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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Education Services for Overseas
Students Legislation Amendment
(Tuition Protection Service and Other
Measures) Bill 2011**

No. , 2011

(Education, Employment and Workplace Relations)

**A Bill for an Act relating to education services for
overseas students, and for related purposes**

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1 **A Bill for an Act relating to education services for**
2 **overseas students, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Education Services for Overseas*
6 *Students Legislation Amendment (Tuition Protection Service and*
7 *Other Measures) Act 2011.*

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.
13

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1, Parts 1 and 2	The first 1 July that occurs on or after the day this Act receives the Royal Assent.	
3. Schedule 1, Part 3, Division 1	The first 1 July that occurs on or after the day this Act receives the Royal Assent. However, if item 12 of Schedule 1 to the <i>Education Services for Overseas Students Amendment (Registration Charges Consequential) Act 2011</i> commences at or before that time, the provision(s) do not commence at all.	
4. Schedule 1, Part 3, Division 2	The later of: (a) immediately after the commencement of the provision(s) covered by table item 2; and (b) immediately after the commencement of item 12 of Schedule 1 to the <i>Education Services for Overseas Students Amendment (Registration Charges Consequential) Act 2011</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
5. Schedule 1, Parts 4 and 5	The first 1 July that occurs on or after the day this Act receives the Royal Assent.	
6. Schedule 2, Parts 1 and 2	The first 1 July that occurs on or after the day this Act receives the Royal Assent.	
7. Schedule 2, Part 3, Division 1	The first 1 July that occurs on or after the day this Act receives the Royal Assent. However, if item 10 of Schedule 1 to the <i>Education Services for Overseas Students Amendment (Registration Charges Consequential) Act 2011</i> commences at or	

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
	before that time, the provision(s) do not commence at all.	
8. Schedule 2, Part 3, Division 2	<p>The later of:</p> <p>(a) immediately after the commencement of the provision(s) covered by table item 6; and</p> <p>(b) immediately after the commencement of Schedule 1 to the <i>Education Services for Overseas Students (Registration Charges) Amendment Act 2011</i>.</p> <p>However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.</p>	
9. Schedule 2, Part 3, Division 3	<p>Immediately before the commencement of item 7 of Schedule 1 to the <i>Education Services for Overseas Students Amendment (Registration Charges Consequential) Act 2011</i>.</p> <p>However, if that item commences at the same time as, or before, Part 2 of Schedule 2 to this Act, the provision(s) do not commence at all.</p>	
10. Schedule 2, Part 3, Division 4	<p>Immediately before the commencement of items 5, 6, 8 and 9 of Schedule 1 to the <i>Education Services for Overseas Students Amendment (Registration Charges Consequential) Act 2011</i>.</p> <p>However, if those items commence at the same time as, or before, Part 2 of Schedule 2 to this Act, the provision(s) do not commence at all.</p>	
11. Schedule 2, Part 4	The first 1 July that occurs on or after the day this Act receives the Royal Assent.	
12. Schedule 3, Part 1, Division 1	The first 1 July that occurs on or after the day this Act receives the Royal Assent.	
13. Schedule 3, Part 1, Division 2	Immediately after the commencement of the provision(s) covered by table item 6.	

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
14. Schedule 3, Part 2	The first 1 July that occurs on or after the day this Act receives the Royal Assent.	
15. Schedules 4 to 6	The first 1 July that occurs on or after the day this Act receives the Royal Assent.	
16. Schedule 7, Part 1	The day this Act receives the Royal Assent. However, if item 3 of Schedule 1 to the <i>Tertiary Education Quality and Standards Agency (Consequential Amendments and Transitional Provisions) Act 2011</i> commences before that time, the provision(s) do not commence at all.	
17. Schedule 7, Part 2	The later of: (a) the start of the day this Act receives the Royal Assent; and (b) immediately after the commencement of item 3 of Schedule 1 to the <i>Tertiary Education Quality and Standards Agency (Consequential Amendments and Transitional Provisions) Act 2011</i> .	
18. Schedule 7, Part 3	Immediately after the commencement of the provision(s) covered by table item 17.	
19. Schedule 8, Part 1	The first 1 July that occurs on or after the day this Act receives the Royal Assent.	
20. Schedule 8, Part 2	Immediately after the commencement of the provision(s) covered by table item 6.	

1 Note: This table relates only to the provisions of this Act as originally
2 enacted. It will not be amended to deal with any later amendments of
3 this Act.

