



Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Act 2012

No. 9, 2012 as amended

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Includes amendments up to: Act No. 31, 2014

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Act 2012* as in force on 1 July 2012. It includes any commenced amendment affecting the legislation to that date.

This compilation was prepared on 29 May 2014.

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of each amended provision.

Uncommenced amendments

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in the endnotes.

Application, saving and transitional provisions for provisions and amendments

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

Modifications

If a provision of the compiled law is affected by a modification that is in force, details are included in the endnotes.

Provisions ceasing to have effect

If a provision of the compiled law has expired or otherwise ceased to have effect in accordance with a provision of the law, details are included in the endnotes.

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An Act relating to education services for overseas students, and for related purposes

1 Short title

This Act may be cited as the *Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Act 2012*.

2 Commencement

- (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
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	20 March 2012
2. Schedule 1, Parts 1 and 2	The first 1 July that occurs on or after the day this Act receives the Royal Assent.	1 July 2012
3. Schedule 1, Part 3, Division 1	The first 1 July that occurs on or after the day this Act receives the Royal Assent. However, if item 12 of Schedule 1 to the <i>Education Services for Overseas Students Amendment (Registration Charges Consequential) Act 2011</i> commences at or before that time, the provision(s) do not commence at all.	Does not commence
4. Schedule 1, Part 3, Division 2	The later of: (a) immediately after the commencement of the provision(s) covered by table item 2; and	1 July 2012 (paragraph (a) applies)

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(Tuition Protection Service and Other Measures) Act 2012*

1

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
	(b) immediately after the commencement of item 12 of Schedule 1 to the <i>Education Services for Overseas Students Amendment (Registration Charges Consequential) Act 2011</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
5. Schedule 1, Parts 4 and 5	The first 1 July that occurs on or after the day this Act receives the Royal Assent.	1 July 2012
6. Schedule 2, Parts 1 and 2	The first 1 July that occurs on or after the day this Act receives the Royal Assent.	1 July 2012
7. Schedule 2, Part 3, Division 1	The first 1 July that occurs on or after the day this Act receives the Royal Assent. However, if item 10 of Schedule 1 to the <i>Education Services for Overseas Students Amendment (Registration Charges Consequential) Act 2011</i> commences at or before that time, the provision(s) do not commence at all.	Does not commence
8. Schedule 2, Part 3, Division 2	The later of: (a) immediately after the commencement of the provision(s) covered by table item 6; and (b) immediately after the commencement of Schedule 1 to the <i>Education Services for Overseas Students (Registration Charges) Amendment Act 2011</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	1 July 2012 (paragraph (a) applies)
9. Schedule 2, Part 3, Division 3	Immediately before the commencement of item 7 of Schedule 1 to the <i>Education Services for Overseas Students Amendment (Registration Charges Consequential) Act 2011</i> .	Does not commence

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
	However, if that item commences at the same time as, or before, Part 2 of Schedule 2 to this Act, the provision(s) do not commence at all.	
10. Schedule 2, Part 3, Division 4	Immediately before the commencement of items 5, 6, 8 and 9 of Schedule 1 to the <i>Education Services for Overseas Students Amendment (Registration Charges Consequential) Act 2011</i> . However, if those items commence at the same time as, or before, Part 2 of Schedule 2 to this Act, the provision(s) do not commence at all.	Does not commence
11. Schedule 2, Part 4	The first 1 July that occurs on or after the day this Act receives the Royal Assent.	1 July 2012
12. Schedule 3, Part 1, Division 1	The first 1 July that occurs on or after the day this Act receives the Royal Assent.	1 July 2012
13. Schedule 3, Part 1, Division 2	Immediately after the commencement of the provision(s) covered by table item 6.	1 July 2012
14. Schedule 3, Part 2	The first 1 July that occurs on or after the day this Act receives the Royal Assent.	1 July 2012
15. Schedules 4 to 6	The first 1 July that occurs on or after the day this Act receives the Royal Assent.	1 July 2012
16. Schedule 7, Part 1	The day this Act receives the Royal Assent. However, if item 3 of Schedule 1 to the <i>Tertiary Education Quality and Standards Agency (Consequential Amendments and Transitional Provisions) Act 2011</i> commences before that time, the provision(s) do not commence at all.	Does not commence
17. Schedule 7, Part 2	The later of: (a) the start of the day this Act receives the Royal Assent; and (b) immediately after the commencement of item 3 of Schedule 1 to the <i>Tertiary</i>	20 March 2012 (paragraph (a) applies)

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
	<i>Education Quality and Standards Agency (Consequential Amendments and Transitional Provisions) Act 2011.</i>	
18. Schedule 7, Part 3	Immediately after the commencement of the provision(s) covered by table item 17.	20 March 2012
19. Schedule 8, Part 1	The first 1 July that occurs on or after the day this Act receives the Royal Assent.	1 July 2012
20. Schedule 8, Part 2	Immediately after the commencement of the provision(s) covered by table item 6.	1 July 2012

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

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.

4 Regulations

- (1) 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.
- (2) In particular, regulations may be made prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by this Act.

Schedule 1—Tuition protection service

Part 1—Main amendments

Education Services for Overseas Students Act 2000

1 Part 5

Repeal the Part, substitute:

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.
- (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.

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);
 - (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 pre-paid fees received by the provider in respect of the student.

Note: For providers who are required to maintain an initial pre-paid fees account, 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 pre-paid 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
 - (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
 - (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;
 - (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).

47C Registered provider to notify of student default

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

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 notify, in writing, the Secretary and the TPS Director of the default within 5 business days of the default occurring.

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

- (3) A notice given under this section must comply with any requirements of a legislative instrument made under subsection (4).
- (4) The Minister may, by legislative instrument, specify requirements for a notice given under this section.

Former registered providers

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

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).

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 initial pre-paid fees account, 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.

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 a legislative instrument made under subsection (4), of any unspent pre-paid fees received by the provider in respect of the student.

Note: For providers who are required to maintain an initial pre-paid fees account, 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 unspent pre-paid fees 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.

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 an overseas student or intending overseas student defaults in relation to a course provided by the provider at a location.

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 47D or 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.

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
 - (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
 - (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 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 pre-paid fees.

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 initial pre-paid fees account, 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 (1)(d) of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988*.

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.

