



Australian Government

**Department of Industry
Innovation, Science, Research
and Tertiary Education**

***Submission to the Inquiry into the Migration
Legislation Amendment (Student Visas) Bill 2012***

April 2012

Introduction

The Migration Legislation Amendment (Student Visas) Bill 2012 (the "Bill") introduced by the Hon Chris Bowen MP, Minister for Immigration and Citizenship, seeks to amend the Migration Act 1958 (the "Migration Act") and the Education Services for Overseas Students Act 2000 (the "ESOS Act") to implement recommendation 24 of the Strategic Review of the Student Visa Program, conducted by the Hon. Michael Knight AO (the "Knight Review").

Recommendation 24 of the Knight Review is to abolish automatic cancellation of student visas and for that provision to be replaced by a system in which information conveyed about student course variations is used as an input into more targeted and strategic analysis of non-compliance.

The amendments require education providers to provide updated contact details to the Secretary of DIIRTE within 14 days of being notified of a change. Requiring contact details to be updated will better enable contact with students, particularly for the purposes of resolving their visa status should they be subject to any report of non-compliance. This amendment is considered necessary by the Department of Immigration and Citizenship (DIAC) for ensuring a smooth transition from an automatic to a discretionary cancellation regime without compromising immigration integrity. The amendments also address the continued need for relevant government agencies to access the most up-to-date contact information held by education providers for accepted students.

DIIRTE has worked closely with DIAC in the conduct and implementation of the Knight Review, including the development of the amendments contained in this Bill.

Provisions in ESOS which support student visa integrity

One of the three principal objects of the ESOS Act is to complement Australia's migration laws by ensuring providers collect and report information relevant to the administration of the law relating to student visas.

Visa integrity measures under the ESOS legislation currently fall under Sections 19 and 20 of the ESOS Act, Part 3 of the *Education Services for Overseas Students Regulations 2001* (Regulations) and Standards 10 and 11 of the *National Code of Practice for Registration Authorities and providers of Education and Training to Overseas Students 2007* (National Code). Section 20 makes providers responsible for reporting students to DIAC if the student breaches a prescribed condition of the student visa. Part 3 of the Regulations sets out prescribed obligations related to student information and records. Under the National Code, providers are specifically responsible for reporting a student to DIAC if the student fails to make satisfactory course progress or course attendance (student visa condition 8202).

Comments on proposed amendment to Section 20

DIIRTE supports the proposed amendment to Section 20 of the ESOS Act which will remove the obligation on providers to send a notice to a student advising they have been reported to DIAC and must present at a DIAC office within 20 days of the notice to avoid automatic cancellation of their visa. It is the Section 20 notice that triggers visa cancellation.

The proposed amendment is consistent with Recommendation 9 of the review of ESOS conducted by the Hon Bruce Baird AM in 2010 (the Baird review) that the *Migration Act 1958* be 'amended to enable a more flexible approach to current visa cancellation requirements for students who are reported for failing to maintain satisfactory course progress and attendance'¹. In making this recommendation Mr Baird cited concerns raised about a number of related issues including: the pressure on providers in reporting students given the high stakes of visa cancellation involved; that students often pursue multiple complaints avenues when reported; allegations that a small number of unscrupulous providers use their reporting powers to force students to make early or additional payments; and the high level of prescription required in the National Code related to monitoring and reporting on course progress and attendance.

Under Section 19 of the ESOS Act a provider is still required to report students to DIAC for unsatisfactory attendance or course progress via the Provider Registration and International Student Management System (PRISMS). By allowing DIAC discretion in matters related to visa cancellations, however, the proposed amendment will therefore weaken the potential for providers to exploit international students through their Section 19 reporting obligations. Removing the Section 20 requirement will also remove a significant administrative burden on providers.

Providers will still be required to support and intervene with students at risk of making unsatisfactory attendance and/or course progress (Standards 10 and 11 of the National Code) prior to a breach taking place. For the purposes of due process, providers will still be obliged to notify students in writing of their intention to report the student to DIAC for not achieving satisfactory attendance or course progress. The written notice must inform the student that he or she is able to access internal and external complaints and appeals processes within 20 days.

Comments on proposed amendments to Sections 5 and 19

The proposed amendments to Sections 5 and 19 of the ESOS Act are supported by DIISRTE as they will support provider compliance with student record keeping requirements. This strengthens existing requirements in the ESOS regulations which require providers to update students' addresses in PRISMS when a course variation occurs (regulation 3.03). The proposed amendments introduce a 14 day timeframe for making PRISMS updates and expand the details required to include a student's mobile phone number and email address if any as these tend to be more enduring for students than residential address.

Up to date student contact details serve multiple purposes but most importantly tuition protection, student welfare and visa integrity.

The proposed amendments complement a recent amendment to Section 21 of the ESOS Act enacted in March 2012 to require providers to have an active mechanism for confirming provider held student contact details at least every six months, including mobile phone and email. This amendment is to implement a recommendation of the Baird Review related primarily to supporting new streamlined tuition protection arrangements.

¹ Review of the *Education Services for Overseas Students (ESOS) Act 2000* Final report - February 2010, p29

Implementation

Subject to passage of the legislation, DIISRTE will work with DIAC to communicate the changed requirements to the sector including through the Australian Education International website and the PRISMS system directly to all registered providers. In recently held provider information sessions in all major capitals on the ESOS amendments enacted in March 2012, DIISRTE also briefed providers on these proposed amendments to ESOS currently before Parliament and the subject of this Inquiry. DIISRTE is making necessary PRISMS enhancements to implement the expanded contact detail requirements and is also exploring the possibility of enhancements to PRISMS to make data entry of student contact details into PRISMS as quick and simple for providers as possible. With all enhancements to PRISMS, maintaining the integrity and security of the data base is a paramount consideration.