



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

**No. 164, 2000**

## **Compilation No. 27**

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**This compilation includes commenced amendments made by Act No. 126, 2015. Amendments made by Act No. 4, 2016 have not commenced but are noted in the endnotes.**

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *Education Services for Overseas Students Act 2000* that shows the text of the law as amended and in force on 5 March 2016 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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# **An Act to regulate education services for overseas students, and for related purposes**

## **Part 1—Introduction**

### **Division 1—Preliminary**

#### **1 Short title**

This Act may be cited as the *Education Services for Overseas Students Act 2000*.

#### **2 Commencement**

- (1) This section and section 1 commence on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act commence on a day or days to be fixed by Proclamation.
- (3) However, if a provision of this Act does not commence under subsection (2) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

#### **3 Crown to be bound**

- (1) This Act binds the Crown in each of its capacities.
- (2) However, nothing in this Act makes the Crown in any capacity liable to be prosecuted for an offence.

#### **4 *Criminal Code* applies**

The *Criminal Code* applies to all offences against this Act.

Section 4A

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**4A Objects**

The principal objects of this Act are:

- (a) to provide tuition assurance, and refunds, for overseas students for courses for which they have paid; and
- (b) to protect and enhance Australia's reputation for quality education and training services; and
- (c) to complement Australia's migration laws by ensuring providers collect and report information relevant to the administration of the law relating to student visas.

**4B Extension of this Act to Christmas Island and Cocos (Keeling) Islands**

- (1) Subject to subsection (2), this Act applies in relation to the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands as if:
  - (a) a reference in a provision of this Act to a State included a reference to the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands; and
  - (b) to the extent that a reference in a provision of this Act to a designated authority relates to a designated authority covered by table item 4 of the table in subsection 7A(1)—the reference included a reference to the Territories Minister.
- (2) Paragraph (1)(a) does not apply in relation to the following provisions:
  - (a) the definitions of *designated authority* and *State* in section 5;
  - (b) paragraph 9B(1)(a);
  - (c) paragraph 31(a);
  - (f) paragraph 127(3)(b);
  - (g) paragraph 152(3)(b);
  - (h) paragraph 175(1)(e).
- (3) The Territories Minister may, by signed writing, delegate all or any of his or her functions or powers as a designated authority under this Act to:

- (a) an APS employee who is an SES employee or acting SES employee; or
- (b) an officer or employee of a State.

## 5 Definitions

In this Act, unless the contrary intention appears:

***accepted student*** of a registered provider means a student (whether within or outside Australia):

- (a) who is accepted for enrolment, or enrolled, in a course provided by the provider; and
- (b) who is, or will be, required to hold a student visa to undertake or continue the course.

***agent*** of a provider means a person (whether within or outside Australia) who represents or acts on behalf of the provider, or purports to do so, in dealing with overseas students or intending overseas students.

***agreed starting day*** for a course means the day on which the course was scheduled to start, or a later day agreed between the registered provider for the course and the student.

***annual registration charge*** means the annual registration charge imposed under the *Education Services for Overseas Students (Registration Charges) Act 1997*.

***applicable number of days*** has the meaning given by subsection 19(1A).

***approved provider*** for a course for a location means a provider approved by a relevant designated authority to provide that course at that location to overseas students, other than an approval that has been withdrawn by that authority.

***approved unit of study*** has the meaning given by section 21.

***associate*** of a person has the meaning given by section 6.

Section 5

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**attendance notice** means a notice given under section 116.

**authorised employee** means:

- (aa) if, under subsection 170(2), the Secretary delegates a power to TEQSA that TEQSA considers requires powers to be exercised under Part 7—a person who is an authorised officer (within the meaning of the TEQSA Act); or
- (a) if, under subsection 170(2), the Secretary delegates a power to the National VET Regulator which the Regulator considers requires powers to be exercised under Part 7—a person who is an authorised officer (within the meaning of the *National Vocational Education and Training Regulator Act 2011*); or
- (b) a person who:
  - (i) is authorised in writing by the Secretary to exercise powers under Part 7; and
  - (ii) is an employee in the Department; and
  - (iii) holds the classification of APS 5 or higher, or an equivalent classification.

**Board** means the TPS Advisory Board established by section 55A.

**Board member** means a member of the Board appointed under section 55D, including the Chair and the Deputy Chair.

**call**: a **call** is made on the OSTF in the circumstances set out in section 50A.

**condition**, in relation to a provider's registration, means a condition imposed on the registration under section 9AD or 9AE or subsection 83(3).

**course** means a course of education or training.

**default**:

- (a) in relation to a registered provider—has the meaning given by section 46A; and
- (b) in relation to an overseas student or intending overseas student—has the meaning given by section 47A.



**default day**, in relation to a default, means:

- (a) if subparagraph 46A(1)(a)(i) or paragraph 47A(1)(a) applies—the agreed starting day; or
- (b) if subparagraph 46A(1)(a)(ii) applies—the day on which the course ceases to be provided; or
- (c) if paragraph 47A(1)(b) applies—the day on which the student withdraws from the course; or
- (d) if paragraph 47A(1)(c) applies—the day on which the registered provider of the course refuses to provide, or continue providing, the course to the student.

**designated authority** has the meaning given by section 7A.

**document** includes a copy of a document.

**ELICOS Standards** has the meaning given by section 176B.

**entry to market charge** means an entry to market charge imposed under the *Education Services for Overseas Students (Registration Charges) Act 1997*.

**evidential material** means either of the following:

- (a) a thing that there are reasonable grounds for suspecting will afford evidence as to the commission or suspected commission of an offence against this Act;
- (b) a thing that there are reasonable grounds for suspecting is intended to be used for the purpose of committing any such offence.

**first entry to market charge** means the entry to market charge referred to in table item 1 of the table in subsection 6(2) of the *Education Services for Overseas Students (Registration Charges) Act 1997*.

**Foundation Program Standards** has the meaning given by section 176C.

**higher education provider** has the same meaning as in the *Higher Education Support Act 2003*.

## Section 5

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**high managerial agent** of a provider means an employee, agent or officer of the provider with duties of such responsibility that his or her conduct may fairly be assumed to represent the provider in relation to the business of providing courses.

**Immigration Minister** means any of the Ministers who administer the *Migration Act 1958* from time to time.

**Immigration Minister's suspension certificate** means a certificate given under Division 2 of Part 6.

**Immigration Secretary** means the Secretary of the Department administered by the Immigration Minister.

**intending overseas student** means a person (whether within or outside Australia) who intends to become, or who has taken any steps towards becoming, an overseas student.

**late payment penalty** means the penalty imposed by section 172.

**monitoring purpose** means a purpose of determining:

- (a) whether a registered provider is complying or has complied with the requirements of this Act or the national code; or
- (b) whether, because of financial difficulty or any other reason, the provider might not be able to:
  - (i) provide courses to its accepted students; or
  - (ii) refund amounts to its accepted students under Division 2 of Part 5.

**monitoring warrant** means a warrant issued under section 138 or subsection 165(2).

**national code** means the National Code of Practice for Providers of Education and Training to Overseas Students in force under Part 4.

**National VET Regulator** has the same meaning as in the *National Vocational Education and Training Regulator Act 2011*.

***occupier:***

- (a) in relation to premises comprising a vehicle or vessel—means the person apparently in charge of the vehicle or vessel; and
- (b) in any case—includes a person who apparently represents the occupier.

***old ESOS Act*** means the *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991*.

***OSTF***: see Overseas Students Tuition Fund.

***overseas student*** means a person (whether within or outside Australia) who holds a student visa, but does not include students of a kind prescribed in the regulations.

***Overseas Students Tuition Fund*** means the Overseas Students Tuition Fund established under section 52A.

***premises*** means:

- (a) an area of land or any other place, whether or not it is enclosed or built on; or
  - (b) a building or other structure; or
  - (c) a vehicle or vessel;
- and includes a part of any such premises.

***principal executive officer*** of a provider that is not an individual means the person who has executive responsibility for the operation of the provider.

***production notice*** means a notice given under section 113.

***provide*** a course includes participate in providing the course.

***provider*** means an institution or other body or person that provides or seeks to provide courses to overseas students.

***provider obligation period***, in relation to a default, has the meaning given by section 46D, 47D or 47E (as the case requires).

**Section 5**

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**Register** means the Register kept under section 14A.

**registered** means registered under Part 2.

Note: Other grammatical forms of the word **registered** (such as **registration**) have a corresponding meaning (see section 18A of the *Acts Interpretation Act 1901*).

**registered provider** for a course for a location means an approved provider that is entered on the Register as a provider for the course for the location.

**reinstatement fee** means the fee referred to in section 171.

**resident** means:

- (a) in the case of a company, a company incorporated in Australia that carries on business in Australia and that has its central management and control in Australia; or
- (b) in the case of an unincorporated body, a body that carries on business in Australia and that has its central management and control in Australia.

**risk assessment** of a provider means an assessment of the risk of the provider being unable to satisfy the obligations of a provider under this Act.

**search warrant** means a warrant issued under section 144 or subsection 165(3).

**second or third entry to market charge** means the entry to market charge referred to in table item 2 or 3 (as the case requires) of the table in subsection 6(2) of the *Education Services for Overseas Students (Registration Charges) Act 1997*.

**Secretary** means the Secretary of the Department.

**State** includes the Australian Capital Territory and the Northern Territory.

**student visa** has the meaning given by the regulations.

**TEQSA** (short for Tertiary Education Quality and Standards Agency) means the body established by section 132 of the TEQSA Act.

**TEQSA Act** means the *Tertiary Education Quality and Standards Agency Act 2011*.

**Territories Minister** means the Minister responsible for administering the *Christmas Island Act 1958*.

**this Act** includes the regulations.

**TPS levy** means a TPS levy that a provider is required to pay to the TPS Director under paragraph 9AB(1)(d) or subsection 24(1).

**tribunal member** means a member of the Administrative Appeals Tribunal.

**tuition fees** has the meaning given by section 7.

## **5A When higher education providers are taken to have the principal purpose of providing education**

For the purposes of subparagraphs 9AB(1)(f)(ii) and 14(1)(a)(ii) and paragraphs 9AH(c) and 83(1C)(a), a higher education provider is taken to have the principal purpose of providing education if its principal purpose is either or both of the following:

- (a) providing education;
- (b) conducting research.

## **6 Meaning of *associate***

- (1) In this Act:

***associate*** of a person means:

- (a) the spouse or de facto partner of the person; or
- (b) a child of the person, or of the person's spouse or de facto partner; or

**Section 6**

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- (c) a parent of the person, or of the person's spouse or de facto partner; or
- (d) a sibling of the person; or
- (e) if the person is a company:
  - (i) an officer of the company; or
  - (ii) an officer of a company that is related to the first-mentioned company; or
  - (iii) a person who holds a substantial ownership interest in the company; or
- (f) if the person is an association or a co-operative—the principal executive officer or a member of the body (however described) that governs, manages, or conducts the affairs of the association or co-operative; or
- (g) if the person is a body corporate established for a public purpose by or under an Australian law and another body is responsible for the management or the conduct of the affairs of the body corporate—the principal executive officer or a member of that other body; or
- (h) if the person is any other kind of body corporate established for a public purpose by or under an Australian law—the principal executive officer or a member of the body corporate; or
- (i) if the person is a partnership:
  - (i) the principal executive officer or an individual, or a body corporate, that is a member of the partnership; or
  - (ii) an individual who is an officer of a company, or a member of any other body corporate, that is a member of the partnership.

*Related companies*

- (2) For the purposes of subsection (1), the question of whether companies are **related** to each other is to be determined in the same manner as the question of whether bodies corporate (within the meaning of the *Corporations Act 2001*) are related to each other is determined under section 50 of the *Corporations Act 2001*.

*Substantial ownership interest*

- (3) For the purposes of subsection (1), a person holds a **substantial ownership interest** in a company if the total of all amounts paid on the shares in the company in which the person holds interests equals or exceeds 15% of the total of all amounts paid on all shares in the company.

*Interests in shares*

- (4) For the purposes of subsection (3):
- (a) a person **holds an interest in a share** if the person has any legal or equitable interest in the share; and
  - (b) without limiting the generality of paragraph (a), a person **holds an interest in a share** if the person, although not the registered holder of the share, is entitled to exercise, or control the exercise of, a right attached to the share, otherwise than because the person has been appointed as a proxy or representative to vote at a meeting of members of a company or of a class of its members.

*Mutual associates*

- (5) If, under this section, one person is an associate of a second person, then the second person is an **associate** of the first person.

*Chains of associates*

- (6) If, under this section:
- (a) one person is an associate of a second person (including because of a previous application of this subsection); and

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(b) the second person is an associate of a third person;  
then the first person is an *associate* of the third person.

### *Other definitions*

(7) In this section:

**child**: without limiting who is a child of a person for the purposes of this section, someone is the **child** of a person if he or she is a child of the person within the meaning of the *Family Law Act 1975*.

**de facto partner** of a person has the meaning given by the *Acts Interpretation Act 1901*.

**parent**: without limiting who is a parent of a person for the purposes of this section, someone is the **parent** of a person if the person is his or her child because of the definition of **child** in this section.

**person** includes a provider.

### *Certain family relationships*

(8) For the purposes of paragraph (d) of the definition of **associate** in subsection (1), if one person is the child of another person because of the definition of **child** in this section, relationships traced to or through the person are to be determined on the basis that the person is the child of the other person.

## **7 Meaning of *tuition fees***

In this Act:

### ***tuition fees***:

- (a) means fees a provider receives, directly or indirectly, from:
- (i) an overseas student or intending overseas student; or
  - (ii) another person who pays the fees on behalf of an overseas student or intending overseas student;



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that are directly related to the provision of a course that the provider is providing, or offering to provide, to the student; and

- (b) without limiting paragraph (a), includes any classes of fees prescribed by the regulations for the purposes of this paragraph; and
- (c) without limiting paragraph (a), excludes any classes of fees prescribed by the regulations for the purposes of this paragraph.

**7A Meaning of *designated authority***

(1) The *designated authority*, in relation to a provider, is as follows:

<b>Meaning of <i>designated authority</i></b>		
<b>Item</b>	<b>For a provider, to the extent that it is:</b>	<b>the designated authority is:</b>
1	a registered higher education provider (within the meaning of the TEQSA Act)	TEQSA
2	an NVR registered training organisation (within the meaning of the <i>National Vocational Education and Training Regulator Act 2011</i> )	the National VET Regulator
2A	a provider that: <ul style="list-style-type: none"><li>(a) is a registered training organisation (within the meaning of that Act), but not an NVR registered training organisation; and</li><li>(b) is seeking to provide courses to overseas students at locations in a non-referring State (within the meaning of that Act)</li></ul>	the National VET Regulator
3	a provider of: <ul style="list-style-type: none"><li>(a) an English Language Intensive Course for Overseas Students; or</li><li>(b) a Foundation program</li></ul>	the entity determined under subsection (3)

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<b>Meaning of <i>designated authority</i></b>		
<b>Item</b>	<b>For a provider, to the extent that it is:</b>	<b>the designated authority is:</b>
4	a provider not covered by items 1 to 3	the person responsible under the law of the State for approving providers to provide courses to overseas students for the State

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- (2) However, if the provider is covered by more than one item of the table, the Minister may, by legislative instrument:
- (a) determine that one or more entities are the ***designated authorities*** in relation to the provider; and
  - (b) specify the circumstances in which each of those entities is the ***designated authority*** in relation to the provider.
- (3) The Minister may, by legislative instrument, determine an entity to be the ***designated authority*** in relation to a provider covered by table item 3.

## **Division 2—Guide to this Act**

### **7B Guide to this Act**

- This Act regulates providers who provide courses to overseas students.
- A person who provides a course at a location to an overseas student must be registered to provide that course at that location (or do so in accordance with an arrangement with a provider who is so registered).
- This Act and the national code impose obligations on registered providers, such as notification, record keeping and financial requirements.
- In particular, there are obligations on registered providers when the provider or an overseas student of the provider defaults, and does not start or finish a course. The provider is required to provide a refund to the student. For a provider default, the provider may instead provide an alternative course for the student at the provider's expense.
- If a provider that has defaulted does not discharge its obligations to an overseas student, the TPS Director must provide the student with options for suitable alternative courses (if any such courses are available).
- In the case of a default, a call is made on the Overseas Students Tuition Fund to pay for alternative courses, or to provide refunds to students, if providers have not already done so.

## **Part 2—Registration of approved providers**

### **Division 1—Guide to this Part**

#### **8A Guide to this Part**

- A person who provides a course at a location to an overseas student must be registered to provide that course at that location (or do so in accordance with an arrangement with a provider who is so registered).
- Division 2 creates an offence for a person who contravenes that requirement. It is also an offence for a registered provider to offer courses, or hold itself out as able to provide a course, to overseas students without being appropriately registered (or doing so in accordance with an appropriate arrangement).
- Approved providers are registered under Division 3. A provider's registration lists all of the courses that the provider is registered to provide, and the locations at which the provider is registered to provide those courses. Conditions can be imposed on a provider's registration. A registration lasts for a minimum of 2 and a maximum of 5 years.
- The Register (which contains each provider's registration) is maintained, and kept up-to-date, under Division 4.

## **Division 2—Offence for providing or promoting a course without a registered provider**

### **8 Offence: providing or promoting a course without a registered provider**

- (1) A person is guilty of an offence if the person:
- (a) provides a course at a location to an overseas student; or
  - (b) makes an offer to an overseas student or an intending overseas student to provide a course at a location to that student; or
  - (c) invites an overseas student or intending overseas student to undertake, or to apply to undertake, a course at a location; or
  - (d) holds himself, herself or itself out as able or willing to provide a course at a location to overseas students;
- unless:
- (e) the person is registered to provide that particular course at that particular location; or
  - (f) the person does so in accordance with an arrangement that the person has with a registered provider for that particular course for that particular location.

Maximum penalty: Imprisonment for 2 years.

Note 1: This means that, if 2 or more providers jointly provide a course, then only one of the providers needs to be registered.

Note 2: However, a provider of a course who is not registered must identify the registered provider in any written material promoting the course (see section 107) and must not engage in misleading or deceptive conduct in relation to the course (see subsection 83(2)).

Note 3: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (2) The prosecution bears a legal burden in relation to the matter in paragraph (1)(e) (despite subsection 13.3(3) of the *Criminal Code*).

Note: A defendant bears an evidential burden in relation to the matter in paragraph (1)(f): see subsection 13.3(3) of the *Criminal Code*.

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*Defence: surveys etc. to assess demand for a course*

- (3) A person does not commit an offence under paragraph (1)(d) if:
- (a) the relevant conduct was only for either or both of the following purposes:
    - (i) carrying out surveys or other investigations to assess the demand for the course; or
    - (ii) negotiating with another institution or other body or person in connection with designing or developing the course; and
  - (b) the person took reasonable steps to ensure that:
    - (i) overseas students and intending overseas students who were, or might become, interested in undertaking the course; and
    - (ii) any institution or other body or person who might also provide the course;were aware that:
    - (iii) the person was not a registered provider for the course for the location; and
    - (iv) the relevant conduct was not carried out in accordance with an arrangement that the person had with a registered provider for the course for the location; and
  - (c) the person neither invited nor accepted any amount for the course from overseas students or intending overseas students, or from the students' agents.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3): see subsection 13.3(3) of the *Criminal Code*.

## **Division 3—Registration of approved providers**

### **Subdivision A—Registration of approved providers**

#### **9AA Recommendation by designated authority that approved provider be registered to provide a course at a location**

- (1) A designated authority may recommend that an approved provider for a course for a location be registered under this Act to provide that course at that location to overseas students.

##### *Risk management approach*

- (2) A designated authority must use a risk management approach when considering whether to make such a recommendation.

##### *Recommendation may relate to new or existing registration*

- (3) A designated authority may make such a recommendation:
  - (a) for the purposes of the Secretary registering an approved provider under section 9AB; or
  - (b) for the purposes of the Secretary adding one or more courses at one or more locations to a provider's registration under section 9AG.

#### **9AB Registration of approved providers by Secretary**

##### *Registering approved providers*

- (1) The Secretary must register an approved provider if:
  - (a) a designated authority makes a recommendation under section 9AA in relation to the provider; and
  - (b) the provider is:
    - (i) a resident of Australia; or
    - (ii) a Table C provider (within the meaning of the *Higher Education Support Act 2003*); and

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- (c) the provider has paid the first entry to market charge (unless the provider is exempt from the requirement to do so under regulations made under subsection 6(4) of the *Education Services for Overseas Students (Registration Charges) Act 1997*); and
- (d) if the provider is not a registered provider—the provider has paid its first TPS levy (see Subdivision B of Division 2 of Part 5A); and
- (e) in any case—the designated authority has given the Secretary a certificate in accordance with section 9AH; and
- (f) the Secretary has no reason to believe that the provider:
  - (i) is not complying, or will not comply, with this Act or the national code; or
  - (ii) does not have the principal purpose of providing education; or
  - (iii) does not have the clearly demonstrated capacity to provide education of a satisfactory standard; or
  - (iv) is unlikely to be able to provide education of a satisfactory standard; and

Note 1: The Secretary must notify the relevant designated authority if the Secretary has reason to believe that any of the matters set out in this paragraph apply: see section 14.

Note 2: For when a higher education provider has the principal purpose of providing education, see section 5A.

- (g) if the provider has previously been registered—the provider is not liable for an annual registration charge, a second or third entry to market charge or a late payment penalty that remains unpaid after it became due for payment.

Note: The Secretary must determine that the provider is registered for a specified period: see section 9AC.

- (2) The Secretary must not register the provider in any other circumstances.
- (3) Nothing in subsection (1) of this section creates a duty for the Secretary to seek any information about the matters mentioned.



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*Registering courses and locations*

- (4) At the time the Secretary registers an approved provider under this section, the Secretary must determine:
- (a) the course or courses that the provider is registered to provide; and
  - (b) the location or locations at which the provider is registered to provide that course or those courses.

Note 1: For when the approved provider becomes registered to provide a course at a location, see subsection 14A(6).

Note 2: Under section 9AG, courses and locations can be added later to a provider's registration.

*Renewing registrations*

- (5) To avoid doubt, the Secretary registers a provider under this section if the Secretary renews the provider's registration.

**9AC Period of registration**

- (1) At the time the Secretary registers an approved provider under section 9AB, the Secretary must determine that the provider is registered for a specified period that is:
- (a) more than 2 years; but
  - (b) no more than 5 years.
- (2) To avoid doubt, subsection (1) does not limit the Minister's power under section 83 to cancel a registered provider's registration within the first 2 years of the provider's registration.
- (3) The period specified under subsection (1) may be different from the period stated by the designated authority under paragraph 9AH(i).
- (4) The Secretary may vary the period specified under subsection (1) at any time, but the varied period must not:
- (a) end earlier than 2 years; nor
  - (b) extend beyond 5 years;

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from the day on which the provider was registered.

*When registration would otherwise expire before renewal completed*

- (5) If:
- (a) a provider's registration is due to expire; and
  - (b) before that expiry, a designated authority makes a recommendation under section 9AA in relation to the provider; and
  - (c) by the time the provider's registration would otherwise expire, the Secretary has not yet made a decision whether to register the provider under section 9AB;
- the provider's registration is taken to continue until the Secretary makes his or her decision.

*When registration expires before course completed*

- (6) If a provider's registration is due to expire before the provider has finished providing a course for which the provider is registered, the provider is taken to be registered to provide the course until the provider has finished providing the course to the students who were enrolled in that course before that registration was due to expire.

**9AD Imposing conditions on provider's registration when designated authority has imposed conditions**

*Imposing conditions at time of registering providers*

- (1) If:
- (a) a provider is approved by a designated authority to provide courses to overseas students; and
  - (b) the designated authority has imposed a condition on the provider relating to its provision of those courses; and
  - (c) the provider was not registered under section 9AB at the time the condition was imposed; and

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- (d) the provider subsequently becomes registered under that section;
- the Secretary may, at the time of registering the provider, impose that condition on the provider's registration.

*Imposing conditions on registered providers*

- (2) If:
  - (a) a provider is approved by a designated authority to provide courses to overseas students; and
  - (b) the designated authority has imposed a condition on the provider relating to its provision of those courses; and
  - (c) the provider was registered under section 9AB at the time the condition was imposed;the Secretary or Minister may, by notifying the provider in writing, impose that condition on the provider's registration.

