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Statutory Rules 1994 No. 1

101/

Education Services for Overseas Students (Registration of Providers and Financial Regulation) Regulations² (Amendment)

I, THE ADMINISTRATOR of the Government of the Commonwealth of Australia, acting with the advice of the Federal Executive Council and under section 4 of the *Acts Interpretation Act 1901*, make the following Regulations under the *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991*.

Dated 13 April 1994.

P. BENNETT
Administrator

By His Excellency's Command,

SIMON CREAN
Minister for Employment, Education and Training

1. Commencement

1.1 These Regulations commence on 1 June 1994.

2. Amendment

2.1 The Education Services for Overseas Students (Registration of Providers and Financial Regulation) Regulations are amended as set out in these Regulations.

3. Regulation 2 (Interpretation)

3.1 Definitions of “administrative fee” and “year”:

Omit the definitions.

3.2 Insert the following definitions:

“ ‘**course money**’ has the same meaning as in section 6A of the Act;
‘**notified trust account**’ has the same meaning as in section 6A of the Act;

‘**reporting period**’ has the same meaning as in section 8 of the Act;

‘**tuition fees**’, in relation to a student:

(a) includes any amount payable by the student to a provider by way of:

- (i) commission; and
- (ii) course enrolment fees; and
- (iii) administration fees; and

(b) if it is a requirement of the course being undertaken, or to be undertaken, by the student that the student must live in the accommodation to which the following costs relate—includes:

- (i) costs of board and lodging; and
- (ii) any additional costs for the provision of domestic services;”.

4. Regulation 4 (Amounts not refundable)

4.1 Omit the regulation.

5. Regulation 5 (Refunds of course fees)

5.1 Omit the regulation.

6. Regulation 6 (Allowable cost for provision of a course)

6.1 Omit the regulation, substitute:

**Withdrawals and payments out of notified trust accounts—
tuition fees**

“4. (1) Subject to subregulation (2), if an amount of tuition fees is paid by, or on behalf of, a student for a course to be provided to the student by a provider, the provider may withdraw or pay money for tuition fees out of a notified trust account:

(a) if:

- (i) the money is withdrawn or taken out of the account before the start of the course; and
- (ii) the amount of money does not exceed 20% of the amount standing to the credit of the student in the account for the course; or

(b) if:

- (i) the money is withdrawn or taken out of the account on the day on which the course starts; and
- (ii) the amount of money does not exceed 45% of the amount standing to the credit of the student in the account for the course before the provider acts under paragraph (a); or

(c) if:

- (i) the money is withdrawn or taken out of the account after the start of the course; and
- (ii) the amount of money does not exceed the amount of tuition fees relating to a part of the course that has already been provided to the student; and
- (iii) the provider does not act under this paragraph more than once in a week.

“(2) A provider must not withdraw or pay money out of a notified trust account before the student by, or on behalf of, whom the money was paid into the account is granted a visa or entry permit under regulations under the *Migration Act 1958* that permits the student:

- (a) to travel to Australia for the purpose of undertaking the education or training; or
- (b) to remain in Australia while undertaking the education or training;

to which the money in the account relates.

Withdrawals and payments out of notified trust accounts—other fees and charges

Accommodation and other domestic services

“5. (1) If an amount of money is paid to a provider by, or on behalf of, a student for payment of the costs of accommodation or other domestic services provided to the student that are not tuition fees, the provider may withdraw or pay money out of a notified trust account for the purpose of paying those costs:

- (a) if the withdrawal is at the direction of the student for payment:
 - (i) to the person providing those services; or
 - (ii) to the student, or to another person specified by the student;in accordance with the direction; and
- (b) if paragraph (a) does not apply—not more than 3 months before the end of the period to which the expenses relate.

Surface transport to and from airports

“(2) If an amount of money is paid to a provider by, or on behalf of, a student for the transport of the student to or from an airport, the provider may withdraw or pay money out of a notified trust account for the payment of the cost of the transport service on or after the day on which the service is provided.

Health insurance

“(3) If an amount of money is paid to a provider by, or on behalf of, a student for payment for the health insurance of the student to:

- (a) Medibank Private; or
- (b) if another hospital benefits organisation is prescribed for the purposes of the definition of ‘course money’ in section 6A of the Act—that organisation;

the provider may withdraw or pay money out of a notified trust account for the health insurance of the student for the period to which the payment by, or on behalf of, the student relates on or after the day on which the payment is due.

Compulsory student union fees

“(4) If an amount of money is paid to a provider by, or on behalf of, a student for membership by the student of a students’ union or association membership of which is compulsory for the student, the provider may withdraw or pay money out of a notified trust account for the payment of those fees:

- (a) in accordance with the requirements of the students’ union or association for payment of the fee; and
- (b) otherwise—on or after the start of the term or semester of the course undertaken by the student.

Books, equipment and other materials

“(5) If an amount of money is paid to a provider by, or on behalf of, a student for the purchase of books, equipment and other materials for a course, the provider may withdraw or pay money out of a notified trust account for a purchase of that kind for the student not more than 4 weeks before the start of the term or semester to which the purchase relates.

