

Education Services for Overseas Students Regulations 2019

made under the

Education Services for Overseas Students Act 2000

**Compilation No. 2**

**Compilation date:** 26 September 2021

**Includes amendments up to:** F2021L00849

**Registered:** 23 December 2021

**About this compilation**

**This compilation**

This is a compilation of the *Education Services for Overseas Students Regulations 2019* that shows the text of the law as amended and in force on 26 September 2021 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

**Uncommenced amendments**

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

**Application, saving and transitional provisions for provisions and amendments**

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

**Editorial changes**

For more information about any editorial changes made in this compilation, see the endnotes.

**Modifications**

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

**Self‑repealing provisions**

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Part 1—Preliminary 1

Division 1—Preliminary 1

1 Name 1

3 Authority 1

Division 2—Definitions 2

5 Definitions 2

6 Meaning of *student visa* 3

7 Tuition fees 3

Part 2—Registration of providers 5

8 Information to be entered on the Register 5

Part 3—Obligations on registered providers 7

Division 1—Giving information about accepted students 7

9 Students who become accepted 7

10 Students who do not begin courses when expected 8

11 Other prescribed matters 8

12 Prescribed condition of student visa 10

Division 2—Record keeping 11

13 Details of which a registered provider must keep records 11

14 Fees for accessing records 12

Part 5—Application and transitional provisions 13

Division 1—Provisions for this instrument as originally made 13

28 Definitions 13

29 Things done under the old regulations 13

Endnotes 14

Endnote 1—About the endnotes 14

Endnote 2—Abbreviation key 15

Endnote 3—Legislation history 16

Endnote 4—Amendment history 17

Part 1—Preliminary

Division 1—Preliminary

1 Name

 This instrument is the *Education Services for Overseas Students Regulations 2019*.

3 Authority

 This instrument is made under the *Education Services for Overseas Students Act 2000*.

Division 2—Definitions

5 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

(a) accepted student;

(b) agent;

(c) ESOS agency;

(d) provider.

 In this instrument:

***ABN*** (short for Australian Business Number) has the same meaning as in the *A New Tax System (Australian Business Number) Act 1999*.

***ACN*** (short for Australian Company Number) has the same meaning as in the *Corporations Act 2001*.

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

***Australian Qualifications Framework*** means the framework for recognition and endorsement of qualifications:

 (a) that is established by the Council consisting of the Ministers for the Commonwealth and each State and Territory responsible for higher education; and

 (b) that is to give effect to agreed standards in relation to the provision of education in Australia.

***non‑tuition fees***, for a course, means an amount of money that:

 (a) a provider receives, directly or indirectly, from:

 (i) an overseas student who is accepted for enrolment, or enrolled, in the course; or

 (ii) an intending overseas student who intends to become, or who has taken any steps towards becoming, accepted for enrolment, or enrolled, in the course; or

 (iii) another person who pays the amount on behalf of such an overseas student or intending overseas student; and

 (b) is not tuition fees.

***public provider*** means:

 (a) a government school; or

 (b) a registered VET provider 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*).

***registered migration agent*** has the same meaning as in Part 3 of the *Migration Act 1958*.

***registered office*** of a body corporate means the office of the body corporate that is the registered office in accordance with the Commonwealth, State, Territory or foreign law by or under which the body corporate is incorporated.

6 Meaning of *student visa*

 For the purposes of the definition of ***student visa*** in section 5 of the Act, a visa of a subclass mentioned in the definition of ***student visa*** in regulation 1.03 of the *Migration Regulations 1994* is a student visa unless it is granted to:

 (a) a Foreign Affairs student (within the meaning of the *Migration Regulations 1994*); or

 (b) a Defence student (within the meaning of the *Migration Regulations 1994*); or

 (c) a secondary exchange student (within the meaning of the *Migration Regulations 1994*); or

 (d) an overseas student who has been approved under a scholarship scheme, or an exchange scheme, sponsored by the Commonwealth to undertake a course of study or training in Australia; or

 (e) a person who satisfies the secondary criteria, but not the primary criteria, under the *Migration Regulations 1994* for the grant of the visa.

