



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

**Act No. 114 of 1991 as amended**

**[Note: This Act is repealed by Act No. 166 of 2000]**

This compilation was prepared on 4 June 2001  
taking into account amendments up to Act No. 166 of 2000

The text of any of those amendments not in force  
on that date is appended in the Notes section

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# **An Act to regulate the export of education services and training, and for related purposes**

## **1 Short title** [see Note 1]

This Act may be cited as the *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991*.

## **2 Commencement** [see Note 1]

This Act commences on the day on which it receives the Royal Assent.

## **2A Crown to be bound**

This Act binds the Crown in each of its capacities.

## **3 Interpretation**

In this Act, unless the contrary intention appears:

***annual registration charge*** means annual registration charge imposed under the *Education Services for Overseas Students (Registration Charges) Act 1997*.

***approved provider***, in relation to a course in relation to a State, means an institution or other body or person to which or to whom the designated authority of the State has granted, under the law of the State, an approval to provide that course to overseas students in the State, other than an approval that has been withdrawn by that authority.

***course*** means a course of education or training.

***designated authority***, in relation to a State, means the person responsible under the law of the State for granting approvals to institutions or other bodies or persons to provide courses to overseas students in the State.

**initial registration charge** means initial registration charge imposed under the *Education Services for Overseas Students (Registration Charges) Act 1997*.

**intending overseas student** means a person who intends to become an overseas student.

**overseas student** means a person who holds a student visa issued under regulations made under the *Migration Act 1958*.

**principal executive officer**, in relation to a provider that is not a natural person, means the person who has executive responsibility for the operation of the provider.

**provider** means an institution or other body or person in Australia that provides or seeks to provide courses to overseas students.

**Register** means the register kept under section 5.

**registered** means registered under section 5.

**registered provider**, in relation to a course in relation to a State, means an institution or other body or person that is registered as a provider in respect of the course in respect of that State.

**Secretary** means Secretary to the Department.

**State** includes the Australian Capital Territory and the Northern Territory.

#### **4 Only registered providers may provide courses to overseas students**

- (1) On and after a day to be fixed by the Minister by notice published in the *Gazette*, an institution or other body or person must not:
  - (a) provide a course to overseas students; or
  - (b) make an offer to an intending overseas student to provide a course to that student; or
  - (c) invite an intending overseas student to undertake, or to apply to undertake, a course; or

- (d) hold itself, himself or herself out as able or willing to provide a course to overseas students;  
unless the institution or other body or person is a registered provider in respect of the course in respect of the State or each State in which the course is, or is proposed to be, provided.
- (1A) A person who intentionally or recklessly contravenes subsection (1) is guilty of an offence punishable by imprisonment for up to 2 years.
- (2) Subsection (1) does not apply to a matter to the extent that a law of a State applies to that matter.
- (3) It is a defence to a prosecution for an offence against paragraph (1)(d) in relation to a course if the defendant proves that:
  - (a) the conduct in question was only for either or both of the following purposes:
    - (i) carrying out surveys and other investigations to assess the demand for the course; or
    - (ii) negotiating with another institution, body or person in connection with designing or developing the course; and
  - (b) the defendant took reasonable steps to ensure that:
    - (i) overseas students who were, or might become, interested in undertaking the course; and
    - (ii) any institution, body or person who might assist in providing the course;were aware that the defendant was not a registered provider in respect of the course as required by subsection (1); and
  - (c) the defendant neither invited nor accepted any amount in respect of the course from overseas students or intending overseas students, or from their agents.

## **5 Registration of providers**

- (1) The Secretary must cause to be kept for the purposes of this Act a register to be known as the Commonwealth Register of Institutions and Courses for Overseas Students.

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- (2) Subject to subsection (3), the Secretary must cause to be entered in the Register:
  - (a) the name of each provider that is an approved provider in respect of one or more courses in respect of a State or States; and
  - (b) if the provider is not a natural person—the name of the principal executive officer of the provider; and
  - (c) particulars of each course in each State in respect of which the provider is an approved provider; and
  - (d) such other matters as are prescribed.
- (3) Subsection (2) does not apply in relation to a provider whose registration has previously been cancelled unless the Minister is satisfied that in all the circumstances it is appropriate to register that provider.
- (3A) Subsection (2) does not apply in relation to a provider if:
  - (a) the provider is liable to pay any annual registration charge, re-instatement fee or late payment penalty; and
  - (b) one or more of those amounts remains unpaid after the time when it became due for payment;unless the Minister is satisfied that in all the circumstances it is appropriate to register that provider.
- (4) Upon the entry in the Register of the name of an approved provider and of particulars of each course in each State in respect of which the provider is an approved provider, the provider is taken to be registered as a provider in respect of the course in respect of the State.

