

EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 363

Education Services for Overseas Students Act 2000

Education Services for Overseas Students Amendment Regulations 2009 (No. 1)

Background

The *Education Services for Overseas Students Act 2000* (the Act) regulates education services for overseas students. The *Education Services for Overseas Students Amendment Regulations 2009 (No. 1)* amend the *Education Services for Overseas Students Regulations 2001* (the Principal Regulations).

Authority

Section 177 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Purpose and operation

The purpose of the Regulations is to:

- clarify that student visa condition 8202 is a “prescribed condition” for the purposes of not only subsection 19(2) of the Act, but also for subsection 20(1) of the Act (it is currently only prescribed for the purposes of subsection 19(2) of the Act); and
- expand the categories of providers exempt under paragraph 24(2)(c) of the Act from the requirement to pay annual Education Services for Overseas Students Assurance Fund (the Fund) contributions to include providers who are technical and further education institutions or vocational education and training institutions created under state legislation for the purpose of the state delivering technical and further education, or vocational education and training. These providers are essentially administered by and accountable to state and territory governments and pose minimal risk to their students in terms of being unable to fully meet their obligations under the Act to their students.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Commencement

The Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

Consultation

It was not considered necessary to consult on regulation 3.03A, as the amendment merely clarifies that visa condition 8202 is a prescribed condition for the purposes of both subsections 19(2) and 20(1) of the Act.

It was not considered necessary to consult on paragraph 3.18(1)(a) of the Regulations. Pursuant to paragraph 24(2)(c) of the Act, the Regulations may prescribe for exemptions from the requirement for registered providers to pay an annual Fund contribution. The categories of provider currently prescribed in paragraph 3.18(1)(a) of the Regulations no longer exist with the repeal by Victorian legislation in 2006 of the legislation specified in that paragraph. The amendment to paragraph 3.18(1)(a) exempts, from the requirement to pay annual Fund contributions, providers who are technical and further education institutions or vocational education and training institutions created under state legislation for the purpose of the state delivering technical and further education, or vocational education and training. This exemption is beneficial to the providers in question who are essentially administered by and accountable to state and territory governments and pose minimal risk to their students in terms of being unable to fully meet their obligations under the Act to their students.

Detailed description of provisions

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Education Services for Overseas Students Amendment Regulations 2009 (No.1)*.

Regulation 2 – Commencement

This regulation provides for the Regulations to commence on the day after they are registered on the Federal Register of Legislative Instruments.

Regulation 3 – Amendment

Schedule 1 amends the *Education Services for Overseas Students Regulations 2001*.

Schedule 1 - Amendments

Item [1] – Regulation 3.03A

Item 1 substitutes current regulation 3.03A with a new regulation 3.03A. New regulation 3.03A provides that, for the purposes of subsections 19(2) and 20(1) of the Act, a prescribed condition of a student visa is visa condition 8202.

Student visa condition 8202 is set out in Schedule 8 of the *Migration Regulations 1994* and requires students to maintain satisfactory attendance in their course and course progress for each study period as required by their education provider.

Currently, regulation 3.03A only refers to subsection 19(2) of the Act. The amendment makes it clear that visa condition 8202 applies to both subsections 19(2) and 20(1) of the Act. This is consistent with the recent Federal Magistrates Court decision in *Hossain v Minister for Immigration & Anor [2009] FMCA 1008* in which His Honour Scarlett FM held that the reference to a prescribed condition in subsection 20(1) of the Act also refers to a condition prescribed for the purposes of subsection 19(2) of the Act. It is also consistent with the intention of subsections 19(2) and 20(1) of the Act.

A note under regulation 3.03A states that subsections 19(2) and 20(1) of the Act require providers to notify the Secretary (which, for the purposes of subsections 19(2) and 20(1) of the Act, means the Secretary of the Department of Immigration and Citizenship) and accepted students if accepted students breach a prescribed condition of their student visas.

Item [2] – Subparagraph 3.18(1)(a)

Subsection 24(2) of the Act grants an exemption from paying an annual Fund contribution to specified providers, including those providers prescribed in regulations made for the purposes of paragraph 24(2)(c) of the Act. Regulation 3.18 prescribes those providers exempt from paying an annual Fund contribution.

Currently, subparagraph 3.18(1)(a)(i) of the Principal Regulations provides an exemption from the requirement to pay an annual Fund contribution for a provider administered by the council of a TAFE college established under the *Vocational Education and Training Act 1990* of Victoria. This Act was repealed on 1 July 2007 by paragraph 6.1.1(m) of the *Education and Training Reform Act 2006* of Victoria.

Currently, subparagraph 3.18(1)(a)(ii) of the Principal Regulations provides an exemption from the requirement to pay an annual Fund contribution for a provider administered by the governing board of an adult education institution established under the *Adult, Community and Further Education Act 1991* of Victoria. This Act was repealed on 1 July 2007 by paragraph 6.1.1(a) of the *Education and Training Reform Act 2006* of Victoria.

Item 2 substitutes current subparagraph 3.18(1)(a) with a new subparagraph 3.18(1)(a). The effect of this amendment is to broaden the categories of providers exempt from the requirement to pay annual Fund contributions. The broadened category is providers that are technical and further education institutions or vocational education and training institutions, created under state legislation for the purpose of the state itself delivering technical and further education, or vocational education and training. The purpose of this amendment is to exempt from the requirement to pay the annual Fund contribution providers of technical and further education and vocational education and training who are essentially administered by and accountable to state and territory governments and pose minimal risk to their students in terms of being unable to fully meet their obligations under the Act to their students.