

EXPLANATORY STATEMENT

Issued by authority of the Minister for Home Affairs

Migration Regulations 1994

Migration (Suspension Certificate Matters) Specification (LIN 24/034) 2024

- 1 The Instrument, departmental reference LIN 24/034, has been made under subregulation 1.29(3) of the *Migration Regulations 1994* (the Migration Regulations).
- 2 The Instrument commences on 23 March 2024. It is a legislative instrument for the purposes of the *Legislation Act 2003* (the Legislation Act).
- 3 The *Migration Amendment (Suspending Education Providers) Regulations 2024* (the Amendment Regulations) amended the Migration Regulations in support of the implementation of the Government's Migration Strategy, which was announced on 11 December 2023. The Amendment Regulations were made on 14 March 2024.
- 4 The Amendment Regulations inserted regulation 1.29 in the Migration Regulations. This regulation provides that in considering whether to give an Immigration Minister's certificate to a registered provider under section 97 of the *Education Services for Overseas Students Act 2000* (ESOS Act), the Minister may have regard to the relevant score for the provider at that time. Regulation 1.29 of the Migration Regulations also provides a power for the Minister to make a legislative instrument to specify the method for working out a relevant score for a registered provider, as well as the score's period of effect and the frequency with which the score is to be calculated.
- 5 Paragraph 97(2)(d) of the ESOS Act provides that the Minister, when deciding whether to give a suspension certificate to a registered provider, may have regard to any matter set out in regulations made under the *Migration Act 1958*, in addition to those listed under paragraphs 97(2)(a) to (c) of the ESOS Act.
- 6 Subsection 97(3) of the ESOS Act provides that the matters to which the Immigration Minister may have regard in considering whether to give a certificate are not limited by Subsection 97(2) of the ESOS Act.

Purpose

- 7 The purpose of the Instrument is to specify the method for working out a score, the score's period of effect and the frequency with which the score is to be calculated for a registered provider under subregulation 1.29(3) of the Migration Regulations.
- 8 The method for working out a relevant score may also take into account matters relating to overseas students, or intending overseas students in respect of the registered provider or another provider that is an associate of the registered provider, and matters

that occurred during a particular period. While there is no statutory provision for merits review directly in relation to the score that is worked out by the method specified under regulation 1.29, judicial review would be available. Relevantly, section 98 of the ESOS Act sets out the procedure for issuing an Immigration Minister's suspension certificate, where the 'relevant score' would be a matter the Minister may have regard to under subsection 97(2) of the ESOS Act when considering whether to issue a suspension certificate to a provider. Section 98 includes a requirement for the Minister to give the registered provider a written notice:

- stating that the Minister intends to give the provider an Immigration Minister's suspension certificate, and why; and
- giving the provider at least 7 days to give the Minister written submissions about the matter.

9 Further details of the Instrument are set out in the [Attachment](#).

Consultation

- 10 The Department of Home Affairs consulted with education sector stakeholders and the Department of Education and the Department of Workplace Relations on the development of the Migration Strategy, which includes the International Student integrity reforms agreed by the Government. Further consultation occurred in relation to the Amendment Regulations with the above stakeholders, in addition to the Tertiary Education Quality and Standards Agency (TEQSA), Australian Skills Quality Authority (ASQA), the Attorney-General's Department, the Tuition Protection Service, and the Overseas Students Ombudsman. The Department of Education was consulted on the approach taken in the Instrument.
- 11 The Office of Impact Analysis (OIA) was also consulted. By setting out the method for working out the relevant score for a registered provider, and related matters, the Instrument gives effect to provisions in the Migration Regulations inserted by the Amendment Regulations, and is considered unlikely to have more than a minor regulatory impact. The OIA reference number is OIA23-06072.
- 12 The Department follows standard practices to notify clients about the Instrument, including updating its website.

Parliamentary scrutiny etc.

- 13 The Instrument is exempt from disallowance under section 42 of the Legislation Act. This is because a legislative instrument made under Part 1 of the Migration Regulations is prescribed under section 10, item 20(b) of the *Legislation (Exemptions and Other Matters) Regulation 2015* as an instrument not subject to disallowance.

