



**Education Services for Overseas  
Students Legislation Amendment (2006  
Measures No. 1) Act 2006**

**No. 143, 2006**

**An Act to amend the law relating to education  
services for overseas students, and for related  
purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# **Education Services for Overseas Students Legislation Amendment (2006 Measures No. 1) Act 2006**

**No. 143, 2006**

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**An Act to amend the law relating to education  
services for overseas students, and for related  
purposes**

*[Assented to 6 December 2006]*

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Education Services for Overseas  
Students Legislation Amendment (2006 Measures No. 1) Act 2006*.

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## **2 Commencement**

This Act commences on 1 January 2007.

## **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendments**

### **Part 1—Amendments**

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

##### **1 Section 5**

Insert:

*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.

##### **2 Section 5 (definition of *reinstatement fee*)**

Omit “imposed by”, substitute “referred to in”.

##### **3 After paragraph 9(2)(a)**

Insert:

(aa) the provider has paid the associated initial registration charge; and

Note 1: The following heading to subsection 9(1) is inserted “*Recommendation by designated authority*”.

Note 2: The following heading to subsection 9(2) is inserted “*Registration by Secretary*”.

##### **4 Paragraph 9(2)(e)**

Omit “, reinstatement fee”.

##### **5 Subsection 9(6)**

Omit all the words from and including “whether the provider” to and including “by the provider”, substitute “whether a person to whom subsection (6A) applies”.

Note: The following heading to subsection 9(5) is inserted “*Fit and proper to be registered*”.

##### **6 After subsection 9(6)**

Insert:

(6A) For the purposes of subsection (6), this section 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.

## **7 Subsection 11(1)**

After “associate”, insert “or high managerial agent”.

## **8 Section 12**

Repeal the section, substitute:

## **12 Initial registration charge**

The Secretary must give a written notice to each provider who is liable to pay the initial registration charge stating the amount of the charge.

Note 1: A provider cannot get registered until it has paid the initial registration charge: see paragraph 9(2)(aa).

Note 2: For the amount of the initial registration charge, see sections 6 and 7 of the *Education Services for Overseas Students (Registration Charges) Act 1997*.

## **9 Subsection 17(1)**

After “associate” (first occurring), insert “or high managerial agent”.

Note: The heading to section 17 is altered by adding at the end “**and high managerial agents**”.

## **10 Paragraph 17(1)(b)**

After “the associate’s”, insert “or agent’s”.

## **11 Paragraph 17(1)(c)**

After “the associate”, insert “or agent”.

## **12 Paragraph 17(1)(d)**

After “the associate’s”, insert “or agent’s”.

## **13 Subsection 18(1)**

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Repeal the subsection, substitute:

- (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 course money 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 course money 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 course money paid by students directly to any of the other providers is taken to have been paid directly to the registered provider.

Note: The heading to section 18 is altered by omitting "**registered**".

#### **14 Subsection 22(1)**

Repeal the subsection, substitute:

- (1) A registered provider for a course must at all times:
  - (a) be a member of a tuition assurance scheme that:
    - (i) is established in accordance with the regulations; and
    - (ii) covers the course; and
  - (b) comply with the rules of the scheme.

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

#### **15 Subsection 22(2)**

Omit "who is not a member of", substitute "for a course who is not a member of such".

#### **16 Subsection 22(3)**

After "providers", insert "for courses".

#### **17 Section 23 (note 2)**

Repeal the note, substitute:

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

## **18 Section 31**

Repeal the section, substitute:

### **31 Providers' liabilities may be satisfied by alternative arrangements**

*Section applies if provider defaults*

- (1) This section applies in a situation covered by subsection 27(1).

*Provider may arrange alternative course*

- (2) As an alternative to making a payment required by this Division, the registered provider (or former registered provider) may arrange for the student to be offered a place in an alternative course at the provider's expense.
- (3) The provider is relieved of its liability to make the payment if the student accepts, in writing, the offer under subsection (2).

Note: A call is not made on the Fund in respect of the original course if:

- (a) the student accepts the offer (see paragraph 76(1)(a)); or
- (b) the alternative course is a suitable alternative course (whether or not the student accepts the offer) (see paragraph 76(1)(c)).

*Tuition assurance scheme may arrange suitable alternative course*

- (4) As an alternative to the registered provider (or former registered provider) making a payment required by this Division, a tuition assurance scheme that covers the course may arrange for the student to be promptly offered a place in a suitable alternative course.

Note: Not all courses are required to be covered by a tuition assurance scheme: see subsection 22(3).

- (5) The provider is relieved of its liability to make the payment if the student accepts, in writing, the offer under subsection (4).

Note: A call is not made on the Fund in respect of the original course: see paragraph 76(1)(c).

## **19 Section 32**

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After “tell”, insert “the Secretary and”.

Note: The heading to section 32 is altered by omitting “notify” and substituting “tell the Secretary and”.

## **20 At the end of subsection 60(2)**

Add “or schemes that cover each of the provider’s courses”.

## **21 Paragraph 76(1)(c)**

Repeal the paragraph, substitute:

(c) the student has not been promptly offered a place in a suitable alternative course.

## **22 At the end of subsection 76(1)**

Add:

Note: A provider is not required to refund an amount under Division 2 of Part 3 if the student accepts an alternative course from the provider: see subsection 31(3).

## **23 Subsection 83(1)**

After “associate”, insert “or high managerial agent”.

## **24 After subsection 83(1A)**

Insert:

(1B) The Minister may also take one or more of those actions against a registered provider (other than a provider covered by subsection 9(5)) if the Minister (having regard to the matters referred to in subsection 9(6)) believes on reasonable grounds that the provider is not fit and proper to be registered.