4 (2) Any information in column 3 of the table is not part of this Act.
5 Information may be inserted in this column, or information in it
6 may be 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

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concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Regulations

- (1) The Governor-General may make regulations 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.

- (2) In particular, regulations may be made prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by this Act.

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Schedule 1—Tuition protection service

Part 1—Main amendments

Education Services for Overseas Students Act 2000

1 Part 5

Repeal the Part, substitute:

Part 5—Tuition protection service

Division 1—Guide to this Part

45 Guide to this Part

- This Part sets out what happens when a registered provider or an overseas student or intending overseas student defaults (that is, when a provider fails to start or finish providing a course to a student, or a student fails to start or finish a course with a provider).
- Division 2 sets out the obligation on registered providers to provide refunds to students. In the case of a provider default, a registered provider may instead provide alternative courses for the students at the provider’s expense.
- If a provider defaults and fails to discharge its obligations to a student under Division 2, then, under Division 3, the TPS Director must provide the student with options for suitable alternative courses (if any such courses are available).
- Under Division 4, payments can be made out of the Overseas Students Tuition Fund to refund students, and to reimburse providers who provide students with alternative courses, when a provider has failed to discharge its obligations. (This is called making a call on the OSTF.)

1 **Division 2—Obligations on registered providers when a**
2 **provider or student defaults**

3 **Subdivision A—Provider defaults**

4 **46A When a registered provider defaults**

5 (1) A registered provider *defaults*, in relation to an overseas student or
6 intending overseas student and a course at a location, if:

7 (a) either of the following occurs:

8 (i) the provider fails to start to provide the course to the
9 student at the location on the agreed starting day;

10 (ii) the course ceases to be provided to the student at the
11 location at any time after it starts but before it is
12 completed; and

13 (b) the student has not withdrawn before the default day.

14 Note: For an exception to this rule, see subsection (3).

15 (2) To avoid doubt, a registered provider defaults if the provider is
16 prevented from providing a course at a location because a sanction
17 has been imposed on the provider under Part 6.

18 *Ceasing to provide courses*

19 (3) A registered provider does not default, in relation to an overseas
20 student or intending overseas student and a course at a location, if
21 the provider fails to start to provide the course, or the course ceases
22 to be provided, to the student because the student defaults in
23 relation to the course under paragraph 47A(1)(c).

24 (4) If a registered provider for a course for a location has changed to
25 become an entity of a different kind, the Minister may notify the
26 provider in writing that the course is not taken, for the purposes of
27 subparagraph (1)(a)(ii) of this section, to have ceased to be
28 provided at the location merely because of the change. The notice
29 has effect accordingly.

30 (5) In deciding whether to give the notice, the Minister must have
31 regard to:

32 (a) the effect of the change on the delivery of courses and
33 outcomes for students; and

1 (b) any advice of the relevant designated authority.

2 **46B Registered providers to notify of provider default**

3 (1) A registered provider must give notices in accordance with this
4 section if the provider defaults in relation to one or more overseas
5 students or intending overseas students and a course at a location.

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

8 *Notifying Secretary and TPS Director*

9 (2) The provider must notify, in writing, the Secretary and the TPS
10 Director of the default within 24 hours of the default occurring.

11 (3) The notice must include the following:

12 (a) the circumstances of the default;

13 (b) the details of the students in relation to whom the provider
14 has defaulted;

15 (c) advice as to:

16 (i) whether the provider intends to discharge its obligations
17 to those students under section 46D; and

18 (ii) (if appropriate) how the provider intends to discharge
19 those obligations.

20 *Notifying students*

21 (4) The provider must also notify, in writing, of the default the
22 students in relation to whom the provider has defaulted.

23 *Notice requirements*

24 (5) A notice given under subsection (2) or (4) must comply with any
25 requirements of a legislative instrument made under subsection (6).

26 *Legislative instrument*

27 (6) The Minister may, by legislative instrument, specify requirements
28 for a notice given under this section.

1 *Former registered providers*

- 2 (7) This section continues to apply to a provider if the provider ceases
3 to be a registered provider.

4 **46C Designated authorities to notify of provider default**

5 A designated authority must notify the Secretary and the TPS
6 Director, in writing, as soon as practicable if the authority becomes
7 aware that a registered provider has defaulted, or is likely to
8 default.

9 **46D Obligations on registered providers in case of provider default**

- 10 (1) This section applies if a registered provider defaults in relation to
11 an overseas student or intending overseas student and a course at a
12 location.
- 13 (2) The provider must discharge its obligations to the student, in
14 accordance with subsection (3), within the period (the *provider*
15 *obligation period*) of 14 days after the default day.