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
 - (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 *Financial Management and Accountability Act 1997*.

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;
 - (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 21 of the *Financial Management and Accountability Act 1997* (debits from 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).

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.

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.

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 *Financial Management and Accountability Act 1997*;
 - (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 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*.

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:
 - (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
 - (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:
 - (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.

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:
 - (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 2—Consequential amendments

Education Services for Overseas Students Act 2000

2 Paragraph 4A(a)

Omit “financial and tuition assurance to”, substitute “tuition assurance, and refunds, for”.

3 Paragraphs 4B(2)(c) and (e)

Repeal the paragraphs.

4 Section 5

Insert:

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.

5 Section 5 (definition of *annual Fund contribution*)

Repeal the definition.

6 Section 5

Insert:

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

7 Section 5

Insert:

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

8 Section 5

Insert:

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

9 Section 5 (definition of *contributions criteria*)

Repeal the definition.

10 Section 5

Insert:

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.

11 Section 5

Insert:

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.

12 Section 5 (definition of *Fund*)

Repeal the definition.

13 Section 5 (definition of *Fund Manager*)

Repeal the definition.

14 Section 5

Insert:

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

15 Section 5

Insert:

OSTF: see Overseas Students Tuition Fund.

16 Section 5

Insert:

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

17 Section 5 (definition of *Panel*)

Repeal the definition.

18 Section 5

Insert:

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

19 Section 5 (definition of *special levy*)

Repeal the definition.

20 Section 5

Insert:

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).

21 Section 5 (definition of *tuition assurance scheme*)

Repeal the definition.

22 Section 13

Repeal the section, substitute:

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.

23 Section 22

Repeal the section.

24 Sections 24 and 25

Repeal the sections, substitute:

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.

25 Section 26

Repeal the section, substitute:

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.

26 Division 2 of Part 3

Repeal the Division.

27 Paragraph 90(1)(a)

Omit "section 75", substitute "section 53D".

28 Paragraphs 106(1A)(e) and (f)

Repeal the paragraphs, substitute:

- (e) section 46E; or
- (f) section 47F; or
- (g) section 47G.

29 Paragraph 108(a)

Omit "fund manager", substitute "TPS Director".

30 After section 170A

Insert:

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.

31 At the end of section 170

Add:

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.

32 Paragraph 172(1)(c)

Repeal the paragraph, substitute:

- (c) TPS levy (other than a provider's first TPS levy);

33 Paragraph 173(1)(c)

Repeal the paragraph, substitute:

- (c) TPS levy (other than a provider's first TPS levy).

34 Subsection 173(2)

Omit “the Fund, the Fund Manager”, substitute “the OSTF, the TPS Director”.

35 Section 174

Omit “(*Assurance Fund Contributions*) Act 2000”, substitute “(*TPS Levies*) Act 2012”.

36 Subsection 175(1) (heading)

Repeal the heading, substitute:

Giving information to government agencies, the TPS Director etc.

37 Paragraphs 175(1)(f) and (g)

Repeal the paragraphs, substitute:

(f) the TPS Director; or

(g) a Board member; or

38 Before paragraph 176(1)(b)

Insert:

(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

Tertiary Education Quality and Standards Agency Act 2011

39 Paragraph 189(1)(e)

Omit “the Fund Manager, or the operator of an applicable tuition assurance scheme,”, substitute “the TPS Director,”.

Part 3—Contingent amendments

Division 1—Amendment that will not commence if the Registration Charges Acts commence first

Education Services for Overseas Students Act 2000

40 Section 90 (heading)

Omit “annual Fund contribution, special levy”, substitute “TPS
levy”.

Division 2—Amendment commencing immediately after the later of the commencement of Part 1 of this Schedule and the Registration Charges Acts

Education Services for Overseas Students Act 2000

41 Section 90 (heading)

Omit “contribution,”.

**Part 4—Repeal of the Education Services for
Overseas Students (Assurance Fund
Contributions) Act 2000**

*Education Services for Overseas Students (Assurance Fund
Contributions) Act 2000*

42 The whole of the Act

Repeal the Act.

Part 5—Application, saving and transitional provisions

Division 1—Introduction

43 Definitions

In this Part:

asset means:

- (a) any legal or equitable estate or interest in real or personal property, whether actual, contingent or prospective; and
- (b) any right, power, privilege or immunity, whether actual, contingent or prospective;

but does not include a right, power, privilege or immunity conferred by an Act or by regulations or other subordinate legislation made under an Act.

ESOS Act means the *Education Services for Overseas Students Act 2000*.

liability means any liability, duty or obligation, whether actual, contingent or prospective, but does not include a liability, duty or obligation imposed by an Act or by regulations or other subordinate legislation made under an Act.

old Fund means the ESOS Assurance Fund established under section 45 of the ESOS Act (as in force immediately before this item commences).

Division 2—Defaults

44 Application—defaults after commencement

The amendments made by this Schedule apply in relation to any default by a registered provider, or an overseas student or intending overseas student, that occurs after this item commences.

45 Transitional—defaults before commencement

- (1) This item sets out what happens if:
 - (a) before this item commences:

- (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 at a location; and
 - (b) by the time this item commences:
 - (i) the student has not accepted an alternative course in accordance with Division 2 of Part 3, or Division 5 of Part 5, of the ESOS Act (as in force immediately before this item commences); and
 - (ii) the student has not been provided with a refund under one of those Divisions.
- (2) Despite the repeal of Division 2 of Part 3, and Division 5 of Part 5, of the ESOS Act by this Schedule, those Divisions (except subsections 31(4) to (5)) (as in force immediately before this item commences) continue to apply after this item commences, in relation to the default, with the following changes:
- (a) references in those Divisions to the Fund Manager are taken to be references to the TPS Director;
 - (b) references in those Divisions to the Fund are taken to be references to the Overseas Students Tuition Fund;
 - (c) section 77 of the ESOS Act applies as if it required the TPS Director to comply with that section within:
 - (i) the period of 30 days of a call being made on the Fund; or
 - (ii) if the TPS Director determines that exceptional circumstances apply—any longer period determined in writing by the TPS Director, and agreed to by the student;
 - (d) the TPS Director may pay an amount in relation to a student under section 77 of the ESOS Act without having attempted to place the student in a suitable alternative course.
- (3) For the purposes of section 52C of the ESOS Act (as inserted by this Schedule), making a payment under section 77 of the ESOS Act (as continued by this item) is taken to be a purpose of the Overseas Students Tuition Fund.
-

Division 3—The old Fund and the OSTF

46 Vesting of assets of old Fund

- (1) This item applies to the assets of the old Fund immediately before this item commences.
- (2) At that time, the assets cease to be assets of the old Fund and become assets of the Commonwealth without any conveyance, transfer or assignment. The Commonwealth becomes the successor in law in relation to the assets.

