

2004-2005-2006

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

**Education Services for Overseas  
Students Legislation Amendment (2006  
Measures No. 2) Bill 2006**

**No.     , 2006**

*(Education, Science and Training)*

**A Bill for an Act to amend the law about education  
services for overseas students, and for related  
purposes**

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1     **A Bill for an Act to amend the law about education**  
2     **services for overseas students, and for related**  
3     **purposes**

4     The Parliament of Australia enacts:

5     **1 Short title**

6                     This Act may be cited as the *Education Services for Overseas*  
7                     *Students Legislation Amendment (2006 Measures No. 2) Act 2006*.

8     **2 Commencement**

9                     (1) Each provision of this Act specified in column 1 of the table  
10                     commences, or is taken to have commenced, in accordance with  
11                     column 2 of the table. Any other statement in column 2 has effect  
12                     according to its terms.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedule 1	1 January 2007.	1 January 2007
3. Schedule 2, Part 1	1 January 2007.	1 January 2007
4. Schedule 2, Part 2	1 July 2007.	1 July 2007
5. Schedules 3 and 4	1 January 2007.	1 January 2007

1 Note: This table relates only to the provisions of this Act as originally  
2 passed by both Houses of the Parliament and assented to. It will not be  
3 expanded to deal with provisions inserted in this Act after assent.

4 (2) Column 3 of the table contains additional information that is not  
5 part of this Act. Information in this column may be added to or  
6 edited in any published version of this Act.

### 7 **3 Schedule(s)**

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9 repealed as set out in the applicable items in the Schedule  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

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## **Schedule 1—Membership of tuition assurance scheme as prerequisite for registration**

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

#### **1 After paragraph 9(2)(b)**

Insert:

(ba) either:

- (i) the provider is a member of a tuition assurance scheme that is established in accordance with the regulations made for the purposes of paragraph 22(1)(a) and that covers the course; or
- (ii) the provider is exempt from the requirements of section 22 under regulations made for the purposes of subsection 22(3); and

#### **2 Application**

Paragraph 9(2)(ba) of the *Education Services for Overseas Students Act 2000* applies in relation to the registration of providers on and after the commencement of this Schedule.

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2 **Schedule 2—Reporting by registered provider**

3 **Part 1—Early termination of studies**

4 *Education Services for Overseas Students Act 2000*

5 **1 Paragraph 19(1)(d)**

6 Omit “studies by an accepted student”, substitute “an accepted student’s  
7 studies (whether as a result of action by the student or the provider or  
8 otherwise)”.

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## **Part 2—Breach of prescribed conditions of student visa**

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

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#### **2 Subsections 19(2) and 20(1)**

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Omit “student visa condition relating to attendance or satisfactory academic performance”, substitute “prescribed condition of a student visa”.

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#### **3 Application**

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The amendment of subsections 19(2) and 20(1) of the *Education Services for Overseas Students Act 2000* made by this Part applies to breaches of conditions of visas that occur on or after the commencement of this Part.

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#### **4 Subsection 104(1) (penalty)**

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Omit “60”, substitute “50”.

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#### **5 Subsection 104(3) (penalty)**

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Omit “60”, substitute “50”.

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#### **6 Subsection 104(4) (penalty)**

19

Omit “60”, substitute “50”.

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### ***Migration Act 1958***

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#### **7 Subsection 137J(1) (note)**

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Omit “relating to attendance or satisfactory academic performance”, substitute “that is prescribed by regulations made for the purposes of that Act”.

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## Schedule 3—Refunds to students etc.

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

#### **1 At the end of subsection 27(2)**

Add:

; or (c) the registered provider of the course refuses to provide, or continue providing, the course to the student 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.

#### **2 Subsection 27(3) (at the end of the definition of *default day*)**

Add:

; or (d) the day on which the registered provider of the course refuses to provide, or continue providing, the course to the student, if paragraph (2)(c) applies.

#### **3 Application**

The amendments of section 27 of the *Education Services for Overseas Students Act 2000* by this Schedule apply to refusals because of acts and omissions by overseas students and intending overseas students occurring on or after the commencement of this Schedule.

#### **4 At the end of section 28**

Add:

(4) Despite subsection (1), this section does not apply 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 subsection 27(2) to apply:
  - (i) the student's failure to start the course on the agreed starting day;



- 1 (ii) the student’s withdrawal from the course;  
2 (iii) the student’s failure to pay an amount he or she was  
3 liable to pay the provider, directly or indirectly, in order  
4 to undertake the course.

5 **5 Application**

6 Section 28 of the *Education Services for Overseas Students Act 2000* as  
7 amended by this Schedule applies in relation to agreements made on or  
8 after the commencement of this Schedule.

