

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2007 No. 182**

*Education Services for Overseas Students Act 2000*

*Education Services for Overseas Students Amendment Regulations 2007 (No. 1)*

#### **Background**

The *Education Services for Overseas Students Act 2000* (the Act) regulates education services for overseas students. The *Education Services for Overseas Students Amendment Regulations 2007 (No. 1)* amend the *Education Services for Overseas Students Regulations 2001* (the Principal Regulations).

#### **Authority**

Section 177 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

#### **Purpose and operation**

The purpose of the Regulations is to give effect to recent amendments to the Act and to maintain the integrity of the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS).

The Principal Regulations specify:

- information to be entered onto the register;
- record-keeping and reporting requirements;
- requirements related to Annual Fund contributions and exemptions;
- prescribed amounts for refunds under the provisions of the Act; and
- penalties for breaches of the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007 (the National Code 2007),

The purpose of the Regulations is to:

- align with the recent changes to the Act and the former National Code arising from the independent evaluation of the Act, and
- implement other technical amendments to facilitate the administration of the Act and the National Code 2007 which commences on 1 July 2007.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

#### **Commencement**

The Regulations commence on 1 July 2007.

### Consultation

Consultation was undertaken with the ESOS Assurance Fund Manager in relation to the amendment at Item 8 prior to making the Regulations. The amendments align the Regulations with changes made as a consequence of the independent evaluation of the Act. Extensive consultation was undertaken during the evaluation. The Regulations do not substantially alter the previous arrangements.

### Detailed description of provisions

#### Regulation 1 – Name of Regulations

This Regulation provides that the title of the Regulations is the *Education Services for Overseas Students Amendment Regulations 2007 (No. 1)*.

#### Regulation 2 – Commencement

This Regulation provides for the Regulations to commence on 1 July 2007.

#### Regulation 3 – Amendment of *Education Services for Overseas Students Regulations 2001*

Schedule 1 amends the *Education Services for Overseas Students Regulations 2001*.

#### Schedule 1 - Amendments

##### **Item [1] - Regulation 1.03, definition of *student visa***

The *Education Services for Overseas Students Act 2000* provides that the definition of *student visa* has the meaning given by the Regulations.

This substitution of regulation 1.03 ensures that the definition of *student visa* aligns with the definition in the *Migration Regulations 1994*.

##### **Item [2] – Regulation 2.01**

This item substitutes current regulation 2.01 with a new regulation 2.01. New regulation 2.01 specifies information to be entered on to the Register for the purposes of subsection 10(4) of the Act. The Register is made under this section of the Act and only that information prescribed under subsection 10(4), including information prescribed in the Regulations, may be entered.

New subregulation 2.01(1) provides that for the purposes of paragraph 10(4)(d) of the Act, the following information must be entered on the Register for each approved provider (as defined by section 5 of the Act) registered to provide a course or courses in a State:

- the address of the provider's place of business, registered office (if the provider is not an individual) and the postal address (if different from the place of business or registered office);
- the provider's telephone and facsimile numbers and e-mail address (if any);
- the provider's Australian Business Number or Australian Company Number;

- the provider's trading name or names;
- if the designated authority for the State has specified a period of approval for the provider to provide the course or courses to overseas students, the first and last days of the period; and
- the maximum number of overseas students, approved by the designated authority, to whom the provider may provide the course or courses.

New subregulation 2.01(2) provides that for the purposes of paragraph 10(4)(d) of the Act, the following information must be entered on the Register for each course that the provider is registered to provide:

- the duration, level and field of study of the course;
- the estimated total amount payable by a student for a course;
- if the course duration is 2 or more whole years – the estimated annual amount payable by a student for the course;
- the location or locations where the course will be provided including the address of each location, the telephone and facsimile numbers and e-mail address (if any) for each location and the student capacity for each location;
- whether the course is provided by the owner-operator of the provider or under an arrangement with another registered provider or under an arrangement with a non-registered provider.

At the end of new subregulation 2.01(2) examples are provided for levels of study and fields of study.

Approved providers are entered on to the Register using the name of their legal entity. The Act specifies that the registered provider and the number allocated to the registered provider must be identified in all written and electronic material. To ensure the integrity of the Register, the trading name of the provider must also be included on the register.