47 Transferring amount standing to the credit of the old Fund

The amount standing to the credit of the old Fund immediately before this item commences is, by force of this item, transferred to the Commonwealth immediately after this item commences.

48 Vesting of liabilities of old Fund

- (1) This item applies to the liabilities of the old Fund immediately before this item commences, other than any loan from the Commonwealth.
- (2) At that time, the liabilities cease to be liabilities of the old Fund and become liabilities of the Commonwealth without any conveyance, transfer or assignment. The Commonwealth becomes the successor in law in relation to the liabilities.

49 Transitional—financial accountability

Despite the repeal of section 80 of the ESOS Act by this Schedule, that section (as in force immediately before this item commences) continues to apply, after this item commences, with the following changes:

- (a) the TPS Director (and not the Fund Manager) must arrange for the independent auditor to prepare the report;
- (b) the report must be prepared as soon as possible after 30 June of the year in which this item commences (and not after the end of a calendar year);
- (c) the report must be given to the Minister only (and not the Panel).

50 Section 82 of the ESOS Act

To avoid doubt, section 82 of the ESOS Act (as in force immediately before this item commences) does not apply in relation to the repeal of Division 1 of Part 5 of that Act by this Schedule.

51 Seed funding for the OSTF

- (1) Despite section 52B of the ESOS Act (as inserted by this Schedule), the amount (the *seed funding amount*) of \$5 million is, by force of this item, credited to the OSTF immediately after this item commences.

Returning amounts to the Commonwealth

- (2) The difference between:
- (a) the seed funding amount; and
 - (b) the total of amounts debited from the OSTF under section 52C of the ESOS Act (as inserted by this Schedule) before the 1 July that occurs 1 year after this item commences;
- is, by force of this item, debited from the OSTF at the beginning of that 1 July.

Division 4—The Fund Manager and the Contributions Review Panel

52 Termination of appointment of Fund Manager

A person who, immediately before this item commences, is appointed as Fund Manager, ceases, by force of this item, to be Fund Manager after that time.

53 References in Acts and instruments—Fund Manager

- (1) If:
- (a) an Act or instrument is in force immediately before this item commences; and
 - (b) the Act or instrument contains a reference to the Fund Manager;
- the Act or instrument has effect after this item commences as if the reference to the Fund Manager were a reference to the TPS Director.

Note: During the first year after this item commences, instruments can retrospectively amend references to the Fund Manager: see item 59.

- (2) The Minister may, by writing, determine that subitem (1):
- (a) does not apply in relation to a specified reference; or
 - (b) applies, in relation to a specified reference, as if the reference in that subitem to the TPS Director were a reference to the Commonwealth.

A determination under this subitem has effect accordingly.

- (3) The regulations may provide that an instrument containing a reference specified in a determination under paragraph (2)(a) has effect, after this item commences, as if the reference were a reference to a person or body other than the TPS Director or the Commonwealth.
- (4) A determination made under subitem (2) is not a legislative instrument.

54 Operation of laws—Fund Manager

- (1) If, before this item commences, a thing was done by, or in relation to, the Fund Manager, then, for the purposes of the operation of any law of the Commonwealth after this item commences, the thing is taken to have been done by, or in relation to, the TPS Director.
- (2) For the purposes of subitem (1), a thing done before this item commences under a provision that is amended by this Act has effect from that time as if it were done under that provision as amended. However, this is not taken to change the time at which the thing was actually done.
- (3) The Minister may, by writing, determine that subitem (1):
- (a) does not apply in relation to a specified thing done by, or in relation to, the Fund Manager; or
 - (b) applies as if the reference in that subitem to the TPS Director were a reference to the Commonwealth.
- A determination under this subitem has effect accordingly.
- (4) The regulations may provide for a thing specified in a determination under paragraph (3)(a) to be taken to have been done by, or in relation to, a person or body other than the TPS Director or the Commonwealth.
- (5) A determination made under subitem (3) is not a legislative instrument.

55 Transitional—transfer of Fund Manager’s records

- (1) This item applies to any records or documents that are in the possession of the Fund Manager immediately before this item commences.
- (2) The records and documents are, by force of this item, transferred to the Commonwealth after this item commences.

56 Termination of appointment of members of Contributions Review Panel

A person who, immediately before this item commences, is a member of the Contributions Review Panel, ceases, by force of this item, to hold office as such a member after that time.

57 References in Acts and instruments—Contributions Review Panel

- (1) If:
 - (a) an Act or instrument is in force immediately before this item commences; and
 - (b) the Act or instrument contains a reference to the Contributions Review Panel;

the Act or instrument has effect after this item commences as if the reference to the Contributions Review Panel were a reference to the TPS Advisory Board.

Note: During the first year after this item commences, instruments can retrospectively amend references to the Contributions Review Panel: see item 59.

- (2) The Minister may, by writing, determine that subitem (1):
 - (a) does not apply in relation to a specified reference; or
 - (b) applies, in relation to a specified reference, as if the reference in that subitem to the TPS Advisory Board were a reference to the Commonwealth.

A determination under this subitem has effect accordingly.

- (3) The regulations may provide that an instrument containing a reference specified in a determination under paragraph (2)(a) has effect after this item commences as if the reference were a reference to a person or body other than the TPS Advisory Board or the Commonwealth.

- (4) A determination made under subitem (2) is not a legislative instrument.

