

DEPARTMENT OF EDUCATION, TRAINING AND EMPLOYMENT

Response to the Migration Legislation Amendment Student Visas Bill 2012

Topic: Inquiry into the Migration Legislation Amendment (Student Visas) Bill 2012

Summary: the Senate has referred the Migration Legislation Amendment (Student Visas) Bill 2012 (the Bill) to the Legal and Constitutional Affairs Legislation Committee (the Committee) for inquiry and report by 18 June 2012.

The Bill amends the *Migration Act 1958* (Migration Act) and the *Education Services for Overseas Students Act 2000* (ESOS Act) to abolish the automatic cancellation of student visas and create a new system in which information conveyed by student course variations more strategically analyses and targets non-compliance (Recommendation 24 of the *Strategic Review of the Student Visa Program* conducted by the Hon. Michael Knight AO).

The Committee has invited written submissions to its inquiry by 27 April 2012.

Proposed legislation changes

Section 20 Notice

Currently, education providers are required to report a student who has not maintained satisfactory course progress or attendance through the Provider Registration and International Student Management System (PRISMS). They must also download, complete, print and send a notice to the student under Section 20 of the ESOS Act (a Section 20 Notice). This notice advises the student to attend an office of the Department of Immigration and Citizenship (DIAC) within 28 days to avoid the automatic cancellation of their visa.

Cessation of automatic cancellation

The Government is proposing to cease the automatic cancellation of student visas by changing Section 20 of the ESOS Act so that providers will no longer be required to send a Section 20 Notice to a student who has not maintained satisfactory academic progress or attendance. Without the Section 20 Notice, the relevant provisions relating to automatic cancellation in the Migration Act will no longer be triggered. Providers will still be required to report the students through PRISMS, but will no longer be required to download, complete, print and send a Section 20 Notice.

Consequential amendment to require updated student contact details to be entered into PRISMS within 14 days

Under the proposed amendment outlined above, DIAC will no longer have access to a student's most up to date contact details as given by the education provider on the Section 20 Notice. This will make it more difficult for DIAC to contact a student who has been reported for a breach of their visa conditions. Contact with the student is important for the purposes of obtaining any relevant information that may affect DIAC's decision as to whether to consider cancellation of the visa. For this reason, the Government is proposing to amend section 19 of the ESOS Act to require that education providers give updated contact details for accepted students within 14 days of being notified of a change. Contact details would be defined as email address, residential address and mobile phone number. The period of 14 days is consistent with other provisions in section 19 of the ESOS Act that require providers to give a range of other particulars within 14 days, such as the name, starting day and expected course duration of an accepted student.

Concerns

- Department of Education, Training and Employment (DETE) is concerned at what action will be taken by DIAC for students under 18 years of age who are in breach of their student visa conditions for non-satisfactory academic progress or attendance in class if a Section 20 notice is not generated and provided to the student.
- What notification will DETE be expected to provide to the students/agents/parents if students are reported to DIAC? Presently this is done through the provision of the section 20 notice.
- How long will the process recommended in the legislation take?
- If students are under 18 does the provider have to continue to maintain welfare responsibility while cancellation is being considered?
- DETE needs more explicit information with regard to communication responsibilities with school age students, parents and agents in order to ensure appropriate welfare provision.
- The change outlined in the legislation with regard to updating student contact details will be very resource intensive if every student must be updated in PRISMS within the 14 days. Extra staffing hours needed will present a significant new cost to the business.
- If the student is truanting and welfare must be maintained by DETE this compromises the provider's ability to provide adequate welfare as detailed in the *National Code 2007*.

Suggestions

- That there is an official notification to the students/agents/parents providing notification regarding reporting to DIAC.
 - That the student is informed that DIAC will be in contact with the student within a 28 day period regarding a possible cancellation.
 - That DIAC give significant credence to a recommendation from a state school provider in considering the cancellation of a student's enrolment.
 - That if an official notification goes to DIAC from the provider the most recent student contact details could be sent at that time which is a continuation of the present process. Updating everything continually in PRISMS is a duplication of work as this information is already held in our own database. The regulators can then easily check to see if the provider has a process in place to maintain correct contact details.
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