### **5A Annual registration charge**

A provider who is liable to pay an annual registration charge for a year must pay the charge by the last day of February of the year.

### **5B Initial registration charge**

- (1) A provider who is liable to pay an initial registration charge for a registration must pay the charge by the day specified in a notice given to the provider by the Secretary.



- (2) The day specified in the notice must be more than 28 days after the day the notice is given.

### **5C Information and records**

- (1) A provider must give or produce to the Secretary any information or document relating to enrolments in the provider's courses that the Secretary requests in writing.
- (2) A provider must not give information under subsection (1) that the provider knows, or reasonably suspects, is false or misleading.
- (3) If a provider produces a document under subsection (1) that the provider knows, or reasonably suspects, contains false or misleading information, the provider must give to the Secretary a statement, in writing, identifying the aspects of the information that are false or misleading.
- (4) A provider must keep proper records of enrolments in the provider's courses.

### **6A Provider must operate trust account**

- (1) A provider must:
  - (a) as soon as practicable after the commencement of this section, pay into a notified trust account all course money that, at the commencement of this section, was in a special account maintained by the provider for the purposes of section 6 of this Act (as in force before the commencement of this section); and
  - (b) as soon as practicable after receipt, pay into a notified trust account all course money that the provider receives after the commencement of this section.
- (2) A provider must not withdraw or pay money out of a notified trust account except as permitted by the regulations.
- (3) For each notified trust account into which the provider has paid money, the provider must keep a record of the following amounts for each student for each course:
  - (a) the amounts paid into the account;

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- (b) withdrawals or payments out of the account;
  - (c) the balance remaining in the account.
- (4) A provider who intentionally or recklessly contravenes subsection (1), (2) or (3) is guilty of an offence punishable by imprisonment for up to 12 months.
- (5) The regulations may make provision for or in relation to exempting providers, either wholly or partly, from some or all of the requirements of this section.
- (6) In this section:

**ADI** (authorised deposit-taking institution) means:

- (a) a body corporate that is an ADI for the purposes of the *Banking Act 1959*; or
- (b) the Reserve Bank of Australia.

**course money** means money received by the provider, directly or indirectly, from an overseas student, or intending overseas student, in relation to a course that the provider is providing, or offering to provide, to the student. For this purpose, money received in relation to a course includes:

- (a) tuition fees;
- (b) any amount that the provider is to pay, on behalf of the student, to Medibank Private or another prescribed hospital benefits organisation;
- (c) any other amount that the student had to pay in order to undertake the course.

**notified trust account** means an account that meets all the following requirements:

- (a) the account is a trust account maintained by the provider with an ADI in Australia;
- (b) details of the account have been notified to the Secretary in writing;
- (c) the ADI has been notified that the account is a trust account.

## **6B Refund if provider defaults**

- (1) This section applies to a student in relation to a course if:
  - (a) the course does not start on the agreed starting date; or
  - (b) the provider ceases to provide the course at any time after it starts but before it is completed;and the student has not withdrawn before the default date.
- (2) The provider must pay the student the difference between:
  - (a) the amounts received by the provider before the default date that the provider was required by subsection 6A(1) to pay into a notified trust account for the student in relation to the course (whether or not the provider actually paid the amounts into a notified trust account); and
  - (b) any part of those amounts that the provider became entitled to withdraw from the account before the default date.
- (3) The provider must pay within 2 weeks after the default date.
- (4) The student is entitled to recover the amount as a debt, by action in a court of competent jurisdiction.
- (5) If the provider has a liability apart from this section to pay an additional amount to the student, then this section does not affect that liability.
- (6) A provider who intentionally or recklessly contravenes this section is guilty of an offence punishable by imprisonment for up to 12 months.
- (7) In this section:

***agreed starting date*** means the date on which the course was scheduled to start, or a later date agreed between the provider and the student.

***default date*** means:

- (a) the agreed starting date, if paragraph (1)(a) applies; or
- (b) the date on which the provider ceased to provide the course, if paragraph (1)(b) applies.