### **Item [3] – after subregulation 3.03(2)**

Regulation 3.03 deals with other prescribed matters relating to accepted students. Item 3 inserts new subregulations 3.03(3) and (4).

Subregulation 3.03(3) provides that for the purpose of paragraph 19(1)(f) of the Act the prescribed matters relating to an accepted student who proposes to defer or suspend his or her studies is the proposed duration of any deferment or suspension. The subregulation requires the registered provider give to the Secretary the proposed duration of any approved deferment or suspension of studies by an accepted student of the provider.

Subregulation 3.03(4) provides that for the purposes of paragraph 19(1)(f) of the Act, the prescribed matters relating to an accepted student who has been granted a deferment or suspension of his or her studies is any change to the proposed end date or the deferment or suspension. This subregulation requires that the registered provider

give to the Secretary notice of any change to the proposed end date of the deferment or suspension of studies.

The National Code 2007 requires that registered providers only allow students to defer or temporarily suspend their studies in certain limited circumstances. These are compassionate or compelling grounds or for student misbehaviour.

#### **Item [4] – After regulation 3.03**

Item 4 inserts new regulation 3.03A, *Breach by an accepted student of a student visa condition*. Regulation 3.03A provides that for the purposes of subsection 19(2) of the Act, the registered provider must give the Secretary particulars of any breach by an accepted student visa condition 8202. A note at the end of the table to regulation 3.03A refers the reader to Schedule 8 to the *Migration Regulations 1994*.

This Regulation is a consequential amendment to the amendment to student visa condition 8202 in Schedule 8 of the *Migration Regulations 1994* (Migration Regulations) by the Department of Immigration and Citizenship (DIAC). This condition previously required the Minister to be satisfied that the student is maintaining satisfactory academic progress and attendance. The change to the Migration Regulations states that a student visa holder meets the requirements of the visa condition if the education provider has not certified them for not achieving satisfactory course progress or attendance, the standards for which are outlined in the National Code 2007.

#### **Item [5] - Paragraph 3.18(1)(b)**

Subsection 24(2) of the Act grants an exemption from paying an annual Assurance Fund contribution to specified providers. The ESOS Assurance Fund is established under Part 5 of the Act. Regulation 3.18 prescribes the providers that are exempt from paying the annual Assurance Fund contribution under paragraph 24(2)(c) of the Act.

This item substitutes paragraph 3.18(1)(b).

Paragraph 3.18(1)(b) extends the exemption to providers that accept payment for tuition for a course, or part of a course, upon completion of the course, or part of the course. The Principal Regulations provided for an exemption process which was cumbersome on the provider, the Department and the Assurance Fund manager. The amendment to paragraph 3.18(1)(b) streamlines the process for exemption whilst protecting the interests of students.

#### **Item [6] – Subregulations 3.18(2) and (3)**

Regulation 3.18 prescribes information to be provided to the Secretary by the registered provider to demonstrate that the provider satisfies the grounds for exemption.

This item substitutes subregulations 3.18(2) and (3).

Subregulations 3.18(2), (2A) and (2B) set out the matters to be attested to by the provider where the provider takes full payment in arrears.

Subregulations 3.18(3), (3A) and (3B) set out the matters to be attested to by the provider where the provider takes part payment in arrears.

**Item [7] – Subregulation 4.01(1), table**

Subregulation 4.01(1) specifies penalties for offences for breaching certain provisions of the National Code. Item 7 substitutes the table to subregulation 4.01(1).

The National Code 2007, which commences on 1 July 2007, has been re-written into a set of standards. The penalties for breaches of the National Code are unchanged. This amendment aligns the penalties with the relevant provisions of the National Code 2007.

**Item [8] – After regulation 5.03**

Item 8 inserts new regulation 5.04, *Reduction of amount paid out of the fund under paragraph 77(1)(b) of the Act*, which sets out a formula that the Fund Manager can use to determine the amount by which the refund is to be reduced for the purposes of subsection 77(1A).

Amendments to section 77 of the Act allow for the ESOS Assurance Fund Manager to provide less than a full refund in circumstances where a student has enrolled in a new course and the monetary value of the course has been reduced due to academic credit or recognition of prior learning from the original course.