



Education Services for Overseas Students Regulations 2001

Statutory Rules 2001 No. 96 as amended

made under the

*Education Services for Overseas Students Act 2000 and
the Education Services for Overseas Students
(Consequential and Transitional) Act 2000*

This compilation was prepared on 1 July 2012
taking into account amendments up to SLI 2012 No. 128

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Regulation 1.01

Part 1 Introduction**1.01 Name of Regulations** [see Note 1]

These Regulations are the *Education Services for Overseas Students Regulations 2001*.

1.02 Commencement

These Regulations commence on 4 June 2001.

1.03 Definitions

In these Regulations:

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

agreed starting day, for a course provided to a student, means the day on which the course is scheduled to start, or a later day agreed between the provider for the course and the student.

confirmation of enrolment means the information a registered provider must give the Secretary under section 19 of the Act when a person becomes an accepted student of the provider.

non-government school means a school in a State that is not conducted by or on behalf of the Government of a State, but does not include a school conducted for profit.

PRISMS (Provider Registration and International Student Management System) means the electronic system of that name used to process information given to the Secretary in the form approved under subsection 19 (3) of the Act.

public provider means:

- (a) a government school; or
- (b) a vocational education and training institution that is owned or controlled (whether directly or indirectly) by a State or Territory; or
- (c) a Table A provider within the meaning of the *Higher Education Support Act 2003*.

Regulation 1.03

student visa means a visa described in the *Migration Regulations 1994* as a Subclass 560, 562, 563, 570, 571, 572, 573, 574, 575 or 576 visa, whenever granted, other than a visa granted to:

- (a) a person who satisfies the secondary criteria, but not the primary criteria, under those Regulations for the grant of the visa; or
- (b) an exchange student or AusAID student within the meaning of those Regulations; or
- (c) an overseas student who has been approved by the Minister for Defence to undertake a course of study or training under a scholarship scheme or training program approved by the Minister for Defence; or
- (d) an overseas student who has been approved under another scholarship scheme, or an exchange scheme, sponsored by the Commonwealth to undertake a course of study or training in Australia.

university means an institution of higher education specified in Table A of the definition of ***institution*** in subsection 4 (1) of the *Higher Education Funding Act 1988*.

Note For the definitions of the following terms, see section 5 of the Act:

- accepted student
- approved provider
- course
- designated authority
- Immigration Minister
- national code
- overseas student
- provide
- provider
- Register
- registered provider
- Secretary
- tuition fees.

Regulation 2.01

2.01 Information to be entered on the Register

- (1) For paragraph 14A (4) (i) of the Act, the following information must be entered on the Register for each approved provider registered to provide a course or courses for a State:
 - (a) the address of the provider's place of business;
 - (b) if the provider is not an individual — the address of the provider's registered office;
 - (c) the provider's postal address (if different from the address mentioned in paragraph (a) or (b));
 - (d) the provider's telephone number, facsimile number and e-mail address (if any);
 - (e) the provider's Australian Business Number or Australian Company Number;
 - (f) the provider's trading name or names;
 - (g) the estimated annual number of full-time equivalent domestic students enrolled with the provider, excluding students enrolled for online study only;
 - (h) the maximum number of overseas students, approved by the designated authority, to whom the provider may provide the course or courses.

- (2) For paragraph 14A (4) (i) of the Act, the information that must be entered on the Register for each course that the provider mentioned in subregulation (1) is registered to provide is:
 - (a) the duration, level and field of study of the course; and
 - (b) the estimated total of the tuition fees payable by a student for the course; and
 - (c) the estimated total of the non-tuition fees payable by a student for the course; and
 - (d) whether the provider only accepts payment in arrears; and
 - (e) each location where the course will be provided, including:
 - (i) the address of the location; and
 - (ii) the period of approval for the course at the location; and

Regulation 2.01

- (iii) the telephone number, fax number (if any), email address (if any) and primary contact, for the location; and
- (iv) the maximum number of students on a student visa to whom the provider may provide the course in the location; and
- (f) whether the course is provided:
 - (i) by the owner-operator of the provider mentioned in subregulation (1); or
 - (ii) under an arrangement with another registered provider; or
 - (iii) under an arrangement with a non-registered provider.