58 Operation of laws—Contributions Review Panel

- (1) If, before this item commences, a thing was done by, or in relation to, the Contributions Review Panel, then, for the purposes of the operation of any law of the Commonwealth after this item commences, the thing is taken to have been done by, or in relation to, the TPS Advisory Board.
- (2) For the purposes of subitem (1), a thing done before this item commences under a provision that is amended by this Act has effect after this item commences as if it were done under that provision as amended. However, this is not taken to change the time at which the thing was actually done.
- (3) The Minister may, by writing, determine that subitem (1):
- (a) does not apply in relation to a specified thing done by, or in relation to, the Contributions Review Panel; or
 - (b) applies as if the reference in that subitem to the TPS Advisory Board were a reference to the Commonwealth.
- A determination under this subitem has effect accordingly.
- (4) The regulations may provide for a thing specified in a determination under paragraph (3)(a) to be taken to have been done by, or in relation to, a person or body other than the TPS Advisory Board or the Commonwealth.
- (5) A determination made under subitem (3) is not a legislative instrument.

59 Amending instruments may be retrospective

- (1) If:
- (a) an instrument is made within the period of 12 months beginning on the day on which this item commences; and
 - (b) a provision of the instrument amends a reference to the Fund Manager or the Contributions Review Panel;
- the provision may be expressed to take effect from the day that this item commences, or a later day in the period referred to in paragraph (a), that occurs before the instrument is made.

- (2) This item has effect despite subsection 12(2) of the *Legislative Instruments Act 2003*.

60 Transitional—reviews

- (1) This item applies if, before this item commences:
- (a) a person applies for a review of the amount of its annual Fund contribution under section 66 or 68 of the ESOS Act (as in force immediately before this item commences); and
 - (b) a notice has not been given under section 67 or 69 (as the case requires) of that Act.
- (2) Despite the repeal of Subdivision B of Division 4 of Part 5 (rights of review) of the ESOS Act by this Schedule, that Subdivision continues to apply, after this item commences, as if:
- (a) a reference in that Subdivision to the Fund Manager were a reference to the TPS Director; and
 - (b) a reference in that Subdivision to the Panel were a reference to the Secretary.

Division 5—Payment of TPS levies

61 Application—payment of TPS levies

The requirement to pay a TPS levy imposed by section 14 of the *Education Services for Overseas Students (TPS Levies) Act 2012* applies in relation to:

- (a) the first calendar year that begins after the day this item commences; and
- (b) later calendar years.

Division 6—Miscellaneous

62 Constitutional safety net

- (1) If the operation of this Schedule would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.

- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this item:
acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.
just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

63 Delegation by Minister

- (1) The Minister may, by writing, delegate all or any of his or her powers and functions under this Part to a person.
- (2) The delegate must be:
 - (a) the Secretary; or
 - (b) an SES employee, or acting SES employee, in the Department.

Note: *SES employee* is defined in section 2B of the *Acts Interpretation Act 1901*.

- (3) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Minister.

Schedule 2—National registration

Part 1—Main amendments

Education Services for Overseas Students Act 2000

1 Section 9

Repeal the section, substitute:

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
- (c) the provider has paid the associated initial registration charge; 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 or 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.

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;
- 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
 - (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.
- (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.

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

2 Sections 10 and 11

Repeal the sections.

3 Sections 14A and 14B

Repeal the sections, substitute:

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.

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 2—Consequential amendments

Education Services for Overseas Students Act 2000

4 Before section 1

Insert:

Division 1—Preliminary

5 Paragraph 4B(1)(b)

Repeal the paragraph, substitute:

- (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.

6 Paragraph 4B(2)(d)

Repeal the paragraph.

7 Section 5 (definition of *approved provider*)

Repeal the definition, substitute:

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.

8 Section 5 (definition of *Commonwealth designated authority*)

Repeal the definition.

9 Section 5 (definition of *condition*)

Repeal the definition, substitute:

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

10 Section 5 (definition of *modification*)

Repeal the definition.

11 Section 5 (definition of *Register*)

Omit “section 10”, substitute “section 14A”.

12 Section 5 (definition of *registered*)

Repeal the definition, substitute:

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*).

13 Section 5 (definition of *registered provider*)

Omit “State” (wherever occurring), substitute “location”.

14 After section 5

Insert:

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.

15 Subsection 7A(1)

Omit “for a State”.

16 Subsection 7A(1) (cell at table item 4, column headed “the designated authority is:”)

Repeal the cell, substitute:

the person responsible under a law of a
State for approving providers to

provide courses to overseas students at
locations in the State

17 Paragraphs 7A(2)(a) and (b)

Omit “for the State”.

18 Subsection 7A(3)

Omit “for a State”.

19 At the end of Part 1

Add:

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.

20 Before section 8

Insert:

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

21 Paragraphs 8(1)(a) to (d)

Omit “in a State”, substitute “at a location”.

22 Paragraph 8(1)(e)

Omit “for that particular State”, substitute “at that particular location”.

23 Paragraph 8(1)(f)

Omit “for a State”, substitute “for that particular location”.

24 Subparagraph 8(3)(b)(iii)

Omit “State”, substitute “location”.

25 Subparagraph 8(3)(b)(iv)

Omit “for a State”, substitute “for the location”.

26 Before subsection 9B(1)

Insert:

(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).

27 Subsection 9B(1)

Omit “Paragraphs 9(2)(ca) and 9A(2)(e)”, substitute “The provisions referred to in subsection (1A)”.

28 Subsection 9B(2)

Omit “it is satisfied as mentioned in paragraph 9(2)(ca) or 9A(2)(e), the designated authority”, substitute “to be satisfied as mentioned in a provision referred to in subsection (1A), the Minister, Secretary or designated authority (as the case requires)”.

29 Paragraph 9B(2)(b)

Omit “States”, substitute “locations”.

30 Section 14 (heading)

Repeal the heading, substitute:

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

31 Subparagraph 14(1)(a)(iii)

Omit “and”, substitute “or”.

32 At the end of paragraph 14(1)(a)

Add:

- (iv) is unlikely to be able to provide education of a satisfactory standard; and

33 At the end of subsection 14(1)

Add:

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

34 Subsection 14(1A)

Repeal the subsection.

35 Before Division 1 of Part 3

Insert:

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.

- 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.

36 Paragraph 17(1)(b)

Omit “States”, substitute “locations”.

37 Before section 33

Insert:

Division 1—Guide to this Part

33A Guide to this Part

- The Minister makes a national code under this Part.
- The purpose of the code is to provide nationally consistent standards and procedures for registered providers in providing courses to overseas students, dealing with agents and other providers, and providing refunds.
- 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

38 Subsection 33(1)

Omit “expressed to commence on a day at least 28 days after it is registered in the Federal Register of Legislative Instruments”.