16 Note: For the consequences of breaching this section, see section 46E
17 (offence), Divisions 3 (student placement service) and 4 (calls on the
18 OSTF), and Division 1 of Part 6 (conditions, suspension and
19 cancellation).

- 20 (3) The provider discharges its obligations to the student if:
21 (a) both of the following apply:
22 (i) the provider arranges for the student to be offered a
23 place in a course in accordance with subsection (4);
24 (ii) the student accepts the offer in writing; or
25 (b) the provider provides a refund in accordance with
26 subsection (6).

27 *Arranging alternative courses*

- 28 (4) The provider may arrange for the student to be offered a place in
29 an alternative course at the provider's expense.
- 30 (5) The student may accept, in writing, the offer under subsection (4).

1 *Providing a refund*

2 (6) The provider may pay the student a refund of the amount, worked
3 out in accordance with any legislative instrument made under
4 subsection (7), of any unspent pre-paid fees received by the
5 provider in respect of the student.

6 Note: For providers who are required to maintain an initial pre-paid fees
7 account, the refund might be paid out of the account: see section 29.

8 (7) The Minister may, by legislative instrument, specify a method for
9 working out the amount of unspent pre-paid fees for the purposes
10 of subsection (6).

11 *Former registered providers*

12 (8) This section continues to apply to a provider if the provider ceases
13 to be a registered provider.

14 **46E Offence for failure to discharge obligations**

15 (1) A person commits an offence if:

16 (a) either:

17 (i) the person is a registered provider; or

18 (ii) if a registered provider is an unincorporated body—the
19 person is the principal executive officer of the provider;
20 and

21 (b) the person defaults in relation to an overseas student or
22 intending overseas student and a course at a location; and

23 (c) the person fails to discharge its obligations to the student in
24 accordance with section 46D (whether or not the provider is
25 still a registered provider at that time).

26 Penalty: 60 penalty units.

27 (2) An offence under subsection (1) is an offence of strict liability.

28 Note: For strict liability, see section 6.1 of the *Criminal Code*.

29 (3) The maximum penalty for each day that an offence under
30 subsection (1) continues is 10% of the maximum penalty that can
31 be imposed in respect of that offence.

32 Note: Subsection (1) is a continuing offence under section 4K of the *Crimes*
33 *Act 1914*.

1 **46F Registered providers to notify of outcome of discharge of**
2 **obligations**

- 3 (1) A registered provider that defaults, in relation to one or more
4 overseas students or intending overseas students and a course at a
5 location, must give a notice in accordance with this section.

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

- 8 (2) The provider must give a notice to the Secretary and the TPS
9 Director within 7 days after the end of the provider obligation
10 period.

11 *Notice requirements*

- 12 (3) The notice must include the following:
13 (a) whether the provider discharged its obligations to the
14 students in accordance with section 46D;
15 (b) if the provider arranged alternative courses:
16 (i) details of the students the provider arranged alternative
17 courses for; and
18 (ii) details of the courses arranged; and
19 (iii) evidence of each student's acceptance of an offer of a
20 place in an alternative course;
21 (c) if the provider provided refunds:
22 (i) details of the students the provider provided refunds to;
23 and
24 (ii) details of the amounts of the refunds provided.
- 25 (4) The notice must comply with any requirements of a legislative
26 instrument made under subsection (5).

27 *Legislative instrument*

- 28 (5) The Minister may, by legislative instrument, specify requirements
29 for a notice given under this section.

30 *Former registered providers*

- 31 (6) This section continues to apply to a provider if the provider ceases
32 to be a registered provider.

1 **Subdivision B—Student defaults**

2 **47A When a student defaults**

- 3 (1) An overseas student or intending overseas student *defaults*, in
4 relation to a course at a location, if:
5 (a) the course starts at the location on the agreed starting day, but
6 the student does not start the course on that day (and has not
7 previously withdrawn); or
8 (b) the student withdraws from the course at the location (either
9 before or after the agreed starting day); or
10 (c) the registered provider of the course refuses to provide, or
11 continue providing, the course to the student at the location
12 because of one or more of the following events:
13 (i) the student failed to pay an amount he or she was liable
14 to pay the provider, directly or indirectly, in order to
15 undertake the course;
16 (ii) the student breached a condition of his or her student
17 visa;
18 (iii) misbehaviour by the student.