- 14 As the Instrument is exempt from disallowance, a Statement of Compatibility with Human Rights is not required.
- 15 The instrument is made by the Minister for Home Affairs in accordance with subregulation 1.29(3) of the Migration Regulations.

Details of the Migration (Suspension Certificate Matters) Specification (LIN 24/034) 2024

Section 1 – Name

This section provides that the name of the instrument is the *Migration (Suspension Certificate Matters) Specification (LIN 24/034) 2024*.

Section 2 – Commencement

This section provides that the instrument commences on 23 March 2024.

Section 3 – Authority

This section provides that the instrument is made under subregulation 1.29(3) of the *Migration Regulations 1994* (Migration Regulations).

Section 4 – Definitions

This section defines terms frequently referred to throughout the instrument. This section also notes that certain terms have the same meaning as in the Migration Act and the Migration Regulations.

Section 5 – Method for working out a score

Section 97 of the ESOS Act provides that the Immigration Minister may give a suspension certificate to a registered provider or an associate of a registered provider, if in their opinion, a significant number of overseas students or intending overseas students are entering or remaining in Australia for purposes not contemplated by their visa.

In considering whether to issue a suspension certificate under subsection 97(1) of the ESOS Act, the Minister may have regard to any of the matters in subsection 97(2) of the ESOS Act, including any other matters set out in regulations made for the purpose of paragraph 97(2)(d) of the ESOS Act. The *Migration Amendment (Suspending Education Providers) Regulations 2024* amended the Migration Regulations to prescribe the relevant score as a matter that the Minister may have regard to when considering whether to issue a suspension certificate.

Subsection 5(1) of the Instrument specifies the method for working out a score for a registered provider for the purpose of paragraph 1.29(3)(a) of the Migration Regulations. When working out the score for the registered provider, the following matters are to be taken into consideration:

- the number of student visa applications where the Minister made a decision in respect of that application to grant or refuse the primary applicant a student visa;
- the number of student visas that were cancelled for a primary person in accordance with sections 109, 116, 128, 501 or 501A of the Migration Act;
- the number of student visa applications where the Minister's decision in respect of that application was to refuse to grant the primary applicant a student visa because a criterion for the grant of the visa is Public Interest Criterion 4020 under subclause

500.217(1) of Schedule 2 to the Migration Regulations and the non-citizen did not satisfy that criterion;

- the number of non-citizens who were unlawful non-citizens for more than 28 days and who were enrolled at a registered provider where the last substantive visa held by the primary person was a student visa;
- the number of student visas held by a primary person that ceased to be in effect in accordance with section 82 of the Migration Act;
- the number of applications made for a protection visa, where the applicant's last substantive visa was a student visa (held as a primary person).

Subsection 5(2) of the Instrument provides, where a step in the method under subsection 5(1) of the Instrument refers to a number of student visas, primary applicant for a student visa or a student visa held by a primary person, that number is specified to only relate to overseas students, or intending overseas students, in respect of the registered provider.

Section 6 – Working out a relevant score – frequency and timing

This section specifies the frequency and timing of when, and how often, a relevant score for a registered provider is to be worked out for the purpose of paragraph 1.29(3)(b) of the Migration Regulations.

Paragraph 6(a) of the Instrument specifies that relevant score is to be worked out twice in the year in which the instrument commences, once in the period between 1 January and 30 June and once in the period between 1 July to 31 December.

Paragraph 6(b) specifies that the relevant score is to be worked out twice in each subsequent year for so long as the instrument remains in force, once in the period between 1 January and 30 June and once in the period between 1 July to 31 December.

Section 7 – Relevant score – period of effect

This section provides the period for which a relevant score for a registered provider has effect.

Section 7 of the Instrument specifies that the period for which a relevant score for a registered provider is the period that begins on the day that the Department notifies the provider that the relevant score (the **first score**) has been worked out and is available to the registered provider via ImmiAccount, and ends on the earlier of:

- the end of the period of 6 months beginning on the first day the score takes effect; and
- the day on which the Department notifies the provider via ImmiAccount that a further score (the second score) has been worked out and is available to the registered provider, regardless of whether or not the second score is the same as the first score.