39 Subsection 33(1) (note)

Repeal the note, substitute:

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

40 Section 34

Omit “registration and”.

41 Section 36

Repeal the section.

42 Paragraphs 38(a), (c) and (f)

Repeal the paragraphs.

43 Section 40 (note)

Omit “section 9”, substitute “section 9AB”.

44 Section 43 (heading)

Repeal the heading, substitute:

43 Designated authorities to investigate breaches of the national code

45 Paragraph 43(1)(a)

Omit “for a State”, substitute “for a course for a location”.

46 Before Division 1 of Part 6

Insert:

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.

47 Subsection 83(1B)

Omit "(having regard to the matters referred to in subsection 9B(2))".

48 Subsection 83(1B) (note)

Omit "Note", substitute "Note 1".

49 At the end of subsection 83(1B)

Add:

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.

50 Subsection 83(1C) (note)

Omit "Note", substitute "Note 1".

51 At the end of subsection 83(1C)

Add:

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

52 Subsection 83(1D)

Repeal the subsection.

53 Paragraphs 83(3)(a) to (c)

Omit “States”, substitute “locations”.

54 Subsection 83(4)

Omit “State”, substitute “location”.

55 Section 88

Repeal the section.

56 Subsection 89(1)

Repeal the subsection, substitute:

- (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.

57 Subsection 89(2)

Omit “State’s”, substitute “designated authority’s”.

58 Subsections 89A(1) to (2)

Repeal the subsections, substitute:

- (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.

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

(b) the Secretary is again satisfied that the provider is fit and proper to be registered;
as the case requires.

59 Subsection 90(1)

Omit “States”, substitute “locations”.

60 Section 91 (heading)

Repeal the heading, substitute:

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

61 Section 91

Omit “State” (wherever occurring), substitute “location”.

62 Section 92

Omit “States”, substitute “locations”.

63 Before subsection 93(1)

Insert:

Notice requirements before Minister makes decision

64 Subsection 93(1)

Omit “subsection 14A(2)” (wherever occurring), substitute “subsection 9AD(2)”.

65 Before subsection 93(1A)

Insert:

Notice requirements before Secretary makes decision

66 Subsection 93(1A)

Omit “subsection 14B(1)”, substitute “subsection 9AE(1)”.

67 Before subsection 93(2)

Insert:

Consideration of submissions received and giving notice of decision

68 Subsection 95(1)

Omit “for a State”, substitute “for a location”.

69 Paragraphs 95(1)(a), (b) and (c)

Omit “for the State”, substitute “at the location”.

70 Subsection 95(2)

Omit “State”, substitute “location”.

71 Section 96

Repeal the section.

72 Paragraphs 101(1)(a) to (c)

Omit “in any State”, substitute “at any location”.

73 Subsection 107(1)

Omit “(1)”.

74 Paragraphs 107(1)(a) to (c)

Omit “in a State”, substitute “at a location”.

75 Subsection 107(1)

After “identify”, insert “any one or more of the following”.

76 Paragraph 107(1)(d)

Omit “and”.

77 Paragraph 107(1)(e)

Repeal the paragraph, substitute:

(e) the unique identifier allocated to the registered provider under paragraph 14A(4)(d);

78 Before Division 1 of Part 7

Insert:

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.

79 Before section 170A

Insert:

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.

80 Paragraphs 176(1)(a) to (ab)

Repeal the paragraphs, substitute:

- (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

81 Paragraph 176(1)(b)

Omit "or 88".

Part 3—Contingent amendments

Division 1—Amendment that will not commence if the Registration Charges Acts commence first

Education Services for Overseas Students Act 2000

82 Section 12 (note 1)

Repeal the note, substitute:

Note 1: A provider cannot be registered under section 9AB until it has paid the initial registration charge: see paragraph 9AB(1)(c).

Division 2—Amendments commencing immediately after the later of the commencement of Part 2 of this Schedule and the Registration Charges Acts

Education Services for Overseas Students Act 2000

83 Paragraph 9AB(1)(c)

Repeal the paragraph, substitute:

(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

84 Paragraph 9AB(1)(g)

Omit “annual registration charge or”, substitute “annual registration charge, a second or third entry to market charge or a”.

85 Subsection 12(1) (note 1)

Repeal the note, substitute:

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).

86 Paragraph 12(2)(a)

Omit “section 9”, substitute “section 9AB”.

***Education Services for Overseas Students Amendment
(Registration Charges Consequential) Act 2011***

87 Subitem 17(4) of Schedule 1

Omit “for a State under section 9”, substitute “under section 9AB”.

***Education Services for Overseas Students (Registration
Charges) Amendment Act 2011***

88 Subitem 14(2) of Schedule 1

Omit “for a State under section 9”, substitute “under section 9AA”.

**Division 3—Repeal of provisions if this Act commences
before item 7 of Schedule 1 to the Registration
Charges Acts**

***Education Services for Overseas Students Amendment
(Registration Charges Consequential) Act 2011***

89 Item 7 of Schedule 1

Repeal the item.

90 Subitems 17(1) and (2) of Schedule 1

Repeal the subitems.

91 Subitem 17(4) of Schedule 1

Omit “amendments made by items 7 and”, substitute “amendment made by item”.

**Division 4—Repeal of provisions if this Act commences
before other items in the Registration Charges
Acts**

***Education Services for Overseas Students Amendment
(Registration Charges Consequential) Act 2011***

92 Items 5 and 6 of Schedule 1

Repeal the items.

93 Items 8 and 9 of Schedule 1

Repeal the items.

Part 4—Application, saving and transitional provisions

Division 1—Definition of ESOS Act

94 Definition of *ESOS Act*

In this Part:

ESOS Act means the *Education Services for Overseas Students Act 2000*.

Division 2—Application and transitional provisions for national registration

95 Application—recommendations of designated authorities

Recommendations made after commencement

- (1) The amendments made by Parts 1 to 3 of this Schedule apply in relation to any recommendation, made by a designated authority after this item commences, that an approved provider be registered under the ESOS Act to provide a course at a location to overseas students.

