

## **EXPLANATORY STATEMENT**

### *Education Services for Overseas Students Act 2000*

### *Education Services for Overseas Students (Publishing Results of Enforcement Action) Instrument 2017*

#### **Authority**

Subsection 170A(4) of the *Education Services for Overseas Students Act 2000* (ESOS Act) provides that the Secretary may, by legislative instrument, specify the way in which the ESOS agency for a registered provider publishes information referred to in subsection 170A(2).

#### **Purpose and operation**

The purpose of the *Education Services for Overseas Students (Publishing Results of Enforcement Action) Instrument 2017* (the Instrument) is to specify the way in which ESOS agencies may publish information regarding enforcement action taken against registered providers.

One of the principal objectives of the ESOS Act is to protect and enhance Australia's reputation for quality education and training services. This Instrument provides for ESOS agencies to publish information relating to enforcement action (such as imposing conditions, or suspending or cancelling a registration) against a registered provider that is not complying with the ESOS legislative framework. The publication of information relating to enforcement action taken against a registered provider contributes to upholding Australia's high quality education and training standards and informing student choice.

#### **Overview**

Part 6 of the ESOS Act sets out the framework under which an ESOS agency can take enforcement action against a registered provider.

This Instrument provides that an ESOS agency may, at its discretion, publish on its home website the details of enforcement action taken against a registered provider, and the results of taking that action.

#### **Consultation**

The Tertiary Education Quality and Standards Agency and the Australian Skills Quality Authority have been consulted (in their capacity as ESOS agencies) and are supportive of the instrument.

#### **Explanation of Provisions**

##### **Sections 1 and 2**

Sections 1 and 2 of the Instrument are formal provisions setting out the name and date of commencement of the Instrument.

### **Section 3**

Section 3 of the Instrument sets out the Secretary's legal authority to make the Instrument.

### **Section 4**

Section 4 provides definitions for the terms 'Act', 'enforcement action' and 'home website'.

A note explains that a number of expressions used in the Instrument are defined in section 5 of the ESOS Act.

### **Section 5**

The purpose of section 5 is to set out the way that information about the matters specified in subsection 170A(2) of the ESOS Act is to be published.

Section 5 provides that an ESOS agency may publish information about the matters specified in subsection 170A(2) of the ESOS Act on its home website. Two examples of the results of enforcement action that may be published can be found in subsection 170A(2) of the ESOS Act, being recommendations for improvements given to the provider, and action by the provider to implement those recommendations.

## **FINANCIAL IMPACT STATEMENT**

There is no financial impact concerned with this Legislative Instrument.

## **REGULATION IMPACT STATEMENT**

The Office of Best Practice Regulation (OBPR) considers the measures will result in no regulatory impact. A Regulation Impact Statement is not required (OBPR ID 21737).

## **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 (Publishing Results of Enforcement Action) Instrument*  
2017

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 *Education Services for Overseas Students (Publishing Results of Enforcement Action) Instrument 2017* (Instrument) allows an ESOS agency to publish information about enforcement action taken under Part 6 of the *Education Services for Overseas Students Act 2000* (the ESOS Act).

### **Human rights implications**

This Legislative Instrument engages the following human rights:

#### *Right to Education*

The Instrument engages the right to education, contained in Article 13 of the *International Covenant on Economic, Social, and Cultural Rights* (ICCPR), insofar as it relates to the provision of high-quality education services to international students by education providers registered under the ESOS Act.

In particular, the Instrument promotes the right to education as it will ensure that international students have access to information that assists them in making informed choices about which education provider to seek to enrol with in Australia. It further supports international students by encouraging registered providers' continued compliance with Australia's ESOS legislative framework through public scrutiny and accountability.

To the extent that the right to education is engaged, the measures contained in this Instrument are compatible with the right to education.

#### *Right to privacy and reputation*

Article 17 of the ICCPR prohibits unlawful or arbitrary interferences with a person's privacy. Collecting, using, storing, disclosing or publishing personal information amounts to an interference with privacy. In order for the interference with privacy not to be 'arbitrary', any interference with privacy must be in accordance with the provisions, aims and objectives of the ICCPR and should be reasonable in the particular circumstances. Reasonableness, in this context, incorporates notions of proportionality, appropriateness and necessity.

The Instrument engages the right to privacy and reputation to the extent that it confers discretion on an ESOS agency to publish information concerning enforcement action against a registered provider.

The legitimate objective of the Instrument is to ensure operational transparency and ensure timely information, which may impact student choice and decision making around quality assurance about

a provider, is available to current and prospective international students and other higher education regulators and stakeholders.

While the instrument may limit the right to privacy, any limitation is reasonable, necessary and proportionate in order to achieve the legitimate objective of the Instrument and, more broadly, is supportive of the ESOS legislative framework that places obligations on education institutions to deliver a high-quality service to international students and protect their interests in making informed educational choices. The terms of the disclosure are proportionate in that information that may be published for this purpose is strictly circumscribed.

Published information is limited to factual and publically verifiable details including the enforcement action taken by the ESOS agency and the results of taking that action, for example recommendations for improvement that are given to the provider and the action taken by the provider to implement those recommendations.

The ESOS agency for that provider must publish the information outlined above and ensure that the information published is up-to-date and accurate including details of the provider's application for review and, once completed, the results of the review as soon as practicable as per subsection 170A(3)(a). This ensures that the decision-making processes associated with the enforcement action are easily identifiable, the information published is properly representative the review actions initiated by providers and the results of such review actions are notified in a timely manner.

This measure is similar to measures under the *Tertiary Education Quality and Standards Agency Act 2011* and the *National Vocational Education and Training Regulator Act 2011* in allowing the national regulators to publish enforcement action against education providers, within certain parameters.

## **Conclusion**

This Instrument is compatible with human rights because it advances the protection of human rights. To the extent it limits human rights, this limitation is reasonable and proportionate to the legitimate policy objective.