Examples of levels of study of courses for paragraph (a)

- 1 Primary.
- 2 Secondary.
- 3 Diploma.
- 4 Bachelor degree.
- 5 Masters coursework.
- 6 PhD.
- 7 Non award.
- 8 Foundation studies.
- 9 English language intensive courses for overseas students.

Examples of fields of study of courses for paragraph (a)

- 1 Business administration.
- 2 English language study.
- 3 Visual and performing arts.
- 4 Education.

Regulation 3.01

Part 3 Obligations on registered providers

Division 3.1 Information and records

3.01 Prescribed details about accepted students

For paragraph 19 (1) (a) of the Act, the following details are prescribed for a person who becomes an accepted student of a provider:

- (a) the student's full name;
- (b) the student's gender;
- (c) the student's date of birth;
- (d) the student's country of birth;
- (e) the student's nationality;
- (ea) if the student is under 18 years old:
 - (i) the current residential address, mobile phone number (if any) and email address (if any) of a person other than the provider who has legal authority to act on the student's behalf; and
 - (ii) the relationship of the person to the student;

Example

A parent or guardian.

- (f) the unique identifier of the student's course and its location;
- (g) the agreed starting day of the course;
- (h) the day when the student is expected to complete the course;
- (i) the amount of tuition fees that the provider received for the student for the course before confirming the student's enrolment using PRISMS;
- (ia) if the provider is not a public provider—the start and end dates of the period to which the amount mentioned in paragraph (i) relates;

Regulation 3.02

- (ib) the amount of non-tuition fees that the provider received for the student for the course before confirming the student's enrolment using PRISMS;
- (j) the total amount of tuition fees that the student is required to pay to the provider to undertake the full course in accordance with the written agreement entered into with the student;
- (k) whether premiums have been paid for health insurance for the student (for example, overseas student health cover) before the course starts;
- (l) if the student has undertaken a test to determine the student's level of comprehension of English, the name of the test and the score the student received for the test;
- (m) the office of the Immigration Minister's Department where the student's application for a student visa was made or is expected to be made;
- (n) if the student was in Australia when he or she became an accepted student, the number of the student's passport;
- (o) if the student holds an Australian visa, the number of the visa.

Examples of English tests for paragraph (l)

- 1 The International English Language Testing System test.
- 2 An Occupational English Test conducted by the National Language and Literacy Institute of Australia.
- 3 Teaching of English as a Foreign Language test.

3.02 Prescribed information about accepted students who do not begin courses when expected

- (1) For paragraph 19 (1) (c) of the Act, the following information is prescribed for an accepted student who does not begin his or her course when expected:
 - (a) the information mentioned in paragraphs 3.01 (a) to (h) for the student (if the provider has not already given that information to the Secretary using PRISMS);
 - (b) the student's current residential address, mobile phone number (if any) and email address (if any) (if the student has given that information to the provider);

Regulation 3.03

- (c) the office of the Immigration Minister's Department where the student's application for a student visa was made.
- (2) However, the information need not be given about an accepted student if, before the student's expected starting day:
 - (a) the student asks the provider for a later starting day; and
 - (b) the request is made on health or compassionate grounds; and
 - (c) the provider agrees to a later starting day for the student.

3.03 Other prescribed matters relating to accepted students

- (1) For paragraph 19 (1) (f) of the Act, the following are prescribed matters relating to an accepted student who terminates his or her studies before the course is completed:
 - (a) the information mentioned in paragraphs 3.01 (a) to (h) for the student (if the provider has not already given that information to the Secretary using PRISMS);
 - (b) the student's current residential address, mobile phone number (if any) and email address (if any) (if the student has given that information to the provider);
 - (c) the office of the Immigration Minister's Department in Australia to which the Secretary is to give the information received under this regulation.
- (2) For paragraph 19 (1) (f) of the Act, the following are prescribed matters relating to an accepted student who changes his or her course, or whose course changes in duration:
 - (a) the information mentioned in paragraphs 3.01 (a) to (h) for the student (if the provider has not already given that information to the Secretary using PRISMS);
 - (b) the student's current residential address, mobile phone number (if any) and email address (if any) (if the student has given that information to the provider);
 - (c) the office of the Immigration Minister's Department in Australia to which the Secretary is to give the information received under this regulation.