Recommendations made before commencement

- (2) The amendments made by Parts 1 to 3 of this Schedule also apply in relation to any recommendation made by a designated authority that an approved provider be registered under the ESOS Act to provide a course for a State to overseas students if:
- (a) the recommendation is made before this item commences; and
 - (b) immediately before this item commences, the Secretary has not yet decided whether to register the provider for the course for the State under section 9 of that Act.
- (3) If, after this item commences, the Secretary decides:
- (a) under section 9AB of the ESOS Act (as inserted by this Schedule) to register a provider referred to in subitem (2) of this item; or

- (b) under section 9AG of that Act (as inserted by this Schedule) to add a course to the registration of a provider referred to in subitem (2) of this item;

the Secretary must determine the location or locations at which the provider is to be registered to provide the course.

Choosing a registration to add to

- (4) If:
 - (a) after this item commences, the Secretary decides to add a course at a location to a provider's registration under section 9AG of the ESOS Act (as inserted by this Schedule); and
 - (b) the provider already has 2 or more other separate registrations to provide courses to overseas students;

the Secretary may choose which registration to add the new course to.

- (5) The Secretary must use a risk management approach when considering which registration to add a new course to.

Review of decisions

- (6) The ESOS Act applies as if section 176 of that Act included a reference to:
 - (a) a decision under subitem (3) of this item to determine the location or locations at which the provider is to be registered to provide the course; and
 - (b) a decision under subitem (4) of this item to choose which registration to add a new course to.

Note: Section 176 of the ESOS Act allows applications to be made to the Administrative Appeals Tribunal for review of decisions.

96 Transitional—requesting amalgamation of registrations

- (1) This item applies if, at the time this item commences, a provider has more than one registration under the ESOS Act.

Request to amalgamate registrations

- (2) The provider may, in the approved form, request the Secretary to amalgamate all of the provider's registrations into one registration.

- (3) The Secretary may approve a form for the purposes of subitem (2).

Secretary may amalgamate registrations or refuse request

- (4) If a provider makes a request under subitem (2), the Secretary may:
- (a) amalgamate all of the provider's registrations into one registration; or
 - (b) refuse to amalgamate all of the provider's registrations into one registration.
- (5) The Secretary may choose which of the provider's registrations is to become the provider's single registration under the ESOS Act.
- (6) The Secretary must use a risk management approach when considering which registration to choose to become the provider's single registration.
- (7) The Secretary may remove a provider's registration from the Register if the Secretary amalgamates that registration into another registration under this item.

Review of decisions

- (8) The ESOS Act applies as if section 176 of that Act included a reference to:
- (a) a decision under subitem (4) of this item to refuse to amalgamate all of the provider's registrations into one registration; and
 - (b) a decision under subitem (5) of this item to choose which registration is to become the provider's single registration.

Note: Section 176 of the ESOS Act allows applications to be made to the Administrative Appeals Tribunal for review of decisions.

Division 3—Other application, saving and transitional provisions

97 Transitional—old registrations

A provider who is registered under section 9 of the ESOS Act immediately before this item commences is taken, after that time, to be registered under section 9AB of that Act.

98 Saving—cancellation or suspension of registration of courses for States

Despite the amendment of paragraphs 9B(2)(b) and 17(1)(b) of the ESOS Act by this Schedule, those paragraphs continue to operate, in relation to a cancellation or suspension that occurs before this item commences, as if those amendments had not been made.

99 Transitional—locations already in Register

- (1) This item applies if:
 - (a) immediately before this item commences, a provider is registered under the ESOS Act to provide a course for a State; and
 - (b) the Register also includes a reference to one or more locations in that State at which the provider provides that course.
- (2) For the purposes of the ESOS Act as amended by this Schedule, the provider is taken, after this item commences, to be registered to provide that course at that location or those locations.
- (3) For the purposes of the ESOS Act as amended by this Schedule, if:
 - (a) immediately before this item commences, a provider's registration for a course for a State is suspended; and
 - (b) under subitem (2), the provider is taken to be registered to provide the course at a location or at locations in that State;the provider's registration is taken, after this item commences, to be suspended for the course for that location or those locations.
- (4) For the purposes of the ESOS Act as amended by this Schedule, if:
 - (a) immediately before this item commences, a provider's registration for all courses for all States is suspended; and
 - (b) under subitem (2), the provider is taken to be registered to provide a course at a location or locations;the provider's registration is taken, after this item commences, to be suspended for all courses for all locations.

100 Transitional—approved form and certificates

Approved form

- (1) A form that has been approved for a State for the purposes of paragraph 9(2)(c) of the ESOS Act immediately before this item commences is taken, after that time, to have been approved for the purposes of section 9AH of that Act (as inserted by this Schedule).

Certificates

- (2) If:
- (a) a designated authority gives the Secretary a certificate under paragraph 9(2)(c) of the ESOS Act before this item commences; and
 - (b) immediately before this item commences, the Secretary has not yet decided whether to register the provider to whom the certificate relates;
- the certificate is taken, after this item commences, to have been given under section 9AH of that Act (as inserted by this Schedule).
- (3) If a designated authority referred to in subitem (2) tells the Secretary in writing, for the purposes of paragraph 9(2)(ca) of the ESOS Act, that the provider has satisfied the designated authority that the provider is fit and proper to be registered, the designated authority is taken to have included such a statement in a certificate for the purposes of paragraph 9AH(b) of that Act (as inserted by this Schedule).

101 Application—period of registration

Subsection 9AC(4) of the ESOS Act (as inserted by this Schedule) applies to any registration of a provider (whether the provider is registered before or after this item commences).

102 Application—powers in relation to conditions

Sections 9AD, 9AE and 9AF of the ESOS Act (as inserted by this Schedule) apply in relation to any condition imposed on a provider's registration (whether before or after this item commences).

103 Saving—the Register

The repeal of section 10 of the ESOS Act by this Schedule does not affect the continuity of the Register.

104 Saving—allocated numbers

If:

- (a) before this item commences, a number has been allocated to a provider under paragraph 10(4)(c) of the ESOS Act; and
- (b) immediately before this item commences, the provider is registered to provide a course for a State;

that number is taken, after this item commences, to be a unique identifier that is allocated under paragraph 14A(4)(d) of that Act (as inserted by this Schedule).

105 Transitional—regulations

Regulations that are in force under paragraph 10(4)(d) of the ESOS Act immediately before this item commences are taken, after that time, to have been made for the purposes of paragraph 14A(4)(i) of that Act (as inserted by this Schedule).

