

Education Services for Overseas Students (Registration of Providers and Financial Regulation) Regulations (Amendment) 1995 No. 13

EXPLANATORY STATEMENT

STATUTORY RULES 1995 No. 13

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 Principal Act) provides the legislative authority for the registration of all Australian education providers offering courses in Australia to overseas students and the particulars of each course so provided. It also requires providers to comply with financial requirements which aim to assure the security of fees paid in advance by overseas students for courses of education in Australia.

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

The Principal Act was amended by the *Education Services For Overseas Students (Registration of Providers and Financial Regulation) Amendment Act 1993*, Act No. 114 of 1993. The 1993 amendments included the introduction of section 6A which requires providers who are not exempt from the financial regulations of the Principal Act to pay into notified trust accounts all pre-paid course money received directly or indirectly from overseas students. Subsection 6A(2) of the Principal Act specifies that withdrawals or payments from notified trust accounts may not be made except in accordance with regulations under the Principal Act. Subsection 6A(5) of the Principal Act specifies that the regulations may exempt providers either wholly or in part from the requirement in paragraph 6A(1)(b) of the Principal Act that the provider deposit all pre-paid course money into the notified trust account.

Regulations specifying the amounts of withdrawals or payments from notified trust accounts were made as Statutory Rules 1994, No. 146. However, when the Regulations were tabled in the Senate they became subject to a notice of motion of disallowance. The Regulations were then referred to the Senate Standing Committee on Employment, Education and Training for inquiry. Following the Senate Committee hearing, the Minister proposed a package of amendments to the Principal Act and its Regulations which included amending the trust account regulations to meet industry's concerns about agents' commissions and enrolment fees.

However, before this could be achieved, advice from the Attorney-General's Department indicated that, in order to amend the trust account regulations, Statutory Rules 101 of 1994 and 146 of 1994, subsection 6A(5) of the Principal Act would first have to be amended. As a consequence, the Government introduced legislation during the 1994 Spring sittings of Parliament to amend subsection 6A(5) of the Principal Act to allow the regulations under the Principal Act to exempt providers, either wholly or in part, from the notified trust account requirements of the Principal Act.

The Senate viewed this action as evidence of good faith by the Minister and the notice of motion of disallowance of Statutory Rules No. 146 of 1994 was withdrawn on 23 August 1994.

The legislation amending subsection 6A(5) of the Principal Act was subsequently passed by Parliament and became the *Education Services For Overseas Students (Registration of Providers and Financial Regulation) Amendment Act 1994*, Act No. 135 of 1994.

The Regulations give effect to more flexible arrangements for the deposit of course money into a notified trust account under paragraph 6A(1)(b) of the Principal Act, and also vary the rate at which providers can withdraw money from the notified trust accounts. In brief, the amendments consist of three elements:

- amendments to definitions used in the Regulations;
- the provision of a partial exemption from the deposit requirements under paragraph 6A(1)(b) of the Principal Act; and
- amendments to the rate at which a provider can withdraw course money from the notified trust account.

The Regulations:

- define course enrolment fees;
- amend the definition of tuition fees;
- allow a provider to retain a course enrolment fee of not more than \$250, which would be excluded from pre-paid tuition fees;
- allow a provider to not deposit into the notified trust account up to 20% of pre-paid tuition fees:
 - that is, 80% of pre-paid tuition fees (which are defined as not including the \$250 course enrolment fee) must be deposited into the notified trust account;
- where a provider chooses to deposit between 80% and 100% of pre-paid tuition fees into the notified trust account, provide for a range of withdrawal situations before course commencement which would all culminate in at least 80% of pre-paid tuition fees remaining in the notified trust account prior to course commencement;
- on commencement of a course, allow a provider to withdraw up to 45% of pre-paid tuition fees (including amounts drawn down before course commencement); and
- after commencement of a course, allow a provider to draw down weekly in arrears the remaining prepaid tuition fees.

The Regulations also correct a drafting error in paragraph 5(1)(b) of the current regulations, and remove a contradiction between the requirements of current subregulations 5(1A) and 5(3).

Details of the Regulations follow:

Regulation 1: Amendment

This states that the Education Services for Overseas Students (Registration of Providers and Financial Regulation) Regulations are amended as set out in the following Regulations.

Regulation 2: Regulation 2 (Interpretation)

Subregulation 2.1 inserts a definition of "course enrolment fees" stating that it has the meaning given in subregulation 6A(3). That is, "course enrolment fees" are defined in the new subregulation 6A(3).

Subregulation 2.2 omits the current definition of "tuition fees" and replaces it with one which states that such fees include:

- commission and administration fees;
- any amount of course money, for course enrolment fees that exceeds \$250; and
- where live-in arrangements are a specific course requirement for the overseas student, the costs of board, lodging and other domestic services.;

but do not include:

- course enrolment fees not exceeding \$250.

Regulation 3: Regulation 4 (Withdrawals and payments out of notified trust accounts - tuition fees)

Subregulation 3.1 omits current regulation 4 (Withdrawals and payments out of notified trust accounts - tuition fees) and replaces it with new regulations 4 and 4A.

New regulation 4 states that, if a provider pays all or any part of course enrolment fees as defined in new subregulation 6A(3) into the notified trust account, the provider may withdraw or pay out all or any part of such fees.

This provision ensures that the provider can deposit and withdraw such fees in full or in part from the notified trust account at a time convenient to the provider. New regulation 4A takes into account two situations.

(1) A situation where a provider has deposited 100% of the tuition fees into the notified trust account and not taken advantage of the exemption provided by the new subregulation 6A(1).

