

EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 128

Education Services for Overseas Students Act 2000

Education Services for Overseas Students Amendment Regulation 2012 (No. 1)

Authority

Section 177 of the *Education Services for Overseas Students Act 2000* (the ESOS Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the ESOS Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the ESOS Act.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Legislative background

The Hon Bruce Baird AM undertook a review of the Education Services for Overseas Students legislative framework, titled *Stronger, simpler, smarter ESOS: supporting international students* (the ESOS Review), which reported February 2010. A number of the review recommendations related to the creation of a new tuition protection framework for international students studying in Australia on a student visa including; the establishment of a new Tuition Protection Service; partial rather than full refund requirements; strengthened student record keeping requirements and the removal of all current exemptions from tuition assurance requirements.

Mr Baird also reported the finding that taking 100 per cent of fees upfront was poor business practice. Additionally, the review recommended the introduction of national registration for providers operating in more than jurisdiction and provision of better information for students about the provider, course, student cohort and costs to ensure students can accurately compare potential study choices.

The *Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Act 2012* (the Amendment Act) was enacted on 20 March 2012 in response to these recommendations. Among the key recommendations of the ESOS Review, the Amendment Act amended the ESOS Act to:

- establish a new tuition protection framework for international students studying in Australia on a student visa;
- introduce national registration for providers operating in multiple jurisdictions; and
- make technical amendments to strengthen tuition protection to ensure students receive the tuition they have paid for or, as a last resort, a refund.

Purpose and operation

Following on from the enactment of the Amendment Act, the purpose of the *Education Services for Overseas Students Amendment Regulation 2012 (No. 1)* (the Regulation) is to amend the *Education Services for Overseas Students Regulations 2001* (the Principal Regulations) to implement the final stages of the legislative reforms introduced by the Amendment Act.

The Regulation will:

- introduce new terms and update existing definitions to reflect new terminology introduced by the Amendment Act;
- specify information that must be included on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) to support greater transparency around course fees and student cohort, and to specify course information by location rather than by State in line with national registration of multi-jurisdictional providers;
- specify information required from registered providers to be entered into the Provider Registration and International Students Management System to support the calculation of refunds in the event of a provider default, and to prescribe information about the contact details of responsible persons able to act for students under 18 in the event of a provider closure or a welfare-related incident;
- prescribe details of how provider-held records must be kept, including information about the collection of fees from students and the maximum amount that providers may charge students to access their academic records.

Commencement

The Regulation commences on 1 July 2012.

Detailed explanation of the Regulation's provisions

Regulation 1 – Name of regulation

This regulation provides that the title of the Regulation is the *Education Services for Overseas Students Amendment Regulation 2012 (No. 1)*.

Regulation 2 – Commencement

This regulation provides for the Regulation to commence on 1 July 2012.

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

This regulation provides that the Principal Regulations are amended as set out in Schedule 1.

Schedule 1 - Amendments

Items [1], [2], [3], [4] and [5] – Regulation 1.03

Items [1] to [5], inclusive, introduce new definitions and amend existing definitions under Regulation 1.03.

Item [1] substitutes a new definition for the term, *agreed starting day*. Under the amendment, *agreed starting day*, for a course provided to a student, means the day on which the course is scheduled to start, or a later day agreed between the provider for the course and the student.

Item [2] inserts a new definition for the new term *confirmation of enrolment* which means the information a registered provider must give the Secretary under section 19 of the Act when a person becomes an accepted student of that provider.

Item [3] repeals the definition for the redundant term, *parent organisation*.

Item [4] inserts a new definition for *public provider* which means either, a government school, or a vocational education and training institution that is owned or controlled (whether directly or indirectly) by a State or Territory, or a Table A provider within the meaning of the *Higher Education Support Act 2003*.

Item [5] substitutes the Note to Regulation 1.03. The Note to Regulation 1.03 refers readers to key definitions under the ESOS Act. In accordance with the amendments made by the Amendment Act, definitions which have been repealed from section 5 of the ESOS Act are removed from the Note and a reference to the new term ‘tuition fees’ is added.

Items [6], [7] and [8] - Regulation 2.01

Regulation 2.01 prescribes information which the Secretary must cause to be entered on the CRICOS. Among the amendments made by Items [6], [7] and [8], are consequential amendments to reflect new terminology introduced by the Amendment Act and the repeal of redundant provisions under the ESOS Act.

Item [6] substitutes the reference to ‘For paragraph 10(4)(d)’ in subregulation 2.01(1) with ‘For paragraph 14A(4)(i)’. This amendment is necessary to reflect the renumbering of section 10 (to section 14) of the ESOS Act by the Amendment Act.

Item [7] substitutes existing paragraph 2.01(1)(g) with new paragraph 2.01(1)(g). This amendment removes the requirement to provide information about approval periods as this information is now required under paragraphs 14A(4)(e) and (f) of the ESOS Act. Instead new paragraph (g) prescribes information about the estimated annual number of domestic students (based on full-time attendance excluding on-line study).

Item [8] makes amendments to existing prescribed information and also prescribes new information that the Secretary must cause to be entered on the CRICOS under subregulation 2.01(2). Subregulation 2.01(2) prescribes certain information for each course that the provider mentioned in subregulation (1) is registered to provide.

Under this amendment, information about the estimated course cost, prescribed under paragraph (b), is amended to require information about both tuition fees and non-tuition fees to be entered on the CRICOS. Also, all references to “students” is amended to mean “students on a student visa” to distinguish from international students on another form of visa.