106 Transitional—conditions

- (1) A condition that is in force under section 14A of the ESOS Act immediately before this item commences is taken, after that time, to have been imposed under section 9AD of that Act (as inserted by this Schedule).
- (2) A condition that is in force under section 14B of the ESOS Act immediately before this item commences is taken, after that time, to have been imposed under section 9AE of that Act (as inserted by this Schedule).

107 Application—amendments to section 89

The repeal of subsection 89(1) of the ESOS Act by this Schedule does not affect the continuity of any suspension of the registration of a provider that is in force under that subsection immediately before this item commences.

108 Application—amendments to section 89A

- (1) The amendments to section 89A of the ESOS Act made by this Schedule apply in relation to any registration of a provider (whether the provider is registered before or after this item commences).
- (2) The repeal of subsections 89A(1) to (1B) of the ESOS Act by this Schedule does not affect the continuity of any suspension of the registration of a provider that is in force under any of those subsections immediately before this item commences.
- (3) The repeal of subsection 89A(2) of the ESOS Act by this Schedule does not affect the continuity of any notice:
 - (a) that is given under that subsection before this item commences; and
 - (b) in relation to which, immediately before this item commences, the provider has not yet paid the associated reinstatement fee.

Schedule 3—Pre-paid fees

Part 1—Amendments

Division 1—Main amendments

Education Services for Overseas Students Act 2000

1 After paragraph 4B(2)(b)

Insert:

(c) paragraph 31(a);

2 Section 5

Insert:

pre-paid fees means tuition fees received by a registered provider in respect of an overseas student or intending overseas student, in relation to a study period for a course to be provided by the provider, before the student begins the study period.

3 Section 5

Insert:

study period for a course provided by a provider means the study period for the course set out in a written agreement made by the provider under section 22.

4 After section 21A

Insert:

22 Requirement to provide for study periods

Written agreements to provide for study periods

- (1) A registered provider for a course for a location must enter into a written agreement with each overseas student or intending overseas student setting out:

- (a) the length of each study period for the course for the location; and
 - (b) the tuition fees for each study period for the course for the location.
- (2) The agreement may be included in the same document as the written agreement made under section 47B (written agreement about refund).

Requirements for study periods

- (3) A study period must be no more than 24 weeks long.
- (4) A course may have only one study period (subject to subsection (3)).
- (5) A study period for a course may (subject to subsection (3)) be longer than the course.

5 After Division 1 of Part 3

Insert:

Division 2—Pre-paid fees

27 Pre-paid fees

Limit on amount of initial pre-paid fees that may be received

- (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 the course has only one study period.

Limit on when remaining tuition fees may be required

- (3) Once an overseas student begins a course, the registered provider for the course must not require any of the remaining tuition fees for the course to be paid, in respect of the overseas student, more than

2 weeks before the beginning of the student's second study period for the course.

28 Obligation for registered provider to maintain designated 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.

Requirements for designated accounts

- (2) The account must be maintained with an Australian ADI (within the meaning of section 9 of the *Corporations Act 2001*).
- (3) The account must be designated as the initial pre-paid fees account.

29 Obligations in relation to designated account money

Requirement to pay initial pre-paid fees received to credit of designated 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
 - (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;
- (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*.

Division 2—Consequential amendment

Education Services for Overseas Students Act 2000

6 Section 15A (after the paragraph relating to Division 1)

Insert:

- Division 2 sets out requirements for providers who receive tuition fees from a student before the student has begun to study with the provider. The provider must keep those fees in a separate account and generally cannot access the fees until the student begins the first study period with the provider.

Part 2—Application provision

7 Application

The amendments made by this Schedule apply in relation to any tuition fees for a course that are received, after Division 1 of Part 1 of this Schedule commences, by a registered provider, in respect of an overseas student or intending overseas student, before the student has begun the course.

Schedule 4—Tuition fees

Part 1—Amendments

Education Services for Overseas Students Act 2000

1 Section 5 (definition of *course money*)

Repeal the definition.

2 Section 5 (subparagraph (b)(ii) of the definition of *monitoring purpose*)

Omit “course money”, substitute “pre-paid fees”.

3 Section 5

Insert:

tuition fees has the meaning given by section 7.

4 Section 7

Repeal the section, substitute:

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;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.

5 Subsection 18(1)

Omit “course money” (wherever occurring), substitute “tuition fees”.

6 Subsection 18(1A)

Omit “course money”, substitute “tuition fees”.

7 Subsection 18(2) (not including the note)

Repeal the subsection.

8 Subsection 21(1)

Omit “course money”, substitute “tuition fees”.

9 Paragraph 38(g)

Omit “course money”, substitute “pre-paid fees”.

10 Paragraph 83(1A)(b)

Omit “course money”, substitute “pre-paid fees”.

Part 2—Application provision

11 Application

The amendments made by this Schedule apply in relation to any tuition fees for a course that are received by a registered provider after this item commences.

Schedule 5—Former accepted students

Part 1—Amendments

Education Services for Overseas Students Act 2000

1 After subsection 19(2)

Insert:

- (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.

2 After subsection 20(1)

Insert:

- (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.

3 Paragraph 97(2)(b)

After “accepted students”, insert “and former accepted students”.

4 Subsection 109(1)

After “accepted students”, insert “and former accepted students”.

5 Subsection 175(2)

Omit “accepted student’s student visa to the registered provider for the accepted student”, substitute “accepted student’s, or former accepted student’s, student visa to the registered provider for the student”.

Ombudsman Act 1976

6 Subsection 19ZJ(3)

Omit “or an accepted student,”, substitute “an accepted student, or a former accepted student,”.

7 Subsection 19ZK(5) (definition of *statutory complaint handler*)

Omit “or an accepted student, “, substitute “an accepted student, or a former accepted student,”.

Part 2—Application provision

8 Application

- (1) The amendments to the *Education Services for Overseas Students Act 2000* that are made by this Schedule apply in relation to:
 - (a) any breach of a student visa that occurs after this item commences; and
 - (b) any information that relates to an accepted student or former accepted student (whether the information was obtained before or after this item commences).
- (2) The amendments to the *Ombudsman Act 1976* that are made by this Schedule apply in relation to any complaint made, or investigation commenced, after commencement.