19 Note: For an exception to paragraph (1)(a), see subsection (2).

- 20 (2) An overseas student or intending overseas student does not default
21 under paragraph (1)(a) in relation to a course at a location if the
22 student does not start that course because the registered provider
23 defaults in relation to the course at the location under subparagraph
24 46A(1)(a)(i).

25 **47B Requirement to make written agreement about student default**

26 A registered provider must enter into a written agreement with
27 each overseas student or intending overseas student that:

- 28 (a) sets out the refund requirements that apply if the student
29 defaults in relation to a course at a location; and
30 (b) meets the requirements (if any) set out in the national code.

31 Note: For the consequences of breaching this section, see section 47F
32 (offence) and Division 1 of Part 6 (conditions, suspension and
33 cancellation).

1 **47C Registered provider to notify of student default**

- 2 (1) A registered provider must give a notice in accordance with this
3 section if an overseas student or intending overseas student
4 defaults in relation to a course provided by the provider at a
5 location.

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

- 8 (2) The provider must notify, in writing, the Secretary and the TPS
9 Director of the default within 24 hours of the default occurring.
- 10 (3) A notice given under this section must comply with any
11 requirements of a legislative instrument made under subsection (4).
- 12 (4) The Minister may, by legislative instrument, specify requirements
13 for a notice given under this section.

14 *Former registered providers*

- 15 (5) This section continues to apply to a provider if the provider ceases
16 to be a registered provider.

17 **47D Refund under a written agreement about student default**

- 18 (1) A registered provider must provide a refund under this section if an
19 overseas student or intending overseas student defaults in relation
20 to a course provided by the provider at a location.

21 Note 1: A refund might not be required under this section if a student is
22 refused a student visa: see subsection (5).

23 Note 2: For the consequences of breaching this section, see section 47G
24 (offence), Division 4 (calls on the OSTF) and Division 1 of Part 6
25 (conditions, suspension and cancellation).

26 *Provider to pay refund*

- 27 (2) The provider must pay a refund of the amount (if any) required by
28 the agreement entered into with the student under section 47B.

29 Note: For providers who are required to maintain an initial pre-paid fees
30 account, the refund might be paid out of the account: see section 29.

- 31 (3) The provider must pay the refund to the following person:
32 (a) the student;

1 (b) if a person (other than the student) is specified in the
2 agreement to receive any refund under this section—the
3 specified person.

4 (4) The provider must pay the refund within the period (the *provider*
5 *obligation period*) of 4 weeks after receiving a written claim from
6 the student.

7 *Exception—refusal of student visa*

8 (5) A registered provider is not required to provide a refund under this
9 section if:

10 (a) the student was refused a student visa; and

11 (b) the refusal was a reason for one or more of the following acts
12 or omissions by the student that directly or indirectly caused
13 the student to default in relation to the course at the location:

14 (i) the student's failure to start the course at the location on
15 the agreed starting day;

16 (ii) the student's withdrawal from the course at that
17 location;

18 (iii) the student's failure to pay an amount he or she was
19 liable to pay the provider, directly or indirectly, in order
20 to undertake the course at that location.

21 Note: A registered provider is required to provide a refund under
22 section 47E instead.

23 *Former registered providers*

24 (6) This section continues to apply to a provider if the provider ceases
25 to be a registered provider.

26 **47E Refund in other cases**

27 (1) A registered provider must provide a refund under this section if:

28 (a) an overseas student or an intending overseas student defaults
29 in relation to a course at a location; and

30 (b) either:

31 (i) the provider has not entered into an agreement with the
32 student that meets the requirements of section 47B; or

1 (ii) the provider is not required to pay a refund to the
2 student because of subsection 47D(5) (refusal of student
3 visa).

4 Note: For the consequences of breaching this section, see section 47G
5 (offence), Division 4 (calls on the OSTF) and Division 1 of Part 6
6 (conditions, suspension and cancellation).

7 (2) The provider must pay the student a refund of the amount, worked
8 out in accordance with a legislative instrument made under
9 subsection (4), of any unspent pre-paid fees received by the
10 provider in respect of the student.

11 Note: For providers who are required to maintain an initial pre-paid fees
12 account, the refund might be paid out of the account: see section 29.

13 (3) The provider must pay the refund within the period (the *provider*
14 *obligation period*) of 4 weeks after the default day.

15 *Legislative instrument*

16 (4) The Minister may, by legislative instrument, specify a method for
17 working out the amount of unspent pre-paid fees for the purposes
18 of subsection (2).