### **6C Refund if student defaults**

- (1) This section applies to a student in relation to a course if:
  - (a) the course starts on the agreed starting date, but the student does not start the course on that date (and has not previously withdrawn); or
  - (b) the student withdraws from the course (either before or after the agreed starting date).
- (2) If the provider and student have a written agreement that covers the refund consequences of the situation that caused this section to apply, the provider must pay the student the amount (if any) required by the agreement.
- (3) If the provider and student do not have a written agreement that covers the refund consequences of the situation that caused this section to apply, the provider must pay the student the difference between:
  - (a) the amounts received by the provider before the default date that the provider was required by subsection 6A(1) to pay into a notified trust account for the student in relation to the course (whether or not the provider actually paid the amounts into a notified trust account); and
  - (b) any part of those amounts that the provider became entitled to withdraw from the account before the default date.
- (4) The provider must pay within 6 weeks after receiving a written claim from the student.
- (5) The student is entitled to recover the amount as a debt, by action in a court of competent jurisdiction.
- (6) A provider who intentionally or recklessly contravenes this section is guilty of an offence punishable by imprisonment for up to 12 months.
- (7) In this section:

***agreed starting date*** means the date on which the course was scheduled to start, or a later date agreed between the provider and the student.

*default date* means:

- (a) the agreed starting date, if paragraph (1)(a) applies; or
- (b) the date on which the student withdrew, if paragraph (1)(b) applies.

#### **7A Provider must be member of tuition assurance scheme**

- (1) After the end of 2 months after the commencement of this section, a provider must at all times:
  - (a) be a member of a tuition assurance scheme established in accordance with the regulations; and
  - (b) comply with the rules of the scheme.
- (2) A provider who is not a member of a tuition assurance scheme as required by subsection (1) contravenes that subsection even though the reason for not being a member is that:
  - (a) the provider's application for membership was rejected; or
  - (b) the provider's membership of a scheme has been cancelled.
- (3) The regulations may make provision for or in relation to exempting providers from the requirements of this section.
- (4) In this section:

*tuition assurance scheme* means a scheme whose main objects include ensuring that overseas students receive the education or training for which they have paid.

#### **8 Returns and other information**

- (1) A provider must, within 28 days after the conclusion of each reporting period, give to the Secretary, for each account maintained by the provider for the purposes of this Act, a return that:
  - (a) is in the prescribed form; and
  - (b) is signed:
    - (i) if the provider is a natural person—by that person or by another person authorised by the first-mentioned person to sign the return; or

- (ii) otherwise—by the principal executive officer of the provider or by a person authorised by the principal executive officer to sign the return; and
  - (c) contains the prescribed particulars in relation to transactions in respect of that account during that reporting period and in relation to money held in that account at the end of that reporting period; and
  - (d) is accompanied by a report by a registered company auditor stating whether, in the opinion of the auditor:
    - (i) the particulars in the return are correct; and
    - (ii) the provider has complied with the financial requirements of this Act.
- (1A) At any time during a reporting period (the *current period*) a provider may notify the Secretary in writing of a new ending date for the provider's reporting periods. The effect of the notification is as follows:
- (a) if the next occurrence (after notification) of the new ending date is more than 12 months after the start of the current period:
    - (i) the current period remains in effect; and
    - (ii) the provider's next reporting period starts after the end of the current period and ends on the new ending date; and
    - (iii) after that, the provider's reporting periods are periods of 12 months ending on the new ending date;
  - (b) in any other case:
    - (i) the current period is replaced by the period from the start of the current period to the new ending date; and
    - (ii) after that, the provider's reporting periods are periods of 12 months ending on the new ending date.
- (2) If the Minister forms a reasonable belief that a registered provider may have:
- (a) failed to comply with the requirements of subsection (1);
  - (b) failed to comply with the financial requirements of this Act;
- or

- (c) provided a return which contains misleading or deceptive information;  
the Minister may, by written notice given to a provider, require the provider to give the Minister such further information as the Minister specifies.
- (3) The regulations may, either generally, or in relation to a particular reporting period or periods, make provision for or in relation to the exemption of a specified provider or a specified class of providers from all or any of the requirements of subsection (1).
- (4) In this section:
- financial requirements of this Act* means the provisions of this Act that:
- (a) require the provider to pay money into an account; or
  - (b) regulate payments or withdrawals from an account; or
  - (c) require the provider to make a payment to a student.
- reporting period*, in relation to a provider, means a financial year or some other period that applies to the provider under subsection (1A).