*Secretary or Minister to have regard to designated authority's advice*

- (3) In deciding whether to impose a condition under this section, the Secretary or Minister must:
  - (a) have regard to any advice of the relevant designated authority; and
  - (b) use a risk management approach.

**9AE Secretary's conditions on provider's registration**

- (1) The Secretary, on the Secretary's own initiative, may impose a condition on a provider's registration.
- (2) The Secretary may impose a condition:
  - (a) either:
    - (i) at the time that a provider is registered; or
    - (ii) at any time before a provider's registration expires; and
  - (b) either generally or in respect of any one or more specified courses for any one or more specified locations.

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- (3) To avoid doubt, section 9AD does not limit the Secretary's power to impose a condition under this section.
- (4) The Secretary must use a risk management approach in deciding whether to impose a condition under this section.

### **9AF Variation or removal of conditions**

- (1) The Secretary may vary or remove a condition that the Secretary has imposed under section 9AD or 9AE.
- (2) The Minister may vary or remove a condition that the Minister has imposed under section 9AD.
- (3) The Secretary and the Minister must use a risk management approach in deciding whether to vary or remove a condition under this section.

### **9AG Changing the scope of a provider's registration**

- (1) The Secretary must add a course at a specified location to a provider's registration if:
  - (a) a designated authority makes a recommendation under section 9AA that the provider be registered to provide that course at that location; and
  - (b) if the provider is not currently registered to provide any courses at the location being added—the designated authority has given the Secretary a certificate in accordance with section 9AH.
- (2) The Secretary must not add one or more courses at one or more locations to a provider's registration in any other circumstances.
- (3) Nothing in subsection (1) creates a duty for the Secretary to seek any information about the matters mentioned.

## **Subdivision B—Provisions relating to registration**

### **9AH Certificate from designated authority**

For the purposes of paragraphs 9AB(1)(e) and 9AG(1)(b), a designated authority who recommends under section 9AA that an approved provider be registered to provide a course at a location must give the Secretary a certificate, in the form approved by the Secretary for the purposes of this section, that:

- (a) relates to the provider's compliance with the national code; and
- (b) except in the case of a provider mentioned in subsection 9B(1)—states that the provider has satisfied the designated authority that the provider is fit and proper to be registered; and
- (c) in any case—states that the provider has the principal purpose of providing education; and
- (d) states that the provider has clearly demonstrated the capacity to provide education of a satisfactory standard (including by having an appropriate business model and access to adequate financial resources, for example); and
- (e) if applicable, states that the provider meets the ELICOS Standards; and
- (f) if applicable, states that the provider meets the Foundation Program Standards; and
- (g) states the results of the designated authority's risk assessment of the provider; and
- (h) states the conditions (if any) that should apply to the provider's registration for the course for the location, in view of the results of that risk assessment; and
- (i) if the certificate is for the purposes of paragraph 9AB(1)(e)—states the period (of no less than 2 years and no more than 5 years) for which the provider should be registered.

Note 1: For paragraph (b), the designated authority must have regard to the matters referred to in section 9B in deciding whether a provider is fit and proper to be registered.

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Note 2: For paragraph (c), see section 5A for when a higher education provider has the principal purpose of providing education.

### **9B Deciding whether a provider is a fit and proper person**

(1A) This section applies for the purposes of the following provisions:

- (a) paragraph 9AH(b);
- (b) subsection 83(1B);
- (c) subparagraphs 89A(1A)(b)(i) and (ii).

(1) The provisions referred to in subsection (1A) do not apply in relation to the following kinds of provider:

- (a) a provider that is administered by a State education authority;
- (b) any other provider that is entitled to receive funds under a law of the Commonwealth for recurrent expenditure for the provision of education or training, other than one excluded by the regulations from the scope of this paragraph;
- (c) any other provider specified in the regulations.

To avoid doubt, any private corporate body established in connection with a provider covered by paragraph (a) or (b) is not itself, by virtue of that connection alone, a provider covered by that paragraph.

(2) In deciding whether to be satisfied as mentioned in a provision referred to in subsection (1A), the Minister, Secretary or designated authority (as the case requires) must have regard to whether a person to whom subsection (3) applies:

- (a) has been convicted of an offence; or
- (b) has ever had his, her or its registration cancelled or suspended for any one or more courses for any one or more locations under this Act or the old ESOS Act; or
- (c) has ever had an Immigration Minister's suspension certificate issued in respect of him, her or it under this Act; or
- (d) has ever had a condition imposed on his, her or its registration under this Act; or
- (e) has ever become bankrupt, applied to take the benefit of a law for the benefit of bankrupt or insolvent debtors,

- compounded with his or her creditors or assigned his or her remuneration for the benefit of creditors; or
- (f) has ever been disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001*; or
- (g) was involved in the business of the provision of courses by another provider who is covered by any of the above paragraphs at the time of any of the events that gave rise to the relevant prosecution or other action;
- and any other relevant matter.
- (3) For the purposes of subsection (2), this subsection applies to the following persons:
- (a) the provider;
- (b) an associate of the provider who has been, is or will be involved in the business of the provision of courses by the provider;
- (c) a high managerial agent of the provider.
- (4) Nothing in subsection (2) affects the operation of Part VIIC of the *Crimes Act 1914* (which deals with spent convictions).

## 12 Entry to market charges

- (1) The Secretary must give a written notice to each provider who is liable to pay an entry to market charge stating the amount of the charge.

Note 1: A provider must pay 3 entry to market charges during the first 2 years that the provider is first registered. A provider cannot get registered under section 9AB until it has paid the first entry to market charge: see paragraph 9AB(1)(c).

Note 2: For the amounts of the entry to market charges, see sections 6 and 7 of the *Education Services for Overseas Students (Registration Charges) Act 1997*.

- (2) The Secretary must give the notice:
- (a) for the first entry to market charge—before the Secretary registers the provider under section 9AB; and

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- (b) for the second or third entry to market charge—at least 30 days before the time at which the charge becomes due for payment.

Note: For when the charges become due for payment, see section 6 of the *Education Services for Overseas Students (Registration Charges) Act 1997*.

- (3) A provider is still required to pay an entry to market charge despite a failure to comply with this section.

### **13 TPS Director may require information**

- (1) The TPS Director may request a provider who is not yet registered to give the TPS Director information that is relevant to determining the provider's amount of TPS levy at any time before the Secretary registers the provider under section 9AB.

Note: A person could be guilty of an offence if the person provides false or misleading information in complying or purporting to comply with this section: see section 108.

- (2) The TPS Director does not have to determine the amount of the provider's TPS levy under section 53A until the provider complies with the request.

### **14 Notifying designated authorities if the Secretary suspects non-compliance with this Act or the national code etc.**

- (1) This section applies if:
  - (a) the Secretary has reason to believe that an approved provider who is not yet registered:
    - (i) is not complying, or will not comply, with this Act or the national code; or
    - (ii) does not have the principal purpose of providing education; or
    - (iii) does not have the clearly demonstrated capacity to provide education of a satisfactory standard; or
    - (iv) is unlikely to be able to provide education of a satisfactory standard; and



- (b) the source of the information is not the relevant designated authority.

Note: For when a higher education provider has the principal purpose of providing education, see section 5A.

- (2) The Secretary must give the information to the relevant designated authority.
- (3) Before deciding whether the provider should be registered, the Secretary must allow the relevant designated authority at least 7 days to respond in writing to the information.

## **Division 4—The Register**

### **14A The Register**

- (1) The Secretary must cause a Register to be kept for the purposes of this Act.
- (2) The Register is called the Commonwealth Register of Institutions and Courses for Overseas Students.
- (3) The Secretary may cause the contents of all or part of the Register to be made available to the public by electronic or other means.

#### *Contents of the Register*

- (4) The Secretary must cause the following information to be entered on the Register in relation to each provider's registration:
  - (a) the name of each provider who is registered;
  - (b) the name of each course which the provider is registered to provide, and each location at which the provider is registered to provide that course;
  - (c) if the provider is not an individual—the name of the principal executive officer of the provider;
  - (d) a unique identifier allocated to the provider;
  - (e) a unique identifier allocated to each course at each location for which the provider is registered;
  - (f) the day on which the provider is registered;
  - (g) the period of the provider's registration;
  - (h) any conditions that are imposed on the provider's registration (either generally or in relation to specific courses and locations);
  - (i) any other matters prescribed by the regulations.
- (5) The Secretary may cause any other information he or she considers appropriate to be entered on the Register in relation to a provider's registration.

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*When an approved provider is registered to provide a course at a location*

- (6) An approved provider is registered to provide a course at a location when the Secretary has entered the name of the provider, the course and the location on the Register.

**14B Updating the Register**

- (1) The Secretary must ensure that the Register is kept up-to-date.
- (2) Without limiting subsection (1), the Secretary must cause the Register to be altered appropriately if:
- (a) a provider's registration is suspended or cancelled for any one or more courses for any one or more locations; or
  - (b) a provider's registration has a condition imposed on it; or
  - (c) a provider's registration has a suspension or condition removed, or a condition varied; or
  - (d) a provider applies to the Administrative Appeals Tribunal for review of a decision to suspend or cancel, or to impose a condition on, the provider's registration.

Note: The Register can also be updated under section 103 (Immigration Minister's suspension certificate).

- (3) However, a failure to keep the Register up-to-date does not affect the validity of any action referred to in subsection (2).

## **Part 3—Obligations on registered providers**

### **Division 1A—Guide to this Part**

#### **15A Guide to this Part**

- A registered provider has obligations under this Part.
- Division 1 contains general obligations on registered providers. For example, a registered provider must not engage in misleading or deceptive conduct when recruiting or providing courses to overseas students. Other obligations relate to notification, record keeping and financial requirements.
- Division 2 deals with tuition fees. In general, a registered provider must not receive more than 50% of the total tuition fees for a course before an overseas student begins the course. The provider must keep those fees in a separate account.
- Enforcement action (such as imposing conditions, or suspending or cancelling a registration) can be taken under Part 6 in relation to a registered provider who breaches this Part.

## **Division 1—General obligations**

### **15 Registered providers must not engage in misleading or deceptive conduct**

A registered provider must not engage in misleading or deceptive conduct in connection with:

- (a) the recruitment of overseas students or intending overseas students; or
- (b) the provision of courses to overseas students.

Note: The Minister may take action under Division 1 of Part 6 against a registered provider that has breached this section.

### **16 Only Australian residents and Table C providers may be registered**

A registered provider must be:

- (a) a resident of Australia; or
- (b) a Table C provider (within the meaning of the *Higher Education Support Act 2003*).

Note: The Minister may take action under Division 1 of Part 6 against a registered provider that has breached this section.

### **17 Registered providers must notify the Secretary of breaches etc. by associates and high managerial agents**

- (1) A registered provider must tell the Secretary as soon as practicable if the provider becomes aware that an associate or high managerial agent of the provider:
  - (a) has been convicted of an offence under this Act or the old ESOS Act at any time during the last 5 years; or
  - (b) has ever had the associate's or agent's registration cancelled or suspended for any one or more courses for any one or more locations under this Act or the old ESOS Act; or

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- (c) has ever had an Immigration Minister's suspension certificate issued in respect of the associate or agent; or
- (d) has ever had a condition imposed on the associate's or agent's registration under this Act; or
- (e) was involved in the provision of a course by another provider who is covered by paragraph (a), (b), (c) or (d) at the time of any of the events that gave rise to the relevant prosecution or other action.

Note: The Minister may take action under Division 1 of Part 6 against a registered provider that has breached this section.

*No effect on Part VIIC of the Crimes Act*

- (2) Nothing in subsection (1) affects the operation of Part VIIC of the *Crimes Act 1914* (which, in certain cases, relieves persons from any requirement to disclose spent convictions).

**18 Payments to providers**

- (1) If a registered provider for a course enters into an arrangement with one or more other providers to provide the course jointly, the arrangement must:
  - (a) be such that the students pay their tuition fees to the registered provider and not directly to the other providers; or
  - (b) both:
    - (i) be in writing; and
    - (ii) provide for the receipt and disbursement of any tuition fees paid by students directly to any of the other providers.
- (1A) However, for the purpose of determining the registered provider's obligations under this Act, any tuition fees paid by students directly to any of the other providers is taken to have been paid directly to the registered provider.

Note: The Minister may take action under Division 1 of Part 6 against a registered provider that has breached this section.

## 19 Giving information about accepted students

- (1) A registered provider must give the Secretary the following information within the applicable number of days after the event specified below occurs:
- (a) the name and any other prescribed details of each person who becomes an accepted student of that provider;
  - (b) for each person who becomes an accepted student—the name, starting day and expected duration of the course for which the student is accepted;
  - (c) the prescribed information about an accepted student who does not begin his or her course when expected;
  - (d) any termination of an accepted student's studies (whether as a result of action by the student or the provider or otherwise) before the student's course is completed;
  - (e) any change in the identity or duration of an accepted student's course;
  - (f) any other prescribed matter relating to accepted students.
- (1A) The ***applicable number of days*** is:
- (a) if the accepted student is less than 18 years old and the information is of a kind referred to in paragraph (1)(c) or (d)—14 days; or
  - (b) otherwise—31 days.
- (2) A registered provider must give the Secretary particulars of any breach by an accepted student of a prescribed condition of a student visa as soon as practicable after the breach occurs.
- (2A) A registered provider must give particulars of a breach by a student under subsection (2) even if the student has ceased to be an accepted student of the provider.
- (3) Information required under this section must be given in a form approved by the Secretary. The approved form may be electronic.

Note 1: The Minister may take action under Division 1 of Part 6 against a registered provider that has breached this section.

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Note 2: It is an offence to provide false or misleading information in complying or purporting to comply with this section: see section 108.

*Unincorporated registered providers*

- (4) If the registered provider is an unincorporated body, then it is instead the principal executive officer of the provider who must give the Secretary the information as required under this section.
- (5) A registered provider, or the principal executive officer of a registered provider that is an unincorporated body, who fails to comply with this section commits an offence.

Penalty: 60 penalty units.

- (6) An offence under subsection (5) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

**20 Sending students notice of visa breaches**

- (1) Subject to subsection (4A), a registered provider must send an accepted student of the provider a written notice if the student has breached a prescribed condition of a student visa.

Note 1: The Minister may take action under Division 1 of Part 6 against a registered provider that has breached this section.

Note 2: It is an offence to provide false or misleading information in complying or purporting to comply with this section: see section 108.

- (1A) A registered provider must send a notice to a student under subsection (1) even if the student has ceased to be an accepted student of the provider.
- (2) The registered provider must send the notice as soon as practicable after the breach.
- (3) The notice must be in a form approved by the Secretary of the Immigration Minister's Department.
- (4) The notice must:
  - (a) contain particulars of the breach; and



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- (b) state that the student is required to attend in person before an officer (within the meaning of the *Migration Act 1958*) at a specified place within 28 days after the day specified in the notice as the date of the notice, for the purpose of making any submissions about the breach and the circumstances that led to the breach; and
  - (c) state that the student must present photographic identification when so attending; and
  - (d) set out the effect of sections 137J and 137K of that Act.
- (4A) A registered provider must not send a notice under subsection (1) on or after the day this subsection commences.

*Unincorporated registered providers*

- (5) If the registered provider is an unincorporated body, then it is instead the principal executive officer of the provider who must send the notice as required under this section.
- (6) A registered provider, or the principal executive officer of a registered provider that is an unincorporated body, who fails to comply with this section commits an offence.

Penalty: 60 penalty units.

- (7) An offence under subsection (6) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## **21 Record keeping**

*Records of students' details*

- (1) A registered provider must keep records of each accepted student who is enrolled with the provider or who has paid any tuition fees for a course provided by the provider.
- (2) The records must consist of the following details for each accepted student:
  - (a) the student's current residential address;

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- (b) the student's mobile phone number (if any);
  - (c) the student's email address (if any);
  - (d) any other details prescribed by the regulations.
- (2A) A registered provider must have a procedure to ensure that, at least every 6 months, while the student remains an accepted student of the provider:
  - (a) the provider confirms, in writing, the details referred to in subsection (2) with the student; and
  - (b) the records are updated accordingly.

*Records of assessment*

- (2B) If:
  - (a) an accepted student of a registered provider completes an approved unit of study for a course; and
  - (b) the student's progress in that unit is assessed;the provider must record the outcome of the student's assessment for the unit.
- (2C) A record under subsection (2B) must be:
  - (a) kept in accordance with any requirements prescribed by the regulations; and
  - (b) kept up-to-date.

*Retention of records*

- (3) The provider must retain records kept under this section for at least 2 years after the person ceases to be an accepted student. However, the records do not need to be kept up-to-date after the cessation.

Note: The Minister may take action under Division 1 of Part 6 against a registered provider that has breached this section.

*Unincorporated registered providers*

- (4) If the registered provider is an unincorporated body, then it is instead the principal executive officer who must keep and retain the records as required under this section.

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*Offence*

- (5) A registered provider, or the principal executive officer of a registered provider that is an unincorporated body, who fails to comply with this section commits an offence.

Penalty: 60 penalty units.

- (6) An offence under subsection (5) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

*Meaning of **approved unit of study***

- (7) In this Act:

**approved unit of study** for a course means a unit of study (however described) that has been approved for the course by a designated authority.

**21A Obligations relating to the agents of registered providers**

- (1) A registered provider must:
- (a) maintain a list of all the provider's agents; and
  - (b) publish that list:
    - (i) on its website; and
    - (ii) in any other manner prescribed by the regulations; and
  - (c) comply with any requirements of regulations made for the purposes of subsection (2).

Note: The Minister may take action under Division 1 of Part 6 against a registered provider that has breached this section.

- (1A) A registered provider who fails to comply with subsection (1) commits an offence.

Penalty: 60 penalty units.

- (1B) An offence under subsection (1A) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

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- (2) The regulations may prescribe requirements that registered providers must comply with in relation to their agents.

**23 Annual registration charge**

A registered provider who is liable to pay an annual registration charge for a year must pay the charge by the last business day of February of the year.

Note 1: A registered provider is liable for an annual registration charge: see section 5 of the *Education Services for Overseas Students (Registration Charges) Act 1997*.

Note 2: The registration of a provider who breaches this section is automatically suspended: see section 90.

**23A Second and third entry to market charges**

A registered provider who is liable to pay a second or third entry to market charge must pay the charge in accordance with section 6 of the *Education Services for Overseas Students (Registration Charges) Act 1997*.

Note: The registration of a provider who breaches this section is automatically suspended: see section 90 of this Act.

**24 TPS levies**

- (1) A registered provider must pay a TPS levy for each calendar year.

Note: Subdivision B of Division 2 of Part 5A, and the *Education Services for Overseas Students (TPS Levies) Act 2012*, have details about how amounts of TPS levy are determined.

- (2) A registered provider who is required to pay an amount of TPS levy for a calendar year must pay it to the TPS Director by the day stated in the notice that the TPS Director gives the provider under section 53B.

Note: The Minister may take action under Division 1 of Part 6 against a registered provider that has breached this section.

## **26 Disclosure obligations of registered providers**

- (1) A registered provider who is required to pay a TPS levy for a year must tell the TPS Director as soon as practicable of any matter that might cause the TPS Director to increase the amount of levy the provider would be required to pay for that or a later year.
- (2) The obligation in subsection (1) continues to apply even after the registered provider has paid its TPS levy for the year.

### *TPS Director may request information*

- (3) At any time, the TPS Director may request a registered provider to give the TPS Director information that is relevant to determining the provider's amount of TPS levy. The provider must comply with the request.

Note 1: The Minister may take action under Division 1 of Part 6 against a registered provider that has breached this section.

Note 2: It is an offence to provide false or misleading information in complying or purporting to comply with this section: see section 108.

## **Division 2—Tuition fees**

### **27 Tuition fees**

- (1) A registered provider must not receive, in respect of an overseas student or intending overseas student, more than 50% of the student's total tuition fees for a course before the student has begun the course.
- (2) Subsection (1) does not apply if:
  - (a) either of the following choose to pay more than 50% of the overseas student's, or intending overseas student's, total tuition fees for a course before the student has begun the course:
    - (i) the student;
    - (ii) a person who is responsible for paying those fees; or
  - (b) the course has a duration of 25 weeks or less.

### **28 Obligation for registered provider to maintain account**

#### *Requirement to maintain account*

- (1) A registered provider who receives, in respect of an overseas student or intending overseas student, tuition fees for a course before the student has begun the course must maintain an account in accordance with this section.

Note: Providers covered by section 31 are not required to comply with this section.

#### *Account to be maintained with an Australian ADI*

- (2) The account must be maintained with an Australian ADI (within the meaning of section 9 of the *Corporations Act 2001*).

**29 Obligations in relation to account money**

*Tuition fees received before course begins to be paid to credit of account*

- (1) A registered provider who receives, in respect of an overseas student or intending overseas student, tuition fees for a course before the student has begun the course must pay the fees to the credit of an account maintained in accordance with section 28.

Note: Providers covered by section 31 are not required to comply with this section.

- (2) The provider must pay the fees into the account within 5 business days of receiving the fees.

Note: For the definition of **business day**, see section 2B of the *Acts Interpretation Act 1901*.

*Requirement in relation to withdrawing money from account*

- (3) The provider must ensure that, at all times, there is a sufficient amount (the **protected amount**) standing to the credit of the account to repay all tuition fees to every overseas student or intending overseas student (a **relevant student**):

- (a) in respect of whom tuition fees have been paid to the provider; and
- (b) who has not yet begun the course that the provider is to provide to the student.

- (4) An amount may be withdrawn from the account, so as to reduce the balance of the account below the protected amount, only if:

- (a) the amount is withdrawn to pay a refund under section 46D, 47D or 47E to, or in relation to, a relevant student; or
- (b) both of the following apply:
  - (i) the provider arranges, under section 46D, for a relevant student to be offered a place in an alternative course at the provider's expense;
  - (ii) the amount is withdrawn to pay the alternative provider in relation to the relevant student; or

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- (c) the amount is withdrawn to pay the TPS Director under section 50C in relation to the relevant student.

Note 1: Tuition fees of a relevant student cease to be part of the protected amount (and may therefore be withdrawn from the account) once the student begins the course that the provider is to provide to the student: see subsection (3).

Note 2: There are no limits on withdrawals from the account as long as the balance of the account remains above the protected amount.

- (5) An amount withdrawn in accordance with subsection (4) must not be more than the amount of the tuition fees received by the provider in respect of the relevant student before the student begins the course.

*Account money not available for payment of debts etc.*

- (6) To avoid doubt, the protected amount:
- (a) is not available for the payment of a debt of any creditor of the provider, other than as referred to in subsection (4); and
  - (b) is not liable to be attached or taken in execution under the order or process of a court at the instance of any creditor of the provider, other than as referred to in subsection (4).

## 30 Regulations

The regulations may provide additional requirements in relation to:

- (a) tuition fees for a course received by a provider, in respect of an overseas student or intending overseas student, before the student has begun the course; or
- (b) accounts maintained under this Division.

Note: Providers covered by section 31 are not required to comply with regulations made under this section.

## 31 Exemption from requirement

The following kinds of provider are exempt from the requirements in sections 28 and 29 and in regulations made under section 30:

- (a) a provider that is administered by a State education authority;



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- (b) any other provider that is entitled to receive funds under a law of the Commonwealth for recurrent expenditure for the provision of education or training, other than one excluded by the regulations from the scope of this paragraph;
- (c) any other provider specified in the regulations.

To avoid doubt, any private corporate body established in connection with a provider covered by paragraph (a) or (b) of this section is not itself, by virtue of that connection alone, a provider covered by that paragraph.

**32 Offence**

- (1) A person commits an offence if:
  - (a) either:
    - (i) the person is a registered provider; or
    - (ii) if the registered provider is an unincorporated body—the person is the principal executive officer of the provider; and
  - (b) the person engages in conduct; and
  - (c) the conduct contravenes a requirement of section 28 or 29; and
  - (d) the provider is not covered by section 31.

Penalty: 60 penalty units.