Regulation 3.03A

- (3) For paragraph 19 (1) (f) of the Act, the following are prescribed matters relating to an accepted student whose studies have been deferred or suspended:
- (a) the proposed duration of any deferment of studies;
 - (b) the proposed duration of any suspension of studies.
- (4) For paragraph 19 (1) (f) of the Act, the following are prescribed matters relating to an accepted student whose studies have been suspended or deferred by the provider or at the request of the student:
- (a) any change to the proposed end date of the deferment of studies;
 - (b) any change to the proposed end date of the suspension of studies.
- (5) For paragraph 19 (1) (f) of the Act, the following are prescribed matters relating to an accepted student of a provider that is not a public provider, for whom the provider receives tuition fees during a calendar month:
- (a) the amount of each payment made;
 - (b) the date the payment was made;
 - (c) the start and end dates of the period to which the payment relates.

3.03A Prescribed condition of student visa

For subsections 19 (2) and 20 (1) of the Act, a prescribed condition of a student visa is visa condition 8202, set out in Schedule 8 to the *Migration Regulations 1994*.

Note Subsections 19 (2) and 20 (1) of the Act make provision for a registered provider to notify the Secretary and an accepted student of a breach of a prescribed condition of a student visa.

Regulation 3.04

3.04 Details of which a registered provider must keep records

For subsection 21 (2) of the Act, the records of each accepted student who is enrolled with a provider or who has paid any tuition fees for a course provided by the provider must include the following details:

- (a) the amount of money that the student has paid to the provider, including the separate identification of tuition fees and non-tuition fees;
- (b) for an amount of tuition fees that the student has paid to the provider for a course:
 - (i) whether the amount was paid for the full course or part of the course; and
 - (ii) if the amount was paid for the full course, the duration of the course; and
 - (iii) if the amount was paid for part of the course, the duration of that part of the course;
- (c) copies of written agreements to which the provider and student are parties;
- (d) any amounts that:
 - (i) have become payable, directly or indirectly, to the provider by the student for the student to undertake a course; and
 - (ii) have not been paid;
- (e) the amount that a student will be charged to access the student's records.

3.05 Electronic records

If records kept for the purpose of section 21 of the Act are kept electronically, they must be backed up.

3.06 Fees for accessing records

The fee for a student to access a record mentioned in regulation 3.04 must not exceed the cost incurred by the provider in providing access to that record.

Part 4 Penalties for the national code

4.01 Offences for breaching certain provisions of the national code

- (1) For section 44 of the Act, a breach of a provision of the national code mentioned in the following table is an offence punishable by a fine not exceeding the penalty units mentioned in the table for the provision.

Provision of the national code	Penalty units
Standard 15.1	10
Standard 2.1	1
Standard 3, excluding paragraphs 3.1 (d) and (e)	3
Standard 10.1	1
Standard 11.1	1
Standard 3.1 (d)	1

- (2) Breach of a provision of the national code mentioned in the table in subregulation (1) is not an offence unless, before the conduct (including an omission) constituting the breach occurred, the text of the provision was set out in Schedule 1.
- (3) An offence created by subregulation (1) is a strict liability offence.

Note Schedule 1 sets out the text of the provisions of the national code mentioned in the table as in force at the commencement of these Regulations. In considering the application of these provisions, you should refer to the full text of the national code available from www.detya.gov.au/esos.

Regulation 6.01

Part 6 Enforcement — infringement notices

6.01 Purpose of Part 6

For section 106 of the Act, this Part provides a procedure under which a registered provider who is alleged to have committed an offence to which section 106 of the Act applies may, as an alternative to having the matter dealt with by a court, dispose of the matter by payment of a monetary penalty (an *infringement notice penalty*) specified in a notice (an *infringement notice*) served on the provider.

