

## EXPLANATORY STATEMENT

### *ELICOS Standards 2018*

Issued by authority of the delegate of the Minister for Education and Training

#### **1 NAME**

The name of the instrument is the *ELICOS Standards 2018*.

#### **2 COMMENCEMENT**

This instrument commences on the day after it is registered on the Federal Register of Legislation.

#### **3 AUTHORITY**

The ELICOS Standards are made under subsection 176B(1) of the *Education Services for Overseas Students Act 2000* (ESOS Act).

#### **4 PURPOSE AND OPERATION**

The purpose of this instrument is to make the *ELICOS Standards 2018*.

The *ELICOS Standards* apply to providers who deliver courses which are solely or predominantly of English language instruction to student visa holders in Australia. The *ELICOS Standards 2018* provide a basis on which regulatory authorities may register a provider on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS), under the ESOS Act, to deliver an ELICOS course.

ELICOS courses form a significant part of Australia's international education industry. Students come from overseas to study English for a variety of reasons including improving their English proficiency for work, career or travel. Many students are required to meet a prerequisite level of English in order to enrol with an Australian education provider and undertake further study.

The *ELICOS Standards 2018* must be read in conjunction with the ESOS Act. Registered providers of ELICOS courses must therefore also meet the requirements of the ESOS Act and its associated regulations and legislative instruments, including the *National Code of Practice for Providers of Education and Training to Overseas Students* (National Code).

This instrument will apply to new and existing providers, whose ELICOS courses are registered on CRICOS on or before the commencement date, from 1 January 2018.

This instrument will apply to transitioning providers, whose ELICOS courses are registered on CRICOS after the commencement date, from 1 March 2018.

#### **5 CONSULTATION**

The Department of Education and Training (the department) has consulted extensively with key peak bodies on the drafting of the revised *ELICOS Standards 2018*. In particular, the department held a number of one-on-one meetings with English Australia, the Australian Council for Private Education and Training, the National ELT Accreditation Scheme (NEAS), and TAFE Directors

Australia. The department has worked closely with the national regulators, the Australian Skills Quality Authority (ASQA) and the Tertiary Education Quality and Standards Agency (TEQSA).

The department has also undertaken broader public consultation and invited responses from interested stakeholders, including all providers of education and training services to overseas students registered on CRICOS.

The proposed amendments have attracted strong support from the majority of stakeholders who view the *ELICOS Standards 2018* as further strengthening high industry standards for international education and protecting Australia's highly regarded reputation for English language teaching.

## **6 REGULATORY IMPACT ASSESSMENT**

The *ELICOS Standards 2018* are expected to create only a minor increase in regulatory burden for ELICOS providers. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (ref 20717). The department has completed regulatory costings which indicate a minor regulatory cost adjustment.

### **EXPLANATION OF PROVISIONS**

**Section 1** states that the name of the instrument is the *ELICOS Standards 2018*.

**Section 2** states that the instrument commences on the day after it is registered.

**Section 3** states that the instrument will apply:

- To *existing* and *new providers* from 1 January 2018; and
- To *transitioning providers* from 1 March 2018.

**Section 3** also states that Standard P6.4 (Teaching Staff Qualifications) will apply to *transitioning providers* from 1 January 2019. This one-year delay in the application of this provision will provide a reasonable adjustment period for transitioning providers and teachers affected by changes to teacher qualification requirements.

**Section 3** also states that a provider may continue delivering a course to a student, if that student enrolls with the provider prior to the application of the *ELICOS Standards 2018* to that provider. This will allow transitioning providers to continue to teach students already enrolled in their courses prior to 1 March 2018, without being required to alter those courses.

**Section 4** states that the *ELICOS Standards 2011*, which are being replaced by the *ELICOS Standards 2018*, will be repealed, effective 1 March 2018.

**Section 5** states that the authority for the instrument is found under subsection 176B(1) of the ESOS Act.

**Section 6** specifies definitions used in the instrument.

The **definition** specifies that the Standards must apply to all courses provided, or intended to be provided, to overseas students that are solely or predominantly of English language instruction. All courses that fit this definition will be required to be regulated under the *ELICOS Standards*, regardless of the industry sector in which they are delivered.

Proposed amendments aim to ensure high standards are applied to ELICOS courses across all sectors of delivery. Under the change to the definition, all English language courses that are solely or predominantly of English language instruction would be considered ELICOS and would be required to meet the *ELICOS Standards 2018*, even if they are registered on CRICOS in other course sectors such as vocational education and training (VET).