Examination fees

“(6) If an amount of money is paid to a provider by, or on behalf of, a student for the payment of an examination fee for a course, the provider may withdraw or pay money out of a notified trust account for the payment of the fee:

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- (a) in the case of an examination conducted by a person except the provider—in accordance with the requirements of that person for payment of the fee; and
- (b) in any other case—not more than 4 weeks before the examination.

Goods and services not otherwise mentioned

“(7) If an amount of money is paid to a provider by, or on behalf of, a student for the payment of an amount to which regulation 4 or subregulation (1), (2), (3), (4), (5) or (6) does not apply, the provider may withdraw or pay money out of a notified trust account for the payment of the amount on or after the day on which:

- (a) the goods or services to which the payment relates are provided; or
- (b) the payment is due;

whichever is later.

Money payable to student

“(8) A provider may withdraw or pay money out of a notified trust account for payment to a student if the money is course money that the student is entitled to recover from the provider because the provider or the student has defaulted as mentioned in section 6B or 6C of the Act.

Interest paid on money in notified trust account

“(9) If a provider is entitled to withdraw or pay an amount of money out of a notified trust account under another provision of these Regulations, the provider may also withdraw or pay out of the account any interest or other earnings paid into the account in relation to the amount that the provider is entitled to withdraw.”.

Course money in arrears

“6. If:

- (a) a provider receives an amount of course money from, or on behalf of, a student; and

- (b) that amount is received after the date on which the goods or services to which the amount relates are provided to the student; and
- (c) the provider has agreed in writing to accept the amount after the date;

the requirements of section 6A of the Act do not apply to the provider in relation to the amount.”.

7. Regulation 7 (Returns and other information)

7.1 Paragraph 7 (2) (a):

Omit “year”, substitute “reporting period”.

7.2 Paragraphs 7 (2) (e) and (f):

Omit the paragraphs, substitute:

- “(e) the total funds held in the notified trust account maintained by the provider at the beginning of the reporting period;
- (f) the total funds held in the notified trust account maintained by the provider at the end of the reporting period;”.

7.3 Paragraph 7 (2) (i):

Omit “year”, substitute “reporting period”.

7.4 Subregulation 7 (3):

Omit the subregulation.

8. Regulation 8 (Exemptions)

8.1 Omit the regulation, substitute:

Exemptions

“8. The following providers are exempt from the requirements of sections 6A, 7 and 8 of the Act:

- (a) a provider that is administered by a State or Territory education authority;
- (b) a provider that is entitled to receive funds under a law of the Commonwealth for recurrent expenditure for the provision of education or training.”.

9. Schedule 1 (Form)

9.1 Omit Schedule 1, substitute the Schedule set out in the Schedule to these Regulations.

10. Schedule 2 (Exempt providers)

10.1 Omit Schedule 2.

SCHEDULE

“SCHEDULE 1

Subregulation 7 (1)

FORM

COMMONWEALTH OF AUSTRALIA

*Education Services for Overseas Students (Registration of Providers
and Financial Regulation) Act 1991*

**STATEMENT OF NOTIFIED TRUST ACCOUNT FUNDS HELD
ON BEHALF OF OVERSEAS STUDENTS FOR THE
REPORTING PERIOD THAT BEGINS ON *(INSERT DATE)* AND
ENDS ON *(INSERT DATE)***

Name of provider:.....(if
a business or company—the registered name)

ACN No. (if the provider is a company):.....

Provider code:

Names:

.....
.....
.....

Registered business address of provider:

.....
.....

.....
Information about notified trust account funds of provider:

(a) Name of any bank(s) and bank branch(es) in which notified trust account funds are held:.....

(b) Number of bank account(s) in which notified trust account funds are held:.....

(c) Name(s) of signatory¹/signatories¹ of each bank account to which paragraph (b) relates:.....

(d) Total notified trust account funds held on (date) : \$.....
(beginning of the reporting period)

(e) Number of course enrolments to which item (d) relates:.....

(f) Total notified trust account funds held on (date) : \$.....
(end of the reporting period)

(g) Number of course enrolments to which item (f) relates:.....

(h) Notified trust account funds deposited in the reporting period:
\$.....

(i) Number of course enrolments to which item (h) relates:.....

I declare that the information set out in this statement is correct to the best of my knowledge.

Dated:.....

.....
(Name of principal executive officer of provider)

.....
(Signature of principal executive officer of provider)

I¹/We¹ certify that I¹/we¹ have audited, to the extent required for the purposes of this certificate, the accounts and records of (insert name of provider) for the reporting period ending (insert date) in

accordance with the Australian Auditing Standards. To the best of
my¹/our¹ knowledge, the particulars set out in this statement are¹/are
not¹ correct and (*insert name of provider*) :

- complies with sections 6A, 6B and 6C of the Act; or¹
- does not comply with sections 6A, 6B and 6C of the Act;
or¹
- complies with sections 6A, 6B and 6C of the Act, subject
to the following qualifications:¹
(*insert any qualifications of registered company
auditor(s)*).

Dated:.....

.....
(*Name(s) and address(es) of registered company auditor(s)*)

.....
(*Signature(s) of registered company auditor(s)*)

1 *Omit this if it does not apply.*"

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 10 April 1994.
2. Statutory Rules 1991 No. 364 as amended by 1992 No. 168.