19 *Former registered providers*

20 (5) This section continues to apply to a provider if the provider ceases
21 to be a registered provider.

22 **47F Offence for failure to enter agreement that complies with**
23 **requirements**

24 (1) A person commits an offence if:

25 (a) either:

26 (i) the person is a registered provider; or

27 (ii) if a registered provider is an unincorporated body—the
28 person is the principal executive officer of the provider;
29 and

30 (b) the person fails to enter into an agreement that complies with
31 the requirements of section 47B.

32 Penalty: 60 penalty units.

33 (2) An offence under subsection (1) is an offence of strict liability.

1 Note: For strict liability, see section 6.1 of the *Criminal Code*.

2 (3) Section 4K of the *Crimes Act 1914* (continuing offences) does not
3 apply in relation to an offence under subsection (1).

4 **47G Offence for failure to provide refund**

5 (1) A person commits an offence if:

6 (a) either:

7 (i) the person is a registered provider; or

8 (ii) if a registered provider is an unincorporated body—the
9 person is the principal executive officer of the provider;
10 and

11 (b) an overseas student or intending overseas student defaults in
12 relation to a course at a location that is or was provided, or is
13 to be provided, by the person; and

14 (c) the person fails to provide a refund to the student in
15 accordance with section 47D or 47E (as the case requires)
16 (whether or not the provider is still a registered provider at
17 that time).

18 Penalty: 60 penalty units.

19 (2) An offence under subsection (1) is an offence of strict liability.

20 Note: For strict liability, see section 6.1 of the *Criminal Code*.

21 (3) The maximum penalty for each day that an offence under
22 subsection (1) continues is 10% of the maximum penalty that can
23 be imposed in respect of that offence.

24 Note: Subsection (1) is a continuing offence under section 4K of the *Crimes*
25 *Act 1914*.

26 **47H Registered providers to notify of outcome of discharge of** 27 **obligations**

28 (1) A registered provider must give a notice in accordance with this
29 section if an overseas student or intending overseas student
30 defaults in relation to a course provided by the provider at a
31 location.

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

- 1 (2) The provider must give a notice to the Secretary and the TPS
2 Director within 7 days after the end of the provider obligation
3 period.
- 4 (3) The notice must include the following:
5 (a) whether the provider provided a refund under section 47D or
6 47E;
7 (b) details of the student the provider provided the refund to;
8 (c) details of the amount of the refund provided.
- 9 (4) The notice must comply with any requirements of a legislative
10 instrument made under subsection (5).
- 11 *Legislative instrument*
- 12 (5) The Minister may, by legislative instrument, specify requirements
13 for a notice given under this section.
- 14 *Former registered providers*
- 15 (6) This section continues to apply to a provider if the provider ceases
16 to be a registered provider.

17 **Subdivision C—Recovering an amount**

18 **48 Recovering an amount**

- 19 (1) An overseas student or intending overseas student may recover an
20 amount owing to the student under this Division as a debt by action
21 in a court of competent jurisdiction (unless subsection (2) applies).
- 22 Note: This section is also affected by section 50C.
- 23 (2) If:
24 (a) a registered provider (or former registered provider) owes an
25 amount to a student under section 47D; and
26 (b) a person (other than the student) is specified in the agreement
27 entered into between the provider and the student under
28 section 47B;
29 the specified person, rather than the student, may recover the
30 amount as a debt by action in a court of competent jurisdiction.

- 1 (3) This Division does not affect any liability that a provider has apart
2 from this Division to pay an additional amount to the student.

3 **Division 3—Student placement service**

4 **49 Student placement service**

- 5 (1) This section applies if the TPS Director determines that:
6 (a) a registered provider (or former registered provider) has
7 defaulted in relation to an overseas student or intending
8 overseas student and a course at a location; and
9 (b) either:
10 (i) the provider has failed to discharge its obligations under
11 section 46D to the student by the end of the provider
12 obligation period; or
13 (ii) the provider is unlikely to be able to discharge its
14 obligations under section 46D to the student by the end
15 of the provider obligation period.

16 *Suitable alternative courses*

- 17 (2) If any suitable alternative courses are available, the TPS Director
18 must provide, in writing, the student with one or more options for
19 such alternative courses.

20 *Accepting an alternative course*

- 21 (3) If a registered provider of an alternative course referred to in
22 subsection (2) offers the student a place in the course, the student
23 may accept the offer.