## 9 Suspension of certain sections in a State

- (1) The Governor-General may, by Proclamation, suspend all or any of sections 6A, 6B, 6C, 7A and 8 in a State if, and so long as, the Governor-General is satisfied that arrangements in effect in the State are sufficient to achieve the purposes of the suspended section or sections.
- (2) If:
- (a) a registered provider fails to comply with the arrangements that served as a basis for suspending one or more sections in a State; and
  - (b) the provider is registered in respect of another State in which one or more of the suspended sections still apply;
- the failure to comply with the arrangements is to be treated for the purposes of section 10 as if it were a failure to comply with the suspended sections.

- (3) If one or more sections are suspended in a State, the provider's registration in respect of that State cannot be suspended under section 10 on the ground of:
  - (a) the provider's failure to comply with the arrangements that served as a basis for suspending the section or sections; or
  - (b) the provider's failure to comply, in another State, with any of the suspended sections.

### **10 Suspension of registration**

- (1) If the Minister forms a reasonable belief that a registered provider may have failed to comply with a requirement of this Act and that, if the failure is established, it may justify suspension of the registration of the provider, the Minister must give written notice to the provider stating that the Minister is of that opinion, setting out the grounds on which the opinion is based and giving to the provider a reasonable opportunity to make written submissions to the Minister in relation to the matter.
- (2) If, after considering any submissions made by the registered provider, the Minister is satisfied that:
  - (a) the registered provider failed to comply with the requirement; and
  - (b) the failure justifies suspension of the registration of the provider;the Minister must, by written notice to the provider, suspend the registration of the provider in respect of the State, or in respect of each State, as the case may be, in respect of which the provider is registered.
- (3) Where the registration of a provider is suspended in respect of a State, the Secretary must cause particulars of the suspension to be entered in the Register.
- (4) The Minister may at any time remove the suspension of the registration of a provider in respect of a State.



## 11 Automatic suspension of registration

- (1) Where the approval of a registered provider under the law of a State is suspended, the registration of the provider in respect of that State is suspended by force of this section.
- (2) Where the suspension of the approval under the law of the State is removed, the registration under this Act is restored.

### 11A Re-instatement fee

- (1) A provider is liable to pay a re-instatement fee if:
  - (a) the suspension of the registration of the provider is removed under subsection 10(4); or
  - (b) the registration of the provider is restored under subsection 11(2).
- (2) The fee must be paid by the day specified in a notice given to the provider by the Secretary.
- (3) The day specified in the notice must be more than 28 days after the day the notice is given.
- (4) The amount of the re-instatement fee is:
  - (a) \$100 for 1997; and
  - (b) for a later year (the *current year*), the amount worked out by multiplying the re-instatement fee for the year before the current year by the indexation factor that applies to the current year.
- (5) The indexation factor that applies to the current year is worked out using the following formula:

$$\frac{\text{Index number for the recent September quarter}}{\text{Index number for the previous September quarter}}$$

where:

*index number*, for a quarter, means the All Groups Consumer Price Index number that is the weighted average of the 8 capital cities and is published by the Australian Statistician for that quarter.

*recent September quarter* means the September quarter in the year before the current year.

*previous September quarter* means the September quarter before the recent September quarter.

- (6) The indexation factor worked out under subsection (5) must be rounded up or down to 3 places (rounding up in the case of exactly halfway between).
- (7) The amount worked out under subsection (5) must be rounded to the nearest whole dollar (rounding up in the case of 50 cents).
- (8) If at any time (whether before or after the commencement of this section) the Australian Statistician has changed or changes the reference base for the Consumer Price Index, then, for the purposes of applying this section after the change, only index numbers published in terms of the new reference base are to be used.

## **12 Cancellation of registration by Minister**

- (1) Where the Minister has reason to believe that:
  - (a) a registered provider has engaged in misleading or deceptive conduct in connection with the recruitment of intending overseas students; or
  - (aa) a provider has contravened section 15; or
  - (b) a provider whose registration is suspended in respect of the State or each State in respect of which the provider is registered is not providing courses to overseas students;and the Minister is of the opinion that the matter referred to in paragraph (a), (aa) or (b), as the case may be, may justify the cancellation of the registration of the provider, the Minister must give written notice to the provider stating that the Minister is of that opinion, setting out the grounds on which the opinion is based and giving to the provider a reasonable opportunity to make written submissions to the Minister in relation to the matter.