Schedule 6—Record keeping requirements

Part 1—Amendments

Education Services for Overseas Students Act 2000

1 Section 5

Insert:

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

2 Before subsection 21(1)

Insert:

Records of students' details

3 Subsections 21(2) and (3)

Repeal the subsections, substitute:

- (2) The records must consist of the following details for each accepted student:
 - (a) the student's current residential address;
 - (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.

4 Before subsection 21(5)

Insert:

Offence

5 At the end of section 21

Add:

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.

Part 2—Application and transitional provision

6 Application

- (1) The amendments made by this Schedule (including the amendments made in relation to student details) apply in relation to any approved unit of study that an accepted student begins after this item commences.
- (2) The amendments made by this Schedule (including the amendments made in relation to student details) also apply in relation to an approved unit of study that:
 - (a) an accepted student begins before this item commences; but
 - (b) is not completed by the time this item commences.

However, the amendments apply only in relation to the part of the unit of study that occurs after this item commences.

7 Transitional—regulations

Regulations that are in force under subsection 21(2) of the *Education Services for Overseas Students Act 2000* immediately before this item commences are taken, after that time, to have been made for the purposes of paragraph 21(2)(d) of that Act (as inserted by this Schedule).

Schedule 7—Definition of designated authority

Part 1—Amendment that will not commence if the TEQSA Consequential Act commences first

Education Services for Overseas Students Act 2000

1 Section 5 (after paragraph (a) of the definition of *designated authority*)

Insert:

(aa) to the extent that the provider:

- (i) is a registered training organisation (within the meaning of that Act), but not an NVR registered training organisation; and
- (ii) is seeking to provide courses to overseas students for a non-referring State (within the meaning of that Act); the National VET Regulator; or

**Part 2—Amendment commencing immediately after
the later of Royal Assent and the
commencement of the TEQSA
Consequential Act**

Education Services for Overseas Students Act 2000

2 Subsection 7A(1) (after table item 2)

Insert:

- | | | |
|----|---|----------------------------|
| 2A | a provider that: | the National VET Regulator |
| | (a) is a registered training organisation
(within the meaning of that Act), but
not an NVR registered training
organisation; and | |
| | (b) is seeking to provide courses to
overseas students for a non-referring
State (within the meaning of that Act) | |

**Part 3—Amendment commencing immediately after
the commencement of Division 2 of this Part**

Education Services for Overseas Students Act 2000

**3 Subsection 7A(1) (paragraph (b) of cell at table item 2A,
column headed “For a provider, to the extent that it
is:”)**

Omit “courses to overseas students for”, substitute “courses to overseas
students at locations in”.

Schedule 8—Miscellaneous

Part 1—Main amendments

Education Services for Overseas Students Act 2000

1 Section 9A

Repeal the section.

2 Section 40 (note)

Omit “or re-registration (see section 9A)”.

3 Sections 92A and 92B

Repeal the sections.

4 Section 110

Repeal the section.

5 At the end of Part 6

Add:

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 Magistrates Court, 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.
- (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.

6 At the end of subsection 113(4)

Add:

- ; or (e) an officer or employee of an administrator or liquidator of a registered provider or former registered provider.

7 At the end of subsection 116(3)

Add:

; or (e) an officer or employee of an administrator or liquidator of a registered provider or former registered provider.

8 After subsection 170(2)

Insert:

(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.

9 Section 176A

Repeal the section.

Part 2—Consequential amendment

Education Services for Overseas Students Act 2000

10 At the end of section 83A

Add:

- 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.

Endnotes

Endnote 1—About the endnotes

The endnotes provide details of the history of this legislation and its provisions. The following endnotes are included in each compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history
Endnote 5—Uncommenced amendments
Endnote 6—Modifications
Endnote 7—Misdescribed amendments
Endnote 8—Miscellaneous

If there is no information under a particular endnote, the word “none” will appear in square brackets after the endnote heading.

Abbreviation key—Endnote 2

The abbreviation key in this endnote 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 the compiled law. The information includes commencement information for amending laws and details of 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 level. It also includes information about any provisions that have expired or otherwise ceased to have effect in accordance with a provision of the compiled law.

Endnotes

Endnote 1—About the endnotes

Uncommenced amendments—Endnote 5

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in endnote 5.

Modifications—Endnote 6

If the compiled law is affected by a modification that is in force, details of the modification are included in endnote 6.

Misdescribed amendments—Endnote 7

An amendment is a misdescribed amendment if the effect of the amendment cannot be incorporated into the text of the compilation. Any misdescribed amendment is included in endnote 7.

Miscellaneous—Endnote 8

Endnote 8 includes any additional information that may be helpful for a reader of the compilation.

Endnote 2—Abbreviation key

ad = added or inserted	pres = present
am = amended	prev = previous
c = clause(s)	(prev) = previously
Ch = Chapter(s)	Pt = Part(s)
def = definition(s)	r = regulation(s)/rule(s)
Dict = Dictionary	Reg = Regulation/Regulations
disallowed = disallowed by Parliament	reloc = relocated
Div = Division(s)	renum = renumbered
exp = expired or ceased to have effect	rep = repealed
hdg = heading(s)	rs = repealed and substituted
LI = Legislative Instrument	s = section(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sch = Schedule(s)
mod = modified/modification	Sdiv = Subdivision(s)
No = Number(s)	SLI = Select Legislative Instrument
o = order(s)	SR = Statutory Rules
Ord = Ordinance	Sub-Ch = Sub-Chapter(s)
orig = original	SubPt = Subpart(s)
par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)	

Endnotes

Endnote 3—Legislation history

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	See s 2(1)	
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 2 (items 2, 3): (a)	—

(a) Subsection 2(1) (item 4) of the *Statute Law Revision Act (No. 1) 2014* 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
4. Schedule 2, items 2 and 3	Immediately after the time specified in the <i>Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Act 2012</i> for the commencement of Parts 1 and 2 of Schedule 2 to that Act.	1 July 2012

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Sch 2	
hdg to item 79	rs No 31, 2014
item 79	am No 31, 2014

Endnotes

Endnote 5—Uncommenced amendments [none]

Endnote 5—Uncommenced amendments [none]

Endnote 6—Modifications [none]

Endnote 7—Misdescribed amendments [none]

Endnote 8—Miscellaneous [none]