6.02 Infringement notices

- (1) If there are reasonable grounds for believing that a registered provider has committed an offence to which section 106 of the Act applies, the Minister may serve an infringement notice, or cause an infringement notice to be served, on the provider in accordance with regulation 6.03.
- (2) The notice must set out the following information:
 - (a) the name of the provider served and the address of the provider's place of business;
 - (b) the provision of the Act that it is alleged has been contravened;
 - (c) details of the alleged offence, including the day, and (if appropriate) the time, on which it is alleged to have been committed;
 - (d) the maximum penalty that may be imposed by a court for the offence;
 - (e) the amount payable as the infringement notice penalty;
 - (f) a statement that, if the provider prefers that the matter not be dealt with by a court, the provider may signify that preference by paying the infringement notice penalty:
 - (i) before the end of 28 days after the day the notice is served; or

Regulation 6.02

- (ii) if a further period is allowed by the Minister under regulation 6.04 — before the end of that further period; or
 - (iii) if payment by instalments is permitted under regulation 6.05 — in accordance with the permission;
 - (g) how, and where, the infringement notice penalty may be paid;
 - (h) a statement that if, before the end of 28 days after service of the notice, the provider notifies the Minister, in the manner set out in the infringement notice, of any facts or matters that the provider believes ought to be taken into account in relation to the alleged offence:
 - (i) time for payment of the penalty will be extended to the extent necessary to enable a decision to be made about those facts or matters; and
 - (ii) the Minister must consider the matters mentioned in subregulation 6.06 (5);
 - (i) a statement of the matters, mentioned in subregulation 6.06 (5), that the Minister must consider;
 - (j) a statement that, if the infringement notice penalty is paid in time:
 - (i) the provider's liability for the offence is discharged; and
 - (ii) further proceedings cannot be taken against the provider for the offence; and
 - (iii) the provider is not taken to have been convicted of the offence;
 - (k) a statement to the effect that, if none of the things mentioned in paragraph (f) or (h) is done within the time specified, the provider may be prosecuted for the alleged offence;
 - (l) the name of the person who serves the notice.
- (3) An infringement notice may contain any other information that the Minister considers necessary.

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- (4) The notice must be served on the provider not more than 12 months after the alleged commission of the offence.

Note The infringement notice penalty in respect of an offence is:

- (a) for an individual — 4 penalty units; or
(b) for a body corporate — 20 penalty units.

See Act, subsection 106 (2).

6.03 Service of infringement notices

- (1) An infringement notice may be served on an individual:
- (a) personally; or
 - (b) by sending it by pre-paid post to the last-known place of residence or business of the individual; or
 - (c) by leaving the notice:
 - (i) at the last-known place of residence or business of the individual; and
 - (ii) with a person, apparently over the age of 16 years, who appears to live or work at the place.
- (2) An infringement notice may be served on a body corporate:
- (a) by sending it by pre-paid post to the last-known place of business or the registered office of the body corporate; or
 - (b) by leaving the notice:
 - (i) at the last-known place of business or the registered office of the body corporate; and
 - (ii) with a person, apparently over the age of 16 years, who appears to live or work at the place.

6.04 Extension of time to pay

- (1) On written application by a provider on whom an infringement notice has been served, the Minister may grant, if satisfied that in all the circumstances it is reasonable to do so, a further period for payment of the infringement notice penalty, whether or not the period of 28 days after the date of service of the notice has ended.

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- (2) If application is made after the end of the 28 day period, the application must include an explanation why the alleged offender could not deal with the notice within that period.
- (3) The Minister must:
 - (a) grant or refuse a further period; and
 - (b) give the applicant written notice of the decision; and
 - (c) if the decision is a refusal — mention in the notice the reasons for refusal.
- (4) The provider must pay the penalty:
 - (a) if a further period is granted — before the end of that period; or
 - (b) if the decision is a refusal — before the end of the later of:
 - (i) 7 days after receiving notice of the refusal; or
 - (ii) the 28 day period.

6.05 Payment by instalments

- (1) If the Minister is satisfied that in all the circumstances it is proper to do so, he or she may make an arrangement with a provider on whom an infringement notice has been served (whether or not the period of 28 days after the date of service of the notice has ended) for the payment of the amount of the infringement notice penalty by instalments.
- (2) The Minister must:
 - (a) grant or refuse to make an arrangement; and
 - (b) give the provider written notice of the decision; and
 - (c) if the decision is a refusal — mention in the notice the reasons for refusal.
- (3) The provider must pay the penalty:
 - (a) if an arrangement is made — in accordance with the arrangement; or
 - (b) if the decision is a refusal — before the end of the later of:
 - (i) the 28 day period; and
 - (ii) 7 days after receiving notice of the refusal.