The requirement for an ELICOS course to provide a minimum of 20 hours of scheduled class contact hours per week has been moved from the definition. This is to allow for the application of the *ELICOS Standards* to any course which is solely or predominantly of English language instruction.

**Standards C1 and P1** make clear that ELICOS courses must comprise a minimum of 20 hours of scheduled class contact hours per week.

**Standard P2** now includes more detail regarding the needs of students under the age of 18, including direct reference to the obligations imposed by the National Code.

The requirements for facilities and operations for students under the age of 18 requires that providers structure courses appropriately for students of different levels of age, maturity and English language proficiency. This ensures that the requirements for facilities and operations for under 18 students are appropriate for students' individual circumstances and aims to maximise the overall educational experience for all students.

**Standard P3** requires that teacher-to-student ratios for students' regular classes do not exceed 1:18 per class in the 20 hour face-to-face context. This Standard imposes a maximum permissible regular class size, but takes consultation feedback into account by also affording providers the flexibility to offer supplementary larger group classes to simulate the lecture-style format common in university level teaching.

**Standard P4** has been clarified at the request of TEQSA, and requires that for ELICOS courses provided under a direct entry arrangement to a tertiary education course, formal measures must be in place to ensure that assessment outcomes are comparable to other criteria used for admission to the tertiary education course of study, or for admission to other similar courses of study.

No substantial changes have been made to **Standard P5**.

Teacher qualification requirements under **Standard P6** have not changed.

The revised instrument provides additional explanation and clarification with regard to course applications, student assessment and moderation of assessment outcomes.

It also provides that rooms and equipment should be fit for purpose and proportionate or appropriate to the number of students and course syllabus. Finally, the instrument makes a number of minor updates to terminology.

## **Statement of Compatibility with Human Rights**

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

### *English Language Intensive Courses for Overseas Students (ELICOS) Standards 2018*

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 purpose of this instrument is to make the *ELICOS Standards 2018*. The *ELICOS Standards 2018* operate adjacent to the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2018 (National Code).

The *ELICOS Standards 2018* apply to providers who are registered to provide ELICOS courses to students studying in Australia on student visas. The *ELICOS Standards 2018* provide a basis on which regulatory authorities may make a recommendation for a provider to be registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS), under the *Education Services for Overseas Students Act 2000* (ESOS Act), to deliver an ELICOS course.

ELICOS courses form a significant part of Australia's international education industry. Students come from overseas to study English for a variety of reasons including improving their English proficiency for work, career or travel. Many students are required to meet a prerequisite level of English in order to enrol with an Australian education provider and undertake further study.

The *ELICOS Standards 2018* must be read in conjunction with the ESOS Act. Registered providers of ELICOS courses must therefore also meet the requirements of the ESOS Act and its associated regulations and legislative instruments, including the National Code.

### **Human rights implications**

This instrument engages the following human rights:

#### *Right to Education*

This 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 service providers registered under the ESOS Act.

The Australian Government has the overarching responsibility for protecting the reputation of Australia's education and training industry, supporting the capacity of the international education industry to provide quality education and training services, and maintaining the integrity of the student visa program.

The measures contained in the *ELICOS Standards 2018* enhance the right to education by ensuring that ELICOS providers comply with nationally consistent standards and deliver a high

quality of education for international students. In particular, measures implemented by this instrument enhance the right to education by:

- supporting the effective regulation of providers under the ESOS legislative framework;
- ensuring that English language training for overseas students meets nationally consistent standards and delivers quality outcomes, regardless of provider sector; and
- ensuring the specific needs of overseas students – including those related to English language instruction and student support – are met.

The legislative instrument is compatible with the right to education.

### *Rights of the Child*

The instrument engages the rights of the child contained in the *Convention on the Rights of the Child*. It contains measures which maintain the protections for students under the age of 18 by ensuring that the needs of younger students are met through specific requirements in relation to facilities, operations and the structure of courses. There are also different requirements for students of different levels of age, maturity and English language proficiency.

This ensures that the requirements for facilities and operations for students under the age of 18 are appropriate for students' individual circumstances and aims to maximise the overall educational experience for all students.

The legislative instrument is compatible with the rights of the child.

### **Conclusion**

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