EXPLANATORY STATEMENT

Issued by the authority of the Assistant Minister for International Education

Education Services for Overseas Students Act 2000

Education Services for Overseas Students (ESOS Agency – ELICOS and Foundation Programs) Determination 2026

AUTHORITY

Subsection 6C(2) of the *Education Services for Overseas Students Act 2000* (the Act) provides that the Minister may, by legislative instrument, determine that an entity is the ESOS agency for a provider or registered provider covered by item 4 or 5 of the table in subsection 6C(1) of the Act.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, 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 any such instrument. The repeal of the *Education Services for Overseas Students (ESOS Agency – ELICOS and Foundation Programs) Determination 2016* (the Former Determination) by the *Education Services for Overseas Students (ESOS Agency – ELICOS and Foundation Programs) Determination 2026* (the Determination) relies on this provision.

PURPOSE AND OPERATION

The purpose of the Determination is to repeal and remake the Former Determination, which was due to sunset on 1 October 2026 in accordance with the *Legislation Act 2003*. The Determination specifies the entities that are the ESOS agency for a provider or registered provider that provides an English Language Intensive Course for Overseas Students (ELICOS) or a Foundation Program (being a provider covered by item 4 of the table in subsection 6C(1) of the Act).

The ESOS agency has responsibility for registrations, monitoring and regulation of providers of education services to overseas students.

COMMENCEMENT

The Determination commences on the day after it is registered on the Federal Register of Legislation.

CONSULTATION

The Tertiary Education Quality and Standards Agency, Australian Skills Quality Authority, Department of Employment and Workplace Relations, Department of Home Affairs, International Education Stakeholder Forum (IESF) and Education Visa Consultative

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Committee (EVCC) were consulted in early 2026 and were supportive of the draft Determination. The IESF and EVCC comprise of relevant Australian Government agencies, peak international education bodies, state and territory representatives, business groups, and unions. Some feedback was received about the clarity of certain wording, and this feedback was addressed in the final drafting of the Determination.

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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 (ESOS Agency – ELICOS and Foundation Programs) Determination 2026

The *Education Services for Overseas Students (ESOS Agency – ELICOS and Foundation Programs) Determination 2026* (the Determination) 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 Determination is to repeal and remake the *Education Services for Overseas Students (ESOS Agency – ELICOS and Foundation Programs) Determination 2016*, which was due to sunset on 1 October 2026 in accordance with the *Legislation Act 2003*. The Determination specifies the entities that are the ESOS agency for a provider or registered provider that provides an English Language Intensive Course for Overseas Students (ELICOS) or a Foundation Program (being a provider covered by item 4 of the table in subsection 6C(1) of the *Education Services for Overseas Students Act 2000*).

The ESOS agency has responsibility for registrations, monitoring and regulation of providers of education services to overseas students.

Human rights implications

The Determination engages the right to education in Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Right to Education

Article 13 of the ICESCR recognises the important personal, societal, economic and intellectual benefits of education.

The Determination will ensure clarity and continuity of arrangements for the regulation of providers delivering ELICOS and Foundation Programs to overseas students by clearly articulating the ESOS agency for these providers. ELICOS and Foundation Programs are often key preparatory courses for international students seeking to further their education in Australia.

Conclusion

The Determination is compatible with human rights because it promotes the protection of human rights.

Assistant Minister for International Education, the Hon Julian Hill MP

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EDUCATION SERVICES FOR OVERSEAS STUDENTS (ESOS AGENCY – ELICOS AND FOUNDATION PROGRAMS) DETERMINATION 2026

EXPLANATION OF PROVISIONS

Section 1: Name

1. This section specifies the name of the instrument as the *Education Services for Overseas Students (ESOS Agency – ELICOS and Foundation Programs) Determination 2026* (the Determination).

Section 2: Commencement

2. This section provides that the Determination commences the day after it is registered on the Federal Register of Legislation.

Section 3: Authority

3. This section provides that the Determination is made under subsection 6C(2) of the *Education Services for Overseas Students Act 2000* (the Act).

Section 4: Schedules

4. This is a technical provision that explains that each instrument that is specified in a Schedule to the Determination is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Determination has effect according to its terms.

Section 5: Definitions

5. This section provides definitions for certain expressions used in the Determination.

Section 6: ESOS Agency – ELICOS

6. Section 6 of the Determination specifies, for the purposes of item 4 of the table in subsection 6C(1) of the Act and subsection 6C(2) of the Act, the ESOS agency for a person or entity that is a provider or registered provider that provides an ELICOS.

Section 7: ESOS Agency – Foundation Programs

7. Section 7 of the Determination specifies, for the purposes of item 4 of the table in subsection 6C(1) of the Act and subsection 6C(2) of the Act, the ESOS agency for a

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person or entity that is a provider or registered provider that provides a Foundation Program.

Schedule 1—Repeals

Item 1: The whole of the instrument

8. This item repeals the *Education Services for Overseas Students (ESOS Agency – ELICOS and Foundation Programs) Determination 2016* in full.

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