EXPLANATORY STATEMENT

Education Services for Overseas Students (ESOS Agency – Aviation Education and Training Providers) Determination 2016

Authority
The Education Services for Overseas Students (ESOS Agency – Aviation Education and Training Providers) 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 registered provider to the extent that the provider or registered provider is a person or entity that provides aviation education and training courses that fall outside the definition of a ‘vocational education and training (VET) course’ under the National Vocational Education and Training Regulator Act 2011 (NVETR Act) to overseas students in non-referring states.

Under the ESOS Act, 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 5 of the table in subsection 6C(1) of the ESOS Act specifies that, to the extent that a provider or registered provider is not covered by another item of the table, 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 covered by item 5 of the table in subsection 6C(1).

There are currently a small number of aviation education and training providers operating in Victoria (a non-referring state) delivering aviation education and training courses that fall outside the definition of a ‘VET course’ under the NVETR Act that would not be captured by
item 2 of the table in subsection 6C(2) for the purposes of specification of the relevant ESOS agency. These providers require an ESOS agency to be appointed by legislative instrument.

This legislative instrument appoints the National VET Regulator as the ESOS agency for these providers. This will make the National VET Regulator responsible for regulation of these providers under the ESOS Act, to the extent that they are aviation education and training providers, for a limited period (until the end of 31 March 2018).

The amendments to the ESOS Act that take effect on 1 July 2016 streamline registration and regulation processes between domestic and international education quality frameworks, and require consistency in the application of appropriate standards between the frameworks. The period of this instrument is therefore set to allow for an appropriate period of transition of the relevant providers’ non-VET courses to courses that meet industry standards such as to be a VET course for the purposes of the NVETR Act and as assessed by the Australian Skills Quality Authority (ASQA), which should occur as soon as practicable.

Following 1 July 2016 the National VET Regulator, as the ESOS agency, will be able to set any conditions of registration, using a risk management approach, to:

- satisfy itself that aviation education and training providers under this instrument are meeting the requirements of the ESOS Act, specifically having the clearly demonstrated capacity to provide education of a satisfactory standard
- determine appropriate teach out arrangements for those previously enrolled students to support the transition of the non-VET courses to VET courses; and
- prevent providers from enrolling any new students in these non-VET courses from 1 July 2016.

Section 4 of the instrument defines the term ‘aviation education and training provider’ as a registered provider that:

- is authorised by the Civil Aviation Safety Authority (CASA) to conduct flight training;
  and
- provides a course of education and training in aviation that:
  - is not a ‘VET course’ (within the meaning of the NVETR Act); and
  - is provided to overseas students only in a non-referring State.
Section 5 of the instrument determines that, for the purposes of subsection 6C(2) of the Act, the ESOS agency for a registered provider that is an aviation education and training provider (as defined in section 4) is the National VET Regulator.

Section 6 of the instrument repeals the instrument at the end of 31 March 2018.

**Commencement**

This instrument commences on 1 July 2016.

Section 6C of the ESOS Act 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 registered providers delivering a course in aviation education and training to overseas students which is not a VET course in a non-referring state.

Representatives from the Department of Education and Training, ASQA and CASA consulted with representatives of the five Victorian aviation providers in March 2016 to advise them of the new arrangements under amendments to the ESOS Act and the necessity for changes to their current course registration arrangements. The Department has also consulted ASQA in preparing this instrument and incorporated their views.
Regulation Impact Statement

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

The OBPR has agreed that a RIS is not required (OBPR ID 20864).
Statement of Compatibility with Human Rights


Education Services for Overseas Students (ESOS Agency – Aviation Education and Training Providers) Determination 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 (ESOS Agency – Aviation Education and Training Providers) 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 registered provider to the extent that the provider or registered provider is a person or entity that provides aviation education and training courses that fall outside the definition of a ‘vocational education and training (VET) course’ under the National Vocational Education and Training Regulator Act 2011 (NVETR Act), to overseas students in non-referring states.

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

There are currently a small number of aviation education and training providers operating in Victoria (a non-referring state) delivering aviation education and training courses to overseas students that fall outside the definition of a ‘VET course’ under the NVETR Act. These arrangements exist under a legacy arrangement since 2012 whereby the Victorian state regulatory authority registered these courses.

To ensure these providers are regulated appropriately by an ESOS agency the legislative instrument appoints the National VET Regulator, the Australian Skills Quality Authority (ASQA) as the ESOS agency for these providers. This will enable the National VET Regulator
to register and regulate these providers and apply its own risk based frameworks under the ESOS Act. The instrument will have effect for a limited period, until March 2018, to enable these providers to transition their non-VET courses to VET courses, consistent with their domestically registered aviation education and training courses.

**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 aviation education and training courses that fall outside the definition of a ‘VET course’ under the NVETR Act in non-referring states to overseas students by clearly articulating the ESOS agency for these providers. This clarity benefits students by supporting high quality education and training in aviation skills.

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* (*the Amendment Act*), 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 instrument are compatible with the right to education.

**Conclusion**

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