

EXPLANATORY STATEMENT

Education Services for Overseas Students (Designated Authority) Determination 2012 (No. 1)

Summary

The *Education Services for Overseas Students (Designated Authority) Determination 2012 (No. 1)* (the Revised Determination) is made by the Minister for Tertiary Education, Skills, Science and Research pursuant to subsection 7A (1) 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 '*Education Services for Overseas Students (Designated Authority) Determination 2011 (No. 2)*' (the Previous Determination).

Authority

Subsection 7A (1) item 3 of the definition of ***designated authority*** 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. To avoid any doubt, the ***designated authority*** determined for a provider in the Revised Determination applies to the provider only to the degree that the provider provides an ELICOS, a Foundation program or both. The ***designated authority*** for that provider for all other circumstances is prescribed at the table in subsection 7A (1) of the ESOS Act.

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), or the body ('TEQSA') established section 132 of the *Tertiary Education Quality and Standards Agency Act 2011* or 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 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 under the Previous Determination is the person responsible under the law of the State for approving providers to provide courses to overseas students for the State.

In the interests of national consistency streamlined regulation, this Revised Determination provides that from 1 July 2012 the following arrangements would apply:

- ASQA will take over as designated authority for providers of ELICOS programs in all states and territories except where a provider delivers the program:
 - in the capacity of a school; or
 - in the capacity of a higher education provider; or
 - under an entry arrangement with a higher education provider pursuant to which an overseas student who completes an ELICOS program with the provider meets the minimum English proficiency requirements for entry with the higher education provider to study a higher education course or Foundation program (Entry Arrangement).

- TEQSA will take over as designated authority for:
 - all Foundation programs, except where delivered by a school;
 - all ELICOS delivered by a higher education provider; and
 - all providers delivering ELICOS programs under an Entry Arrangement with a higher education provider.

- The person responsible under the law of the State for approving providers to provide courses to overseas students at locations in the State will be the designated authority for ELICOS and foundation programs provided in the capacity of a school.

Consultation

The Department of Industry, Innovation, Science Research and Tertiary Education (DIISRTE) has consulted with ASQA and TEQSA regarding the Revised Determination, and with key peak bodies, including the Independent Schools Council of Australia (ISCA) and English Australia (EA), and with the NSW Board of Studies in respect of the original determination.

Regulation Impact Statement

The Revised Determination gives effect to policy decisions flowing from enactment of the NVETR and TEQSA Acts and the amendment to the definition of *designated authority* in the *National Vocational Education and Training Regulation (Consequential Amendments) Act 2011 and the Tertiary Education Quality and Standards Agency (Consequential Amendments and Transitional Provisions) Bill 2011*. Accordingly, no separate Regulatory Impact Statement (RIS) has been undertaken for the Revised Determination.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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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 Legislative Instrument is made under Subsection 7A (1) item 3 of *Education Services for Overseas Students Act 2000* (the ESOS Act), by the Minister for Tertiary Education, Skills, Science and Research.

The purpose of the Legislative Instrument is to revise a previous determination of designated authority responsibilities with respect to English Language Intensive Courses for Overseas Students (ELICOS) and Foundation Programs to include the Tertiary Education Quality and Standards Agency (TEQSA) from 1 July 2012. This reflects agreement by Government that in the interests of streamlined regulation TEQSA will be the designated authority for all Foundation Programs except where delivered by a school, and for all ELICOS delivered by a higher education provider or in an entry arrangement with a higher education provider for a higher education course or Foundation Program.

Human rights implications

Right to education

The Instrument engages the right to education, contained in Article 13 of the International Covenant on Economic, Social, and Cultural Rights. In particular, this Instrument has an effect on the provision of education services to international students by bodies corporate registered on the CRICOS.

To the extent that the right to education is engaged, this right is promoted by the Legislative Instrument.

Conclusion

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