24 Note: A call is made on the OSTF to pay the provider of the alternative
25 course: see Division 4.

- 26 (4) An acceptance must:
27 (a) be in writing; and
28 (b) be made within the period specified in subsection (5).
29 (5) For the purposes of subsection (4), the period is:
30 (a) the period of 30 days after the end of the provider obligation
31 period; or

- 1 (b) if the TPS Director determines that exceptional
2 circumstances apply:
3 (i) any shorter period determined in writing by the TPS
4 Director; or
5 (ii) any longer period determined in writing by the TPS
6 Director, and agreed to by the student.

7 *Legislative instrument*

- 8 (6) The Minister may, by legislative instrument, specify criteria to be
9 applied in considering whether a particular course is a suitable
10 alternative course for the purposes of this Act.

11 **Division 4—Calls on the OSTF**

12 **50A When a call is made on the OSTF**

- 13 (1) This section sets out when a call is made on the OSTF.

14 *Provider default, no place accepted by student*

- 15 (2) A *call* is made on the OSTF if the TPS Director determines that:
16 (a) a registered provider has defaulted in relation to an overseas
17 student or intending overseas student and a course at a
18 location; and
19 (b) the provider has failed to discharge its obligations under
20 section 46D to the student by the end of the provider
21 obligation period; and
22 (c) the student has not accepted a place in an alternative course
23 in accordance with section 49.

24 *Provider default, place accepted by student*

- 25 (3) A *call* is made on the OSTF if the TPS Director determines that:
26 (a) a registered provider has defaulted in relation to an overseas
27 student or intending overseas student and a course at a
28 location; and
29 (b) the provider has failed to discharge its obligations under
30 section 46D to the student by the end of the provider
31 obligation period; and

- 1 (c) the student accepts a place in an alternative course in
2 accordance with section 49.

3 *Student default, refund not provided by registered provider*

- 4 (4) A **call** is made on the OSTF if the TPS Director determines that:
5 (a) a student has defaulted in relation to a course provided by a
6 registered provider at a location; and
7 (b) the provider fails to provide a refund in accordance with
8 section 47D or 47E (as the case requires) by the end of the
9 provider obligation period.

10 *No call on the OSTF after a year*

- 11 (5) A call is not made on the OSTF if the time when the TPS Director
12 becomes aware that the circumstances described in subsection (2),
13 (3) or (4) may exist is more than 12 months after the relevant
14 default day.

15 **50B What the TPS Director must do when a call is made**

16 *TPS Director must pay amount*

- 17 (1) If a call is made on the OSTF, then, as soon as practicable, the TPS
18 Director must pay out of the OSTF an amount equal to the amount
19 that the provider must still pay in order to satisfy the refund
20 requirements under Division 2.

21 Note: The TPS Director pays the amount to the person specified in
22 subsection (3).

- 23 (2) If the student accepts a place in an alternative course in accordance
24 with section 49, the TPS Director may spend more than the amount
25 of that refund entitlement if the TPS Director considers that to do
26 so:
27 (a) would best protect the interests of the student; and
28 (b) would not jeopardise the sustainability of the OSTF.

29 *Who TPS Director pays amount to*

- 30 (3) The TPS Director must, in accordance with a legislative instrument
31 made under subsection (5), pay the amount to:

- 1 (a) if the student has accepted a place in an alternative course in
2 accordance with section 49—the registered provider of that
3 course; and
4 (b) if a refund was required to be paid under section 47D, and a
5 person (other than the student) is specified in the agreement
6 made with the student under section 47B to receive any
7 refund under this section—the specified person; and
8 (c) otherwise—the student.
- 9 (4) If:
- 10 (a) the TPS Director is required under subsection (3) to pay a
11 registered provider for providing an alternative course; and
12 (b) the amount required to be paid is more than the cost of the
13 course;
- 14 the TPS Director must pay the difference to the person specified in
15 paragraph (3)(b) or (c) (as the case requires).
- 16 *Legislative instrument*
- 17 (5) The Minister may, by legislative instrument, specify requirements
18 for payments made under this section.

19 **50C Consequences of a payment under section 50B**

20 *Cessation of claim*

- 21 (1) If:
- 22 (a) either:
- 23 (i) a registered provider defaults in relation to an overseas
24 student or intending overseas student and a course at a
25 location; or
26 (ii) an overseas student or intending overseas student
27 defaults in relation to a course provided by a registered
28 provider at a location; and
29 (b) the TPS Director pays an amount in accordance with
30 section 50B in relation to the student;
- 31 the student, and any person specified in paragraph 50B(3)(b), cease
32 to have any claim against the provider in respect of the student's
33 pre-paid fees.