- (2) If, after considering any submissions made by the registered provider the Minister is satisfied that the registration of the provider should be cancelled, the Minister must, by written notice to the provider, cancel that registration.

### **13 Automatic cancellation of registration**

- (1) Where a registered provider ceases to be an approved provider in respect of a State:
- (a) if the provider continues to be an approved provider in respect of another State or other States—the provider ceases to be registered in respect of the first-mentioned State and the Secretary must cause the particulars of the registration of the provider to be altered accordingly; or
  - (b) if the provider is not an approved provider in respect of any other State—the registration of the provider is cancelled by force of this subsection.
- (2) If:
- (a) a registered provider who is a natural person becomes bankrupt; or
  - (b) a winding-up order is made in respect of a registered provider that is a body corporate; or
  - (c) a registered provider that is a body corporate ceases to exist;
- the registration of the provider is cancelled by force of this subsection.
- (3) If:
- (a) a provider is registered in respect of a course in respect of a State; and
  - (b) the approval of the provider in respect of the course is withdrawn by the designated authority of the State;
- the registration of the provider in respect of the course in respect of the State is cancelled by force of this subsection.
- (4) If any initial registration charge payable by a provider for a registration remains unpaid after the time when it became due for payment, then the registration of the provider is cancelled by force of this subsection.

#### **14 Review of suspension or cancellation**

- (1) An application may be made to the Administrative Appeals Tribunal for the review of:
  - (a) a decision under subsection 10(2) to suspend the registration of a provider; or
  - (b) a decision under subsection 12(2) to cancel the registration of a provider.
- (2) Where a decision of a kind referred to in subsection (1) is made and a written notice of the decision is given to a person whose interests are affected by the decision, the notice must include:
  - (a) a statement to the effect that application may be made to the Administrative Appeals Tribunal under the *Administrative Appeals Tribunal Act 1975* for review of the decision; and
  - (b) a statement to the effect that a person who is entitled to apply to the Administrative Appeals Tribunal for the review of a decision may, under section 28 of that Act, request a statement that includes reasons for the decision.
- (3) Paragraph (2)(b) does not apply in relation to a case to which subsection 28(4) of the *Administrative Appeals Tribunal Act 1975* applies.
- (4) A contravention of subsection (2) in relation to a decision does not affect the validity of the decision.

#### **15 Effect of suspension**

While the registration of a provider is suspended in respect of a State:

- (a) the provider must not do any act or thing for the purpose of recruiting or enrolling intending overseas students in respect of courses provided or to be provided by the provider in that State; and
- (b) the provider must not solicit or accept any money from an overseas student or an intending overseas student in respect of a course provided or to be provided by the provider in that State; and

- (c) if an overseas student or intending overseas student has applied or been enrolled to undertake a course provided or to be provided by the provider in that State but has not commenced the course—the provider must not permit the student to commence the course.

## **16 Effect of cancellation**

Where the registration of a provider is cancelled, the Secretary must cause the name and other particulars of or in relation to the provider to be removed from the Register.

## **17 Delegation**

The Minister may, by writing signed by the Minister, delegate to the Secretary, or to an SES employee or acting SES employee in the Department, all or any of the Minister's powers under this Act.

## **17A Late payment penalty**

If any annual registration charge or re-instatement fee payable by a provider remains unpaid after the time when it became due for payment, then the provider must pay a late payment penalty calculated from that time at the rate of 20% per year on the amount unpaid.

## **17B Debts due to the Commonwealth**

The following are recoverable as debts due to the Commonwealth:

- (a) any annual registration charge;
- (b) any re-instatement fee or late payment penalty payable under this Act.

## **17C Amounts payable by unincorporated bodies**

If a provider that is an unincorporated body is liable to pay an amount under this Act or the *Education Services for Overseas Students (Registration Charges) Act 1997*, then the following persons are taken to be jointly and severally liable to pay the amount:

- (a) the principal executive officer of the provider at the time the liability arose; and
- (b) if there was a governing body of the provider at that time—each of the persons who were members of that governing body at that time.