- (2) To avoid doubt, subsection (1) does not apply if a person contravenes a requirement of regulations made under section 30.
- (3) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## **Part 4—The national code**

### **Division 1—Guide to this Part**

#### **33A Guide to this Part**

- The Minister makes a national code under this Part.
- The purpose of the national code is to provide nationally consistent standards and procedures for registered providers and persons who deliver educational services on behalf of such providers.
- Designated authorities investigate breaches of the code.
- Enforcement action (such as imposing conditions, or suspending or cancelling a registration) can be taken under Part 6 in relation to a registered provider who breaches the code.

## **Division 2—The national code**

### **33 The national code**

- (1) The Minister may make a national code by legislative instrument.

Note: The Minister may amend the national code by legislative instrument: see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) The code is to be called the National Code of Practice for Providers of Education and Training to Overseas Students.
- (3) The Minister must ensure as far as practicable that there is a national code in force at all times.

### **34 Purpose of the national code**

The purpose of the national code is to provide nationally consistent standards and procedures for registered providers and persons who deliver educational services on behalf of registered providers.

### **38 Contents of the national code**

The national code must contain some or all of the following:

- (b) standards and procedures required of registered providers in providing courses to overseas students;
- (d) standards required of registered providers in connection with their dealings with their agents;
- (e) standards required of a registered provider of a course in connection with the provider's dealings with other providers of the course;
- (g) standards and procedures required of registered providers in making agreements with overseas students or intending overseas students;
- (h) standards required of the content of such agreements;
- (i) any other matters that are necessary or convenient to give effect to the purpose of the national code.

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**40 Legal effects of the national code**

The only legal effects of the national code are the effects that this Act expressly provides for.

Note: This Act provides that compliance with the national code is a prerequisite for registration (see section 9AB) and that sanctions under Division 1 of Part 6 may be imposed on a registered provider who breaches the national code.

**41 Notification of the national code**

- (1) The Secretary must give each registered provider written notice of:
  - (a) the making or amendment of the national code; and
  - (b) the day on which the code or amendment takes effect for the provider; and
  - (c) the way in which the provider can get access to the text of the code in force on that day.
- (2) A notice given under subsection (1) is not a legislative instrument.
- (3) However, a breach of this section does not affect the validity of the national code or an amendment of the code.

**43 Designated authorities to investigate breaches of the national code**

- (1) This section applies if:
  - (a) the Secretary has information suggesting that a registered provider for a course for a location may have breached all or any of the following:
    - (i) the national code;
    - (ii) the ELICOS Standards;
    - (iii) the Foundation Program Standards; and
  - (b) the source of the information is not a designated authority in relation to the provider.
- (2) Before the Secretary investigates the matter further or takes any other action under this Act, the Secretary must notify each relevant

designated authority of the possible breach and may request one or more authorities to investigate the matter or take any other suitable action.

- (3) However, the Secretary may investigate the matter or take any other action:
- (a) without notifying each relevant designated authority; or
  - (b) without waiting for a relevant designated authority to investigate or take any other action;
- if, in the Secretary's opinion, the circumstances of the possible breach require urgent action.

#### **44 Regulations may prescribe penalties**

- (1) The regulations may make it an offence to breach prescribed provisions of the national code.
- (2) The offence must be punishable by a fine of no more than 10 penalty units.

## **Part 5—Tuition protection service**

### **Division 1—Guide to this Part**

#### **45 Guide to this Part**

- This Part sets out what happens when a registered provider or an overseas student or intending overseas student defaults (that is, when a provider fails to start or finish providing a course to a student, or a student fails to start or finish a course with a provider).
- Division 2 sets out the obligation on registered providers to provide refunds to students. In the case of a provider default, a registered provider may instead provide alternative courses for the students at the provider's expense.
- If a provider defaults and fails to discharge its obligations to a student under Division 2, then, under Division 3, the TPS Director must provide the student with options for suitable alternative courses (if any such courses are available).
- Under Division 4, payments can be made out of the Overseas Students Tuition Fund to refund students, and to reimburse providers who provide students with alternative courses, when a provider has failed to discharge its obligations. (This is called making a call on the OSTF.)

## **Division 2—Obligations on registered providers when a provider or student defaults**

### **Subdivision A—Provider defaults**

#### **46A When a registered provider defaults**

- (1) A registered provider *defaults*, in relation to an overseas student or intending overseas student and a course at a location, if:
  - (a) either of the following occurs:
    - (i) the provider fails to start to provide the course to the student at the location on the agreed starting day;
    - (ii) the course ceases to be provided to the student at the location at any time after it starts but before it is completed; and
  - (b) the student has not withdrawn before the default day.

Note: For an exception to this rule, see subsection (3).

- (2) To avoid doubt, a registered provider defaults if the provider is prevented from providing a course at a location because a sanction has been imposed on the provider under Part 6.

#### *Ceasing to provide courses*

- (3) A registered provider does not default, in relation to an overseas student or intending overseas student and a course at a location, if the provider fails to start to provide the course, or the course ceases to be provided, to the student because the student defaults in relation to the course under paragraph 47A(1)(c).
- (4) If a registered provider for a course for a location has changed to become an entity of a different kind, the Minister may notify the provider in writing that the course is not taken, for the purposes of subparagraph (1)(a)(ii) of this section, to have ceased to be provided at the location merely because of the change. The notice has effect accordingly.

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- (5) In deciding whether to give the notice, the Minister must have regard to:
- (a) the effect of the change on the delivery of courses and outcomes for students; and
  - (b) any advice of the relevant designated authority.

**46B Registered providers to notify of provider default**

- (1) A registered provider must give notices in accordance with this section if the provider defaults in relation to one or more overseas students or intending overseas students and a course at a location.

Note: The Minister may take action under Division 1 of Part 6 against a registered provider that has breached this section.

*Notifying Secretary and TPS Director*

- (2) The provider must notify, in writing, the Secretary and the TPS Director of the default within 3 business days of the default occurring.

Note: For the definition of **business day**, see section 2B of the *Acts Interpretation Act 1901*.

- (3) The notice must include the following:
- (a) the circumstances of the default;
  - (b) the details of the students in relation to whom the provider has defaulted;
  - (c) advice as to:
    - (i) whether the provider intends to discharge its obligations to those students under section 46D; and
    - (ii) (if appropriate) how the provider intends to discharge those obligations.

*Notifying students*

- (4) The provider must also notify, in writing, of the default the students in relation to whom the provider has defaulted.



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*Notice requirements*

- (5) A notice given under subsection (2) or (4) must comply with any requirements of a legislative instrument made under subsection (6).

*Legislative instrument*

- (6) The Minister may, by legislative instrument, specify requirements for a notice given under this section.

*Former registered providers*

- (7) This section continues to apply to a provider if the provider ceases to be a registered provider.

**46C Designated authorities to notify of provider default**

A designated authority must notify the Secretary and the TPS Director, in writing, as soon as practicable if the authority becomes aware that a registered provider has defaulted, or is likely to default.

**46D Obligations on registered providers in case of provider default**

- (1) This section applies if a registered provider defaults in relation to an overseas student or intending overseas student and a course at a location.
- (2) The provider must discharge its obligations to the student, in accordance with subsection (3), within the period (the ***provider obligation period***) of 14 days after the default day.

Note: For the consequences of breaching this section, see section 46E (offence), Divisions 3 (student placement service) and 4 (calls on the OSTF), and Division 1 of Part 6 (conditions, suspension and cancellation).

- (3) The provider discharges its obligations to the student if:
- (a) both of the following apply:
- (i) the provider arranges for the student to be offered a place in a course in accordance with subsection (4);

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- (ii) the student accepts the offer in writing; or
- (b) the provider provides a refund in accordance with subsection (6).

*Arranging alternative courses*

- (4) The provider may arrange for the student to be offered a place in an alternative course at the provider's expense.
- (5) The student may accept, in writing, the offer under subsection (4).

*Providing a refund*

- (6) The provider may pay the student a refund of the amount, worked out in accordance with any legislative instrument made under subsection (7), of any unspent tuition fees received by the provider in respect of the student.

Note: For providers who are required to maintain an account in accordance with section 28, the refund might be paid out of the account: see section 29.

- (7) The Minister may, by legislative instrument, specify a method for working out the amount of unspent tuition fees for the purposes of subsection (6).

*Former registered providers*

- (8) This section continues to apply to a provider if the provider ceases to be a registered provider.

**46E Offence for failure to discharge obligations**

- (1) A person commits an offence if:
  - (a) either:
    - (i) the person is a registered provider; or
    - (ii) if a registered provider is an unincorporated body—the person is the principal executive officer of the provider; and

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- (b) the person defaults in relation to an overseas student or intending overseas student and a course at a location; and
- (c) the person fails to discharge its obligations to the student in accordance with section 46D (whether or not the provider is still a registered provider at that time).

Penalty: 60 penalty units.

- (2) An offence under subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (3) The maximum penalty for each day that an offence under subsection (1) continues is 10% of the maximum penalty that can be imposed in respect of that offence.

Note: Subsection (1) is a continuing offence under section 4K of the *Crimes Act 1914*.

**46F Registered providers to notify of outcome of discharge of obligations**

- (1) A registered provider that defaults, in relation to one or more overseas students or intending overseas students and a course at a location, must give a notice in accordance with this section.

Note: The Minister may take action under Division 1 of Part 6 against a registered provider that has breached this section.

- (2) The provider must give a notice to the Secretary and the TPS Director within 7 days after the end of the provider obligation period.

*Notice requirements*

- (3) The notice must include the following:
- (a) whether the provider discharged its obligations to the students in accordance with section 46D;
  - (b) if the provider arranged alternative courses:
    - (i) details of the students the provider arranged alternative courses for; and

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- (ii) details of the courses arranged; and
  - (iii) evidence of each student's acceptance of an offer of a place in an alternative course;
- (c) if the provider provided refunds:
  - (i) details of the students the provider provided refunds to; and
  - (ii) details of the amounts of the refunds provided.
- (4) The notice must comply with any requirements of a legislative instrument made under subsection (5).

*Legislative instrument*

- (5) The Minister may, by legislative instrument, specify requirements for a notice given under this section.

*Former registered providers*

- (6) This section continues to apply to a provider if the provider ceases to be a registered provider.

**Subdivision B—Student defaults**

**47A When a student defaults**

- (1) An overseas student or intending overseas student **defaults**, in relation to a course at a location, if:
  - (a) the course starts at the location on the agreed starting day, but the student does not start the course on that day (and has not previously withdrawn); or
  - (b) the student withdraws from the course at the location (either before or after the agreed starting day); or
  - (c) the registered provider of the course refuses to provide, or continue providing, the course to the student at the location because of one or more of the following events:
    - (i) the student failed to pay an amount he or she was liable to pay the provider, directly or indirectly, in order to undertake the course;

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- (ii) the student breached a condition of his or her student visa;
- (iii) misbehaviour by the student.

Note 1: For an exception to paragraph (1)(a), see subsection (2).

Note 2: For an exception to subparagraph (1)(c)(iii), see subsection (3).

- (2) An overseas student or intending overseas student does not default under paragraph (1)(a) in relation to a course at a location if the student does not start that course because the registered provider defaults in relation to the course at the location under subparagraph 46A(1)(a)(i).
- (3) An overseas student or intending overseas student does not default under subparagraph (1)(c)(iii) unless the registered provider accords the student natural justice before refusing to provide, or continue providing, the course to the student at the location.

### **47B Requirement to make written agreement about student default**

A registered provider must enter into a written agreement with each overseas student or intending overseas student that:

- (a) sets out the refund requirements that apply if the student defaults in relation to a course at a location; and
- (b) meets the requirements (if any) set out in the national code.

Note: For the consequences of breaching this section, see section 47F (offence) and Division 1 of Part 6 (conditions, suspension and cancellation).

### **47D Refund under a written agreement about student default**

- (1) A registered provider must provide a refund under this section if an overseas student or intending overseas student defaults in relation to a course provided by the provider at a location.

Note 1: A refund might not be required under this section if a student is refused a student visa: see subsection (5).

Note 2: For the consequences of breaching this section, see section 47G (offence), Division 4 (calls on the OSTF) and Division 1 of Part 6 (conditions, suspension and cancellation).

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*Provider to pay refund*

- (2) The provider must pay a refund of the amount (if any) required by the agreement entered into with the student under section 47B.

Note: For providers who are required to maintain an account in accordance with section 28, the refund might be paid out of the account: see section 29.

- (3) The provider must pay the refund to the following person:
- (a) the student;
  - (b) if a person (other than the student) is specified in the agreement to receive any refund under this section—the specified person.
- (4) The provider must pay the refund within the period (the ***provider obligation period***) of 4 weeks after receiving a written claim from the student.

*Exception—refusal of student visa*

- (5) A registered provider is not required to provide a refund under this section if:
- (a) the student was refused a student visa; and
  - (b) the refusal was a reason for one or more of the following acts or omissions by the student that directly or indirectly caused the student to default in relation to the course at the location:
    - (i) the student's failure to start the course at the location on the agreed starting day;
    - (ii) the student's withdrawal from the course at that location;
    - (iii) the student's failure to pay an amount he or she was liable to pay the provider, directly or indirectly, in order to undertake the course at that location.

Note: A registered provider is required to provide a refund under section 47E instead.

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*Former registered providers*

- (6) This section continues to apply to a provider if the provider ceases to be a registered provider.

**47E Refund in other cases**

- (1) A registered provider must provide a refund under this section if:
- (a) an overseas student or an intending overseas student defaults in relation to a course at a location; and
  - (b) either:
    - (i) the provider has not entered into an agreement with the student that meets the requirements of section 47B; or
    - (ii) the provider is not required to pay a refund to the student because of subsection 47D(5) (refusal of student visa).

Note: For the consequences of breaching this section, see section 47G (offence), Division 4 (calls on the OSTF) and Division 1 of Part 6 (conditions, suspension and cancellation).

- (2) The provider must pay the student a refund of the amount worked out in accordance with an instrument under subsection (4).

Note: For providers who are required to maintain an account in accordance with section 28, the refund might be paid out of the account: see section 29.

- (3) The provider must pay the refund within the period (the ***provider obligation period***) of 4 weeks after the default day.

*Legislative instrument*

- (4) The Minister may, by legislative instrument, specify a method for working out the amount of a refund for the purposes of subsection (2).

*Former registered providers*

- (5) This section continues to apply to a provider if the provider ceases to be a registered provider.

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**47F Offence for failure to enter agreement that complies with requirements**

- (1) A person commits an offence if:
- (a) either:
    - (i) the person is a registered provider; or
    - (ii) if a registered provider is an unincorporated body—the person is the principal executive officer of the provider; and
  - (b) the person fails to enter into an agreement that complies with the requirements of section 47B.

Penalty: 60 penalty units.

- (2) An offence under subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (3) Section 4K of the *Crimes Act 1914* (continuing offences) does not apply in relation to an offence under subsection (1).

**47G Offence for failure to provide refund**

- (1) A person commits an offence if:
- (a) either:
    - (i) the person is a registered provider; or
    - (ii) if a registered provider is an unincorporated body—the person is the principal executive officer of the provider; and
  - (b) an overseas student or intending overseas student defaults in relation to a course at a location that is or was provided, or is to be provided, by the person; and
  - (c) the person fails to provide a refund to the student in accordance with section 47D or 47E (as the case requires) (whether or not the provider is still a registered provider at that time).

Penalty: 60 penalty units.



- (2) An offence under subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (3) The maximum penalty for each day that an offence under subsection (1) continues is 10% of the maximum penalty that can be imposed in respect of that offence.

Note: Subsection (1) is a continuing offence under section 4K of the *Crimes Act 1914*.

#### **47H Registered providers to notify of outcome of discharge of obligations**

- (1) A registered provider must give a notice in accordance with this section if:
- (a) an overseas student or intending overseas student defaults in relation to a course provided by the provider at a location; and
  - (b) the provider is required to provide a refund under section 47E.

Note: The Minister may take action under Division 1 of Part 6 against a registered provider that has breached this section.

- (2) The provider must give a notice to the Secretary and the TPS Director within 7 days after the end of the provider obligation period.
- (3) The notice must include the following:
- (a) whether the provider provided a refund under section 47E;
  - (b) details of the student the provider provided the refund to;
  - (c) details of the amount of the refund provided.
- (4) The notice must comply with any requirements of a legislative instrument made under subsection (5).

##### *Legislative instrument*

- (5) The Minister may, by legislative instrument, specify requirements for a notice given under this section.

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*Former registered providers*

- (6) This section continues to apply to a provider if the provider ceases to be a registered provider.

**Subdivision C—Recovering an amount**

**48 Recovering an amount**

- (1) An overseas student or intending overseas student may recover an amount owing to the student under this Division as a debt by action in a court of competent jurisdiction (unless subsection (2) applies).

Note: This section is also affected by section 50C.

- (2) If:

- (a) a registered provider (or former registered provider) owes an amount to a student under section 47D; and  
(b) a person (other than the student) is specified in the agreement entered into between the provider and the student under section 47B;

the specified person, rather than the student, may recover the amount as a debt by action in a court of competent jurisdiction.

- (3) This Division does not affect any liability that a provider has apart from this Division to pay an additional amount to the student.

## **Division 3—Student placement service**

### **49 Student placement service**

- (1) This section applies if the TPS Director determines that:
- (a) a registered provider (or former registered provider) has defaulted in relation to an overseas student or intending overseas student and a course at a location; and
  - (b) either:
    - (i) the provider has failed to discharge its obligations under section 46D to the student by the end of the provider obligation period; or
    - (ii) the provider is unlikely to be able to discharge its obligations under section 46D to the student by the end of the provider obligation period.

#### *Suitable alternative courses*

- (2) If any suitable alternative courses are available, the TPS Director must provide, in writing, the student with one or more options for such alternative courses.

#### *Accepting an alternative course*

- (3) If a registered provider of an alternative course referred to in subsection (2) offers the student a place in the course, the student may accept the offer.

Note: A call is made on the OSTF to pay the provider of the alternative course: see Division 4.

- (4) An acceptance must:
- (a) be in writing; and
  - (b) be made within the period specified in subsection (5).
- (5) For the purposes of subsection (4), the period is:
- (a) the period of 30 days after the end of the provider obligation period; or

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- (b) if the TPS Director determines that exceptional circumstances apply:
  - (i) any shorter period determined in writing by the TPS Director; or
  - (ii) any longer period determined in writing by the TPS Director, and agreed to by the student.

*Legislative instrument*

- (6) The Minister may, by legislative instrument, specify criteria to be applied in considering whether a particular course is a suitable alternative course for the purposes of this Act.

## **Division 4—Calls on the OSTF**

### **50A When a call is made on the OSTF**

- (1) This section sets out when a call is made on the OSTF.

*Provider default, no place accepted by student*

- (2) A **call** is made on the OSTF if the TPS Director determines that:
- (a) a registered provider has defaulted in relation to an overseas student or intending overseas student and a course at a location; and
  - (b) the provider has failed to discharge its obligations under section 46D to the student by the end of the provider obligation period; and
  - (c) the student has not accepted a place in an alternative course in accordance with section 49.

*Provider default, place accepted by student*

- (3) A **call** is made on the OSTF if the TPS Director determines that:
- (a) a registered provider has defaulted in relation to an overseas student or intending overseas student and a course at a location; and
  - (b) the provider has failed to discharge its obligations under section 46D to the student by the end of the provider obligation period; and
  - (c) the student accepts a place in an alternative course in accordance with section 49.

*Student default, refund not provided by registered provider*

- (4) A **call** is made on the OSTF if the TPS Director determines that:
- (a) a student has defaulted in relation to a course provided by a registered provider at a location; and

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- (b) the provider fails to provide a refund in accordance with section 47D or 47E (as the case requires) by the end of the provider obligation period.

*No call on the OSTF after a year*

- (5) A call is not made on the OSTF if the time when the TPS Director becomes aware that the circumstances described in subsection (2), (3) or (4) may exist is more than 12 months after the relevant default day.

**50B What the TPS Director must do when a call is made**

*TPS Director must pay amount*

- (1) If a call is made on the OSTF, then, as soon as practicable, the TPS Director must pay out of the OSTF an amount equal to the amount that the provider must still pay in order to satisfy the refund requirements under Division 2.

Note: The TPS Director pays the amount to the person specified in subsection (3).

- (2) If the student accepts a place in an alternative course in accordance with section 49, the TPS Director may spend more than the amount of that refund entitlement if the TPS Director considers that to do so:
  - (a) would best protect the interests of the student; and
  - (b) would not jeopardise the sustainability of the OSTF.

*Who TPS Director pays amount to*

- (3) The TPS Director must, in accordance with a legislative instrument made under subsection (5), pay the amount to:
  - (a) if the student has accepted a place in an alternative course in accordance with section 49—the registered provider of that course; and
  - (b) if a refund was required to be paid under section 47D, and a person (other than the student) is specified in the agreement

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made with the student under section 47B to receive any refund under this section—the specified person; and

(c) otherwise—the student.

(4) If:

- (a) the TPS Director is required under subsection (3) to pay a registered provider for providing an alternative course; and
- (b) the amount required to be paid is more than the cost of the course;

the TPS Director must pay the difference to the person specified in paragraph (3)(b) or (c) (as the case requires).

*Legislative instrument*

- (5) The Minister may, by legislative instrument, specify requirements for payments made under this section.

## **50C Consequences of a payment under section 50B**

*Cessation of claim*

(1) If:

(a) either:

- (i) a registered provider defaults in relation to an overseas student or intending overseas student and a course at a location; or
- (ii) an overseas student or intending overseas student defaults in relation to a course provided by a registered provider at a location; and

(b) the TPS Director pays an amount in accordance with section 50B in relation to the student;

the student, and any person specified in paragraph 50B(3)(b), cease to have any claim against the provider in respect of the student's fees to which the refund requirements under Division 2 relate.

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*Provider must pay back TPS Director*

- (2) Instead, the provider must pay the TPS Director an amount equal to the amount that the TPS Director paid under section 50B.

Note: For providers who are required to maintain an account in accordance with section 28, the amount might be paid out of the account: see section 29.

- (3) The TPS Director may recover that amount from the provider as a debt due to the Commonwealth by action in a court of competent jurisdiction.

*TPS Director may enforce security*

- (4) If the provider had granted the TPS Director a charge or other security over any of its assets, the TPS Director may enforce the charge or security in satisfaction, or partial satisfaction, of the debt.

*Former registered providers*

- (5) This section continues to apply to a provider if the provider ceases to be a registered provider.

**50D TPS Director to notify Immigration Secretary**

- (1) The TPS Director must notify the Immigration Secretary, in accordance with a legislative instrument made under subsection (3), as soon as practicable if the TPS Director provides a refund to a person specified in paragraph 50B(3)(b) or (c).

Note 1: This section constitutes authorisation for the purposes of other laws, such as paragraph 6.2(b) of Australian Privacy Principle 6.

Note 2: The Immigration Secretary's power under this section can be delegated under section 170.

- (2) The notice must include the name of the overseas student or intending overseas student in relation to whom the refund was provided.
- (3) The Minister may, by legislative instrument, specify requirements for a notice given under this section.



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**50E Right to refund may be cancelled etc. without compensation**

A right to be paid an amount under section 50B is granted on the basis that:

- (a) the right may be cancelled, revoked, terminated or varied by or under later legislation; and
- (b) no compensation is payable if the right is so cancelled, revoked, terminated or varied.

## **Part 5A—Overseas Students Tuition Fund, the TPS Director and the TPS Advisory Board**

### **Division 1—Guide to this Part**

#### **51 Guide to this Part**

- This Part establishes the Overseas Students Tuition Fund, the TPS Director and the TPS Advisory Board.
- Division 2:
  - (a) establishes the Overseas Students Tuition Fund (the OSTF); and
  - (b) sets out the money that goes into, and can be paid out of, the OSTF; and
  - (c) has rules relating to TPS levies.

The OSTF provides the money for refunds under Part 5 for defaults where registered providers fail to discharge their obligations to overseas students. The money in the OSTF is mostly made up of the TPS levies collected from registered providers each year.

- Division 3 of this Part establishes the office of the TPS Director, and his or her terms and conditions. The TPS Director is responsible for:
  - (a) assisting students to find suitable alternative courses, and providing refunds, in the case of defaults; and
  - (b) setting the amount of the TPS levy each year; and

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(c) managing the OSTF.