1 *Provider must pay back TPS Director*

2 (2) Instead, the provider must pay the TPS Director an amount equal to
3 the amount that the TPS Director paid under section 50B.

4 Note: For providers who are required to maintain an initial pre-paid fees
5 account, the amount might be paid out of the account: see section 29.

6 (3) The TPS Director may recover that amount from the provider as a
7 debt due to the Commonwealth by action in a court of competent
8 jurisdiction.

9 *TPS Director may enforce security*

10 (4) If the provider had granted the TPS Director a charge or other
11 security over any of its assets, the TPS Director may enforce the
12 charge or security in satisfaction, or partial satisfaction, of the debt.

13 *Former registered providers*

14 (5) This section continues to apply to a provider if the provider ceases
15 to be a registered provider.

16 **50D TPS Director to notify Immigration Secretary**

17 (1) The TPS Director must notify the Immigration Secretary, in
18 accordance with a legislative instrument made under
19 subsection (3), as soon as practicable if the TPS Director provides
20 a refund to a person specified in paragraph 50B(3)(b) or (c).

21 Note 1: This section constitutes authorisation for the purposes of other laws,
22 such as paragraph (1)(d) of Information Privacy Principle 11 in
23 section 14 of the *Privacy Act 1988*.

24 Note 2: The Immigration Secretary's power under this section can be
25 delegated under section 170.

26 (2) The notice must include the name of the overseas student or
27 intending overseas student in relation to whom the refund was
28 provided.

29 (3) The Minister may, by legislative instrument, specify requirements
30 for a notice given under this section.

1 **50E Right to refund may be cancelled etc. without compensation**

2 A right to be paid an amount under section 50B is granted on the
3 basis that:

- 4 (a) the right may be cancelled, revoked, terminated or varied by
5 or under later legislation; and
6 (b) no compensation is payable if the right is so cancelled,
7 revoked, terminated or varied.

8 **Part 5A—Overseas Students Tuition Fund, the TPS**
9 **Director and the TPS Advisory Board**

10 **Division 1—Guide to this Part**

11 **51 Guide to this Part**

- 12 • This Part establishes the Overseas Students Tuition Fund, the
13 TPS Director and the TPS Advisory Board.
- 14 • Division 2:
- 15 (a) establishes the Overseas Students Tuition Fund
16 (the OSTF); and
- 17 (b) sets out the money that goes into, and can be paid
18 out of, the OSTF; and
- 19 (c) has rules relating to TPS levies.
- 20 The OSTF provides the money for refunds under Part 5 for
21 defaults where registered providers fail to discharge their
22 obligations to overseas students. The money in the OSTF is
23 mostly made up of the TPS levies collected from registered
24 providers each year.
- 25 • Division 3 of this Part establishes the office of the TPS
26 Director, and his or her terms and conditions. The TPS
27 Director is responsible for:

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- (a) assisting students to find suitable alternative courses, and providing refunds, in the case of defaults; and
 - (b) setting the amount of the TPS levy each year; and
 - (c) managing the OSTF.
- Division 4 establishes the TPS Advisory Board, the Board members' terms and conditions, and how Board meetings are to be conducted. The Board is responsible for providing advice and making recommendations to the TPS Director on setting the TPS levy each year.

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12

Division 2—Overseas Students Tuition Fund and TPS levies

13

Subdivision A—Overseas Students Tuition Fund

14

52A Name of Fund

15

(1) The Overseas Students Tuition Fund is established by this section.

16

(2) The Fund is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

17

18

52B Credits to the OSTF

19

There must be credited to the OSTF amounts equal to the following:

20

21

(a) all amounts of TPS levy received from providers (see section 24 and Subdivision B of this Division);

22

23

(b) all amounts recovered from providers under section 50C;

24

(c) any money the TPS Director borrows for the OSTF;

25

(d) any other money appropriated by the Parliament for the purpose of the OSTF;

26

27

(e) any late payment penalty received by the TPS Director;

28

(f) amounts received by the Commonwealth for the purposes of the OSTF.

29

1 Note: An Appropriation Act may contain a provision to the effect that, if any
2 of the purposes of a Special Account is a purpose that is covered by an
3 item in the Appropriation Act (whether or not the item expressly refers
4 to the Special Account), then amounts may be debited against the
5 appropriation for that item and credited to that Special Account.