7 Tuition fees

 (1) This section applies to a class of fees that a provider receives, directly or indirectly, from:

 (a) an overseas student or intending overseas student; or

 (b) another person who pays the fees on behalf of an overseas student or intending overseas student.

 (2) For the purposes of paragraph (b) of the definition of ***tuition fees*** in section 7 of the Act, the class is prescribed if the fees are for:

 (a) lectures, tutorials, tutoring sessions, training, excursions, fieldwork, laboratories, or practical experience, that:

 (i) form part of a course that the provider is providing, or offering to provide, to the student (whether or not they are a mandatory part of the course); or

 (ii) are intended to assist the student to progress in such a course; or

 (b) matters ancillary to the activities mentioned in paragraph (a).

Example: Paragraph (b) covers supplying materials for use in laboratories or training.

 (3) For the purposes of paragraph (c) of the definition of ***tuition fees*** in section 7 of the Act, the class is prescribed if the fees are for:

 (a) books or equipment sold to the student; or

 (b) health insurance; or

 (c) administration; or

 (d) accommodation (other than accommodation that the student occupies for a short time while undertaking training, excursions, fieldwork or practical experience to which paragraph (2)(a) applies); or

 (e) assisting the student to apply for or hold a student visa.

Part 2—Registration of providers

8 Information to be entered on the Register

 (1) For the purposes of paragraph 14A(4)(i) of the Act, the following matters are prescribed in relation to a provider’s registration to provide a course or courses at a location or locations:

 (a) the address of the provider’s principal place of business;

 (b) if the provider is a body corporate that is not a public provider—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 phone number and email address;

 (e) the provider’s ABN or ACN (if any);

 (f) the provider’s trading name or names (if any);

 (g) if the provider is not a public provider and is not an individual—the name, phone number and email address of the provider’s principal executive officer;

 (h) the maximum number of overseas students, approved by the ESOS agency for the provider, to whom the course or courses may be provided;

 (i) for each of the courses—the matters mentioned in subsection (2).

 (2) For the purposes of paragraph (1)(i), the matters are the following:

 (a) the level and field of study of the course (see subsection (3));

 (b) the duration of the course, including any holiday breaks;

 (c) the estimated total of the tuition fees payable for an overseas student for the course;

 (d) the estimated total of the non‑tuition fees payable for an overseas student for the course;

 (e) whether the provider will only accept payment of tuition fees and non‑tuition fees for the course in arrears;

 (f) whether the course will be provided:

 (i) by the provider; or

 (ii) by another registered provider, in accordance with an arrangement that the other registered provider has or will have with the provider for that particular course; or

 (iii) by a person who is not a registered provider, in accordance with an arrangement that the person has or will have with the provider for that particular course;

 (g) for each location at which the provider is registered to provide the course:

 (i) the address of the location; and

 (ii) the phone number and email address for the location; and

 (iii) if subparagraph (f)(i) applies—the name, phone number and email address of the individual who is responsible for the day‑to‑day operation of the provider at the location; and

 (iv) if subparagraph (f)(ii) or (iii) applies—the name, phone number and email address of the individual who is responsible for the day‑to‑day operation of the other registered provider, or the other person, at the location; and

 (v) the maximum number of overseas students, approved by the ESOS agency for the provider, to whom the course may be provided at the location;

 (h) if subparagraph (f)(ii) or (iii) applies—the matters prescribed by paragraphs (1)(a) to (g) as if the other registered provider, or the other person, were the provider mentioned in those paragraphs.