9 **6 After subsection 76(1)**

10 Insert:

- 11 (1A) The Fund Manager must not make a determination under  
12 subsection (1) if the time when the Fund Manager becomes aware  
13 that the circumstances described in paragraphs (1)(a), (b) and (c)  
14 may exist is more than 12 months after the default day relevant to  
15 the requirement mentioned in paragraph (1)(a).

16 **7 Application**

17 Subsection 76(1A) of the *Education Services for Overseas Students Act*  
18 *2000* applies in relation to default days that are on or after the  
19 commencement of this Schedule.

20 **8 Subsection 76(2)**

21 Omit “However”, substitute “Despite subsection (1)”.

22 **9 After subsection 77(1)**

23 Insert:

- 24 (1A) However, the amount that the Fund Manager must pay out of the  
25 Fund under paragraph (1)(b) is reduced by the amount worked out  
26 under the regulations if:  
27 (a) the student undertook (but did not complete) the course (the  
28 *old course*) to which the call made on the Fund relates; and  
29 (b) since undertaking the old course, the student has been  
30 enrolled in another course (the *new course*); and  
31 (c) the work required of the student in undertaking the new  
32 course is reduced on account of the student’s work in  
33 undertaking the old course.

1 **10 After section 77**

2 Insert:

3 **77A Fund Manager may ask provider of new course about academic**  
4 **credit or recognition of prior learning**

5 (1) This section applies for the purposes of enabling the Fund Manager  
6 to work out:

7 (a) whether subsection 77(1A) applies to reduce the amount  
8 payable out of the Fund because:

- 9 (i) since undertaking a course (the *old course*) to which a  
10 call made on the Fund relates, the student concerned has  
11 been enrolled in another course (the *new course*); and  
12 (ii) the work required of the student in undertaking the new  
13 course is reduced on account of the student's work in  
14 undertaking the old course; and

15 (b) the amount of any reduction of a payment out of the Fund  
16 under subsection 77(1A).

17 (2) The Fund Manager may request a registered provider whom the  
18 Fund Manager believes has enrolled the student in the new course  
19 to inform the Fund Manager within a specified reasonable period:

- 20 (a) whether the provider has enrolled the student; and  
21 (b) whether the work required of the student in undertaking the  
22 new course is reduced on account of the student's work in  
23 undertaking the old course; and  
24 (c) if the work is reduced, the extent and monetary value of the  
25 reduction.

26 (3) The registered provider must comply with the request.

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

29 **11 Application**

30 Subsection 77(1A) and section 77A of the *Education Services for*  
31 *Overseas Students Act 2000* apply in relation to calls made on the Fund  
32 on or after the commencement of this Schedule.

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## **Schedule 4—National code**

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

#### **1 Section 5 (definition of *national code*)**

Repeal the definition, substitute:

*national code* means the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students in force under Part 4.

#### **2 Subsection 9(8)**

Repeal the subsection, substitute:

(8) Paragraph (2)(ca) does not apply when there is not a national code in force.

#### **3 Subsection 33(1)**

Repeal the subsection, substitute:

(1) The Minister may make a national code by legislative instrument expressed to commence on a day at least 28 days after it is registered in the Federal Register of Legislative Instruments.

Note: The Minister may amend the national code by legislative instrument with that kind of commencement provision, after consultations like those the Minister must undertake under section 36 before making the code. See subsection 33(3) of the *Acts Interpretation Act 1901*.

#### **4 At the end of section 33**

Add:

(3) The Minister must ensure as far as practicable that there is a national code in force at all times.

#### **5 Section 35**

Repeal the section.

#### **6 Subsection 36(2)**

Omit “establishing the”, substitute “making a”.

1 **7 Sections 37 and 39**

2 Repeal the sections.

3 **8 Subsections 41(1) and (2)**

4 Repeal the subsections, substitute:

5 (1) The Secretary must give each registered provider written notice of:

6 (a) the making or amendment of the national code; and

7 (b) the day on which the code or amendment takes effect for the  
8 provider; and

9 (c) the way in which the provider can get access to the text of the  
10 code in force on that day.

11 (2) A notice given under subsection (1) is not a legislative instrument.

12 **9 At the end of subsection 41(3)**

13 Add “or an amendment of the code”.

14 **10 Section 42**

15 Repeal the section.

16 **11 Transitional provision**

17 The national code that was in force immediately before the  
18 commencement of this Schedule continues in force after that  
19 commencement as if it had been made under Part 4 of the *Education*  
20 *Services for Overseas Students Act 2000* as amended by this Schedule.