**EXPLANATORY STATEMENT**

***Education Services for Overseas Students (ASQA Registration Renewal Application Period) Determination 2019***

Issued by the authority of the Australian Skills Quality Authority (ASQA)

**Subject:** *Education Services for Overseas Students (ASQA Registration Renewal Application Period) Determination 2019*

**Authority**

Section 10D(3) of the *Education Services for Overseas Students Act 2000* (ESOS Act) allows an ESOS agency for a registered provider to determine, by legislative instrument, the period within which applications to renew registration under section 10D of the ESOS Act must be made.

Section 6C of the ESOS Act prescribes that the National VET Regulator is the ESOS agency for a provider or registered provider to the extent that a provider or registered provider is a registered VET provider. Section 6 of the *Education Services for Overseas Students (ESOS Agency-ELICOS and Foundation Programs) Determination 2016* prescribes that the National VET Regulator is also the ESOS agency for specified providers that provide English Language Intensive Courses for Overseas Students (ELICOS).

Section 5 of the ESOS Act defines the National VET Regulator as having the same meaning as in the *National Vocational Education and Training Regulator Act 2011* (the NVR Act). ASQA is established as the national VET regulator under Part 7 of the NVR Act and Part 4 of the *National Vocational Education and Training Regulator Regulations 2011* (NVR Regs).

Section 157(1) of the NVR Act prescribes the functions of ASQA, including:

(q) such other functions as are conferred on the Regulator by or under:

 (ii) the *Education Services for Overseas Students Act 2000* or any other law of the Commonwealth

ASQA applies fees payable for lodgement and assessment of application for registration, including renewal of registration, under the ESOS Act in accordance with the *Australian Skills Quality Authority Instrument Fixing Fees No. 1 of 2013*.

**Purpose**

The purpose of the instrument is to set out the period within which applications under Section 10D of the ESOS Act must be made.

Under section 10D of the ESOS Act, a registered provider may apply to ASQA to renew the provider’s registration to provide a course or courses at a location or locations to overseas students. Where ASQA is the ESOS agency for the registered provider, the application must be made to ASQA within the period determined in this legislative instrument pursuant to subsection 10D(3) and in the form approved, in writing, by ASQA pursuant to subsection 11A (2)(a). The renewal application will be subject to lodgement and assessment fees that must be paid.

**Consultation**

On 15 February 2019, ASQA wrote to peak sector organisations to advise that ASQA was accepting submissions on the Education Services for Overseas Students (ASQA Registration Renewal application Period) Determination 2019. ASQA also published details on how to make a submission to ASQA on the ASQA website, with a statement that ASQA would accept submissions on the draft Determination until 1 March 2019.

ASQA received two submissions during the consultation period, both of which endorsed the draft Determination. ASQA has had regard to providers’ feedback and procedural fairness for all providers.

**Explanation of provisions**

*Section 1- Name*

Section 1 provides the name of the instrument.

*Section 2 - Commencement*

Section 2 sets out the commencement date of the Instrument, which is the day after registration.

*Section 3 - Authority*

Section 3 sets out the legal authority to make the Instrument.

*Section 4 - Definitions*

Section 4 provides definition for terms used in the Instrument.

*Section 5- Periods within which renewal of registration must be made*

Section 5 details the period within which a registered provider must make a renewal of registration application.

**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 (ASQA Registration Renewal Application Period) Determination 2019**

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 the instrument is to set out the period within which applications must be made for the purposes of Section 10D of the *Education Services for Overseas Students Act 2000*. These applications are applications for renewal of registration of providers on the Commonwealth Register of Institutions and Courses for Overseas Students.

**Human rights implications**

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 by higher education providers.

To the extent that the right to education is engaged, this right is promoted by the Legislative Instrument as it ensures seamless continuity of education through periods of renewal.

**Conclusion**

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

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Mark Paterson AO

Chief Commissioner

Australian Skills Quality Authority