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

Note 1: The following heading to subsection 83(1) is inserted “*Circumstances in which Minister may take action*”.

Note 2: The following heading to subsection 83(3) is inserted “*Actions the Minister may take*”.

Note 3: The following heading to subsection 83(4) is inserted “*Actions not limited to particular courses*”.

## **25 Subsection 89(2)**

Repeal the subsection, substitute:

*Removal of suspension*

- (2) After the State'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.

**26 Section 90**

Repeal the section, substitute:

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

- (1) The registration of a provider (other than a provider covered by subsection 9(5)) is suspended for all courses for a State by force of this subsection if the designated authority for the State tells the Secretary that the authority (having regard to the matters referred to in subsection 9(6)) is no longer satisfied that the provider is fit and proper to be registered.

Note: Section 95 sets out the effect of suspension.

*Removal of suspension*

- (2) If the designated authority tells the Secretary that the authority is again satisfied that the provider is fit and proper to be registered, 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.

**90 Automatic suspension for non-payment of annual Fund contribution, special levy or annual registration charge**

- (1) The registration of a provider who:
  - (a) fails to comply with a reminder notice given under section 75; or

(b) fails to pay the annual registration charge in accordance with section 23;

is suspended by force of this subsection for all courses for all States.

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.

**27 Paragraph 93(1)(b)**

Repeal the paragraph, substitute:

- (b) not to give a notice under subsection 89(2) or 89A(2);

**28 Subparagraph 93(1)(d)(iii)**

After “subsection 89(2)”, insert “or 89A(2)”.

**29 Section 94**

Repeal the section, substitute:

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

*Removal of condition*

(1) If the Minister imposes a condition 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.

**30 Subsections 171(1), (2) and (3)**

Repeal the subsections, substitute:

- (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).

Note: The following heading to subsection 171(5) is inserted "*Annual indexation*".

**31 Paragraph 172(1)(b)**

Repeal the paragraph.

**32 At the end of subsection 172(1)**

Add:

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

**33 Paragraph 173(1)(b)**

Omit "reinstatement fee or".

**34 At the end of subsection 175(1)**

Add:

- ; or (g) a tuition assurance scheme; 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 *Legislative Instruments Act 2003*.

Note: The heading to subsection 175(1) is altered by omitting "*and the Fund Manager*" and substituting "*, the Fund Manager etc.*".

**35 Paragraph 176(1)(c)**

Repeal the paragraph, substitute:

- (c) a decision not to give a notice under subsection 89(2) or 89A(2).

***Education Services for Overseas Students (Registration Charges) Act 1997***

**36 Subsection 6(1)**

Omit “Upon”, substitute “Before”.

## Part 2—Application and saving provisions

### 37 Application

- (1) The amendments:
- (a) of the *Education Services for Overseas Students Act 2000* made by items 2, 3, 4, 8, 30, 31 and 33 of this Schedule; and
  - (b) of the *Education Services for Overseas Students (Registration Charges) Act 1997* made by item 36 of this Schedule;
- do not apply to a liability to pay the initial registration charge or a reinstatement fee if the liability existed immediately before the commencement of this item.
- (2) The amendments of the *Education Services for Overseas Students Act 2000* made by items 9, 10, 11 and 12 of this Schedule apply to a provider becoming aware as mentioned in subsection 17(1) of that Act (as amended by this Schedule) before, on or after the commencement of this item.
- (3) The amendments of the *Education Services for Overseas Students Act 2000* made by items 25, 27 and 35 of this Schedule, so far as they relate to section 89 of that Act, do not apply to suspensions under that section that happened before the commencement of this item. To avoid doubt, subsection 176(1) of that Act, as in force immediately before that commencement, continues to apply to suspensions under section 89 of that Act that happened before that commencement.
- (4) The amendment of the *Education Services for Overseas Students Act 2000* made by item 26 of this Schedule, so far as it relates to paragraph 90(1)(b) of that Act, applies to a failure to pay an annual registration charge that:
- (a) becomes due for payment on or after the commencement of this item; or
  - (b) became due for payment before the commencement of this item and remained unpaid immediately before that commencement.
- (5) The amendment of the *Education Services for Overseas Students Act 2000* made by item 26 of this Schedule, so far as it relates to subsection
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90(2) of that Act, applies to suspensions under subsection 90(1) of that Act that happen on or after the commencement of this item.

### **38 Saving**

(1) Regulations:

- (a) made for the purposes of paragraph 22(1)(a) of the *Education Services for Overseas Students Act 2000*; and
- (b) that are in force immediately before the commencement of this item;

have effect from that commencement as if they had been made for the purposes of subparagraph 22(1)(a)(i) of that Act after that commencement.

(2) The amendments made by items 14 and 16 of this Schedule do not affect the continuity of:

- (a) rules referred to in paragraph 22(1)(b) of the *Education Services for Overseas Students Act 2000*; or
- (b) regulations made for the purposes of subsection 22(3) of that Act;

that are in force immediately before the commencement of this item.

(3) The amendment made by item 21 of this Schedule does not affect the continuity of determinations made under subsection 76(1) of the *Education Services for Overseas Students Act 2000* that are in force immediately before the commencement of this item.

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*[Minister's second reading speech made in—  
House of Representatives on 31 May 2006  
Senate on 14 September 2006]*

(76/06)

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14      *Education Services for Overseas Students Legislation Amendment (2006 Measures No. 1) Act 2006*      No. 143, 2006