 (3) For the purposes of paragraph (2)(a):

 (a) the level may be, but is not required to be, one of the following:

 (i) a level of the Australian Qualifications Framework, as existing at the commencement of this section;

 (ii) non‑award;

 (iii) foundation studies;

 (iv) English language intensive courses for overseas students; and

 (b) the field of study must be:

 (i) a detailed field under the Australian Standard Classification of Education, published by the Australian Statistician in 2001, as existing on 1 October 2019; or

 (ii) English language study.

Part 3—Obligations on registered providers

Division 1—Giving information about accepted students

9 Students who become accepted

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

 (a) the student’s residential address, phone number and email address;

 (b) the student’s gender;

 (c) the student’s date of birth;

 (d) the student’s country of birth;

 (e) the student’s nationality;

 (f) if the student is less than 18 years old:

 (i) the name, residential address, phone number and email address 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 (for example, parent or guardian);

 (g) the unique identifier of the student’s course;

 (h) the location of the course;

 (i) the agreed starting day of the course;

 (j) the day when the student is expected to complete the course;

 (k) the total of the tuition fees paid for the student for the course;

 (l) if the provider is not a public provider—the period to which the tuition fees paid as mentioned in paragraph (k) relate;

 (m) the total of the non‑tuition fees paid for the student for the course;

 (n) the total of the tuition fees that are required to be paid for the student to undertake the course (including fees that have already been paid);

 (o) if the student was in Australia when the student became an accepted student—the number of the student’s passport;

 (p) if the student holds an Australian visa—the number of the visa;

 (q) if:

 (i) undertaking a particular test is a requirement specified under paragraph 500.213(3)(a) of Schedule 2 to the *Migration Regulations 1994* (requirements about English language proficiency for Subclass 500 visas); and

 (ii) the student has undertaken that test (whether or not for the purposes of a Subclass 500 (Student) visa);

 the name of the test, the day the student undertook the test and the score the student received for the test;

 (r) if:

 (i) the student holds, or has applied for, a Subclass 500 (Student) visa; and

 (ii) when the student applied for the visa, the student was within a class of applicants specified under paragraph 500.213(3)(b) of Schedule 2 to the *Migration Regulations 1994* (classes of applicants to which subclause 500.213(1) does not apply);

 that class.

10 Students who do not begin courses when expected

 (1) For the purposes of paragraph 19(1)(c) of the Act, for an accepted student who does not begin his or her course when expected, the student’s residential address, phone number and email address are prescribed.

 (2) Subsection (1) of this section does not apply 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 the basis of compassionate or compelling circumstances; and

 (c) the provider agrees to a later starting day for the student.

11 Other prescribed matters

 (1) This section applies in relation to an accepted student who is accepted for enrolment, or enrolled, in a course provided by a registered provider.

 (2) For the purposes of paragraph 19(1)(f) of the Act, the information mentioned in an item of the following table must be given within the applicable number of days (within the meaning of subsection 19(1A) of the Act) after the event specified in column 1 of the item occurs (subject to the condition, if any, mentioned in column 2 of the item being satisfied).