- Division 4 establishes the TPS Advisory Board, the Board members' terms and conditions, and how Board meetings are to be conducted. The Board is responsible for providing advice and making recommendations to the TPS Director on setting the TPS levy each year.

## **Division 2—Overseas Students Tuition Fund and TPS levies**

### **Subdivision A—Overseas Students Tuition Fund**

#### **52A Name of Fund**

- (1) The Overseas Students Tuition Fund is established by this section.
- (2) The Fund is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

#### **52B Credits to the OSTF**

There must be credited to the OSTF amounts equal to the following:

- (a) all amounts of TPS levy received from providers (see section 24 and Subdivision B of this Division);
- (b) all amounts recovered from providers under section 50C;
- (c) any money the TPS Director borrows for the OSTF;
- (d) any other money appropriated by the Parliament for the purpose of the OSTF;
- (e) any late payment penalty received by the TPS Director;
- (f) amounts received by the Commonwealth for the purposes of the OSTF.

Note: An Appropriation Act may contain a provision to the effect that, if any of the purposes of a special account is a purpose that is covered by an item in the Appropriation Act (whether or not the item expressly refers to the special account), then amounts may be debited against the appropriation for that item and credited to that special account.

#### **52C Purposes of the OSTF**

- (1) The purposes of the OSTF are as follows:
  - (a) making payments as a result of calls being made on the OSTF under Division 4 of Part 5;

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- (b) paying or discharging the costs, expenses and other obligations incurred by the Commonwealth in the performance of the TPS Director's functions, including in managing the OSTF (subject to subsection (2)).

Note: See section 80 of the *Public Governance, Performance and Accountability Act 2013* (which deals with special accounts).

- (2) Paragraph (1)(b) does not include:
  - (a) paying any remuneration or allowances payable to the TPS Director under this Act; or
  - (b) paying or discharging any costs, expenses or other obligations associated with services provided to the TPS Director by any employee or officer of the Department.

**Subdivision B—TPS levies****53A TPS Director to set TPS levies**

- (1) For each calendar year, the TPS Director must determine the amount of TPS levy required from each provider who is required to pay a contribution.
- (2) In doing so, the TPS Director must determine the amount in accordance with the legislative instrument made under subsections 9(3) and 10(2) of the *Education Services for Overseas Students (TPS Levies) Act 2012* for that year.

**53B Notice of amount of TPS levy**

- (1) The TPS Director must give a written notice to each provider who is liable to pay a TPS levy stating:
  - (a) the amount of the provider's levy; and
  - (b) if the provider is registered—the day by which the provider must pay the levy.

Note 1: There is no particular due day for unregistered providers, but they cannot be registered under section 9AB until they have paid their contribution: see paragraph 9AB(1)(d).

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Note 2: The provider may seek review of the amount of the TPS levy from the AAT: see section 176.

- (2) The day mentioned in paragraph (1)(b) of this section must be at least 14 days after the notice is given to the provider.

### **53C Notifying the Secretary in relation to payment of TPS levy**

#### *Payment of first TPS levy*

- (1) The TPS Director must notify the Secretary if a provider who is not yet registered under section 9AB has paid its first TPS levy.

Note: The Secretary needs to know when this has happened so that the provider can be registered under section 9AB: see paragraph 9AB(1)(d).

- (2) A notification under subsection (1) must be given as soon as practicable after the provider has paid the levy.

#### *Non-payment of later TPS levies*

- (3) The TPS Director must notify the Secretary if a provider who is registered under section 9AB has not paid a TPS levy for a year by the end of the period referred to in paragraph 53D(2)(b).

### **53D Reminder notices**

- (1) The TPS Director must give a reminder notice to a registered provider who has not paid an amount of TPS levy by the end of the due day.
- (2) The reminder notice must:
- (a) specify the amount that is still owing; and
  - (b) state that the registered provider must pay the amount, along with the associated late payment penalty, by the end of the seventh day after the reminder notice is given to the provider; and
  - (c) set out the effect of section 90.

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Note: Section 90 provides that the provider's registration is automatically suspended if the provider does not comply with the reminder notice.

- (3) The TPS Director must tell the Secretary if the registered provider fails to comply with the reminder notice.

## **Division 3—TPS Director**

### **54A Appointment of TPS Director**

- (1) The TPS Director is to be appointed by the Minister by written instrument.

Note: The TPS Director is eligible for reappointment: see section 33AA of the *Acts Interpretation Act 1901*.

- (2) Before the Minister makes an appointment, the Minister may take into account any recommendation of the Secretary in relation to the appointment.
- (3) The TPS Director holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.
- (4) The TPS Director is to be appointed on a full-time basis.

### **54B Functions of the TPS Director**

The TPS Director has the following functions:

- (a) facilitating and monitoring the placement of overseas students and intending overseas students in alternative courses under section 49;
- (b) determining whether a call is made on the OSTF under section 50A;
- (c) paying amounts out of the OSTF under section 50B;
- (d) reporting to the Minister on:
  - (i) the operation of Part 5 (tuition protection service); and
  - (ii) the financial status of the OSTF;
- (e) managing the OSTF in a way that ensures that it is able to meet all its liabilities from time to time (including entering into a loan agreement for the benefit of the OSTF);
- (f) making the legislative instrument each year for the purposes of subsections 9(3) and 10(2) of the *Education Services for Overseas Students (TPS Levies) Act 2012*;



(g) any other function conferred by this Act.

#### **54C Remuneration and allowances**

- (1) The TPS Director is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the TPS Director is to be paid the remuneration that is prescribed by the regulations.
- (2) The TPS Director is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

#### **54D Leave of absence**

- (1) The TPS Director has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the TPS Director leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

#### **54E Restrictions on outside employment**

The TPS Director must not engage in paid employment outside the duties of his or her office without the Minister's approval.

#### **54F Disclosure of interests**

The TPS Director must give written notice to the Minister of all interests, pecuniary or otherwise, that the TPS Director has or acquires that could conflict with the proper performance of the TPS Director's functions.

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**54G Resignation**

- (1) The TPS Director may resign his or her appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

**54H Termination of appointment**

- (1) The Minister may terminate the appointment of the TPS Director for:
  - (a) misbehaviour; or
  - (b) physical or mental incapacity.
- (2) The Minister may terminate the appointment of the TPS Director if:
  - (a) the TPS Director:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with his or her creditors; or
    - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
  - (b) the TPS Director is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
  - (c) the TPS Director engages, except with the Minister's approval, in paid employment outside the duties of his or her office (see section 54E); or
  - (d) the TPS Director fails, without reasonable excuse, to comply with section 54F (disclosure of interests).

### **54J Other terms and conditions**

The TPS Director holds office on the terms and conditions (if any) in relation to matters not covered by this Division that are determined by the Minister.

### **54K Acting TPS Director**

The Minister may appoint a person to act as the TPS Director:

- (a) during a vacancy in the office of the TPS Director (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the TPS Director is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

### **54L Consultants**

The TPS Director may, on behalf of the Commonwealth, engage consultants to assist in the performance of the TPS Director's functions.

### **54M Indemnity**

- (1) The TPS Director is not personally subject to any liability to any person (other than the Commonwealth) in respect of anything done, or omitted to be done, in good faith in the exercise or performance of powers or functions under this Act or the *Education Services for Overseas Students (TPS Levies) Act 2012*.
- (2) However, this section does not affect the operation of the *Privacy Act 1988*.

## **Division 4—TPS Advisory Board**

### **Subdivision A—Appointment of Board members**

#### **55A Establishment**

The TPS Advisory Board is established by this section.

#### **55B Function of the Board**

The Board's function is, either on its own initiative or at the request of the TPS Director, to provide advice and make recommendations to the TPS Director in relation to the making of a legislative instrument each year under subsections 9(3) and 10(2) of the *Education Services for Overseas Students (TPS Levies) Act 2012*.

#### **55C Membership**

- (1) The Board consists of the following members:
  - (a) a representative from each of the following agencies:
    - (i) the Department;
    - (ii) the Department whose Minister administers the *Public Governance, Performance and Accountability Act 2013*;
    - (iii) the Department administered by the Immigration Minister;
    - (iv) the Australian Government Actuary;
    - (v) the Australian Prudential Regulation Authority;
  - (b) up to 7 other members.

*Requirements for Board members appointed under paragraph (1)(b)*

- (2) A person is not eligible for appointment as a Board member under paragraph (1)(b) unless the Minister is satisfied that he or she has

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qualifications or experience that the Minister considers relevant to the performance of the Board's function.

- (2A) In appointing a Board member under paragraph (1)(b), the Minister must ensure that the Board members appointed under that paragraph, as a group, have qualifications or experience relevant to the operations of providers from across the international education and training sector.

*Chair and Deputy Chair*

- (3) The Minister must appoint, in writing, one of the Board members to be the Chair, and another Board member to be the Deputy Chair.

**55D Appointment of Board members**

- (1) Board members are to be appointed by the Minister by written instrument.

Note: Board members are eligible for reappointment: see section 33AA of the *Acts Interpretation Act 1901*.

- (2) A Board member holds office for the period specified in the instrument of appointment. The period must not exceed 2 years.
- (3) A Board member is to be appointed on a part-time basis.

**55E Remuneration and allowances**

- (1) A Board member appointed under paragraph 55C(1)(b) is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, such a Board member is to be paid the remuneration that is prescribed by the regulations.
- (2) A Board member appointed under paragraph 55C(1)(b) is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

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**55F Leave of absence**

*Chair*

- (1) The Minister may grant leave of absence to the Chair on the terms and conditions that the Minister determines.

*Other members*

- (2) The Chair may grant leave of absence to any other Board member on the terms and conditions that the Chair determines.

**55G Restrictions on outside employment**

A Board member must not engage in any paid employment that, in the Minister's opinion, conflicts or may conflict with the proper performance of his or her duties.

**55H Disclosure of interests**

A Board member must give written notice to the Minister of all interests, pecuniary or otherwise, that the member has or acquires that could conflict with the proper performance of the member's functions.

**55J Disclosure of interests to the Board**

- (1) A Board member who has an interest, pecuniary or otherwise, in a matter being considered or about to be considered by the Board must disclose the nature of the interest to a meeting of the Board.
- (2) The disclosure must be made as soon as possible after the relevant facts have come to the Board member's knowledge.
- (3) The disclosure must be recorded in the minutes of the meeting of the Board.
- (4) Unless the Board determines otherwise, the Board member:

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- (a) must not be present during any deliberation by the Board on the matter; and
  - (b) must not take part in any decision of the Board with respect to the matter.
- (5) In addition, the Board member:
  - (a) must not be present during any deliberation of the Board for the purpose of making a determination under subsection (4); and
  - (b) must not take part in making the determination.
- (6) A determination under subsection (4) must be recorded in the minutes of the meeting of the Board.

**55K Resignation**

- (1) A Board member may resign his or her appointment by giving the Minister a written resignation.
- (2) The Chair or Deputy Chair may resign his or her appointment as the Chair or Deputy Chair (as the case requires) without resigning his or her appointment as a Board member.
- (3) A resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

**55L Termination**

- (1) The Minister may terminate the appointment of a Board member for:
  - (a) misbehaviour; or
  - (b) physical or mental incapacity.
- (2) The Minister may terminate the appointment of a Board member if:
  - (a) the Board member:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

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- (iii) compounds with his or her creditors; or
- (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
- (b) the Board member is absent, except on leave of absence, from 2 consecutive meetings of the Board; or
- (c) the Board member engages in paid employment that, in the Minister's opinion, conflicts or may conflict with the proper performance of his or her duties (see section 55G); or
- (d) the Board member fails, without reasonable excuse, to comply with section 55H or 55J (disclosure of interests).

**55M Other terms and conditions**

A Board member holds office on the terms and conditions (if any) in relation to matters not covered by this Division that are determined by the Minister.

**55N Acting appointments**

*Acting Board member*

- (1) The Minister may appoint a person to act as a Board member:
  - (a) during a vacancy in the office of the Board member, whether or not an appointment has previously been made to the office; or
  - (b) during any period, or during all periods, when the Board member:
    - (i) is absent from duty or from Australia; or
    - (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

*Acting Chair*

- (2) The Minister may appoint a Board member to act as the Chair if the Deputy Chair is unable to act as the Chair:



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- (a) during a vacancy in the office of the Chair, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Chair:
  - (i) is absent from duty or from Australia; or
  - (ii) is, for any reason, unable to perform the duties of the office.

## **Subdivision B—Meetings of the TPS Advisory Board**

### **56A Convening meetings**

- (1) The Board must hold the meetings that are necessary for the efficient performance of its function.
- (2) Meetings are to be held at the times and places that the Chair determines.

Note: See also section 33B of the *Acts Interpretation Act 1901*, which contains extra rules about meetings by telephone etc.

- (3) The Chair:
  - (a) may convene a meeting; and
  - (b) must convene at least 2 meetings each calendar year; and
  - (c) must convene a meeting if requested in writing by:
    - (i) 7 or more other Board members; or
    - (ii) the Minister.

### **56B Presiding at meetings**

- (1) The Chair must preside at all meetings at which he or she is present.
- (2) If the Chair is not present at a meeting, the Deputy Chair must preside.

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### **56C Quorum**

- (1) At a meeting of the Board, a quorum is constituted by 6 Board members, one of whom must be either the Chair or the Deputy Chair.
- (2) However, if:
  - (a) section 55J prevents a Board member from participating in the deliberations or decisions of the Board with respect to a particular matter; and
  - (b) when the Board member leaves the meeting concerned there is no longer a quorum present; and
  - (c) either the Chair or the Deputy Chair still remains at the meeting;the remaining Board members at the meeting constitute a quorum for the purpose of any deliberation or decision at that meeting with respect to that matter.

### **56D Voting at meetings**

- (1) A question arising at a meeting is to be determined by a majority of the votes of the Board members present and voting.
- (2) The person presiding at a meeting has a deliberative vote and, in the event of an equality of votes, a casting vote.

### **56E Conduct of meetings**

The Board may regulate proceedings at its meetings as it considers appropriate.

### **56F Minutes**

The Board must keep minutes of its meetings.

### **56G Decisions without meetings**

- (1) The Board is taken to have made a decision at a meeting if:

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- (a) without meeting, a majority of the Board members entitled to vote on the proposed decision indicate agreement with the decision; and
  - (b) that agreement is indicated in accordance with the method determined by the Board under subsection (2); and
  - (c) all the Board members were informed of the proposed decision, or reasonable efforts were made to inform all the members of the proposed decision.
- (2) Subsection (1) applies only if the Board:
  - (a) has determined that it may make decisions of that kind without meeting; and
  - (b) has determined the method by which Board members are to indicate agreement with proposed decisions.
- (3) For the purposes of paragraph (1)(a), a Board member is not entitled to vote on a proposed decision if the Board member would not have been entitled to vote on that proposal if the matter had been considered at a meeting of the Board.
- (4) The Board must keep a record of decisions made in accordance with this section.

## **Part 6—Enforcement**

### **Division 1A—Guide to this Part**

#### **83A Guide to this Part**

- Compliance with this Act, the national code and any conditions on a provider's registration is enforced under this Part.
- The Minister can take enforcement action (such as imposing conditions, or suspending or cancelling a registration) under Division 1. Such action can be taken in relation to a provider's registration generally or in relation to a specific course at a specific location. Division 1 also provides for automatic suspension or cancellation of a provider's registration in certain circumstances.
- The Immigration Minister can give a suspension certificate under Division 2 if a significant number of overseas students or intending overseas students are entering or remaining in Australia for a purpose not contemplated by their visas. A registered provider must not offer courses, or hold itself out as able to provide a course, to overseas students while such a certificate is in force for the provider.
- Division 3 provides for certain offences, such as failing to identify a registered provider in written material or providing false or misleading information.
- The Secretary may accept a written undertaking under Division 4 relating to complying with a provision of this Act, the national code or a provision of a provider's registration. The Secretary may apply to a court to enforce the undertaking.

## **Division 1—Conditions, suspension and cancellation**

### **Subdivision A—Sanctions for non-compliance etc.**

#### **83 Minister may impose sanctions for non-compliance etc.**

##### *Circumstances in which Minister may take action*

- (1) The Minister may take one or more of the actions listed in subsection (3) against a registered provider if the Minister believes on reasonable grounds that the registered provider or an associate or high managerial agent of the registered provider is breaching, or has breached, this Act, the national code or a condition of the provider's registration.

Note: Section 93 sets out the procedure for taking the action.

- (1A) The Minister may take one or more of those actions against a registered provider if the Minister believes on reasonable grounds that because of financial difficulty or any other reason the provider might not be able to:
- (a) provide courses to its accepted students; or
  - (b) refund amounts to its accepted students under Division 2 of Part 5.

Note: Section 93 sets out the procedure for taking this action.

- (1B) The Minister may also take one or more of those actions against a registered provider (other than a provider covered by subsection 9B(1)) if the Minister believes on reasonable grounds that the provider is not fit and proper to be registered.

Note 1: Section 93 sets out the procedure for taking the action.

Note 2: The Minister must have regard to the matters referred to in section 9B in deciding whether a provider is fit and proper to be registered.

- (1C) The Minister may also take one or more of those actions against a registered provider if the Minister believes on reasonable grounds that the registered provider:

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- (a) does not have the principal purpose of providing education;  
or
- (b) does not have the clearly demonstrated capacity to provide education of a satisfactory standard.

Note 1: Section 93 sets out the procedure for taking the action.

Note 2: For when a higher education provider has the principal purpose of providing education, see section 5A.

- (2) The Minister may also take one or more of those actions against a registered provider for a course if the Minister believes on reasonable grounds that a provider that is providing the course with the registered provider is engaging, or has engaged, in misleading or deceptive conduct in connection with:
  - (a) the recruitment of overseas students or intending overseas students to the course; or
  - (b) the provision of the course to overseas students.

Note: Section 93 sets out the procedure for taking the action.

*Actions the Minister may take*

- (3) The actions are:
  - (a) to impose one or more conditions on the registered provider's registration either generally or in respect of any one or more specified courses for any one or more specified locations (see section 86);
  - (b) to suspend the registered provider's registration for any one or more specified courses for any one or more specified locations (see section 95);
  - (c) to cancel the registered provider's registration for any one or more specified courses for any one or more specified locations.

*Actions not limited to particular courses*

- (4) The Minister may take action under this section against a registered provider's registration for a particular course for a location even if

the conduct, or the situation, that results in the Minister taking the action does not relate to that particular course.

#### **84 Minister may take further action**

The Minister may take action under section 83 even if he or she has already taken other action under that section in relation to the same matter.

#### **85 Minister may take action for breaches occurring before provider was registered**

The Minister may take action against a registered provider under section 83 even if the provider was not yet registered at the time of the relevant breach.

#### **86 Examples of conditions**

- (1) Examples of the conditions that the Minister may impose under section 83 are conditions that:
  - (a) there be no net increase, or only a limited net increase, in the number of overseas students enrolled with the provider;
  - (b) the provider enrol only a limited number of new overseas students;
  - (c) the provider not accept any new students from a specified country;
  - (d) the provider not deal with a specified agent in relation to overseas students or intending overseas students;
  - (e) the provider not provide a specified course.
- (2) The examples do not limit the kinds of condition that the Minister may impose.

## **Subdivision C—Automatic suspension and cancellation**

### **89 Automatic suspension for loss of approval**

- (1) The registration of a provider for a course for a location is suspended by force of this subsection if the relevant designated authority suspends the provider's approval for that course for that location.

Note: Section 95 sets out the effect of suspension.

#### *Removal of suspension*

- (2) After the designated authority's suspension is removed, the Minister may give the provider a notice that sets out the effect of subsection (3).
- (3) If the Minister gives the provider a notice under subsection (2), the suspension is removed by force of this subsection when the provider has paid the associated reinstatement fee.

Note: For the amount of the associated reinstatement fee, see section 171.

### **89A Automatic suspension if not fit and proper**

- (1A) This section applies if:

- (a) one or more designated authorities approve a provider (other than a provider covered by subsection 9B(1)) to provide a course at a location; and
- (b) either:
  - (i) a designated authority mentioned in paragraph (a) tells the Secretary that the authority is no longer satisfied that the provider is fit and proper to be registered; or
  - (ii) the Secretary is no longer satisfied that the provider is fit and proper to be registered.

Note: The designated authority and Secretary must have regard to the matters referred to in section 9B in deciding whether a provider is fit and proper to be registered.



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*Suspension of registration of all courses at all locations*

- (1B) The registration of the provider is suspended for all courses for all locations by force of this subsection, unless subsection (1C) applies.

Note: Section 95 sets out the effect of suspension.

*Suspension when the designated authority which notifies the Secretary is a State designated authority*

- (1C) The registration of the provider is suspended for all courses for all locations in a State, by force of this subsection, if:
- (a) subparagraph (1A)(b)(i) applies and subparagraph (1A)(b)(ii) does not apply; and
  - (b) the designated authority mentioned in subparagraph (1A)(b)(i) is a designated authority referred to in table item 4 of the table in subsection 7A(1) in relation to that particular State.

Note: Section 95 sets out the effect of suspension.

- (1D) If:
- (a) subsection (1C) applies in relation to the registration of a provider; and
  - (b) either the National VET Regulator or TEQSA has approved the provider to provide courses at one or more locations;
- then the registration of the provider is also suspended for all of those courses at all locations.

Note: Section 95 sets out the effect of suspension.

*Removal of suspension*

- (2) The Minister may give the provider a notice that sets out the effect of subsection (3) if:
- (a) the designated authority mentioned in subparagraph (1A)(b)(i) tells the Secretary that the authority is again satisfied that the provider is fit and proper to be registered; or

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- (b) the Secretary is again satisfied that the provider is fit and proper to be registered;  
as the case requires.
- (3) If the Minister gives the provider a notice under subsection (2), the suspension is removed by force of this subsection when the provider has paid the associated reinstatement fee.

Note: For the amount of the associated reinstatement fee, see section 171.

**90 Automatic suspension for non-payment of levy or charge**

- (1) The registration of a provider who:
  - (a) fails to comply with a reminder notice given under section 53D; or
  - (b) fails to pay the annual registration charge in accordance with section 23; or
  - (c) fails to pay a second or third entry to market charge in accordance with section 23A;is suspended by force of this subsection for all courses for all locations.

Note: Section 95 sets out the effect of suspension.

*Removal of suspension*

- (2) The suspension is removed by force of this subsection when the provider has paid:
  - (a) the amount owing; and
  - (b) the associated late payment penalty; and
  - (c) the associated reinstatement fee.

Note: For the amount of the associated reinstatement fee, see section 171.

**91 Automatic cancellation of registration for course for location if provider ceases to be approved for that course and location**

A provider's registration for a course for a location is cancelled by force of this section if the provider ceases to be an approved provider for that course for that location.

**92 Automatic cancellation for bankruptcy**

The registration of a provider is cancelled for all courses for all locations by force of this section if:

- (a) a provider who is an individual becomes bankrupt; or
- (b) a winding-up order is made in respect of a provider that is a body corporate.

**Subdivision D—Common rules for conditions, suspension and cancellation**

**93 Procedure for taking action etc.**

*Notice requirements before Minister makes decision*

- (1) Before making a decision:
  - (aa) to impose a condition under subsection 9AD(2); or
  - (a) to take action under Subdivision A of this Division; or
  - (b) not to give a notice under subsection 89(2) or 89A(2);the Minister must give the registered provider a written notice:
  - (c) stating that the Minister intends to make that decision and why; and
  - (d) giving the provider:
    - (ia) if subsection 9AD(2) applies—at least 72 hours; or
    - (i) if Subdivision A applies and, in the Secretary's opinion, the circumstances require urgent action—at least 24 hours; or

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- (ii) if Subdivision A otherwise applies—at least 72 hours;  
or
- (iii) if subsection 89(2) or 89A(2) applies—at least 7 days;  
to give the Minister written submissions about the matter.

*Notice requirements before Secretary makes decision*

- (1A) Before making a decision to impose a condition under subsection 9AE(1), the Secretary must give the registered provider a written notice that:
  - (a) states that the Secretary intends to make that decision and why; and
  - (b) gives the registered provider at least 72 hours to give the Secretary written submissions about the matter.

