EXPLANATORY STATEMENT

Education Services for Overseas Students (Designated Authority) Determination 2011 (No. 2)

Summary

The Education Services for Overseas Students (Designated Authority) Determination 2011 (No. 2) (the Revised Determination) is made by the Minister for Tertiary Education, Skills, Jobs and Workplace Relations pursuant to section 5 of the Education Services for Overseas Students Act 2000 (the ESOS Act).

The purpose of the Revised Determination is to revoke and replace the determination titled ‘Specification of criteria for the purposes of the definition of designated authority under section 5 of the Education Services for Overseas Students Act 2000’ (the Previous Determination).

Authority

Paragraph (b) of the definition of designated authority in section 5 of the ESOS Act provides that the designated authority in relation to a provider means, to the extent that the provider provides an English Language Intensive Course for Overseas Students (ELICOS), a Foundation program or both, the entity determined by the Minister by legislative instrument.

Purpose and operation

The purpose of the Revised Determination is to determine the designated authority in relation to a provider, in those situations where the provider provides an ELICOS, a Foundation program, or both, but only to the degree that the provider does so.

The Revised Determination specifies the circumstances in which this designated authority will be the body (‘ASQA’) established by section 155 of the National Vocational Education and Training Regulator Act 2011 (the NVETR Act’), and when the designated authority will be the person responsible under the law of the relevant State for approving providers to provide courses to overseas students for that State.

The Previous Determination provided that the designated authority for providers of ELICOS or Foundation programs was ASQA in all cases, except for schools that were not also registered training organisations. This did not accurately reflect the policy intention.

First, it made ASQA the designated authority for providers of ELICOS or Foundation programs in those States that had not yet referred their powers in relation to vocational education and training for the purposes of the NVETR Act (currently Queensland, South Australia, and Tasmania). Those States will continue to have State-based regulators of providers of ELICOS and Foundation programs until they refer the relevant powers to the Commonwealth.

Second, it made ASQA the designated authority for all schools providing ELICOS or Foundation programs, where the schools were also registered training organisations. The intent is that ASQA
be the designated authority only in relation to those schools that are not providing ELICOS or Foundation programs as part of their school program or curriculum.

Consequently, the Revised Determination makes it clear that ASQA is the designated authority in relation to a provider, for an ELICOS or Foundation program being provided in a referring State, non-referring State, or a Territory (as those terms are used in the NVETR Act), unless the program is being provided by the provider in its capacity as a school. The designated authority in relation to a provider for an ELICOS or Foundation program in all other cases is the person responsible under the law of the State for approving providers to provide courses to overseas students for the State.

Consultation

The Department of Education, Employment and Workplace Relations has consulted with ASQA regarding the Revised Determination, with key peak bodies, including the Independent Schools Council of Australia (ISCA) and English Australia (EA), and with the NSW Board of Studies.

Regulation Impact Statement

The Revised Determination is intended to clarify the Previous Determination, and does not substantially alter arrangements for designated authorities that have been occurring in practice. The determinations give effect to policy decisions flowing from enactment of the NVETR Act and the amendment to the definition of designated authority in the National Vocational Education and Training Regulation (Consequential Amendments) Act 2011. Accordingly, no separate Regulatory Impact Statement (RIS) has been undertaken for the Revised Determination.