New subregulation 4A(1) provides, where a provider has deposited all (100%) of the gross tuition fees paid, directly or indirectly, by the student to the provider into a notified trust account (see paragraph 6A(1)(b) of the Principal Act), the provider may make withdrawals from the notified trust account according to the new subregulations 4A(2) and 4A(5).

New paragraph 4A(2)(a) provides that, before course commencement, a provider may withdraw from the notified trust account not more than 20% of the gross tuition fees standing to the credit of the student in the account. That is, no less than 80% of the gross tuition fees standing to the credit of the student will remain in the notified trust account prior to course commencement.

New paragraph 4A(2)(b) provides that, on or after course commencement, the provider may withdraw from the notified trust account an additional amount of money such that total withdrawals will not exceed 45% of the gross tuition fees standing to the credit of the student. That is, no less than 55% of the gross tuition fees standing to the credit of the student will remain in the notified trust account on course commencement.

The table below gives one example of how the new subregulations 4A(1) and 4A(2) will operate:

Action	Outcome
The provider deposits 100% of gross tuition fees in the notified trust account.	100% of gross tuition fees in notified trust account.
Before course commencement, the provider withdraws a total of 10% of gross tuition fees from the notified trust account.	90% of gross tuition fees in notified trust account.
On course commencement, the provider withdraws a further 35% of gross tuition fees from the notified trust account (ie. total withdrawals amount to 45% of gross tuition fees).	55% of gross tuition fees in notified trust account.

(2) A situation where a provider will take advantage of the exemption from payment into the notified trust account provided by the new subregulation 6A(1).

New subregulation 4A(3) provides that, where a provider has taken advantage of the exemption under the new subregulation 6A(1) and deposited between 80% and 100% of gross tuition fees into the notified trust account, the provider may make withdrawals from the notified trust account according to the new subregulations 4A(4) and 4A(5).

New paragraph 4A(4)(a) provides that, before course commencement, a provider may withdraw an amount of money from the notified trust account so that no less than 80% of the gross tuition fees paid, directly or indirectly, by the student to the provider for the course (ie. the amount of course money for tuition fees in proposed paragraph 4A(3)(a)) will remain in the notified trust account prior to course commencement.

New paragraph 4A(4)(b) will provide that, on or after course commencement, a provider may withdraw from the notified trust account an additional amount not exceeding the difference between:

- 45% of the gross tuition fees paid, directly or indirectly, by the student to the provider, and
- the sum of any amount withdrawn from the notified trust account in accordance with the new paragraph 4A(4)(a) and the amount not paid into the notified trust account under the exemption provided by the new subregulation 6A(1).

That is, no less than 55% of gross tuition fees paid, directly or indirectly, by the student to the provider will remain in the notified trust account at course commencement.

The table below gives one example of how the new subregulations 4A(3) and 4A(4) will operate:

Action	Outcome
The provider deposits 90% of gross tuition fees in the notified trust account.	90% of gross tuition fees in notified trust account.
Before course commencement, the provider withdraws a total of 5% of gross tuition fees from the notified trust account.	85% of gross tuition fees in notified trust account.
On course commencement, the provider withdraws a further 30% of gross tuition fees from the notified trust account (ie. total withdrawals amount to 35% of gross tuition fees).	55% of gross tuition fees in notified trust account.

withdrawals amount to 45% of gross tuition fees).

New subregulation 4A(5) deals with withdrawals after course commencement. It allows providers to withdraw the remaining tuition fees from the notified trust account on a proportionate basis, in arrears, and no more frequently than weekly. It applies in all the situations covered by the new subregulations 4A(1) and 4A(2), and 4A(3) and 4A(4).

Regulation 4: Regulation 5 (Withdrawals and payments out of notified trust accounts - other fees and charges)

Subregulation 4.1 amends current paragraph 5(1)(b) to correct a drafting error. It omits "the end of" and replaces it with "the commencement of".

Paragraph 5(1)(b) states that withdrawals to pay for accommodation and other domestic services may be made not more than 3 months before the end of the period to which the expenses relate. However, it was intended that withdrawals for this purpose could be allowed to be made 3 months in advance.

Subregulation 4.2 removes a contradiction between the requirements of current subregulations 5(1A) and 5(3).

Subregulation 5(1A) states that a provider must not withdraw or pay course money out of a notified trust account before the student is issued a visa. However, withdrawals under subregulation 5(3) for health insurance payments must be allowed before visa issue for new students as they must have evidence of adequate health care arrangements in Australia before being issued a visa.

By inserting a new subregulation 5(3A) after current subregulation 5(3), a provider will be allowed to withdraw course money prior to visa issue for the purpose of acquiring health insurance for the student.

Regulation 5: New regulation 6A

Subregulation 5.1 inserts after current regulation 6 a new regulation 6A (Exemption from payment into notified trust account). Subsection 6A(5) of the Principal Act was amended to allow the making of new regulation 6A.

New subregulations 6A(1) and 6A(2) exempt the provider from the requirements of paragraph 6A(1)(b) of the Principal Act that all pre-paid course money be deposited into a notified trust account.

New subregulation 6A(1) allows the provider not to deposit into a notified trust account up to 20% of the gross tuition fees paid, directly or indirectly, by the student to the provider.

New subregulation 6A(2) allows the provider not to deposit into a notified trust account an amount of course money paid, directly or indirectly, by the student to the provider as a course enrolment fee.

New subregulation 6A(3) defines course enrolment fees for the purpose of the regulation as being an amount paid, directly or indirectly, by a student to a provider as an enrolment fee where the amount is required for enrolment and does not exceed \$250.

The Regulations commenced on the date of gazettal.