*Consideration of submissions received and giving notice of decision*

- (2) After considering any submission received within that period, if the Minister or Secretary still considers that he or she should make the decision, the Minister or Secretary may do so and must give the provider written notice of the decision.

**94 Minister may authorise removal of condition or suspension**

*Removal of condition*

- (1) If a condition is imposed on a provider's registration, the Minister may, at any time, give the provider a written notice that:
  - (a) specifies the condition; and
  - (b) sets out the effect of subsection (2).
- (2) If the Minister has given a provider a notice under subsection (1), the condition specified in the notice is removed by force of this subsection when the provider has paid the associated reinstatement fee.

Note: For the amount of the associated reinstatement fee, see section 171.

*Removal of suspension*

- (3) If a provider's registration is suspended, the Minister may at any time give the provider a written notice that sets out the effect of subsection (4).
- (4) If the Minister has given a provider a notice under subsection (3), the suspension is removed by force of this subsection when the provider has paid the associated reinstatement fee.

Note: For the amount of the associated reinstatement fee, see section 171.

**95 Effect of suspension**

- (1) A provider whose registration is suspended for a course for a location under this Division must not:
  - (a) do any thing for the purpose of recruiting or enrolling overseas students or intending overseas students for the course at the location; or
  - (b) subject to subsection (3), solicit or accept any money from an overseas student or an intending overseas student for the course at the location; or
  - (c) if an accepted student of the provider has not begun the course—permit the student to begin the course at the location.
- (2) The provider is still registered for the course for the location for all other purposes.
- (3) The Minister may give to a provider whose registration is suspended a notice in writing that:
  - (a) states that, for the whole period of the suspension, paragraph (1)(b) does not apply to the provider in relation to overseas students who have started the course; or
  - (b) states that, for a specified part of the period of the suspension, paragraph (1)(b) does not apply to the provider in relation to overseas students who have started the course.

The notice has effect accordingly.

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**Division 1** Conditions, suspension and cancellation

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- (4) A notice under subsection (3) is not a legislative instrument.

## **Division 2—Immigration Minister's suspension certificate**

### **97 Immigration Minister may give a registered provider a suspension certificate**

- (1) The Immigration Minister may give an Immigration Minister's suspension certificate to a registered provider if, in the Immigration Minister's opinion, a significant number of overseas students or intending overseas students in respect of:
- (a) the registered provider; or
  - (b) another provider that is an associate of the registered provider;
- are entering or remaining in Australia for purposes not contemplated by their visas.

#### *Matters that the Minister may consider*

- (2) In considering whether to give such a certificate, the Immigration Minister may have regard to any of the following:
- (a) the number of applications for student visas made by overseas students and intending overseas students, in respect of the registered provider or associate, that have been refused, where there were fraudulent statements made or fraudulent documents given in connection with the application;
  - (b) the number of the registered provider's or associate's accepted students and former accepted students who have breached conditions of their visas;
  - (c) the number of accepted students and former accepted students of the registered provider or associate who remain in Australia unlawfully after finishing their courses;
  - (d) any other matter set out in regulations made for the purposes of this paragraph under the *Migration Act 1958*.

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- (3) Subsection (2) does not limit the matters to which the Immigration Minister may have regard in considering whether to give a certificate.
- (4) For the purposes of paragraph (2)(a), it is immaterial whether or not the fraudulent statements or documents were a reason for refusing the application.

*Power to be exercised personally*

- (5) The power to give an Immigration Minister's suspension certificate must be exercised by the Immigration Minister personally.

**98 Procedure for issuing certificate**

*Written notice of intention to give certificate*

- (1) Before issuing the certificate, the Immigration Minister must give the registered provider a written notice:
  - (a) stating that the Immigration Minister intends to give the provider an Immigration Minister's suspension certificate, and why; and
  - (b) giving the provider at least 7 days to give the Immigration Minister written submissions about the matter.
- (2) After considering any submission received within that period, the Immigration Minister may give the registered provider the certificate if the Immigration Minister still considers that he or she should do so.

*Tabling certificate in Parliament*

- (3) The Immigration Minister must table a copy of the certificate in both Houses of Parliament within 15 sitting days of giving it to the provider.



*Delegating function of giving written notice*

- (4) The Immigration Minister may, by signed writing, delegate to the Secretary of his or her Department, or to an SES employee or acting SES employee in that Department, the function of giving notices under subsection (1).

**99 Content of certificate**

An Immigration Minister's suspension certificate must:

- (a) state the day on which it takes effect; and
- (b) set out why it has been given; and
- (c) set out the effect of sections 100, 101 and 102.

**100 Duration of certificate**

- (1) An Immigration Minister's suspension certificate remains in effect for the period of 6 months beginning on the day that it says it takes effect.
- (2) The Immigration Minister may revoke an Immigration Minister's suspension certificate at any time by giving the registered provider written notice.

**101 Effect of certificate: offence**

- (1) A person is guilty of an offence if the person:
  - (a) makes an offer to an overseas student, an intending overseas student or any other prescribed non-citizen for him or her to be provided with a course at any location by a registered provider; or
  - (b) invites an overseas student, an intending overseas student or a prescribed non-citizen to undertake, or apply to undertake, a course at any location offered by a registered provider; or
  - (c) holds a registered provider out as able or willing to provide a course at any location to overseas students or prescribed non-citizens;

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while an Immigration Minister's suspension certificate is in effect for that registered provider.

Maximum penalty: Imprisonment for 2 years.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(2) The provider is still registered for all other purposes.

(3) In this section:

***prescribed non-citizen*** means a non-citizen (within the meaning of the *Migration Act 1958*) who is of a kind prescribed for the purposes of this section in regulations made under that Act.

**102 Further certificates**

(1) Unless, by the end of the period for which an Immigration Minister's suspension certificate is in effect, the registered provider has satisfied the Immigration Minister that he or she should not be given a further certificate, the Immigration Minister may give the provider a further Immigration Minister's suspension certificate.

(2) The Immigration Minister does not have to follow the procedure in subsections 98(1) and (2) in order to give a further Immigration Minister's suspension certificate.

*Tabling further certificate in Parliament*

(3) However, the Immigration Minister must table a copy of the further certificate in both Houses of Parliament within 15 sitting days of giving it to the provider.

*Application of this section to further certificates*

(4) This section applies to a further Immigration Minister's suspension certificate or certificates in the same way as it applies to an original Immigration Minister's suspension certificate.

### **103 Updating the Register**

- (1) The Secretary must cause the Register to be altered appropriately if the Immigration Minister has given or revoked an Immigration Minister's suspension certificate (or a further such certificate).
- (2) However, a failure to do so does not affect the validity of the certificate or revocation.

## Division 3—Offences

### 106 Infringement notices

- (1A) This section applies to an offence against:
- (a) subsection 19(5); or
  - (b) subsection 20(6); or
  - (c) subsection 21(5); or
  - (d) subsection 21A(1A); or
  - (e) section 46E; or
  - (f) section 47F; or
  - (g) section 47G.
- (1) The regulations may provide for the Minister to give a registered provider an infringement notice requiring payment of a penalty as an alternative to prosecution for the offence.
- (2) The amount of the penalty must be:
- (a) for an individual—4 penalty units; or
  - (b) for a body corporate—20 penalty units.
- Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.
- (3) The regulations may provide for matters concerning the infringement notices.

### 107 Failing to identify registered provider in written material

A person is guilty of an offence if the person in written material, including in electronic form:

- (a) makes an offer to an overseas student or an intending overseas student to provide a course at a location to that student; or
- (b) invites an overseas student or intending overseas student to undertake, or to apply to undertake, a course at a location; or

- (c) holds himself, herself or itself out as able or willing to provide the course at a location to overseas students; and the material fails to identify any one or more of the following:
  - (d) the registered provider for the course;
  - (e) the unique identifier allocated to the registered provider under paragraph 14A(4)(d);
  - (f) any other information prescribed by the regulations.

Maximum penalty: Imprisonment for 6 months.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

### **108 Providing false or misleading information**

A person is guilty of an offence if the person provides false or misleading information in complying or purporting to comply with any of the following provisions:

- (a) section 13 (TPS Director may require information);
- (b) section 19 (giving information about accepted students);
- (c) section 20 (sending students notice of visa breaches);
- (d) subsection 26(1) or (3) (disclosure obligations of registered providers).

Maximum penalty: Imprisonment for 12 months.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

### **109 Access to electronic notification system**

- (1) This section applies if a computer system is established for the purpose of receiving and storing information about accepted students and former accepted students that is given to the Secretary under section 19.
- (2) The Secretary may give any person access to the system for the purposes of this Act.

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*Access may be given subject to conditions*

- (3) The access may be given subject to conditions that the Secretary determines in writing relating to the use of the system and of the means of obtaining access to the system.
- (4) The Secretary must give the person a copy of the conditions.

*Offence: breaching conditions*

- (5) The person is guilty of an offence if the person:
  - (a) intentionally breaches a condition; and
  - (b) knows that, or is reckless as to whether, that conduct is a breach of the condition.

Maximum penalty: Imprisonment for 6 months.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: A person who obtains unauthorised access to information on the system that is protected by an access control system could be guilty of an offence against Part 10-7 of the *Criminal Code*.

## **Division 4—Enforceable undertakings**

### **110A Acceptance of undertakings**

- (1) The Secretary may accept any of the following undertakings:
  - (a) a written undertaking given by a registered provider that the provider will take specified action in order for the provider to comply with a provision of this Act, the national code or a condition of the provider's registration;
  - (b) a written undertaking given by a registered provider that the provider will refrain from taking specified action in order for the provider to comply with a provision of this Act, the national code or a condition of the provider's registration;
  - (c) a written undertaking given by a registered provider that the provider will take specified action directed towards ensuring that, in the future, the provider does not (or is unlikely to) contravene a provision of this Act, the national code or a condition of the provider's registration.
- (2) The provider may withdraw or vary the undertaking at any time, but only with the written consent of the Secretary.
- (3) The consent of the Secretary is not a legislative instrument.
- (4) The Secretary may, by written notice given to the provider, cancel the undertaking.

### **110B Enforcement of undertakings**

- (1) The Secretary may apply to the Federal Court of Australia, or the Federal Circuit Court of Australia, for an order under subsection (2) if:
  - (a) a registered provider has given an undertaking under section 110A; and
  - (b) the undertaking has not been withdrawn or cancelled; and
  - (c) the Secretary considers that the provider has breached the undertaking.

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- (2) If the Court is satisfied that the provider has breached the undertaking, the Court may make any or all of the following orders:
- (a) an order directing the provider to comply with the undertaking;
  - (b) an order directing the provider to pay to the Commonwealth an amount up to the amount of any financial benefit that the provider has obtained directly or indirectly and that is reasonably attributable to the breach;
  - (c) any order that the Court considers appropriate directing the provider to compensate any person who has suffered loss or damage as a result of the breach;
  - (d) any other order that the Court considers appropriate.



## **Part 7—Monitoring and searching providers**

### **Division 1A—Guide to this Part**

#### **111A Guide to this Part**

- Registered providers' compliance with this Act and the national code is monitored under this Part.
- The Secretary can give a production notice (requiring a person to give information or documents) or an attendance notice (requiring a person to attend and answer questions) under Division 2.
- An authorised employee may apply for a monitoring warrant under Division 3. A monitoring warrant allows the employee to enter and search the premises of a registered provider. If the employee finds evidential material on the premises, the employee may secure the material until a search warrant can be obtained.
- Alternatively, an authorised employee may apply for a search warrant under Division 4. As well as allowing the employee to enter and search the premises of a registered provider, the employee may also seize things under a search warrant.

## **Division 1—Introduction**

### **111 Powers conferred on magistrates in their personal capacity**

- (1) A power conferred on a magistrate by section 129, 138, 144, 150, 154 or 165 is conferred on the magistrate in a personal capacity and not as a court or a member of a court.
- (2) The magistrate need not accept the power conferred.

### **112 Immunity of magistrates**

A magistrate exercising a power mentioned in subsection 111(1) has the same protection and immunity as if he or she were exercising that power as, or as a member of, the court of which the magistrate is a member.

## **Division 2—Notices requiring information and documents**

### **Subdivision A—Production notices**

#### **113 Production notices**

- (1) This section applies if the Secretary reasonably believes that an individual specified in subsection (4) has, or has access to, information or documents that are relevant to a monitoring purpose.
- (2) The Secretary may give the individual a written notice requiring him or her to:
  - (a) give any information or documents relevant to the monitoring purpose to an authorised employee; or
  - (b) show any such documents to an authorised employee; or
  - (c) make copies of any such documents and give the copies to an authorised employee.

Note: The Secretary may also give the individual an attendance notice: see section 116.

*Information and documents may be required in a particular form*

- (3) If the information or documents are in a particular form then the production notice may require the information or documents to be given in that form.

*Individuals who may be given production notices*

- (4) The individuals who may be given a production notice are:
  - (a) an officer or employee of a registered provider; or
  - (b) a consultant to a registered provider; or
  - (c) a partner in a registered provider; or
  - (d) an individual trading as a registered provider; or
  - (e) an officer or employee of an administrator or liquidator of a registered provider or former registered provider.

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**114 Contents of the production notice**

- (1) A production notice must:
  - (a) state that it is given under section 113; and
  - (b) set out the effects of sections 120, 121 and 122; and
  - (c) state how and by when the information or documents must be given or shown.

*Time for production of information or documents*

- (2) In so far as the notice covers information or documents:
  - (a) that relate to any extent to the calendar year in which the notice is given; and
  - (b) that are required to be given or shown on the premises where they are currently located;the time mentioned in paragraph (1)(c) must be at least 24 hours after the notice is given.
- (3) In so far as the notice covers any other information or documents, the time mentioned in paragraph (1)(c) must be at least 72 hours after the notice is given.

**115 Serving production notices**

- (1) The Secretary must give a production notice to an individual:
  - (a) by delivering it to the individual personally; or
  - (b) by:
    - (i) leaving it at the address of the individual's place of residence or business last known to the Secretary; and
    - (ii) taking reasonably practicable action to draw the individual's attention to the notice; or
  - (c) by sending it by ordinary or any other class of pre-paid post to the individual's place of residence or business last known to the Secretary.

- (2) However, if the Secretary uses the method in paragraph (1)(c), the time mentioned in paragraph 114(1)(c) must be at least 14 days after the notice is given (instead of at least 24 hours or 72 hours).

Note: Section 29 of the *Acts Interpretation Act 1901* sets out when the notice is taken to have been given if the notice is posted to the individual.

## **Subdivision B—Attendance notices**

### **116 Attendance notices**

- (1) This section applies if the Secretary reasonably believes that an individual specified in subsection (3) has, or has access to, information or documents that are relevant to a monitoring purpose.
- (2) The Secretary may give the individual written notice requiring the individual to attend before an authorised employee and answer questions about the matter.

Note: The Secretary may also give the individual a production notice: see section 113.

#### *Individuals who may be given attendance notices*

- (3) The individuals who may be given an attendance notice are:
- (a) an officer or employee of a registered provider; or
  - (b) a consultant to a registered provider; or
  - (c) a partner in a registered provider; or
  - (d) an individual trading as a registered provider; or
  - (e) an officer or employee of an administrator or liquidator of a registered provider or former registered provider.

### **117 Contents of the attendance notice**

- (1) An attendance notice must:
- (a) state that it is given under section 116; and
  - (b) set out the effects of sections 120, 121 and 122; and
  - (c) state where and when the individual is to attend.

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The time mentioned in paragraph (c) must be at least 14 days after the notice is given.

- (2) An attendance notice may be included in the same document as a production notice, if the notices are being given to the same individual.

### **Subdivision C—Common rules for production and attendance notices**

#### **118 Scales of expenses**

The regulations may prescribe scales of expenses to be allowed to persons required to give information or documents under this Division.

#### **120 Offence: failing to comply with a notice**

- (1) A person who refuses or fails to comply with a production or attendance notice is guilty of an offence.

Maximum penalty: Imprisonment for 6 months.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (2) However, a person is not guilty of an offence in relation to a production notice if the person complied with the notice to the extent that it was practicable to do so within the period allowed by the notice.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2); see subsection 13.3(3) of the *Criminal Code*.

#### **121 Offence: giving false or misleading information**

A person who gives false or misleading information in the course of complying or purporting to comply with a production or attendance notice is guilty of an offence.

Maximum penalty: Imprisonment for 12 months.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

## **122 Offence: giving false or misleading document**

- (1) A person who gives or shows an authorised employee a document that is false or misleading in a material particular, in the course of complying or purporting to comply with a production or attendance notice, is guilty of an offence.

Maximum penalty: Imprisonment for 12 months.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (2) However, the person is not guilty of the offence if the document is accompanied by a written statement signed by the person:
- (a) stating that the document is, to the person's knowledge, false or misleading in the material particular concerned; and
  - (b) setting out or referring to the material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

## **123 Information and documents that incriminate a person**

- (1) A person is not excused from the requirement to comply with a production or attendance notice on the ground that doing so might tend to incriminate the person or expose the person to a penalty.
- (2) However, if the person is an individual:
- (a) the information, document or answer to the question; or
  - (b) any other information, document or thing obtained as a direct or indirect result of complying with a notice;
- is not admissible in evidence against the individual in any criminal proceedings other than proceedings under, or arising out of, section 121 or 122.

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**124 Copies of documents**

- (1) An authorised employee, or a person covered by subsection (2) who has the authorised employee's permission, may:
  - (a) inspect a document given or shown to the authorised employee under this Division; and
  - (b) make and retain copies of, or take and retain extracts from, such a document; and
  - (c) retain a copy of a document given to the authorised employee in accordance with a requirement covered by paragraph 113(2)(c) (copies of documents given under production notices).
- (2) This subsection covers a person if the person is:
  - (a) an employee of the same Agency (within the meaning of the *Public Service Act 1999*) as the authorised employee; or
  - (b) a constituent member (however described) of that Agency.

**125 Employee may retain documents**

- (1) An authorised employee, or a person covered by subsection (3) who has the authorised employee's permission, may retain a document given to the authorised employee under this Division:
  - (a) for the purposes of this Act; or
  - (b) for the purposes of an investigation as to whether an offence has been committed; or
  - (c) to enable evidence of an offence to be secured for the purposes of a prosecution.

- (2) However, the document must not be retained for longer than 60 days after the authorised employee was given the document.

Note: The authorised employee may apply to retain the document for a further period: see section 128.

- (3) This subsection covers a person if the person is:
  - (a) an employee of the same Agency (within the meaning of the *Public Service Act 1999*) as the authorised employee; or



- (b) a constituent member (however described) of that Agency.

### **126 Owner of document must be given copy**

- (1) An employee retaining a document under section 125 must as soon as practicable:
  - (a) certify a copy of the document to be a true copy; and
  - (b) give the copy to the person (the *owner*) otherwise entitled to possession of the document.
- (2) The certified copy must be received in all courts and tribunals as evidence as if it had been the original.

*Owner may inspect etc. original document*

- (3) Until the certified copy is given, the owner, or a person authorised by the owner, may inspect and make copies of, or take and retain extracts from, the original document at the times and places that the employee thinks appropriate.

### **127 Retaining documents**

- (1) This section applies 60 days after a document is given to an authorised employee under this Division.
- (2) The authorised employee must take reasonable steps to return the document to the person who gave the employee the document or to the owner if that person is not entitled to possess it.
- (3) However, the authorised employee does not have to take those steps if:
  - (a) the authorised employee may retain the document because of an order under section 129; or
  - (b) the authorised employee is otherwise authorised (by a law, or an order of a court, of the Commonwealth or a State) to retain, destroy or dispose of the document.

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**128 Employee may apply to magistrate or tribunal member for a further period**

- (1) An authorised employee given a document under this Division, or another employee who is currently retaining such a document, may apply to a magistrate or tribunal member for an order that the employee may retain the document for a further period.

*Time limit for application*

- (2) The application must be made before the end of:
- (a) 60 days after the document was given to the authorised employee; or
  - (b) a period previously specified in an order of a magistrate or tribunal member under section 129.

*Employee must try to notify those affected*

- (3) Before making the application, the employee must:
- (a) take reasonable steps to discover which persons' interests would be affected by the retention of the document; and
  - (b) if it is practicable to do so, notify each person who the employee believes to be such a person of the proposed application.

**129 Magistrate or tribunal member may order retention for further period**

- (1) The magistrate or tribunal member may order that the employee who made the application under section 128 may retain the document if the magistrate or tribunal member is satisfied that it is necessary for the employee to retain it:
- (a) for the purposes of this Act; or
  - (b) for the purposes of an investigation as to whether an offence has been committed; or
  - (c) to enable evidence of an offence to be secured for the purposes of a prosecution.

- (2) The order must specify the period for which the employee may retain the document.

## Division 3—Monitoring warrants

### Subdivision A—Monitoring powers

#### 130 Authorised employee may enter premises for a monitoring purpose

- (1) An authorised employee may for a monitoring purpose:
  - (a) enter any premises:
    - (i) occupied by a registered provider for the purposes of providing courses; or
    - (ii) at which it is reasonable to believe there might be a thing belonging to or possessed by the provider, or an activity conducted by or with the consent of the provider, that is relevant to a monitoring purpose; and
  - (b) exercise the monitoring powers set out in section 131.
- (2) An authorised employee is not authorised to enter premises under subsection (1) unless:
  - (a) the occupier of the premises has consented to the entry and the employee has shown his or her identity card if requested by the occupier; or

Note: Section 157 sets out the requirements for obtaining the occupier's consent.

  - (b) the entry is made under a monitoring warrant.

Note: Monitoring warrants are issued under section 138 or subsection 165(2).

#### 131 Monitoring powers of authorised employees

- (1) For the purposes of this Division, the following are the ***monitoring powers*** that an authorised employee may exercise in relation to premises under section 130:
  - (a) to search the premises, and any receptacle on the premises, for any thing on the premises belonging to or possessed by the provider that might be relevant to a monitoring purpose;

- (b) to examine any such thing;
- (c) to examine any activity that is conducted on the premises by, or with the consent of, the provider that might be relevant to a monitoring purpose;
- (d) to take photographs or make video or audio recordings or sketches on the premises of any such activity or thing;
- (e) to inspect any document on the premises belonging to or possessed by the provider that might be relevant to a monitoring purpose;
- (f) to take extracts from or make copies of any such document;
- (g) to take onto the premises any equipment and materials that the authorised employee requires for the purpose of exercising powers in relation to the premises;
- (h) to secure a thing, until a search warrant is obtained to seize it, being a thing:
  - (i) that the employee finds during the exercise of monitoring powers on the premises; and
  - (ii) that the employee believes on reasonable grounds is evidential material; and
  - (iii) that the employee believes on reasonable grounds would be lost, destroyed or tampered with before the warrant can be obtained;
- (i) the powers in subsections (2), (3) and (5).

*Operating equipment*

- (2) For the purposes of this Division, the **monitoring powers** include the power to operate equipment that is on the premises to see whether:
  - (a) the equipment; or
  - (b) a disk, tape or other storage device that:
    - (i) is on the premises; and
    - (ii) can be used with the equipment or is associated with it; contains information belonging to the provider that is relevant to a monitoring purpose.

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*Removing disks etc. and documents*

- (3) For the purposes of this Division, the **monitoring powers** include the following powers in relation to information described in subsection (2) that is found in the exercise of the power under that subsection:
- (a) to operate facilities that are on the premises to put the information in documentary form and remove the documents so produced;
  - (b) to operate such facilities to transfer the information to a disk, tape or other storage device that:
    - (i) is brought to the premises for the exercise of the power; or
    - (ii) is on the premises and the use of which for that purpose has been agreed to in writing by the provider or occupier (as appropriate);
  - (c) to remove from the premises a disk, tape or other storage device to which the information has been transferred in exercise of the power under paragraph (b).
- (4) The powers mentioned in subsections (2) and (3) must be exercised in accordance with section 148.

*Securing evidence of other offences*

- (5) If an authorised employee, during a search of premises, reasonably believes that there is on the premises a thing that might afford evidence of the commission of an offence against this Act, the *Crimes Act 1914* or the *Criminal Code*, the **monitoring powers** include securing the thing pending the obtaining of a warrant to seize it.