Regulation 6.06

6.06 If infringement notice disputed

- (1) Whether or not a notice is received under subregulation (2), the Minister, if satisfied that in all the circumstances it is proper to do so, may withdraw an infringement notice.
- (2) If, before the end of 28 days after receiving an infringement notice, a provider gives the Minister notice under paragraph 6.02 (2) (h), the Minister must decide whether to withdraw the infringement notice.
- (3) The Minister must:
 - (a) withdraw, or refuse to withdraw, the notice; and
 - (b) give the provider written notice of the decision; and
 - (c) if the decision is a refusal — mention in the notice the reasons for refusal.
- (4) If the Minister decides to refuse to withdraw an infringement notice, notice of that decision must state that:
 - (a) if the amount of the infringement notice penalty is paid within 28 days after notice of the decision is given to the provider, the provider will not be prosecuted for the alleged offence; and
 - (b) if that amount is not paid in accordance with paragraph (a), the provider may be prosecuted for the alleged offence.
- (5) In making a decision, the Minister must consider:
 - (a) the facts or matters set out in the notice (if any) given under paragraph 6.02 (2) (h); and
 - (b) the circumstances in which the offence mentioned in the notice is alleged to have been committed; and
 - (c) whether the provider has been convicted previously of an offence to which section 106 of the Act applies; and
 - (d) whether an infringement notice has previously been given to the provider for an offence of the same kind as the offence mentioned in the notice; and

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- (e) any other matter the Minister considers relevant to the decision.

Note Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them.

6.07 Payment of penalty if infringement notice not withdrawn

If the Minister refuses to withdraw an infringement notice, the provider for whom the withdrawal has been refused must pay the infringement notice penalty before the end of 28 days after receiving notice of the refusal.

6.08 Effect of payment of infringement notice penalty

- (1) If a provider, who is served with an infringement notice, pays the infringement notice penalty in accordance with this Part:
- (a) the provider's liability in respect of the offence is discharged; and
 - (b) further proceedings cannot be taken against the provider for the offence; and
 - (c) the provider is not convicted of the offence.
- (2) Subregulation (1) applies to a provider who makes an arrangement to pay the infringement notice penalty by instalments, only if the provider makes payments in accordance with the arrangement.

6.09 Admissions under paragraph 6.02 (2) (h)

Evidence of an admission made by a provider in a notice under paragraph 6.02 (2) (h) is inadmissible in proceedings against the provider for the alleged offence.

6.10 Matter not to be taken into account in determining sentence

- (1) This regulation applies if a provider served with an infringement notice:

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- (a) elects not to pay the infringement notice penalty; and
 - (b) is prosecuted for, and convicted of, the alleged offence mentioned in the infringement notice.
- (2) In determining the penalty to be imposed, the court must not take into account the fact that the provider chose not to pay the infringement notice penalty.

6.11 Evidence for hearing

- (1) At the hearing of a prosecution for an offence mentioned in an infringement notice, the following certificates are evidence of the facts stated in the certificate:
- (a) a certificate signed by the Minister or an authorised officer and stating that:
 - (i) the infringement notice was served on the alleged offender; and
 - (ii) the infringement notice penalty has not been paid in accordance with this Part;
 - (b) a certificate signed by the Minister or an authorised officer and stating that the notice was withdrawn on a day specified in the certificate;
 - (c) a certificate signed by the Minister and stating that:
 - (i) a further period was refused, under regulation 6.04, for payment of the infringement notice penalty; and
 - (ii) the infringement notice penalty has not been paid in accordance with this Part;
 - (d) a certificate signed by the Minister and stating that:
 - (i) for regulation 6.04, the further time mentioned in the certificate for payment of the infringement notice penalty was granted; and
 - (ii) the infringement notice penalty was not paid in accordance with the notice or within the further time.
- (2) A certificate that purports to have been signed by the Minister or an authorised officer is taken to have been signed by that person unless the contrary is proved.

Regulation 6.13

(3) In this regulation:

authorised officer means a person who:

- (a) is authorised in writing by the Secretary to exercise powers under this regulation; and
- (b) is an employee of the Department; and
- (c) is an SES employee or an acting SES employee.