| Other prescribed matters relating to accepted students |
| --- |
| Item | Column 1Event | Column 2Condition | Column 3Information |
| 1 | the student becomes an accepted student of the provider | an agent of the provider facilitated the acceptance for enrolment of the student in the course | (a) the agent’s name; and(b) the address of the agent’s principal place of business; and(c) if the agent is a body corporate—the address of the body corporate’s registered office; and(d) the agent’s postal address (if different from the address mentioned in paragraph (b) or (c)); and(e) the agent’s phone number, email address and website address (if any); and(f) the agent’s ABN or ACN (if any); and(g) the agent’s trading name or names (if any); and(h) if the agent is a body corporate—the names of the body corporate’s directors; and(i) if the agent is a registered migration agent—the agent’s Migration Agents Registration Number; and(j) the following information about each of the agent’s employees (if any) who are involved in the agent facilitating the enrolment:(i) the employee’s name;(ii) the employee’s email address;(iii) if the employee is a registered migration agent—the employee’s Migration Agents Registration Number |
| 2 | the student becomes accepted for enrolment in the course | immediately before the event mentioned in column 1 occurred, the student was an accepted student of the provider because of another course provided by the provider | the following information in relation to the course mentioned in column 1:(a) the information mentioned in paragraphs 19(1)(a) and (b) of the Act;(b) the information mentioned in item 1 of this table (subject to the condition mentioned in column 2 of that item) |
| 3 | the provider becomes aware that any of the details mentioned in paragraph 9(a) of this instrument in relation to the student have changed | none | the change to the details |
| 4 | the provider becomes aware that any of the details mentioned in paragraph 9(f) of this instrument in relation to the student have changed | the student is less than 18 years old | the change to the details |
| 5 | the course does not begin when expected | paragraph 19(1)(c) of the Act does not apply | the student’s residential address, phone number and email address |
| 6 | the student changes his or her course | none | (a) the day the student changes his or her course (whether or not the change takes effect on that day); and(b) the student’s residential address, phone number and email address |
| 7 | the course changes in duration | none | (a) the day the change takes effect; and(b) the student’s residential address, phone number and email address |
| 8 | the location at which the course is provided changes | none | (a) the day the change takes effect; and(b) the student’s residential address, phone number and email address |
| 9 | the student’s studies are deferred or suspended | none | (a) the day the deferment or suspension starts; and(b) the expected duration of the deferment or suspension; and(c) the student’s residential address, phone number and email address |
| 10 | the end date of a deferment or suspension of the student’s studies is changed | none | the change to the end date |
| 11 | the provider gives particulars under subsection 19(2) of the Act of a breach by the student of a condition of a student visa | none | (a) the student’s residential address in Australia; and(b) the student’s residential address overseas; and(c) the student’s phone number and email address |
| 12 | the student’s studies are terminated (whether or not by the student) before the course is completed | none | (a) the day the student’s studies are terminated (whether or not the termination takes effect on that day); and(b) the last day of the student’s studies; and(c) the student’s residential address, phone number and email address |

12 Prescribed condition of student visa

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

Note: Subsection 19(2) of the Act requires a registered provider to give particulars of any breach by an accepted student of a prescribed condition of a student visa.

Division 2—Record keeping

13 Details of which a registered provider must keep records

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

 (a) the total of the tuition fees paid for the student for the course;

 (b) for each amount of tuition fees paid for the student for the 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) the total of the non‑tuition fees paid for the student for the course;

 (d) the total of the tuition fees and non‑tuition fees paid for the student for the course;

 (e) any tuition fees or non‑tuition fees for the student for the course that:

 (i) have become payable; and

 (ii) have not been paid;

 (f) copies of written agreements to which the provider and student are parties;

 (g) the amount that the student will be charged to access the student’s records;

 (h) if an agent of the provider facilitated, or is facilitating, the enrolment of the student—the following details:

 (i) the agent’s name;

 (ii) the address of the agent’s principal place of business;

 (iii) if the agent is a body corporate—the address of the body corporate’s registered office;

 (iv) the agent’s postal address (if different from the address mentioned in subparagraph (ii) or (iii));

 (v) the agent’s phone number, email address and website address (if any);

 (vi) the agent’s ABN or ACN (if any);

 (vii) the agent’s trading name or names (if any);

 (viii) if the agent is a body corporate—the names of the body corporate’s directors;

 (ix) if the agent is a registered migration agent—the agent’s Migration Agents Registration Number;

 (x) the information mentioned in subsection (2) about each of the agent’s employees (if any) who were or are involved in the agent facilitating the enrolment.

 (2) For the purposes of subparagraph (1)(h)(x), the information about the employee is the following:

 (a) the employee’s name;

 (b) the employee’s email address;

 (c) if the employee is a registered migration agent—the employee’s Migration Agents Registration Number.

14 Fees for accessing records

 The fee for an accepted student to access a record mentioned in section 13 must not exceed the cost incurred by the provider in providing access to that record.