A new requirement is prescribed to require information about whether the provider only accepts payment in arrears for a course to also be entered on CRICOS.

Item [9], [10] and [11] – Regulation 3.01

Regulation 3.01 prescribes, for paragraph 19(1)(a) of the ESOS Act, information relating to accepted students. Items [9] to [11], inclusive, amends information specified under Regulation 3.01.

Item [9] prescribes a new requirement to provide information in relation to an accepted student who is under 18 years of age. Under this amendment, the current residential address, mobile phone number (if any) and email address (if any) of a person (other than the provider who has legal authority to act on the student's behalf), together with information about the nature of the relationship of that person to the student is prescribed.

Item [10] amends paragraph (f) of Regulation 3.01 to replace the term *alphanumeric code* with *unique identifier*.

Item [11] substitutes paragraph (i) and insert new paragraph (j) to make amendments to existing prescribed information and to prescribe new information providers must provide about accepted students. Under this amendment, information about course money (prescribed under paragraph (i)) is amended to require more specific information about both tuition fees and non tuition fees that a provider received for a student.

Item 11 also inserts new paragraph (ia) to prescribe for a non public provider, the start and end dates of the period relating to the amount of tuition fees that a provider received under paragraph (i) of Regulation 3.01.

Item [12] – Paragraphs 3.02(1)(b), 3.03(1)(b) and 3.03(2)(b)

Regulation 3.02 prescribes, for paragraph 19(1)(c) of the ESOS Act, matters relating to accepted students who do not begin their courses when expected. Regulation 3.03 prescribes, for paragraph 19(1)(f) other matters relating to accepted students.

Item [12] expands the existing prescribed information about a student (currently only residential address) to also include residential address, mobile phone number (if any) and email address (if any) in paragraphs 3.02(1)(b), 3.03(1)(b) and 3.03(2)(b).

Item [13] – After paragraph 3.03(4)

Regulation 3.03 prescribes, for paragraph 19(1)(4) of the ESOS Act, information about other matters relating to accepted students.

Item [13] inserts new paragraph 3.03(5) to prescribe new information relating to an accepted student of a provider (that is a non-public provider) for whom the provider receives tuition fees during a calendar month. Under this amendment, information about the amount of tuition fees that the provider received for the student, the date the payment was made by the student and the start and end dates of the period to which the payment relates are prescribed.

Items [14], [15] and [16] – Regulation 3.04

Regulation 3.04 prescribes, for subsection 21(2) of the ESOS Act, the information for each accepted student for whom registered providers must keep records.

Item [14] to [16], inclusive, makes amendments to the existing prescribed information under Regulation 3.04 to specify information about both tuition fees and non tuition fees for which records must be kept.

Item [17] and [18] – Subparagraphs 3.04(d)(ii) and paragraph 3.04(e)

Item [17] makes a technical amendment to paragraph 3.04(d)(ii) for the purposes of the amendment made by Item [18].

Item [18] inserts new paragraph 3.04(d) to prescribe new information about the amount that a student will be charged to access the student's records for which the provide must keep records.

Item [19] – After regulation 3.04

Item [19] inserts two new regulations after regulation 3.04.

New regulation 3.05 requires electronic records (which are kept for the purpose of section 21 of the Act) to be backed up to ensure they are securely maintained and accessible.

New regulation 3.06 prescribes a new requirement that providers must not charge students a fee to access their records in excess of the actual cost incurred by the provider.

Items [20], [21] and [22] – Divisions 3.2 to 3.4, Parts 5, 8 and 9 and Schedule 1

As a result of the new Tuition Protection Service established by the Amendment Act, Items [20], [21] and [22] repeal the following redundant provisions of the Principal Regulations:

- Division 3.2 in relation to the Tuition assurance scheme;
- Division 3.3 in relation to the Annual Fund contributions;
- Division 3.4 in relation to Refunds of course money;
- Part 5 in relation to the ESOS Assurance Fund;
- Part 8 in relation to Miscellaneous matters;
- Part 9 in relation to Transitional matters; and
- Schedule 1 in relation to the Text of national code provisions for Part 4.

Statement of Compatibility with Human Rights

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

Education Services for Overseas Students Amendment Regulation 2012 (No. 1)

This Regulation 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 Regulation

The Regulation is made under Section 177 of *Education Services for Overseas Students Act 2000* (the ESOS Act), by the Governor-General on the advice of the Minister for Tertiary Education, Skills, Science and Research.

Following on from the enactment of the Amendment Act, the purpose of the *Education Services for Overseas Students Amendment Regulation 2012 (No. 1)* (the Regulation) is to amend the *Education Services for Overseas Students Regulations 2001* (the Principal Regulations) to implement the final stages of the legislative reforms introduced by the Amendment Act.

The Amendment Act was enacted on 20 March 2012 in response to recommendations made as a result of the review of the Education Services for Overseas Students legislative framework, titled *Stronger, simpler, smarter ESOS: supporting international students* undertaken by the Hon Bruce Baird AM in 2010. The Amendment Act amends *the Education Services for Overseas Students Act 2000* (the ESOS Act) to:

- establish a new tuition protection framework for international students studying in Australia on a student visa;
- introduce national registration for providers operating in multiple jurisdictions; and
- make technical amendments to strengthen tuition protection to ensure students receive the tuition they have paid for or, as a last resort, a refund.

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 Regulation.

Conclusion

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