,192	19,709	11,499	63,921
VET	128,714	84,775	64,448	187,214
ELICOS	17,705	39,247	73,000	55,579
Schools	7,945	1,042	450	8,579
Non-award / other	4,236	4,477	1,062	6,740
<b>Total</b>	<b>209,792</b>	<b>149,250</b>	<b>150,459</b>	<b>322,031</b>

Assuming that HE sector collects student fees every semester and the other sectors collect every quarter, we can estimate the **number of times** fees will be collected and recorded on PRISMS per year:

	Calculated Full Enrolments	Calculated Half Enrolments	Calculated Quarter Enrolments*
HE	2	1	1
VET	4	2	1
ELICOS	4	2	1
Schools	4	2	1
Non-award / other	4	2	1

\*Quarter enrolments would record a payment each quarter regardless of sector

Assuming 5 minutes, 10 minutes and 15 minutes of work time per student, and an hourly rate of \$73.05, the following table can be calculated using the formula:

$$\$73.05 \times \frac{\text{calculated enrolments} \times \text{number of times reported} \times \text{minutes taken}}{60}$$

60

	Calculated Full Enrolments	Calculated Half Enrolments	Calculated Quarter Enrolments	Grand Total
<b>5 minutes</b>	<b>\$4,485,172.60</b>	<b>\$1,697,140.21</b>	<b>\$915,919.16</b>	<b>\$7,098,231.98</b>
<b>10 minutes</b>	\$8,970,345.20	\$3,394,280.43	\$1,831,838.33	\$14,196,463.95
<b>15 minutes</b>	\$13,455,517.80	\$5,091,420.64	\$2,747,757.49	\$21,294,695.93

The regulatory savings uses the 5-minute calculation as above, mitigating the risk of inflating regulatory savings.