Part 5—Application and transitional provisions

Division 1—Provisions for this instrument as originally made

28 Definitions

 In this Division:

***old regulations*** means the *Education Services for Overseas Students Regulations 2001*, as in force immediately before the commencement of this section.

29 Things done under the old regulations

 (1) If:

 (a) a thing was done for a particular purpose under the old regulations; and

 (b) the thing could be done for that purpose under this instrument;

the thing has effect for the purposes of this instrument as if it had been done for that purpose under this instrument.

 (2) Without limiting subsection (1), a reference in that subsection to a thing being done includes a reference to a notice, application or other instrument being given or made.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

**Abbreviation key—Endnote 2**

The abbreviation key 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 (or will amend) the compiled law. The information includes commencement details for amending laws and details of any 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 (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

**Editorial changes**

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

**Misdescribed amendments**

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnote 2—Abbreviation key

|  |  |
| --- | --- |
| ad = added or inserted | o = order(s) |
| am = amended | Ord = Ordinance |
| amdt = amendment | orig = original |
| c = clause(s) | par = paragraph(s)/subparagraph(s) |
| C[x] = Compilation No. x | /sub‑subparagraph(s) |
| Ch = Chapter(s) | pres = present |
| def = definition(s) | prev = previous |
| Dict = Dictionary | (prev…) = previously |
| disallowed = disallowed by Parliament | Pt = Part(s) |
| Div = Division(s) | r = regulation(s)/rule(s) |
| ed = editorial change | reloc = relocated |
| exp = expires/expired or ceases/ceased to have | renum = renumbered |
| effect | rep = repealed |
| F = Federal Register of Legislation | rs = repealed and substituted |
| gaz = gazette | s = section(s)/subsection(s) |
| LA = *Legislation Act 2003* | Sch = Schedule(s) |
| LIA = *Legislative Instruments Act 2003* | Sdiv = Subdivision(s) |
| (md) = misdescribed amendment can be given | SLI = Select Legislative Instrument |
| effect | SR = Statutory Rules |
| (md not incorp) = misdescribed amendment | Sub‑Ch = Sub‑Chapter(s) |
| cannot be given effect | SubPt = Subpart(s) |
| mod = modified/modification | underlining = whole or part not |
| No. = Number(s) | commenced or to be commenced |

Endnote 3—Legislation history

| Name | Registration | Commencement | Application, saving and transitional provisions |
| --- | --- | --- | --- |
| Education Services for Overseas Students Regulations 2019 | 8 Apr 2019 (F2019L00571) | 1 Oct 2019 (s 2(1) item 1) |  |
| Education Services for Overseas Students Amendment (Deregulation and Other Measures) Regulations 2021 | 25 June 2021 (F2021L00849) | Sch 1 (items 2, 3): 26 Sept 2021 (s 2(1) item 3)Remainder: 1 July 2021 (s 2(1) items 1, 2) | — |

Endnote 4—Amendment history

| Provision affected | How affected |
| --- | --- |
| **Part 1** |  |
| **Division 1** |  |
| s 2  | rep LA s 48D |
| s 4  | rep LA s 48C |
| **Division 2** |  |
| s 5  | am F2021L00849 |
| **Part 3** |  |
| **Division 1** |  |
| s 11  | am F2021L00849 |
| Part 4  | rep F2021L00849 |
| s 15  | rep F2021L00849 |
| s 16  | rep F2021L00849 |
| s 17  | rep F2021L00849 |
| s 18  | rep F2021L00849 |
| s 19  | rep F2021L00849 |
| s 20  | rep F2021L00849 |
| s 21  | rep F2021L00849 |
| s 22  | rep F2021L00849 |
| s 23  | rep F2021L00849 |
| s 24  | rep F2021L00849 |
| s 25  | rep F2021L00849 |
| s 26  | rep F2021L00849 |
| s 27  | rep F2021L00849 |
| Schedule 1  | rep LA s 48C |