

Education Services for Overseas Students (Registration of Providers and Financial Regulation) Regulations (Amendment) 1994 No. 282

EXPLANATORY STATEMENT

STATUTORY RULES 1994 No. 282

Issued by the authority of the Minister for Employment, Education and Training

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

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

The Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991 (the Act) provides the legislative authority for the registration of all courses offered by Australian education providers to overseas students and for requiring providers to assure the financial security of fees paid in advance by overseas students.

Section 19 of the Act provides that the Governor-General may make regulations for the purposes of the Act.

The Regulations make the following amendments to the existing regulations:

Regulation 2 (Interpretation)

Under the amendments, a *bona fide* industry association that has, as part of its membership criteria, a commitment to a voluntary student placement scheme, can be approved as a TAS. The amendments therefore re-define a TAS operator by substituting the words "an association of providers" for "a company". For this reason, this regulation is amended to omit the definitions of a "company limited by guarantee" and an "unlimited company".

Regulation 9 (Other exemptions - membership of a TAS)

The amendments omit the current subregulation 9(1)(b) and substitute it with the following subregulation.

A provider is exempt from the requirement to be a member of a TAS if the provider has a written agreement with each student whereby the student is only required to pay course money after the course has been provided; or after part of the course has been provided and there exist arrangements among providers for the recognition of prior learning and appropriate credit transfer arrangements for that part of the course which has been provided. Given that a partially completed course will not benefit the student unless the student gets credit for it, this amendment will ensure that the student gets full value for that part of the course that was completed.

The amendment also adds that if money is paid for other goods and services, the written agreement would require payment by the student after those goods and services have been provided.

The amendments substitute subregulation 9(2) with the following subregulation. A provider is exempt from the TAS requirement if the Minister is satisfied that:

- the provider is unable to become a member of a TAS because of the special nature of the course offered; or

- because it is unreasonable, in the circumstances, to expect the provider to be a member of a TAS; or
- the provider is unwilling to be a member of a TAS; and
- the provider, under the above circumstances, has obtained an insurance policy that complies with Regulation 15 or a bank guarantee, or a guarantee from a parent organisation. The instruments of guarantees from the bank or parent organisation must indemnify the student in the same way as the insurance policy that meets the requirements of Regulation 15.

Subregulation 9(3) is omitted and substituted with the following subregulation.

The provider must give the Minister written notice of the provider's inability or unwillingness to become a member of a TAS. A copy of the insurance policy or instrument of guarantee must be provided to the Minister before 30 November 1994, if the provider is registered in respect of a course, or has applied for registration and the application has not been rejected. In all other cases, these documents must be provided to the Minister at the time of registration.

The amendments insert new subregulation 9(4) which specifies that the written notice given to the Minister by the provider must include the names of all students covered by the insurance policy or guarantee.

Regulation 11 (Establishment of a TAS)

This subregulation is omitted and substituted with the following regulation:

A TAS when established fulfils the requirements of section 7A of the Act if, when a memberprovider does not provide or ceases to provide a course to a student who has not withdrawn from it, the TAS has arrangements to ensure that the students receive education or training equivalent to the education or training for which the students have paid, and the students are not required to pay any additional tuition fees for that portion of the course for which they have paid course money. A TAS in terms of section 7A is one approved by the Minister under regulation 17 and would also provide for the circumstances in which a provider's membership of the TAS may be cancelled.

Regulation 12 (TAS requirements)

This regulation is omitted and its requirements in terms of guaranteeing education and training to students, approval of a TAS by the Minister, and cancellation of a provider's membership of a TAS are covered under the amended regulation 11.

Regulation 13 (TAS operators)

This regulation is amended by stating that a TAS operator must be an association of providers which has, as one of its objectives, the operation of a TAS as prescribed under the Act (namely, ensuring that overseas students receive the education or training for which they have paid).

Regulation 14 (Membership. objects and rules of companies operating a TAS)

The amendments omit the above regulation as a TAS operator is no longer required to be a company limited or unlimited by guarantee.

Regulation 15 (Insurance policy requirements)

The words "or by a TAS operator" are omitted from this regulation.

The word "and" is omitted from subregulation 15(1)(e)(iv) as the proposed amendments also omit subregulation 15(1)(f).

The amendments also omit subregulation 15(2) as the amended regulations require an approved TAS to have placement arrangements as part of its membership criteria and providers who are not members of an approved TAS are required to obtain an insurance policy to indemnify their students.

Regulation 16 (Application for approval of a TAS)

The words "including information whether the operator is an unlimited company or a company limited by guarantee" are omitted from subregulation 16(2)(a) as a TAS is no longer required to be a company limited or unlimited by guarantee.

Given that the proposed TASs will guarantee placement of students to ensure the students receive the education and training for which they paid, the amendments omit the requirement for TASs to provide information on the "way in which they will provide for payment of amounts to students".

As the amendments omit regulation 12, the words "as mentioned in regulation 12" are omitted from subregulation 16(2)(b).

Subregulation 16(3) is omitted as the requirement for a TAS to take out an insurance policy, provide a copy of that policy and the names of students covered by that policy are removed as the amended regulations require an approved TAS to have placement arrangements as part of its membership criteria and providers who are not members of an approved TAS are required to obtain an insurance policy to indemnify their students.

Regulation 18 (Reporting requirements)

Subregulation 18 (1) is amended to require a TAS to report to the Minister within 28 days after the end of the financial year.

Subregulation 18(1)(e) is omitted as the amendments to the TAS regulations do not require a TAS to be a company established under the Corporations Law.

New regulation 18A (Reporting requirements - providers exempt from membership of a TAS)

The amendments insert a new regulation 18A after regulation 18. Subregulation 18A(1) specifies that a provider who is exempt from the requirement to be a member of a TAS must within 28 days from the end of a reporting period (ie the financial year or some other period that applies to the provider as determined in accordance with section 8 of the Act) give the Minister written notice explaining why the provider should be exempt from the requirement to be a member of a TAS. If the provider is exempt from this requirement, the provider must give the Minister a copy of the insurance policy or instrument of guarantee which indemnifies the provider's students and a list of all the students so indemnified.

The regulations will commence on 24 August 1994.