**132 Authorised employee on premises with consent may ask questions**

An authorised employee who is only authorised to enter premises because the occupier of the premises consented to the entry may:

- (a) ask the occupier to:

- (i) answer any questions that are relevant to a monitoring purpose; and
- (ii) give or show the authorised employee any document requested by the employee that is relevant to the matter; or
- (b) ask any person on the premises to answer any questions that may facilitate the exercise of monitoring powers in relation to the premises.

Note: A person could be guilty of an offence if, in complying or purporting to comply with this section, the person gives false or misleading information or shows a document that is false or misleading in a material particular: see sections 135 and 136.

### **133 Authorised employee on premises under warrant may ask questions**

An authorised employee who is authorised to enter premises by a monitoring warrant may:

- (a) require the occupier of the premises to:
  - (i) answer any questions that are relevant to a monitoring purpose; and
  - (ii) give or show the employee any document requested by the employee that is relevant to a monitoring purpose; or
- (b) require any person on the premises to answer any questions that may facilitate the exercise of monitoring powers in relation to the premises.

Note 1: A person could be guilty of an offence if the person fails to comply with a requirement under this section: see section 134.

Note 2: A person could be guilty of an offence if, in complying or purporting to comply with this section, the person gives false or misleading information or shows a document that is false or misleading in a material particular: see sections 135 and 136.

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**134 Offence: failure to answer question**

- (1) A person is guilty of an offence if the person refuses or fails to comply with a requirement under section 133 (employee on premises under warrant may ask questions).

Maximum penalty: Imprisonment for 6 months.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (2) However, a person is not guilty of an offence if answering the question or giving or showing the document might tend to incriminate the person or expose the person to a penalty.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

**135 Offence: giving false or misleading information**

A person who gives false or misleading information in the course of complying or purporting to comply with section 132 or 133 (employee may ask questions) is guilty of an offence.

Maximum penalty: Imprisonment for 12 months.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

**136 Offence: giving or showing documents that are false or misleading in material particulars**

- (1) A person who gives or shows an authorised employee a document that is false or misleading in a material particular, in the course of complying or purporting to comply with section 132 or 133 (employee may ask questions), is guilty of an offence.

Maximum penalty: Imprisonment for 12 months.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.



- (2) However, the person is not guilty of an offence if the document is accompanied by a written statement signed by the person:
- (a) stating that the document is, to the person's knowledge, false or misleading in the material particular concerned; and
  - (b) setting out or referring to the material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

## **Subdivision B—Applying for monitoring warrants**

### **137 Authorised employee may apply for a monitoring warrant**

- (1) An authorised employee may apply to a magistrate or tribunal member for a monitoring warrant in relation to premises mentioned in subsection 130(1) (including premises in a State other than the magistrate's or tribunal member's State).

Note: Monitoring warrants may also be obtained by telephone, fax or other electronic means in urgent circumstances: see section 165.

- (2) The employee must give the magistrate or tribunal member an information on oath or affirmation that sets out the grounds for seeking the warrant.

### **138 Magistrate or tribunal member may issue a monitoring warrant**

The magistrate or tribunal member may issue a monitoring warrant if he or she is satisfied that it is reasonably necessary that one or more authorised employees have access to the premises mentioned in subsection 130(1) for a monitoring purpose.

### **139 Magistrate or tribunal member may require more information**

- (1) The magistrate or tribunal member may require an authorised employee or other person to give the magistrate or tribunal member further information on oath or affirmation concerning the grounds on which the monitoring warrant is being sought before issuing it.
- (2) The information may be given orally or by affidavit.

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- (3) The magistrate or tribunal member must not issue the warrant until the employee or other person has given the required information.

**140 Contents of monitoring warrant**

- (1) A monitoring warrant must:
- (a) authorise one or more authorised employees:
    - (i) to enter the premises; and
    - (ii) to exercise the powers under section 131 in relation to the premises; and
  - (b) state whether the entry is authorised at any time of the day or night or during specified hours of the day or night; and
  - (c) state the day and time at which it ceases to have effect (which must be no later than 7 days after it is issued); and
  - (d) state the purpose for which the warrant is issued; and
  - (e) state that the warrant is issued under section 138.
- (2) The authorised employees do not have to be named in the warrant.

## **Division 4—Search warrants**

### **Subdivision A—Search powers**

#### **141 Authorised employee may enter premises to look for evidential material**

- (1) This section applies if an authorised employee has reasonable grounds for suspecting that there may be evidential material on any premises.
- (2) The authorised employee may:
  - (a) enter the premises; and
  - (b) exercise the search powers set out in section 142; and
  - (c) if the entry is under warrant—seize the evidential material, if the authorised employee finds it on the premises.
- (3) However, an authorised employee is not authorised to enter premises under subsection (2) unless:
  - (a) the occupier of the premises has consented to the entry and the employee has shown his or her identity card if requested by the occupier; or

Note: Section 157 sets out the requirements for obtaining the occupier's consent.

- (b) the entry is made under a search warrant.

Note: Search warrants are issued under section 144 or subsection 165(3).

#### **142 Search powers of authorised employees**

- (1) For the purposes of this Division, the following are the *search powers* that an authorised employee may exercise in relation to premises under section 141:
  - (a) to search the premises, and any receptacle on the premises, for the evidential material;
  - (b) to examine the evidential material;

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- (c) to take photographs or make video or audio recordings or sketches on the premises of the evidential material;
- (d) to inspect any documentary evidential material;
- (e) to take extracts from or make copies of the evidential material;
- (f) to take onto the premises any equipment and materials that the authorised employee requires for the purpose of exercising powers in relation to the premises;
- (g) the powers in subsections (2), (3) and (5).

*Operating equipment*

- (2) For the purposes of this Division, the **search powers** include the power to operate equipment that is on the premises to see whether:
  - (a) the equipment; or
  - (b) a disk, tape or other storage device that:
    - (i) is on the premises; and
    - (ii) can be used with the equipment or is associated with it; contains evidential material.

*Removing disks etc. and documents*

- (3) For the purposes of this Division, the **search powers** include the following powers in relation to the evidential material that is found in the exercise of the power under subsection (2):
  - (a) to seize the equipment or any disk, tape or other associated storage device;
  - (b) to operate facilities that are on the premises to put the material in documentary form and remove the documents so produced;
  - (c) to operate such facilities to transfer the material to a disk, tape or other storage device that:
    - (i) is brought to the premises for the exercise of the power; or

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- (ii) is on the premises and the use of which for that purpose has been agreed to in writing by the provider or occupier (as appropriate);
  - (d) to remove from the premises a disk, tape or other storage device to which the evidential material has been transferred in exercise of the power under paragraph (c).
- (4) The powers mentioned in subsections (2) and (3) must be exercised in accordance with section 148.
- (5) An authorised employee may seize equipment under paragraph (3)(a) only if:
  - (a) it is not practicable to put the material in documentary form as mentioned in paragraph (3)(b) or to copy the material as mentioned in paragraph (3)(c); or
  - (b) possession by the occupier of the equipment could constitute an offence.
- (6) An authorised employee may seize equipment under paragraph (3)(a) or remove the documents under paragraph (3)(b) only if the employee entered the premises under a warrant.

*Securing evidence of other offences*

- (7) If an authorised employee, during a search of premises, reasonably believes that there is on the premises a thing that might afford evidence of the commission of an offence against this Act, the *Crimes Act 1914* or the *Criminal Code*, then the **search powers** include securing the thing pending the obtaining of a warrant to seize it.

Note: Section 151 allows for things to be seized without a warrant in emergencies.

## **Subdivision B—Applying for search warrants**

### **143 Authorised employee may apply for a search warrant**

- (1) An authorised employee may apply to a magistrate or tribunal member for a search warrant in relation to the premises mentioned

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in subsection 141(1) (including premises in a State other than the magistrate's or tribunal member's State).

Note: Search warrants may also be obtained by telephone, fax or other electronic means in urgent circumstances: see section 165.

- (2) The employee must give the magistrate or tribunal member an information on oath or affirmation that sets out the grounds for seeking the warrant.

### **144 Magistrate or tribunal member may issue a search warrant**

The magistrate or tribunal member may issue a search warrant if he or she is satisfied that there are reasonable grounds for suspecting that there may be evidential material on the premises.

### **145 Magistrate or tribunal member may require more information**

- (1) The magistrate or tribunal member may require an authorised employee or other person to give the magistrate or tribunal member further information on oath or affirmation concerning the grounds on which the search warrant is being sought before issuing it.
- (2) The information may be given orally or by affidavit.
- (3) The magistrate or tribunal member must not issue the warrant until the employee or other person has given the required information.

### **146 Contents of a search warrant**

- (1) A search warrant must:
  - (a) authorise one or more authorised employees:
    - (i) to enter the premises; and
    - (ii) to exercise the powers under section 142 in relation to the premises; and
  - (b) state whether the entry is authorised at any time of the day or night or during specified hours of the day or night; and
  - (c) state the day and time at which it ceases to have effect (which must be no later than 7 days after it is issued); and

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- (d) state the purpose for which the warrant is issued; and
  - (e) state that the warrant is issued under section 144.
- (2) The authorised employees must be named in the warrant.

## **Division 5—Common rules for monitoring warrants and search warrants**

### **Subdivision A—Common powers etc. under monitoring warrants and search warrants**

#### **147 Use of reasonable force and assistance**

An authorised employee may use such assistance and force as is necessary and reasonable in entering the premises under a monitoring warrant or a search warrant and exercising the powers under section 131 or 142.

#### **148 Use of electronic equipment in exercising search or monitoring powers**

In order to exercise search powers or monitoring powers, an authorised employee or a person assisting may operate electronic equipment on the premises if he or she reasonably believes that this can be done without damaging the equipment or data recorded on the equipment.

Note: Compensation may be payable in certain circumstances if the equipment or data is damaged: see section 160.

#### **149 Securing electronic equipment for use by experts**

- (1) This section applies if the authorised employee or a person assisting reasonably believes that:
  - (a) there is on the premises:
    - (i) if the authorised employee is on the premises under section 130—information belonging to the provider concerned that is relevant to a monitoring purpose; or
    - (ii) if the authorised employee is on the premises under section 141—evidential material;that might be accessible by operating electronic equipment that is on the premises; and



- (b) expert assistance is required to operate the equipment; and
  - (c) if he or she does not take action under subsection (2), the information might be destroyed, altered or otherwise interfered with.
- (2) The authorised employee or person assisting may do whatever is necessary to secure the equipment.

*Authorised employee must give notice*

- (3) Before doing so, the authorised employee or person assisting must give notice to the occupier of the premises of:
  - (a) his or her intention to secure equipment; and
  - (b) the fact that the equipment may be secured for up to 24 hours.

*Time limit on securing equipment*

- (4) The equipment may only be secured until the earlier of:
  - (a) 24 hours later; or
  - (b) the equipment being operated by the expert.

## **150 Extension of period**

- (1) If an authorised employee or a person assisting reasonably believes that the expert assistance will not be available within 24 hours, he or she may apply to a magistrate or tribunal member for an extension of the period.
- (2) The authorised employee or a person assisting must give notice to the occupier of the premises of his or her intention to apply for an extension. The occupier is entitled to be heard in relation to that application.
- (3) Subdivision B of Divisions 3 and 4 relating to the issue of monitoring warrants and search warrants apply, with such modifications as are necessary, to the issue of an extension.

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**151 Powers without warrant in emergency situations**

- (1) This section applies when an authorised employee is on premises under section 130 or 141 if the employee reasonably suspects that:
  - (a) a thing relevant to an offence against this Act, the *Crimes Act 1914* or the *Criminal Code* is on the premises; and
  - (b) it is necessary to exercise a power under subsection (2) in order to prevent the thing from being concealed, lost or destroyed; and
  - (c) it is necessary to exercise the power without the authority of a monitoring warrant or a search warrant because the circumstances are so serious and urgent.
- (2) The authorised employee may:
  - (a) search the premises, and any receptacle on the premises, for the thing; and
  - (b) seize the thing if he or she finds it there; and
  - (c) either:
    - (i) if the employee is on the premises under section 130—exercise the powers mentioned in subsections 131(2) and (3); or
    - (ii) if the employee is on the premises under section 141—exercise the powers mentioned in subsections 142(2) and (3);in relation to the thing.

**152 Retaining seized things**

- (1) This section applies to an authorised employee when one of the following happens in respect of a thing seized under section 151:
  - (a) the reason for the thing's seizure no longer exists or it is decided that the thing is not to be used in evidence; or
  - (b) the period of 60 days after the thing's seizure ends.
- (2) The authorised employee must take reasonable steps to return the thing to the person from whom it was seized or to the owner if that person is not entitled to possess it.

- (3) However, the authorised employee does not have to take those steps if:
- (a) in a paragraph (1)(b) case:
    - (i) proceedings in respect of which the thing might afford evidence have been instituted before the end of the 60 days and have not been completed (including an appeal to a court in relation to those proceedings); or
    - (ii) the authorised employee may retain the thing because of an order under section 153; or
  - (b) in any case—the authorised employee is otherwise authorised (by a law, or an order of a court or a tribunal, of the Commonwealth or a State) to retain, destroy or dispose of the thing; or
  - (c) the thing is forfeited or forfeitable to the Commonwealth or is the subject of a dispute as to ownership.

**153 Authorised employee may apply for a thing to be retained for a further period**

- (1) This section applies if an authorised employee has seized a thing under section 151 and proceedings in respect of which the thing might afford evidence have not commenced before the end of:
- (a) 60 days after the seizure; or
  - (b) a period previously specified in an order of a magistrate or tribunal member under section 154.
- (2) The authorised employee may apply to a magistrate or tribunal member for an order that the employee may retain the thing for a further period.

*Authorised employee must try to notify those affected*

- (3) Before making the application, the authorised employee must:
- (a) take reasonable steps to discover which persons' interests would be affected by the retention of the thing; and

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- (b) if it is practicable to do so, notify each person who the employee believes to be such a person of the proposed application.

**154 Magistrate or tribunal member may order that the thing be retained**

- (1) The magistrate or tribunal member may order that the authorised employee who made an application under section 153 may retain the thing if the magistrate or tribunal member is satisfied that it is necessary for the employee to do so:
  - (a) for the purposes of an investigation as to whether an offence has been committed; or
  - (b) to enable evidence of an offence to be secured for the purposes of a prosecution.
- (2) The order must specify the period for which the employee may retain the thing.

**155 Occupier to provide authorised employee with all facilities and assistance**

- (1) The occupier of the premises to which a monitoring warrant or a search warrant relates must provide the authorised employee executing the warrant and any person assisting that employee with all reasonable facilities and assistance for the effective exercise of their powers.
- (2) A person is guilty of an offence if the person breaches subsection (1).

Maximum penalty: 10 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

## **Subdivision B—Obligations on authorised employees etc.**

### **156 Being on premises with consent**

- (1) An authorised employee may enter premises under section 130 or 141 with the consent of the occupier of the premises at any reasonable time of the day or night.
- (2) However, the authorised employee must leave the premises if the occupier asks the employee to do so.

### **157 Consent**

- (1) Before obtaining the consent of a person for the purposes of paragraph 130(2)(a) or 141(3)(a), the authorised employee must inform the person that he or she may refuse consent.
- (2) An entry of an authorised employee with the consent of a person is not lawful unless the person voluntarily consents to the entry.

### **158 Announcement before entry**

An authorised employee executing a monitoring warrant or a search warrant must, before entering premises under the warrant:

- (a) announce that he or she is authorised to enter the premises; and
- (b) give a person on the premises (if there is one) an opportunity to allow entry to the premises.

### **159 Copy of warrant to be given to the occupier before entry**

- (1) If a monitoring warrant or a search warrant is being executed on premises and the occupier of the premises is present, the authorised employee must make a copy of the warrant available to the occupier.
- (2) The authorised employee must identify himself or herself to that person.

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**160 Compensation for damage to electronic equipment or data**

- (1) This section applies if:
- (a) damage is caused to equipment as a result of it being operated as mentioned in section 148; or
  - (b) the data recorded on the equipment is damaged or programs associated with its use are damaged or corrupted;
- because:
- (c) insufficient care was exercised in selecting the person who was to operate the equipment; or
  - (d) insufficient care was exercised by the person operating the equipment.

*Amount of compensation*

- (2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as they agree on.
- (3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in the Federal Court for such reasonable amount of compensation as the Court determines.
- (4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises and his or her employees and agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.
- (5) Compensation is payable out of money appropriated by the Parliament.

*Damage to data*

- (6) For the purposes of subsection (1), **damage to data** includes damage by erasure of data or addition of other data.

**161 Occupier entitled to be present during execution of the monitoring warrant**

- (1) If a monitoring warrant or a search warrant is being executed at premises and the occupier of the premises is present, the occupier is entitled to observe the execution of the warrant.
- (2) The right to observe the execution of the warrant ceases if the occupier impedes that execution.
- (3) This section does not prevent the execution of the warrant in 2 or more areas of the premises at the same time.

**162 Identity cards**

- (1) The Secretary must give each authorised employee an identity card.
- (2) An identity card must:
  - (a) be in a form approved in writing by the Secretary; and
  - (b) include a recent photograph of the employee.

*Offence: failing to return identity card*

- (3) A person is guilty of an offence if:
  - (a) the person holds or held an identity card; and
  - (b) the person ceases to be an authorised employee; and
  - (c) the person does not, as soon as is practicable after so ceasing, return the identity card to the Secretary.

Maximum penalty: 1 penalty unit.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (4) This offence is one of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

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*Defence: lost or destroyed card*

- (5) However, the person is not guilty of the offence if the identity card was lost or destroyed.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5): see subsection 13.3(3) of the *Criminal Code*.

*Authorised employee must always carry identity card*

- (6) An authorised employee must carry an identity card at all times when exercising powers under Division 3, 4 or 5.

**163 Authorised employee must produce identity card on request**

An authorised employee is not entitled to exercise any powers under Division 3, 4 or 5 in relation to premises if:

- (a) the occupier of the premises requests the authorised employee to show his or her identity card to the occupier; and
- (b) the authorised employee fails to comply with the request.

**Subdivision C—Issue of warrants by telephone etc.**

**164 Employee may apply for warrants by telephone etc.**

- (1) An authorised employee may apply to a magistrate or tribunal member for a monitoring warrant or a search warrant by telephone, fax or other electronic means if the employee thinks it necessary to do so because of urgent circumstances.
- (2) The magistrate or tribunal member may require communication by voice to the extent that it is practicable in the circumstances.
- (3) Before making the application, the authorised employee must prepare an information on oath or affirmation that sets out the grounds for seeking the warrant.
- (4) However, the employee may make the application before the information has been sworn or affirmed, if necessary.



**165 Magistrate or tribunal member may grant warrant by telephone etc.**

*Procedure before issuing the warrant*

- (1) Before issuing the warrant the magistrate or tribunal member must:
  - (a) consider the information prepared under subsection 164(3); and
  - (b) receive any further information that the magistrate or tribunal member may require about the grounds on which the warrant is being sought.

*Issuing monitoring warrant by telephone etc.*

- (2) The magistrate or tribunal member may issue a monitoring warrant if the magistrate or tribunal member is satisfied:
  - (a) that it is reasonably necessary that one or more authorised employees have access to the premises for a monitoring purpose; and
  - (b) that there are reasonable grounds for issuing the warrant by telephone, fax or other electronic means.

*Issuing search warrant by telephone etc.*

- (3) The magistrate or tribunal member may issue a search warrant if the magistrate or tribunal member is satisfied:
  - (a) that there are reasonable grounds for suspecting that there might be evidential material on the premises; and
  - (b) that there are reasonable grounds for issuing the warrant by telephone, fax or other electronic means.

**166 Procedure for issuing warrant by telephone etc.**

*Obligations on magistrate or tribunal member*

- (1) If the magistrate or tribunal member issues a warrant under section 165, the magistrate or tribunal member must complete and sign a warrant that is the same as the monitoring warrant or search

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warrant that the magistrate or tribunal member would have issued if the application had been made under section 137 or 143.

- (2) The magistrate or tribunal member must also:
- (a) inform the authorised employee of:
    - (i) the terms of the warrant; and
    - (ii) the day and time when it was signed; and
    - (iii) the time at which it ceases to have effect (which must be no later than 48 hours after it is signed); and
  - (b) record on the warrant the reasons for issuing it.

*Obligations on authorised employees*

- (3) The authorised employee must:
- (a) complete a form of warrant in the terms given to the authorised employee by the magistrate or tribunal member; and
  - (b) write on it the magistrate's or tribunal member's name and the day and time when the warrant was signed.

**167 Procedure after telephone warrant ceases or is executed**

*Obligations on authorised employee*

- (1) An authorised employee who completes a form of warrant under section 166 must send the magistrate or tribunal member who signed the monitoring warrant or search warrant:
- (a) the form of warrant completed by the authorised employee; and
  - (b) the information duly sworn or affirmed in connection with the warrant.
- (2) The form of warrant and information must be sent by the end of the day after the earlier of:
- (a) the day on which the warrant ceases to have effect; or
  - (b) the day on which the warrant is executed.

*Obligations on magistrate or tribunal member*

- (3) The magistrate or tribunal member must:
- (a) attach the monitoring warrant or search warrant signed by the magistrate or tribunal member under section 166 to the form of warrant and information; and
  - (b) deal with the documents in the same way that the magistrate or tribunal member would have dealt with them if the application for the warrant had been made under section 137 or 143.

**168 Form of warrant authorises exercise of power**

The form of warrant completed under section 166 is authority for any exercise of a power that the monitoring warrant or search warrant issued under section 165 is authority for, if the form of warrant is in accordance with the terms of the monitoring warrant or search warrant.

**169 Court to assume that exercise of power not authorised by telephone etc. warrant**

A court must assume (unless the contrary is proved) that an exercise of power was not authorised by a monitoring warrant or search warrant if the warrant signed by the magistrate or tribunal member under section 166 is not produced in evidence.

## Part 8—Miscellaneous

### 169A Guide to this Part

- This Part contains miscellaneous provisions, such as the following:
  - (a) publication of enforcement action and annual reports;
  - (b) delegation powers;
  - (c) provisions relating to paying amounts like fees, penalties and charges;
  - (d) giving information to relevant bodies;
  - (e) review of decisions.

### 170A Publishing results of enforcement and monitoring

- (1) This section applies if the Minister, Immigration Minister or Secretary takes action (including by exercising a power) in relation to a provider:
  - (a) under Part 6, which deals with enforcing this Act; or
  - (b) under Part 7, which deals with the monitoring of providers.
- (2) The Secretary may publish information about:
  - (a) the action taken; and
  - (b) the results of taking that action, including for example:
    - (i) recommendations for improvements that are given to a provider; and
    - (ii) the action taken by the provider to implement those recommendations.

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- (3) However, if the Secretary does publish that information, the Secretary must ensure that:
  - (a) if the provider applies for review of the decision to take the action—that fact, and the results of the review, are also published; and
  - (b) the information is accurate and kept up-to-date.
- (4) The Secretary may decide the way in which the publication is to be made (on the Department's website, for example).

**170B Annual report**

- (1) After the end of each financial year, the TPS Director must prepare and give to the Minister a report in relation to the following:
  - (a) the financial status of the OSTF during that financial year;
  - (b) the number of students placed in alternative courses under section 49 during that financial year;
  - (c) the time taken to place students in alternative courses under section 49 during that financial year;
  - (d) the number of calls made on the OSTF during that financial year;
  - (e) the time taken to pay an amount under section 50B during that financial year;
  - (f) the total of any amounts paid out under section 50B during that financial year;
  - (g) an assessment of any issues affecting the operation of Part 5 (tuition protection service) during that financial year;
  - (h) an assessment of any issues that might affect the operation of Part 5 in future financial years;
  - (i) an assessment of the outlook of the industry that provides courses to overseas students, and any potential risk to the OSTF as a result of that outlook.
- (2) The report must be included in the Department's annual report for that financial year.

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**170 Delegation**

*Minister's delegation*

- (1) The Minister may, by signed writing, delegate any or all of the Minister's powers under this Act to:
  - (a) the Secretary; or
  - (aa) TEQSA; or
  - (b) the National VET Regulator; or
  - (c) an SES employee or acting SES employee in the Department.