### **18 Offences by unincorporated bodies**

Where a provision of this Act is contravened in respect of a provider that is an unincorporated body of persons:

- (a) the principal executive officer of the provider at the time of the contravention is taken to have contravened the provision at that time; and
- (b) if there was a governing body of the provider at that time—each of the persons who were members of that governing body at that time is also taken to have contravened the provision at that time.

### **19 Regulations**

The Governor-General may make regulations, not inconsistent with this Act, 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.

### **20 Cessation of operation of Act**

This Act, unless sooner repealed, shall cease to be in force on 1 January 2002.

**Table of Acts**

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

**Note 1**

The *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991* as shown in this compilation comprises Act No. 114, 1991 amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions see Table A.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991</i>	114, 1991	27 June 1991	27 June 1991	
<i>Education Services for Overseas Students (Registration of Providers and Financial Regulation) Amendment Act 1993</i>	114, 1993	24 Dec 1993	Ss. 3(2), 5, 6, 9(2), 10(2) and 11: 1 June 1994 (see <i>Gazette</i> 1994, No. S194) Ss. 7 and 10(3): 24 Aug 1994 S. 8: 24 June 1994 (see <i>Gazette</i> 1994, No. S194) Remainder: Royal Assent	Ss. 5(2) and 12(2)
<i>Education Services for Overseas Students (Registration of Providers and Financial Regulation) Amendment Act 1994</i>	135, 1994	1 Nov 1994	1 Nov 1994	—
<i>Education Services for Overseas Students (Registration of Providers and Financial Regulation) Amendment Act (No. 1)</i>	41, 1996	9 Oct 1996	9 Oct 1996	—

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

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
1996				
<i>Education Services for Overseas Students (Registration of Providers and Financial Regulation) Amendment Act (No. 1) 1997</i>	19, 1997	27 Mar 1997	24 Apr 1997	Sch. 1 (item 9)
<i>Financial Sector Reform (Consequential Amendments) Act 1998</i>	48, 1998	29 June 1998	Schedule 1 (items 44-46): 1 July 1998 (see <i>Gazette</i> 1998, No. S316) (a)	—
<i>Education Services for Overseas Students (Registration of Providers and Financial Regulation) Amendment Act 1998</i>	115, 1998	11 Dec 1998	11 Dec 1998	—
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (item 400): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (b)	—
<i>Education Services for Overseas Students (Consequential and Transitional) Act 2000</i>	166, 2000	21 Dec 2000	Schedule 1 (item 1) and Schedule 2: 4 June 2001 (see <i>Gazette</i> 2001, No. S175) (c)	Sch. 2



## Act Notes

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- (a) The *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991* was amended by Schedule 1 (items 44-46) only of the *Financial Sector Reform (Consequential Amendments) Act 1998*, subsection 2(2) of which provides as follows:
- (2) Subject to subsections (3) to (14), Schedules 1, 2 and 3 commence on the commencement of the *Australian Prudential Regulation Authority Act 1998*.
- (b) The *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991* was amended by Schedule 1 (item 400) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
  - (2) Subject to this section, this Act commences at the commencing time.
- (c) The *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991* was repealed by Schedule 1 (item 1) of the *Education Services for Overseas Students (Consequential and Transitional) Act 2000*, subsection 2(4) of which provides as follows:
- (4) The remaining provisions of this Act commence on a day or days to be fixed by Proclamation.



## Table of Amendments

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### Table of Amendments

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 2A .....	ad. No. 19, 1997
S. 3.....	am. No. 114, 1993; No. 19, 1997
S. 4.....	am. No. 114, 1993
S. 5.....	am. No. 19, 1997
Ss. 5A-5C.....	ad. No. 19, 1997
S. 6.....	rep. No. 114, 1993
S. 6A .....	ad. No. 114, 1993 am. No. 135, 1994; No. 48, 1998
Ss. 6B, 6C.....	ad. No. 114, 1993
S. 7.....	am. No. 114, 1993 rep. No. 114, 1993
S. 7A .....	ad. No. 114, 1993
S. 8.....	am. No. 114, 1993
S. 9.....	rs. No. 114, 1993 am. No. 114, 1993
S. 10.....	am. No. 114, 1993
S. 11A .....	ad. No. 19, 1997
S. 12.....	am. No. 114, 1993
S. 13.....	am. No. 19, 1997
S. 17.....	am. No. 146, 1999
Ss. 17A-17C.....	ad. No. 19, 1997
S. 20.....	am. No. 114, 1993; No. 41, 1996; No. 115, 1998