6.12 Payment of penalty by cheque

If a cheque is given to the Commonwealth in payment of all or part of the amount of an infringement notice penalty, the payment is taken not to have been made unless the cheque is honoured on presentation.

6.13 Infringement notice not compulsory, etc

Nothing in this Part is to be taken:

- (a) to require that a provider suspected of having committed an offence to which section 106 of the Act applies be served an infringement notice; or
- (b) to affect the liability of a provider to be prosecuted for an alleged offence, if:
 - (i) an infringement notice is not served on the provider for the offence; or
 - (ii) an infringement notice is served, and withdrawn; or
- (c) to limit the penalty that may be imposed by a court on a provider convicted of an offence.

Note Part 7 has been reserved for future use.

Table of Instruments

Notes to the *Education Services for Overseas Students Regulations 2001***Note 1**

The *Education Services for Overseas Students Regulations 2001* (in force under the *Education Services for Overseas Students Act 2000* and the *Education Services for Overseas Students (Consequential and Transitional) Act 2000*) as shown in this compilation comprise Statutory Rules 2001 No. 96 amended as indicated in the Tables below.

Table of Instruments

Year and Number	Date of notification in Gazette or FRLI registration	Date of commencement	Application, saving or transitional provisions
2001 No. 96	23 May 2001	4 June 2001	
2007 No. 182	29 June 2007 (see F2007L01962)	1 July 2007	—
2009 No. 363	16 Dec 2009 (see F2009L04325)	17 Dec 2009	—
2011 No. 192	24 Oct 2011 (see F2011L02109)	25 Oct 2011	—
2012 No. 128	29 June 2012 (see F2012L01432)	1 July 2012	—

Table of Amendments**Table of Amendments**

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

Provision affected	How affected
Part 1	
R. 1.03	am. 2007 No. 182; 2012 No. 128
Note to r. 1.03	rs. 2012 No. 128
R. 2.01	rs. 2007 No. 182 am. 2012 No. 128
Part 3	
Division 3.1	
R. 3.01	am. 2012 No. 128
R. 3.02	am. 2012 No. 128
R. 3.03	am. 2007 No. 182; 2012 No. 128
R. 3.03A	ad. 2007 No. 182 rs. 2009 No. 363
R. 3.04	am. 2012 No. 128
R. 3.05	ad. 2012 No. 128
R. 3.06	ad. 2012 No. 128
Div. 3.2 of Part 3	rep. 2012 No. 128
R. 3.05	rep. 2012 No. 128
R. 3.06	rep. 2012 No. 128
R. 3.07	rep. 2012 No. 128
R. 3.08	rep. 2012 No. 128
R. 3.09	rep. 2012 No. 128
R. 3.10	rep. 2012 No. 128
R. 3.11	rep. 2012 No. 128
R. 3.12	rep. 2012 No. 128
R. 3.13	rep. 2012 No. 128
R. 3.14	rep. 2012 No. 128
R. 3.15	rep. 2012 No. 128
R. 3.16	rep. 2012 No. 128
Div. 3.3 of Part 3	rep. 2012 No. 128
R. 3.17	rep. 2012 No. 128
R. 3.18	am. 2007 No. 182; 2009 No. 363 rep. 2012 No. 128
Div. 3.4 of Part 3	rep. 2012 No. 128
R. 3.19	rep. 2012 No. 128
Part 4	
R. 4.01	am. 2007 No. 182

Table of Amendments

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

Provision affected	How affected
Part 5	rep. 2012 No. 128
R. 5.01	rep. 2012 No. 128
R. 5.02	rep. 2012 No. 128
R. 5.03	rep. 2012 No. 128
R. 5.04	ad. 2007 No. 182 rep. 2012 No. 128
Part 6	
R. 6.01	am. 2011 No. 192
R. 6.02	am. 2011 No. 192
R. 6.06	am. 2011 No. 192
R. 6.13	am. 2011 No. 192
Part 8	rep. 2012 No. 128
R. 8.01	rep. 2012 No. 128
Part 9	rep. 2012 No. 128
R. 9.01	rep. 2012 No. 128
R. 9.02	rep. 2012 No. 128
Schedule 1	rep. 2012 No. 128