*Secretary's delegation*

- (2) The Secretary may, by signed writing, delegate any or all of the Secretary's powers under this Act to:
  - (aa) TEQSA; or
  - (a) the National VET Regulator; or
  - (b) an SES employee or acting SES employee in the Department.
- (2AA) Without limiting subsection (2), the Secretary may, by signed writing, delegate all or any of the Secretary's power under Subdivision A of Division 2 of Part 7 (production notices) to a person in the Department who holds, or is acting in, an Executive Level 1 or 2, or equivalent, position.

*Subdelegation*

- (2A) If the Minister or the Secretary delegates a power under this section to TEQSA, TEQSA may, by writing, subdelegate the power to a member of the staff of TEQSA (within the meaning of the TEQSA Act) who:
  - (a) is an SES employee or acting SES employee; or
  - (b) holds, or is acting in, an Executive Level 1 or 2, or equivalent, position.
- (3) If the Minister or the Secretary delegates a power under this section to the National VET Regulator, the Regulator may, by writing, subdelegate the power to a member of the staff of the

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Regulator (within the meaning of the *National Vocational Education and Training Regulator Act 2011*) who:

- (a) is an SES employee or acting SES employee; or
  - (b) holds, or is acting in, an Executive Level 1 or 2, or equivalent, position.
- (4) Sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* apply in relation to a subdelegation under subsection (2A) or (3) in a corresponding way to the way in which they apply in relation to a delegation.

*Immigration Secretary*

- (5) The Immigration Secretary may, by signed writing, delegate his or her power under section 50D (TPS Director to notify Immigration Secretary) to an SES employee or acting SES employee in the Department administered by the Immigration Minister.

## **171 Reinstatement fee**

- (1) A registered provider must pay a reinstatement fee before the suspension of, or a condition on, the registration of the provider is removed under subsection 89(3), 89A(3), 90(2) or 94(2) or (4).

*Amount of reinstatement fee*

- (4) The amount of the reinstatement fee is:
- (a) \$500 for the initial year; and
  - (b) for a later year (the **current year**), the amount worked out by multiplying the reinstatement fee for the year before the current year by the indexation factor that applies to the current year.

*Annual indexation*

- (5) The **indexation factor** that applies to the current year is worked out using the following formula:

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$$\frac{\text{Index number for the recent September quarter}}{\text{Index number for the previous September quarter}}$$

where:

***index number*** for a quarter means the All Groups Consumer Price Index number that is the weighted average of the 8 capital cities and is published by the Australian Statistician for that quarter.

***previous September quarter*** means the September quarter before the recent September quarter.

***recent September quarter*** means the September quarter in the year before the current year.

- (6) The indexation factor worked out under subsection (5) must be rounded up or down to 3 places (rounding up in the case of exactly halfway between).
- (7) The amount worked out under paragraph (4)(b) must be rounded to the nearest whole dollar (rounding up in the case of 50 cents).
- (8) If at any time (whether before or after the commencement of this section) the Australian Statistician has changed or changes the index reference period for the Consumer Price Index, then, for the purposes of applying this section after the change, only index numbers published in terms of the new index reference period are to be used.

***Definition of initial year***

- (9) In this section, the ***initial year*** means the first calendar year in which the reinstatement fee is \$500.

### 172 Late payment penalty

- (1) A registered provider must pay a late payment penalty for any:
  - (a) annual registration charge; or
  - (b) second or third entry to market charge; or



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(c) TPS levy (other than a provider's first TPS levy); payable by the provider that remains unpaid after the time when it became due for payment.

Note: The Minister may take action under Division 1 of Part 6 against a registered provider that has breached this section.

*Amount of penalty*

- (2) The amount of the penalty is 20% per year on the unpaid amount calculated from the day when the original amount became due for payment.

### **173 Debts due to the Commonwealth**

- (1) The following are recoverable as debts due to the Commonwealth by action in a court of competent jurisdiction:
- (a) annual registration charge;
  - (aa) the second and third entry to market charges;
  - (b) late payment penalty;
  - (c) TPS levy (other than a provider's first TPS levy).
- (2) In the case of an amount that relates to the OSTF, the TPS Director may recover the debt on behalf of the Commonwealth.

### **174 Amounts payable by unincorporated bodies**

The following persons are jointly and severally liable to pay an amount for which a registered provider that is an unincorporated body is liable under this Act, the *Education Services for Overseas Students (Registration Charges) Act 1997* or the *Education Services for Overseas Students (TPS Levies) Act 2012*:

- (a) the principal executive officer of the provider at the time the liability arose;
- (b) if there was a body (however described) that governed, managed or conducted the affairs of the provider at that time—each of the persons who were members of that body at that time.

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### 175 Giving information to relevant bodies

*Giving information to government agencies, the TPS Director etc.*

- (1) For the purposes of:
- (a) promoting compliance with this Act and the national code; or
  - (b) assisting with the regulation of providers; or
  - (c) promoting compliance with the conditions of a particular student visa or visas, or of student visas generally; or
  - (d) facilitating the monitoring and control of immigration;
- the Secretary may give information obtained or received for the purposes of this Act to:
- (e) an agency of the Commonwealth, or of a State, that is responsible for or otherwise concerned with immigration or the regulation of providers; or
  - (f) the TPS Director; or
  - (g) a Board member; or
  - (h) a person specified in the regulations for the purposes of this paragraph.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

*Giving information to registered providers*

- (2) For the purposes of:
- (a) promoting compliance with this Act and the national code; or
  - (b) promoting compliance with the conditions of a particular student visa or visas, or of student visas generally;
- the Secretary may give information relating to an accepted student's, or former accepted student's, student visa to the registered provider for the student.

### 176 Review of decisions

- (1) An application may be made to the Administrative Appeals Tribunal for the review of:

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- (aa) a decision that an approved provider should not be registered under section 9AB; or
  - (ab) a decision that an approved provider be registered for a specified period under section 9AC, or a decision under that section to vary that specified period; or
  - (ac) a decision to impose a condition on a provider's registration under section 9AD or 9AE; or
  - (ad) a decision to vary a condition under section 9AF; or
  - (ae) a decision that a course at a location should not be added to a provider's registration under section 9AG; or
  - (af) a decision not to notify a registered provider under subsection 46A(4); or
  - (ag) a decision under section 53A as to an amount of TPS levy to be paid by a provider; or
  - (b) a decision to take any action under section 83; or
  - (c) a decision not to give a notice under subsection 89(2) or 89A(2); or
  - (d) a decision not to give a notice under subsection 95(3).
- (2) If such a decision is made and a written notice of the decision is given to a person whose interests are affected by the decision, the notice must include:
- (a) a statement to the effect that application may be made to the Administrative Appeals Tribunal under the *Administrative Appeals Tribunal Act 1975* for review of the decision; and
  - (b) if the person is entitled to reasons for the decision under section 28 of that Act—a statement to the effect that the person may request, under that section, a statement that includes reasons for the decision.
- (3) A breach of subsection (2) does not affect the validity of the decision concerned.

**176B ELICOS Standards**

- (1) The Minister may, by legislative instrument, make the ***ELICOS Standards***.

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- (2) Despite subsection 14(2) of the *Legislation Act 2003*, the ELICOS Standards may apply, adopt or incorporate, with or without modification, any matter contained in any other instrument or writing, as existing:
  - (a) at a particular time; or
  - (b) from time to time.

**176C Foundation Program Standards**

- (1) The Minister may, by legislative instrument, make the *Foundation Program Standards*.
- (2) Despite subsection 14(2) of the *Legislation Act 2003*, the Foundation Program Standards may apply, adopt or incorporate, with or without modification, any matter contained in any other instrument or writing, as existing:
  - (a) at a particular time; or
  - (b) from time to time.

**177 Regulations**

- The Governor-General may make regulations prescribing matters:
- (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

## Endnotes

### Endnote 1—About the endnotes

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be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

## Endnote 2—Abbreviation key

**Endnote 2—Abbreviation key**

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnotes

### Endnote 3—Legislation history

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#### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Education Services for Overseas Students Act 2000	164, 2000	21 Dec 2000	ss. 1 and 2: Royal Assent Remainder: 4 June 2001 (see <i>Gazette</i> 2001, No. S175)	
Education Services for Overseas Students (Consequential and Transitional) Act 2000	166, 2000	21 Dec 2000	Schedule 4: (a)	—
Corporations (Repeals, Consequential and Transitional) Act 2001	55, 2001	28 June 2001	Schedule 3 (items 168–171): 15 July 2001 (see <i>Gazette</i> 2001, No. S285) (b)	—
Cybercrime Act 2001	161, 2001	1 Oct 2001	21 Dec 2001 (see <i>Gazette</i> 2001, No. S529)	—
Education Services for Overseas Students Amendment Act 2002	101, 2002	10 Nov 2002	11 Nov 2002	Sch. 1 (items 20, 23, 27)
Education Services for Overseas Students Amendment Act 2005	157, 2005	19 Dec 2005	Schedule 1: 20 Dec 2005 (see s. 2(1)) Schedule 2: 20 Dec 2005 Remainder: Royal Assent	Sch. 1 (item 4)
Education Services for Overseas Students Legislation Amendment (2006 Measures No. 1) Act 2006	143, 2006	6 Dec 2006	1 Jan 2007	Sch. 1 (items 37, 38)



## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Education Services for Overseas Students Legislation Amendment (2006 Measures No. 2) Act 2006	144, 2006	6 Dec 2006	Schedule 1, Schedule 2 (item 1), Schedule 3 and Schedule 4: 1 Jan 2007 Schedule 2 (items 2–7): 1 July 2007 Remainder: Royal Assent	Sch. 1 (item 2), Sch. 2 (item 3), Sch. 3 (items 3, 5, 7, 11) and Sch. 4 (item 11)
Private Health Insurance (Transitional Provisions and Consequential Amendments) Act 2007	32, 2007	30 Mar 2007	Schedule 2 (item 9): 1 Apr 2007 ( <i>see</i> s. 2(1))	—
Education Services for Overseas Students Legislation Amendment Act 2007	70, 2007	28 May 2007	Schedule 1: 1 July 2007 Remainder: Royal Assent	Sch. 1 (item 23)
Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008	144, 2008	9 Dec 2008	Schedule 5 (items 1–5): 10 Dec 2008	—
Education Services for Overseas Students Amendment (Re-registration of Providers and Other Measures) Act 2010	10, 2010	3 Mar 2010	Schedule 1 (items 1–26, 31) and Schedule 2: Royal Assent	Sch. 1 (item 31)
Education Services for Overseas Students Legislation Amendment Act 2011	11, 2011	8 Apr 2011	Schedule 1: 9 Apr 2011	Sch. 1 (item 27)

## Endnotes

### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
National Vocational Education and Training Regulator (Consequential Amendments) Act 2011	14, 2011	12 Apr 2011	Schedule 1 (items 1–6, 9–16, 18–32): (c) Schedule 1 (item 7): (c) Schedule 1 (items 8, 17): (c)	Sch. 1 (items 30–32)
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Schedule 2 (items 548–550) and Schedule 3 (items 10, 11): 27 Dec 2011	Sch. 3 (items 10, 11)
Tertiary Education Quality and Standards Agency (Consequential Amendments and Transitional Provisions) Act 2011	74, 2011	29 June 2011	Schedule 1 (items 1–14): (d) Schedule 1 (items 15–39): (d) Schedule 1 (items 40–44): 29 July 2011 ( <i>see s. 2(1)</i> ) Schedule 1 (items 45, 46): (d)	Sch. 1 (items 13, 14)
Education Services for Overseas Students Amendment (Registration Charges Consequentials) Act 2011	106, 2011	26 Sept 2011	Schedule 1 (items 1–6, 8–17): 31 Oct 2011 ( <i>see s. 2(1)</i> ) Remainder: Royal Assent	Sch. 1 (item 17) (am. by 9, 2012, Sch. 2 [item 87])
<b>as amended by</b> Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Act 2012	9, 2012	20 Mar 2012	Schedule 2 (item 87): ( <i>see 9, 2012 below</i> ) Schedule 2 (items 89–93): ( <i>see 9, 2012 below</i> )	—

## Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Act 2012	9, 2012	20 Mar 2012	Sch 1 (items 1–38, 41, 43–63), Sch 2 (items 1–81, 83–87, 94–108), Sch 3 (items 1–7), Sch 4, Sch 5 (items 1–5, 8(1)), Sch 6 and Sch 8 (items 1–10): 1 July 2012 (s 2(1) items 2, 4–6, 8, 11–15, 19, 20) Sch 1 (item 40), Sch 2 (items 82, 89–93) and Sch 7 (item 1): never commenced (s 2(1) items 3, 7, 9, 10, 16) Sch 7 (items 2, 3): 20 Mar 2012 (s 2(1) item 17, 18)	Sch 1 (items 43–63), Sch 2 (items 94–108), Sch 3 (item 7), Sch 4 (item 11), Sch 5 (item 8(1)) and Sch 6 (items 6, 7)
<b>as amended by</b>				
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 2 (items 2, 3): 1 July 2012 (s 2(1) item 4)	—
Migration Legislation Amendment (Student Visas) Act 2012	192, 2012	12 Dec 2012	Sch 1 (items 4, 5): 13 Apr 2013 (s 2(1) item 2)	—
Privacy Amendment (Enhancing Privacy Protection) Act 2012	197, 2012	12 Dec 2012	Sch 5 (item 33) and Sch 6 (items 15–19): 12 Mar 2014 (s 2(1) items 3, 16) Sch 6 (item 1): 12 Dec 2012 (s 2(1) item 19)	Sch 6 (items 1, 15–19)
Federal Circuit Court of Australia (Consequential Amendments) Act 2013	13, 2013	14 Mar 2013	Sch 1 (item 116): 12 Apr 2013 (s 2(1) item 2)	—

## Endnotes

### Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Education Services for Overseas Students Amendment Act 2014	2, 2014	28 Feb 2014	Sch 1: 1 July 2014 (s 2(1) item 2) Remainder: 28 Feb 2014 (s 2(1) item 1)	Sch 1 (item 23)
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 8 (items 140–143) and Sch 14: 1 July 2014 (s 2(1) items 6, 14)	Sch 14
<b>as amended by</b>				
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7
<b>as amended by</b>				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (items 175, 176): 5 Mar 2016 (s 2(1) item 2)	—

## Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Statute Law Revision Act (No. 2) 2015	145, 2015	12 Nov 2015	Sch 4 (item 8): 10 Dec 2015 (s 2(1) item 7)	—
Education Services for Overseas Students Amendment (Streamlining Regulation) Act 2015	171, 2015	11 Dec 2015	Sch 1 (items 1–282), Sch 2 (items 1–7), Sch 3 (item 1), Sch 4, Sch 5 (items 19–24), and Sch 6 (items 2–6, 8–13): <u>1 Jul 2016 (s 2(1) items 2, 4, 6, 8)</u> Sch 5 (items 1–17) and Sch 6 (items 1, 7): 12 Dec 2015 (s 2(1) items 3, 5, 7)	Sch 6 (items 1, <u>2–6, 7, 8–13</u> )
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 140–146, 367–372): <u>10 Mar 2016 (s 2(1) item 6)</u>	—

(a) The *Education Services for Overseas Students Act 2000* was amended by Schedule 4 only of the *Education Services for Overseas Students (Consequential and Transitional) Act 2000*, subsections 2(2) and (3) of which provide as follows:

(2) Item 1 of Schedule 4 commences at the later of:

- (a) the time when Parts 4 to 10 of the Act that establishes the Administrative Review Tribunal commence; and
- (b) immediately after the commencement of section 5 of the *Education Services for Overseas Students Act 2000*.

Note: The Act that establishes the Administrative Review Tribunal is either the *Administrative Review Tribunal Act 2000* or the *Administrative Review Tribunal Act 2001*.

(3) The rest of Schedule 4 commences at the later of:

- (a) the time when Parts 4 to 10 of the Act that establishes the Administrative Review Tribunal commence; and
- (b) immediately after the commencement of section 176 of the *Education Services for Overseas Students Act 2000*.

## Endnotes

### Endnote 3—Legislation history

The *Administrative Review Tribunal Bill* was not enacted. Therefore these amendments did not commence.

- (b) The *Education Services for Overseas Students Act 2000* was amended by Schedule 3 (items 168–171) only of the *Corporations (Repeals, Consequential and Transitionals) Act 2001*, subsection 2(3) of which provides as follows:

(3) Subject to subsections (4) to (10), Schedule 3 commences, or is taken to have commenced, at the same time as the *Corporations Act 2001*.

- (c) Subsection 2(1) (items 2–7) of the *National Vocational Education and Training Regulator (Consequential Amendments) Act 2011* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
2. Schedule 1, items 1 to 6	Immediately after the commencement of section 3 of the <i>National Vocational Education and Training Regulator Act 2011</i> .	1 July 2011
3. Schedule 1, item 7	Immediately after the commencement of section 3 of the <i>National Vocational Education and Training Regulator Act 2011</i> .  However, if Schedule 1 to the <i>Education Services for Overseas Students Legislation Amendment Act 2011</i> commences before that time, the provision(s) do not commence at all.	Does not commence
4. Schedule 1, item 8	Immediately after the commencement of Schedule 1 to the <i>Education Services for Overseas Students Legislation Amendment Act 2011</i> .  However, if section 3 of the <i>National Vocational Education and Training Regulator Act 2011</i> commences before that time, the provision(s) do not commence at all.	9 April 2011
5. Schedule 1,	Immediately after the commencement of section 3	1 July 2011

## Endnote 3—Legislation history

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
items 9 to 16	of the <i>National Vocational Education and Training Regulator Act 2011</i> .	
6. Schedule 1, item 17	Immediately after the commencement of Schedule 1 to the <i>Education Services for Overseas Students Legislation Amendment Act 2011</i> .	9 April 2011
7. Schedule 1, items 18 to 33	Immediately after the commencement of section 3 of the <i>National Vocational Education and Training Regulator Act 2011</i> .	1 July 2011
<p>(d) Subsection 2(1) (items 2–5 and 7) of the <i>Tertiary Education Quality and Standards Agency (Consequential Amendments and Transitional Provisions) Act 2011</i> provides as follows:</p> <p>(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.</p>		
Provision(s)	Commencement	Date/Details
2. Schedule 1, Part 1	<p>Immediately after the later of:</p> <p>(a) the commencement of Part 2 of the <i>Tertiary Education Quality and Standards Agency Act 2011</i>; and</p> <p>(b) the commencement of item 1 of Schedule 1 to the <i>National Vocational Education and Training Regulator (Consequential Amendments) Act 2011</i>.</p> <p>However, the provision(s) do not commence at all unless both of the events mentioned in paragraphs (a) and (b) occur.</p>	<p>29 January 2012</p> <p>(paragraph (a) applies)</p>

## Endnotes

### Endnote 3—Legislation history

Provision(s)	Commencement	Date/Details
3. Schedule 1, items 15 to 24	At the same time as Part 2 of the <i>Tertiary Education Quality and Standards Agency Act 2011</i> commences.  However, if item 1 of Schedule 1 to the <i>National Vocational Education and Training Regulator (Consequential Amendments) Act 2011</i> commences at or before that time, the provision(s) do not commence at all.	Do not commence
4. Schedule 1, item 25	Immediately after the later of: (a) the commencement of the provision(s) covered by table item 3; and (b) the commencement of Schedule 1 to the <i>Education Services for Overseas Students Legislation Amendment Act 2011</i> .  However, the provision(s) do not commence at all unless both of the events mentioned in paragraphs (a) and (b) occur.	Does not commence
5. Schedule 1, items 26 to 39	At the same time as Part 2 of the <i>Tertiary Education Quality and Standards Agency Act 2011</i> commences.  However, if item 1 of Schedule 1 to the <i>National Vocational Education and Training Regulator (Consequential Amendments) Act 2011</i> commences at or before that time, the provision(s) do not commence at all.	Do not commence
7. Schedule 1, Part 4	Immediately after the commencement of Part 2 of the <i>Tertiary Education Quality and Standards Agency Act 2011</i> .	29 January 2012



## Endnote 4—Amendment history

## Endnote 4—Amendment history

Provision affected	How affected
<b>Part 1</b>	
<b>Division 1</b>	
Heading to Div. 1 of .....	ad. No. 9, 2012
Part 1	
s. 4A .....	ad. No. 70, 2007
	am. No. 9, 2012
s. 4B .....	ad. No. 70, 2007
	am. No. 10, 2010; No. 9, 2012; <u>No 171, 2015</u>
s. 5 .....	am. No. 101, 2002; No. 157, 2005; Nos. 143 and 144, 2006; No. 70, 2007; No. 10, 2010; Nos. 11, 14, 74 and 106, 2011; No. 9, 2012; No 2, 2014; No 171, 2015 ( <u>Sch 1 items 5-26; Sch 2 item 1; Sch 4 items 1, 2</u> )
s. 5A .....	ad. No. 9, 2012
	am <u>No 171, 2015</u>
Subhead. to s. 6(7) .....	rs. No. 144, 2008
s. 6 .....	am. No. 55, 2001; No. 144, 2008
s 6A .....	ad <u>No 171, 2015</u>
s 6B .....	ad <u>No 171, 2015</u>
s 6C .....	ad <u>No 171, 2015</u>
s 6D .....	ad <u>No 171, 2015</u>
s 6E .....	ad <u>No 171, 2015</u>
s. 7 .....	am. No. 32, 2007
	rs. No. 9, 2012
s. 7A .....	ad. No. 74, 2011
	am. No. 9, 2012
	rs <u>No 171, 2015</u>
s 7AA .....	ad <u>No 171, 2015</u>
<b>Division 2</b>	
Div. 2 of Part 1 .....	ad. No. 9, 2012
s. 7B .....	ad. No. 9, 2012

## Endnotes

### Endnote 4—Amendment history

Provision affected	How affected
	am <u>No 171, 2015</u>
<b>Part 2</b>	
Part 2 heading .....	rs <u>No 171, 2015</u>
<b>Division 1</b>	
Div. 1 of Part 2 .....	ad. No. 9, 2012
s. 8A .....	ad. No. 9, 2012
	am <u>No 171, 2015</u>
<b>Division 2</b>	
Heading to Div. 2 of .....	ad. No. 9, 2012
Part 2	
s. 8 .....	am. No. 101, 2002; No. 70, 2007; No. 9, 2012; <u>No 4, 2016</u>
Note 1 to s. 8(1) .....	am. No. 70, 2007
Subhead. to s. 9(1) .....	ad. No. 143, 2006
	rep. No. 9, 2012
Subhead. to s. 9(2) .....	ad. No. 143, 2006
	rep. No. 9, 2012
Subhead. to s. 9(5) .....	ad. No. 143, 2006
	rep. No. 10, 2010
s. 9 .....	am. No. 55, 2001; No. 101, 2002; No. 157, 2005; Nos. 143 and 144, 2006; No. 70, 2007; No. 10, 2010; Nos. 11, 14 and 106, 2011
	rep. No. 9, 2012
Note to s. 9(2)(d) .....	am. No. 101, 2002
	rs. No. 10, 2010
	rep. No. 9, 2012
<b>Division 3</b>	
Division 3 heading	ad. No. 9, 2012
	rs <u>No 171, 2015</u>
<b>Subdivision A</b>	
s. 9AA .....	ad. No. 9, 2012
	rep <u>No 171, 2015</u>
s. 9AB .....	ad. No. 9, 2012

## Endnote 4—Amendment history

Provision affected	How affected
	am. No. 9, 2012
	rep <u>No 171, 2015</u>
s. 9AC.....	ad. No. 9, 2012
	rep <u>No 171, 2015</u>
s. 9AD.....	ad. No. 9, 2012
	rep <u>No 171, 2015</u>
s. 9AE.....	ad. No. 9, 2012
	rep <u>No 171, 2015</u>
s. 9AF.....	ad. No. 9, 2012
	rep <u>No 171, 2015</u>
s. 9AG.....	ad. No. 9, 2012
	rep <u>No 171, 2015</u>
s 9.....	ad <u>No 171, 2015</u>
s 10.....	ad <u>No 171, 2015</u>
s 10A.....	ad <u>No 171, 2015</u>
<b>Subdivision B</b>	
s 10B.....	ad <u>No 171, 2015</u>
s 10C.....	ad <u>No 171, 2015</u>
<b>Subdivision C</b>	
s 10D.....	ad <u>No 171, 2015</u>
s 10E.....	ad <u>No 171, 2015</u>
s 10F.....	ad <u>No 171, 2015</u>
s 10G.....	ad <u>No 171, 2015</u>
<b>Subdivision D</b>	
s 10H.....	ad <u>No 171, 2015</u>
s 10J.....	ad <u>No 171, 2015</u>
s 10K.....	ad <u>No 171, 2015</u>
s 10L.....	ad <u>No 171, 2015</u>
s 10M.....	ad <u>No 171, 2015</u>

