

EXPLANATORY STATEMENT

Education Services for Overseas Students (Student default – discharge of obligations – requirements for a notice) Specification 2015 (No. 1)

Summary

The *Education Services for Overseas Students (Student default – discharge of obligations – requirements for a notice) Specification 2015 (No. 1)* (the Specification) is made by the Minister for Tourism and International Education (the Minister), pursuant to subsection 47H(5) of the *Education Services for Overseas Students Act 2000* (the Act).

The Specification revokes the *Education Services for Overseas Students (Notification of student default – requirements for a notice) Determination 2012 (No. 1)* (previous Instrument) and gives effect to amendments made by the *Education Services for Overseas Students Amendment (Streamlining Regulation) Act 2015* (ESOS Streamlining Regulation Act).

The tuition protection provisions in the Act (which commenced in 2012 and were amended in 2015) are designed to protect the considerable investment international students make in an Australian education. These safeguards also enhance Australia's reputation as a destination of choice for international students.

The 2015 amendments make minor changes to section 47H of the Act. This Specification sets out the updated requirements for a notice a provider must give under amended section 47H.

Authority

Subsection 47H(5) of the Act permits the Minister, by legislative instrument, to specify requirements for a notice given under that section.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary such instrument. Subsection 33(3) of the *Acts Interpretation Act 1901* applies to the Act.

Purpose and operation

Section 47H of the amended Act requires that a registered provider must give a notice in accordance with that section, whenever an overseas student or intending overseas student defaults in relation to a course provided by the provider. Subsection 47H(3) of the Act provides that the notice must include information about:

- whether the provider has provided a refund under section 47E;
- details of the student to whom the provider provided the refund; and
- details of the amount of the refund provided.

Subsection 47H(4) of the Act stipulates that the notice must also comply with requirements set out in the legislative instrument made by the Minister under subsection 47H(5).

This Specification is made under subsection 47H(5) of the Act. It sets out the requirements for the notice a provider must give that reports on whether a provider has paid a refund to a student

under section 47E of the Act, and therefore discharged its obligations under that section. It also specifies the additional information the notice must contain, and the form in which the notice must be given.

If the provider has met its obligations by paying a refund, paragraph 6(1)(b) of the Specification requires that the notice contain information:

- about the date that the refund was paid by the provider to the student;
- confirming that the refund was calculated in accordance with subsection 47E(4) of the Act; and
- on the date of default by the student.

If the provider has not paid a refund, paragraph 6(1)(a) of the Specification requires that the notice must give reasons for this.

Subsection 6(2) of the Specification also requires that the notice be given by entering the required information into the Provider Registration and International Student Management System (PRISMS).

Information about student default refunds paid under section 47E of the Act supports the effectiveness of Australia's tuition protection arrangements. This information helps to facilitate prompt and effective responses by providers and by the Tuition Protection Service (TPS) if necessary. It will also enable regulatory authorities to monitor provider compliance with the refund provisions under the Act, or other bodies to investigate complaints about refunds.

Explanation of provisions

Section 1 – Name of instrument

Section 1 provides the name of the Specification is the *Education Services for Overseas Students (Student default – discharge of obligations – requirements for a notice) Specification 2015 (No. 1)*.

Section 2 – Commencement information

Section 2 provides that the Specification will commence on the day after the day it is registered.

Section 3 – Authority

Section 3 provides the authority for the Specification, which is subsection 47H(5) of the Act.

Section 4 – Revocation

Section 4 of the Specification revokes the previous Instrument, namely, the *Education Services for Overseas Students (Notification of student default – requirements for a notice) Determination 2012 (No. 1)*.

Section 5 – Definitions

Section 5 contains the definitions for the Specification.

Section 6 – Student default – discharge of obligations – requirements for a notice

Section 6 outlines the requirements that a notice under section 47H of the Act must comply with.

Subsection 6(1) provides that, for the purposes of section 47H of the Act, for each Confirmation of Enrolment for a student who is in default, the notice the registered provider must give must include the following:

- if the provider has paid a refund in accordance with section 47E of the Act, the reason why it has not done so;
- if the provider has paid a refund in accordance with section 47E of the Act:
 - the date that the refund was paid by the provider to the student;
 - confirmation that the refund amount was calculated in accordance with subsection 47E(4) of the Act; and
 - the date on which the student default occurred.

Subsection 6(2) provides that the way in which a registered provider must give the notice required by section 47H is by entering the required information into relevant fields in PRISMS.

Consultation

Throughout 2014-15 the Department of Education and Training conducted extensive consultation with the international education sector on reforms to the ESOS framework. Parties consulted included education peak bodies, student groups and individual institutions across the school, vocational education and training, higher education and English language sectors, as well as state and territory agencies, the Overseas Students Ombudsman, the Department of Immigration and Border Protection, the Tertiary Education Quality and Standards Agency and the Australian Skills Quality Authority.

Regulatory Impact Statement

A Regulation Impact Statement (RIS) was not required by the Office of Best Practice Regulation (OBPR) for the amendments to section 47 of the Act. However, a RIS was required for other measures in the ESOS Streamlining Regulation Act, and was approved on 4 September 2015 (OBPR ID number 17028 refers).

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 Specification 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 Specification

The *Education Services for Overseas Students (Student default - discharge of obligations - requirements for a notice) Specification 2015 (No.1)* (Specification) is made under subsection 47H(5) of the *Education Services for Overseas Students Act 2000* (the Act) by the Minister for Education and Training.

The purpose of this Specification is to specify the requirements for a notice a provider must give that reports on whether a provider has paid a refund to a student under section 47E of the Act and therefore discharged its obligations under that section.

The tuition protection provisions in the Act (which commenced in 2012 and were amended in 2015) are designed to protect the considerable investment international students make in an Australian education. These safeguards also enhance Australia's reputation as a destination of choice for international students.

The *Education Services for Overseas Students Amendment (Streamlining Regulation) Act 2015* has amended section 47H of the Act to remove the obligation on a registered provider to give a notice under section 47H where the provider is required to provide a refund under section 47D of the Act. The Specification revokes the previous legislative instrument made under section 47H and sets out the requirements for a notice that a provider must give under the amended section 47H of the Act.

This Specification is one of a number that the Minister may make to specify in greater detail some of the requirements under the Act.

Human rights implications

Right to education

This Specification engages the right to education, contained in Article 13 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Article 13 of the ICESCR recognises the right of everyone to education.

In particular, this Specification has an effect on the provisions of education services to international students by bodies corporate registered on the Commonwealth Register of Institutions and Courses for Overseas Students. This Specification sets out requirements that a provider of education must satisfy when reporting on whether the provider has met its refund obligations to students under section 47E of the Act. The reporting of this information gives regulatory authorities access to information that may assist in monitoring provider compliance

with refund provisions under the Act, thereby enhancing protection for overseas students studying or intending to study in Australia.

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

Conclusion

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