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## **Table A**

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### **Table A**

#### **Application, saving or transitional provisions**

*Education Services for Overseas Students (Registration of Providers and Financial Regulation) Amendment Act 1993* (No. 114, 1993)

#### **5 Repeal of section 6 and substitution of new sections**

- (2) If, at the commencement of this section:
- (a) money is in a special account maintained by a provider for the purposes of section 6 of the Principal Act; and
  - (b) the account also qualifies as a notified trust account for the purposes of section 6A of the Principal Act as amended by this Act;

sections 6A, 6B and 6C of the amended Act apply as if the provider had paid that money into that account in compliance with subsection 6A(1) of the amended Act.

#### **12 Cancellation of registration by Minister**

- (2) The amendments made by subsection (1) do not apply to contraventions that occurred before the commencement of this section.

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*Education Services for Overseas Students (Registration of Providers and Financial Regulation) Amendment Act (No. 1) 1997* (No. 19, 1997)

### **Schedule 1**

#### **9 Transitional arrangements for 1997**

**Table A**

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If this Act does not commence before 1 January 1997, then section 5A of the *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991* (as inserted by this Schedule) applies for 1997 as if the reference in that section to “by the last day of February of the year” were a reference to “by the end of 2 months after this section commenced”.

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*Education Services for Overseas Students (Consequential and Transitional) Act 2000* (No. 166, 2000)

**Schedule 2**

**1 Application—starting day for obligations of registered providers**

*Minister must publish starting day*

- (1) The Minister must publish a notice in the *Gazette* specifying the starting day of the obligations in sections 19, 20 and 21 of the new ESOS Act. The starting day must be at least 28 days after the day of the publication.
- (2) The Minister must also notify in writing each registered provider of the starting day.

*Notification of details about accepted students*

- (3) The requirements in section 19 (giving information about accepted students) of the new ESOS Act apply to all events that happen on or after the starting day in relation to all persons who became or become accepted students on or after that day.
- (4) The requirements in paragraphs 19(1)(d) and (e) and subsection 19(2) of the new ESOS Act also apply to events that happen on or after the starting day in relation to persons who became accepted students before that day.

## **Table A**

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### *Notification of student visa breaches*

- (5) The requirements in section 20 (sending students notice of visa breaches) of the new ESOS Act apply to all breaches that happen on or after the starting day.

### *Record keeping*

- (6) The requirements in section 21 (record keeping) of the new ESOS Act apply to all current and future accepted students from the starting day onwards.
- (7) However, the notice under subitem (1) may prescribe a period or further period giving providers who are registered when the requirement in section 21 takes effect extra time to comply with the requirement.

## **2 Transitional—registration**

- (1) The registration of a provider that was in effect under the old ESOS Act immediately before the commencement of this item continues to have effect after that time as if the registration had been done for the same courses under the new ESOS Act.
- (2) If that registration was suspended under the old ESOS Act immediately before the commencement of this item, the new registration has effect after that time as if it had been suspended to the same extent under the new ESOS Act.

## **3 Transitional—national code**

The national code may prescribe a period or a further period giving providers who are registered when the code takes effect extra time to comply with the requirements of the code.

## **4 Application—notified trust accounts and ESOS Assurance Fund**

- (1) The requirements in the old ESOS Act relating to notified trust accounts continue to apply until Part 5 of the new ESOS Act commences even if Schedule 1 to this Act repealed those requirements earlier.

**Table A**

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- (2) The requirements in the new ESOS Act relating to the ESOS Assurance Fund apply to 2001 and later years.
- (3) However, the Minister may publish a notice in the *Gazette* stating that those Fund requirements apply instead to 2002 and later years.
- (4) In that case, the requirements in the old ESOS Act relating to notified trust accounts continue to apply until the later of:
  - (a) the beginning of 2002; and
  - (b) the commencement of Part 5 of the new ESOS Act;even if Schedule 1 to this Act repealed those requirements earlier.

**5 Transitional—money in notified trust accounts**

- (1) This item applies to course money that was in a notified trust account immediately before the requirements in the old ESOS Act relating to such accounts ceased to apply.
- (2) The course money is no longer considered to be held on trust after that time.

**6 Transitional—regulations**

Regulations under the new ESOS Act may provide for the transition from the old ESOS Act to the new ESOS Act, and for related transitional matters.