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
Subdivision B	
Subdivision B heading.....	rs and renum <u>No 171, 2015</u>
<b>Subdivision E</b>	
Subdivision E (prev Subdivision B) heading.....	renum <u>No 171, 2015</u>
s. 9AH.....	ad. No. 9, 2012 rep <u>No 171, 2015</u>
s. 9A .....	ad. No. 10, 2010 am. Nos. 11, 14 and 106, 2011 rep. No. 9, 2012
s. 9B.....	ad. No. 10, 2010 am. No. 9, 2012 rep <u>No 171, 2015</u>
s. 10 .....	am. No. 70, 2007; No. 10, 2010; Nos. 14 and 106, 2011 rep. No. 9, 2012
s. 11 .....	am. No. 101, 2002; No. 143, 2006 rep. No. 9, 2012 ad <u>No 171, 2015</u>
s. 11A .....	ad <u>No 171, 2015</u>
s. 11B.....	ad <u>No 171, 2015</u>
s. 11C.....	ad <u>No 171, 2015</u>
s. 12 .....	rs. No. 143, 2006 am No 10, 2010 rs No. 106, 2011; No. 9, 2012 am <u>No 171, 2015</u>
s. 13 .....	rs. No. 9, 2012 am <u>No 171, 2015</u> ; <u>No 4, 2016</u>
s. 14 .....	am. No. 101, 2002; No. 10, 2010; No. 14, 2011; No. 9, 2012 rs <u>No 171, 2015</u>
<b>Division 4</b>	

## Endnote 4—Amendment history

Provision affected	How affected
Heading to Div. 4 of ..... Part 2	ad. No. 9, 2012
s. 14A .....	ad. No. 10, 2010 am. Nos. 11 and 14, 2011 rs. No. 9, 2012 am <u>No 171, 2015</u>
s. 14B.....	ad. No. 11, 2011 am. No. 14, 2011 rs. No. 9, 2012 am <u>No 171, 2015</u>
<b>Part 3</b>	
<b>Division 1A</b>	
Div. 1A of Part 3.....	ad. No. 9, 2012
s. 15A .....	ad. No. 9, 2012 am. No. 9, 2012; No 171, 2015
<b>Division 1</b>	
s. 15 .....	am <u>No 171, 2015</u>
s. 16 .....	rs. No. 157, 2005 am <u>No 171, 2015</u>
s. 17 .....	am. No. 101, 2002; No. 143, 2006; No. 9, 2012; <u>No 171, 2015</u>
s. 18 .....	am. No. 157, 2005; No. 143, 2006; No. 9, 2012; <u>No 171, 2015</u>
s. 19 .....	am. No. 144, 2006; No. 11, 2011; No. 9, 2012; No 171, 2015 ( <u>Sch 1 items 52-54</u> )
s. 20 .....	am. No. 144, 2006; No. 70, 2007; No. 11, 2011; No 9, 2012; 192, 2012; <u>No 171, 2015</u>
s. 21 .....	am. No. 11, 2011; No. 9, 2012; <u>No 171, 2015</u>
s. 21A .....	ad. No. 10, 2010 am. No. 11, 2011; <u>No 171, 2015</u>
s. 22 .....	am. No. 143, 2006 rs. No. 9, 2012 rep No 171, 2015

## Endnotes

### Endnote 4—Amendment history

Provision affected	How affected
s 23 .....	am No 143, 2006; <u>No 171, 2015</u>
s. 23A .....	ad. No. 106, 2011
	rs <u>No 171, 2015</u>
s. 24 .....	rs. No. 9, 2012
	am <u>No 171, 2015</u>
s. 25 .....	rep. No. 9, 2012
s. 26 .....	rs. No. 9, 2012
	am No 101, 2002; <u>No 171, 2015</u>
<b>Division 2</b>	
hdg to Div 2 of Pt 3 .....	rs No 2, 2014
Div. 2 of Part 3 .....	rs. No. 9, 2012
s. 27 .....	am. No. 144, 2006; No. 10, 2010; No. 14, 2011
	rs. No. 9, 2012
	am No 2, 2014; No 171, 2015
hdg to s 28 .....	am. No. 70, 2007
	rs. No. 9, 2012; No 2, 2014
Subhead to s 28(2) .....	rs No 2, 2014
s. 28 .....	am. No. 101, 2002; No. 144, 2006; No. 70, 2007; No. 11, 2011
	rs. No. 9, 2012
	am No 2, 2014
hdg to s 29 .....	rs No 2, 2014
Subhead to s 29(1) .....	rs No 2, 2014
s. 29 .....	am. No. 70, 2007; No. 11, 2011
	rs. No. 9, 2012
s. 30 .....	am. No. 101, 2002
	rs. No. 9, 2012
s. 31 .....	rs. No. 143, 2006
	am. No. 10, 2010
	rs. No. 9, 2012
Heading to s. 32 .....	am. No. 143, 2006
	rs. No. 9, 2012

## Endnote 4—Amendment history

Provision affected	How affected
s. 32 .....	am. No. 143, 2006 rs. No. 9, 2012
<b>Part 4</b>	
<b>Division 1</b>	
Div. 1 of Part 4 .....	ad. No. 9, 2012
s. 33A .....	ad. No. 9, 2012 am No 171, 2015 (Sch 1 item 62)
<b>Division 2</b>	
Heading to Div. 2 of .....	ad. No. 9, 2012
Part 4	
s. 33 .....	am. No. 157, 2005; No. 144, 2006; No. 9, 2012; No 2, 2014
s. 34 .....	am. No. 9, 2012; No 171, 2015
s. 35 .....	rep. No. 144, 2006
s. 36 .....	am. No. 144, 2006 rep. No. 9, 2012
s. 37 .....	rep. No. 144, 2006
s. 38 .....	am. No. 9, 2012; No 2, 2014; No 171, 2015
s. 39 .....	rep. No. 144, 2006
s. 40 .....	am. No. 10, 2010; No. 9, 2012; <u>No 171, 2015</u>
s. 41 .....	am. No. 144, 2006
s. 42 .....	rep. No. 144, 2006
s. 43 .....	am. No. 70, 2007; No. 14, 2011; No. 9, 2012 rep <u>No 171, 2015</u>
<b>Part 5</b>	
Part 5 .....	rs. No. 9, 2012
<b>Division 1</b>	
s. 45 .....	rs. No. 9, 2012
s. 46 .....	rep. No. 9, 2012
<b>Division 2</b>	
<b>Subdivision A</b>	
s. 46A .....	ad. No. 9, 2012

## Endnotes

### Endnote 4—Amendment history

Provision affected	How affected
	am No 171, 2015
s. 46B.....	ad. No. 9, 2012
	am No 171, 2015
s. 46C.....	ad. No. 9, 2012
	rep No 171, 2015
s. 46D .....	ad. No. 9, 2012
	am No 2, 2014
Note to s 46D(6) .....	am No 2, 2014
s. 46E.....	ad. No. 9, 2012
s. 46F .....	ad. No. 9, 2012
	am No 171, 2015
s. 47 .....	rep. No. 9, 2012
<b>Subdivision B</b>	
s. 47A .....	ad. No. 9, 2012
s. 47B.....	ad. No. 9, 2012
s. 47C.....	ad. No. 9, 2012
	rep No 171, 2015
s. 47D .....	ad. No. 9, 2012
Note to s 47D(2) .....	am No 2, 2014
s. 47E.....	ad. No. 9, 2012
	am No 2, 2014
s. 47F .....	ad. No. 9, 2012
s. 47G .....	ad. No. 9, 2012
s. 47H .....	ad. No. 9, 2012
	am No 171, 2015 (Sch 1 items 75, 76)
<b>Subdivision C</b>	
s. 48 .....	rs. No. 9, 2012
<b>Division 3</b>	
s. 49 .....	rs. No. 9, 2012
s. 50 .....	rep. No. 9, 2012
<b>Division 4</b>	



## Endnote 4—Amendment history

Provision affected	How affected
s. 50A .....	ad. No. 9, 2012
s. 50B.....	ad. No. 9, 2012
s. 50C.....	ad. No. 9, 2012
	am No 2, 2014
Note to 50C(2)	am No 2, 2014
s. 50D .....	ad. No. 9, 2012
Note 1 to s 50D.....	am No 197, 2012
s. 50E.....	ad. No. 9, 2012
<b>Part 5A</b>	
Part 5A.....	ad. No. 9, 2012
<b>Division 1</b>	
s. 51 .....	rs. No. 9, 2012
s. 52 .....	am. No. 46, 2011
	rep. No. 9, 2012
Note to s. 52.....	ad. No. 46, 2011
	rep. No. 9, 2012
<b>Division 2</b>	
<b>Subdivision A</b>	
s. 52A .....	ad. No. 9, 2012
	am No 62, 2014
s. 52B.....	ad. No. 9, 2012
Note to s 52B.....	am No 62, 2014
s. 52C.....	ad. No. 9, 2012
Note to s 52C(1) .....	rs No 62, 2014
s. 53 .....	rep. No. 9, 2012
<b>Subdivision B</b>	
s. 53A .....	ad. No. 9, 2012
s. 53B.....	ad. No. 9, 2012
	am No 171, 2015
s. 53C.....	ad. No. 9, 2012
	am No 171, 2015

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
s. 53D .....	ad. No. 9, 2012 am <u>No 171, 2015</u>
s. 54 .....	rep. No. 9, 2012
<b>Division 3</b>	
s. 54A .....	ad. No. 9, 2012
s. 54B.....	ad. No. 9, 2012 am <u>No 171, 2015</u>
s. 54C.....	ad. No. 9, 2012
s. 54D .....	ad. No. 9, 2012
s. 54E.....	ad. No. 9, 2012
s. 54F .....	ad. No. 9, 2012
s. 54G .....	ad. No. 9, 2012
s. 54H .....	ad. No. 9, 2012
s. 54J.....	ad. No. 9, 2012
s. 54K .....	ad. No. 9, 2012
s. 54L.....	ad. No. 9, 2012
s. 54M.....	ad. No. 9, 2012
s. 54N .....	ad <u>No 171, 2015</u>
s. 55 .....	rep. No. 9, 2012
<b>Division 4</b>	
<b>Subdivision A</b>	
s. 55A .....	ad. No. 9, 2012
s. 55B.....	ad. No. 9, 2012
s. 55C.....	ad. No. 9, 2012 am No 62, 2014
s. 55D .....	ad. No. 9, 2012
s. 55E.....	ad. No. 9, 2012
s. 55F.....	ad. No. 9, 2012
s. 55G .....	ad. No. 9, 2012
s. 55H .....	ad. No. 9, 2012
s. 55J.....	ad. No. 9, 2012

## Endnote 4—Amendment history

Provision affected	How affected
s. 55K .....	ad. No. 9, 2012
s. 55L .....	ad. No. 9, 2012
s. 55M .....	ad. No. 9, 2012
s. 55N .....	ad. No. 9, 2012
s. 56 .....	rep. No. 9, 2012
<b>Subdivision B</b>	
s. 56A .....	ad. No. 9, 2012
s. 56B .....	ad. No. 9, 2012
s. 56C .....	ad. No. 9, 2012
s. 56D .....	ad. No. 9, 2012
s. 56E .....	ad. No. 9, 2012
s. 56F .....	ad. No. 9, 2012
s. 56G .....	ad. No. 9, 2012
s. 57 .....	rep. No. 9, 2012
s. 58 .....	rep. No. 9, 2012
s. 59 .....	rep. No. 9, 2012
s. 60 .....	am. No. 143, 2006
	rep. No. 9, 2012
s. 61 .....	rep. No. 9, 2012
s. 62 .....	rep. No. 9, 2012
s. 63 .....	rep. No. 9, 2012
Note 1 to s. 63(1) .....	am. No. 10, 2010
	rep. No. 9, 2012
s. 64 .....	rs. No. 10, 2010
	rep. No. 9, 2012
s. 65 .....	rep. No. 9, 2012
Note to s. 65(2) .....	am. No. 10, 2010
	rep. No. 9, 2012
s. 66 .....	rep. No. 9, 2012
Note to s. 66(4) .....	am. No. 10, 2010
	rep. No. 9, 2012

## Endnotes

### Endnote 4—Amendment history

Provision affected	How affected
s. 67 .....	rep. No. 9, 2012
Note to s. 67(2) .....	am. No. 10, 2010
	rep. No. 9, 2012
s. 68 .....	rep. No. 9, 2012
s. 69 .....	rep. No. 9, 2012
Note to s. 69(3) .....	am. No. 10, 2010
	rep. No. 9, 2012
s. 70 .....	rep. No. 9, 2012
s. 71 .....	rep. No. 9, 2012
s. 72 .....	rep. No. 9, 2012
s. 73 .....	rep. No. 9, 2012
s. 74 .....	rep. No. 9, 2012
s. 74A .....	ad. No. 10, 2010
	rep. No. 9, 2012
s. 75 .....	rep. No. 9, 2012
Division 5 .....	rep. No. 9, 2012
s. 76 .....	am. No. 101, 2002; Nos. 143 and 144, 2006; No. 10, 2010
	rep. No. 9, 2012
Note to s. 76(1) .....	ad. No. 143, 2006
	rep. No. 10, 2010
Notes 1, 2 to s. 76(1) .....	ad. No. 10, 2010
	rep. No. 9, 2012
s. 77 .....	am. No. 101, 2002; No. 144, 2006
	rep. No. 9, 2012
Note to s. 77(1) .....	ad. No. 10, 2010
	rep. No. 9, 2012
s. 77A .....	ad. No. 144, 2006
	rep. No. 9, 2012
Heading to s. 78 .....	rs. No. 101, 2002
	rep. No. 9, 2012
s. 78 .....	am. No. 101, 2002

## Endnote 4—Amendment history

Provision affected	How affected
	rep. No. 9, 2012
s. 79 .....	rep. No. 9, 2012
s. 80 .....	am. No. 55, 2001
	rep. No. 9, 2012
s. 80A .....	ad. No. 10, 2010
	rep. No. 9, 2012
s. 81 .....	rep. No. 9, 2012
s. 82 .....	rep. No. 9, 2012
<b>Part 6</b>	
<b>Division 1A</b>	
Div. 1A of Part 6.....	ad. No. 9, 2012
s. 83A .....	ad. No. 9, 2012
	am. No. 9, 2012; <u>No 171, 2015</u>
<b>Division 1</b>	
<b>Subdivision A</b>	
s. 83 .....	am. No. 101, 2002; No. 143, 2006; No. 10, 2010; No. 9, 2012; No 2, 2014; <u>No 171, 2015</u>
s. 84 .....	rs <u>No 171, 2015</u>
s. 85 .....	am <u>No 171, 2015</u>
s. 86 .....	am <u>No 171, 2015</u>
s. 87 .....	ad <u>No 171, 2015</u>
Heading to Subdiv. B.....	rep. No. 101, 2002
of Div. 1 of Part 6	
s. 87 .....	rep. No. 101, 2002
s. 88 .....	am. No. 70, 2007
	rep. No. 9, 2012
<b>Subdivision C</b>	
s. 89 .....	am. No. 143, 2006; No. 14, 2011; No. 9, 2012
	rs <u>No 171, 2015</u>
s. 89A .....	ad. No. 143, 2006
	am. No. 10, 2010; Nos. 14 and 74, 2011; No. 9, 2012

## Endnotes

### Endnote 4—Amendment history

Provision affected	How affected
	rep <u>No 171, 2015</u>
s. 90 .....	rs. No. 143, 2006
	am. No. 106, 2011; No. 9, 2012; <u>No 171, 2015</u>
s. 91 .....	am. No. 9, 2012
	rep <u>No 171, 2015</u>
s. 92 .....	am. No. 9, 2012
s. 92A .....	ad. No. 10, 2010
	rep. No. 9, 2012
s. 92B.....	ad. No. 10, 2010
	am. No. 14, 2011
	rep. No. 9, 2012
<b>Subdivision D</b>	
s. 93 .....	am. No. 101, 2002; No. 143, 2006; No. 10, 2010; No. 11, 2011; No. 9, 2012
	rs <u>No 171, 2015</u>
s. 94 .....	rs. No. 143, 2006
	am. No. 10, 2010; <u>No 171, 2015</u>
s. 95 .....	rs. No. 101, 2002
	am. No. 10, 2010; No. 9, 2012; <u>No 171, 2015</u>
s. 96 .....	am. No. 101, 2002; No. 11, 2011
	rep. No. 9, 2012
s. 97 .....	am. No. 9, 2012
s. 101 .....	am. No. 9, 2012; <u>No 4, 2016</u>
<b>Division 3</b>	
s. 104 .....	am. No. 144, 2006
	rep. No. 11, 2011
s. 105 .....	rep. No. 11, 2011
s. 106 .....	am. No. 11, 2011; No. 9, 2012; <u>No 171, 2015</u>
s. 107 .....	am. No. 70, 2007; No. 9, 2012; <u>No 4, 2016</u>
s. 108 .....	am. No. 9, 2012; <u>No 4, 2016</u>
s. 109 .....	am. No 161, 2001; No. 9, 2012; <u>No 171, 2015</u> ; <u>No 4, 2016</u>

## Endnote 4—Amendment history

Provision affected	How affected
s. 110 .....	rep. No. 9, 2012
<b>Division 4</b>	
Div. 4 of Part 6 .....	ad. No. 9, 2012
s. 110A.....	ad. No. 9, 2012
	am <u>No 171, 2015</u>
s. 110B.....	ad. No. 9, 2012
	am. No. 13, 2013; <u>No 171, 2015</u>
<b>Part 7</b>	
<b>Division 1A</b>	
Div. 1A of Part 7.....	ad. No. 9, 2012
s. 111A.....	ad. No. 9, 2012
	am <u>No 171, 2015</u>
<b>Division 2</b>	
<b>Subdivision A</b>	
s. 113 .....	am. No. 9, 2012; <u>No 171, 2015</u>
s. 113A .....	ad <u>No 171, 2015</u>
s. 114 .....	am <u>No 171, 2015</u>
s. 115 .....	am <u>No 171, 2015</u>
<b>Subdivision B</b>	
s. 116 .....	am. No. 9, 2012; <u>No 171, 2015</u>
s. 117 .....	am <u>No 171, 2015</u>
<b>Subdivision C</b>	
s. 119 .....	rep. No. 11, 2011
s. 120 .....	am <u>No 4, 2016</u>
s. 121 .....	am <u>No 4, 2016</u>
s. 122 .....	am <u>No 171, 2015</u> ; <u>No 4, 2016</u>
s. 122A .....	ad <u>No 171, 2015</u>
s. 124 .....	am. No. 74, 2011; <u>No 171, 2015</u>
s. 125 .....	am. No. 74, 2011; <u>No 171, 2015</u>
s. 125A .....	ad <u>No 171, 2015</u>
s. 126 .....	am <u>No 171, 2015</u>

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
s 127 .....	am <a href="#">No 171, 2015</a>
s 128 .....	am <a href="#">No 171, 2015</a>
s 128A .....	ad <a href="#">No 171, 2015</a>
s 129 .....	am <a href="#">No 171, 2015</a>
<b>Division 3</b>	
<b>Subdivision A</b>	
s 130 .....	am <a href="#">No 171, 2015</a>
s 131 .....	am <a href="#">No 171, 2015</a>
s 132 .....	am <a href="#">No 171, 2015</a> ; <a href="#">No 4, 2016</a>
s 133 .....	am <a href="#">No 171, 2015</a> ; <a href="#">No 4, 2016</a>
s 134 .....	am <a href="#">No 171, 2015</a> ; <a href="#">No 4, 2016</a>
s 135 .....	am <a href="#">No 171, 2015</a> ; <a href="#">No 4, 2016</a>
s 136 .....	am <a href="#">No 171, 2015</a> ; <a href="#">No 4, 2016</a>
<b>Subdivision B</b>	
s 137 .....	am <a href="#">No 171, 2015</a>
s 138 .....	am <a href="#">No 171, 2015</a>
s 139 .....	am <a href="#">No 171, 2015</a>
s 140 .....	am <a href="#">No 171, 2015</a>
<b>Division 4</b>	
<b>Subdivision A</b>	
s 141 .....	am <a href="#">No 171, 2015</a>
s 142 .....	am <a href="#">No 171, 2015</a>
<b>Subdivision B</b>	
s 143 .....	am <a href="#">No 171, 2015</a>
s 145 .....	am <a href="#">No 171, 2015</a>
s 146 .....	am <a href="#">No 171, 2015</a>
<b>Division 5</b>	
<b>Subdivision A</b>	
s 147 .....	am <a href="#">No 171, 2015</a>
s 148 .....	am <a href="#">No 171, 2015</a>
s 149 .....	am <a href="#">No 171, 2015</a>



## Endnote 4—Amendment history

Provision affected	How affected
s 150 .....	am <u>No 171, 2015</u>
s 151 .....	am <u>No 171, 2015</u>
s 152 .....	am <u>No 171, 2015</u>
s 153 .....	am <u>No 171, 2015</u>
s 154 .....	am <u>No 171, 2015</u>
s 155 .....	am <u>No 171, 2015</u> ; <u>No 4, 2016</u>
<b>Subdivision B</b>	
Subdivision B heading.....	rs <u>No 171, 2015</u>
s 156 .....	am <u>No 171, 2015</u>
s 157 .....	am <u>No 171, 2015</u>
s 158 .....	am <u>No 171, 2015</u>
s 159 .....	am <u>No 171, 2015</u>
s 162 .....	am <u>No 171, 2015</u> ; <u>No 4, 2016</u>
s 163 .....	am <u>No 171, 2015</u>
<b>Subdivision C</b>	
s 164 .....	am <u>No 171, 2015</u>
s 165 .....	am <u>No 171, 2015</u>
s 166 .....	am <u>No 171, 2015</u>
s 167 .....	am <u>No 171, 2015</u>
<b>Part 7A</b>	
Part 7A	ad <u>No 171, 2015</u>
<b>Division 1</b>	
s 169AA.....	ad <u>No 171, 2015</u>
<b>Division 2</b>	
s 169AB.....	ad <u>No 171, 2015</u>
s 169AC.....	ad <u>No 171, 2015</u>
s 169AD.....	ad <u>No 171, 2015</u>
s 169AE.....	ad <u>No 171, 2015</u>
s 169AF.....	ad <u>No 171, 2015</u>
s 169AG.....	ad <u>No 171, 2015</u>
<b>Part 8</b>	

## Endnotes

### Endnote 4—Amendment history

Provision affected	How affected
s 169A .....	ad No 9, 2012 am <u>No 171, 2015</u>
s. 170A.....	ad. No. 11, 2011 am <u>No 171, 2015</u>
s. 170B.....	ad. No. 9, 2012
s 170C.....	ad <u>No 171, 2015</u>
s. 170 .....	rs. No. 14, 2011 am. No. 74, 2011; No. 9, 2012; <u>No 171, 2015</u>
s 171A .....	ad <u>No 171, 2015</u>
s. 171 .....	am. No. 143, 2006; No. 106, 2011; No 145, 2015; <u>No 171, 2015</u>
s. 172 .....	am. No. 143, 2006; No. 70, 2007; No. 106, 2011; No. 9, 2012; <u>No 171, 2015</u>
s. 173 .....	am. No. 143, 2006; No. 106, 2011; No. 9, 2012; <u>No 171, 2015</u>
s. 174 .....	am. No. 9, 2012
s. 175 .....	am. No. 143, 2006; No. 9, 2012; No 126, 2015; <u>No 171, 2015</u>
s. 176 .....	am. No. 101, 2002; No. 143, 2006; No. 10, 2010; No. 11, 2011; No. 9, 2012 rep <u>No 171, 2015</u>
s. 176A.....	rep. No. 9, 2012
s 176B.....	ad. No. 14, 2011 am No 126, 2015
s 176C.....	ad No 14, 2011 am No 126, 2015