6 **52C Purposes of the OSTF**

- 7 (1) The purposes of the OSTF are as follows:
- 8 (a) making payments as a result of calls being made on the
9 OSTF under Division 4 of Part 5;
- 10 (b) paying or discharging the costs, expenses and other
11 obligations incurred by the Commonwealth in the
12 performance of the TPS Director's functions, including in
13 managing the OSTF (subject to subsection (2)).

14 Note: See section 21 of the *Financial Management and Accountability Act*
15 1997 (debits from Special Accounts).

- 16 (2) Paragraph (1)(b) does not include:
- 17 (a) paying any remuneration or allowances payable to the TPS
18 Director under this Act; or
- 19 (b) paying or discharging any costs, expenses or other
20 obligations associated with services provided to the TPS
21 Director by any employee or officer of the Department.

22 **Subdivision B—TPS levies**

23 **53A TPS Director to set TPS levies**

- 24 (1) For each calendar year, the TPS Director must determine the
25 amount of TPS levy required from each provider who is required to
26 pay a contribution.
- 27 (2) In doing so, the TPS Director must determine the amount in
28 accordance with the legislative instrument made under subsections
29 9(3) and 10(2) of the *Education Services for Overseas Students*
30 (*TPS Levies*) Act 2011 for that year.

31 **53B Notice of amount of TPS levy**

- 32 (1) The TPS Director must give a written notice to each provider who
33 is liable to pay a TPS levy stating:
- 34 (a) the amount of the provider's levy; and

1 (b) if the provider is registered—the day by which the provider
2 must pay the levy.

3 Note 1: There is no particular due day for unregistered providers, but they
4 cannot be registered under section 9AB until they have paid their
5 contribution: see paragraph 9AB(1)(d).

6 Note 2: The provider may seek review of the amount of the TPS levy from the
7 AAT: see section 176.

8 (2) The day mentioned in paragraph (1)(b) of this section must be at
9 least 14 days after the notice is given to the provider.

10 **53C Notifying the Secretary in relation to payment of TPS levy**

11 *Payment of first TPS levy*

12 (1) The TPS Director must notify the Secretary if a provider who is not
13 yet registered under section 9AB has paid its first TPS levy.

14 Note: The Secretary needs to know when this has happened so that the
15 provider can be registered under section 9AB: see paragraph
16 9AB(1)(d).

17 (2) A notification under subsection (1) must be given as soon as
18 practicable after the provider has paid the levy.

19 *Non-payment of later TPS levies*

20 (3) The TPS Director must notify the Secretary if a provider who is
21 registered under section 9AB has not paid a TPS levy for a year by
22 the end of the period referred to in paragraph 53D(2)(b).

23 **53D Reminder notices**

24 (1) The TPS Director must give a reminder notice to a registered
25 provider who has not paid an amount of TPS levy by the end of the
26 due day.

27 (2) The reminder notice must:

28 (a) specify the amount that is still owing; and

29 (b) state that the registered provider must pay the amount, along
30 with the associated late payment penalty, by the end of the
31 seventh day after the reminder notice is given to the provider;
32 and

33 (c) set out the effect of section 90.

1 Note: Section 90 provides that the provider's registration is automatically
2 suspended if the provider does not comply with the reminder notice.

3 (3) The TPS Director must tell the Secretary if the registered provider
4 fails to comply with the reminder notice.

5 **Division 3—TPS Director**

6 **54A Appointment of TPS Director**

7 (1) The TPS Director is to be appointed by the Minister by written
8 instrument.

9 Note: The TPS Director is eligible for reappointment: see section 33AA of
10 the *Acts Interpretation Act 1901*.

11 (2) Before the Minister makes an appointment, the Minister may take
12 into account any recommendation of the Secretary in relation to the
13 appointment.

14 (3) The TPS Director holds office for the period specified in the
15 instrument of appointment. The period must not exceed 5 years.

16 (4) The TPS Director is to be appointed on a full-time basis.

17 **54B Functions of the TPS Director**

18 The TPS Director has the following functions:

- 19 (a) facilitating and monitoring the placement of overseas
20 students and intending overseas students in alternative
21 courses under section 49;
- 22 (b) determining whether a call is made on the OSTF under
23 section 50A;
- 24 (c) paying amounts out of the OSTF under section 50B;
- 25 (d) reporting to the Minister on:
26 (i) the operation of Part 5 (tuition protection service); and
27 (ii) the financial status of the OSTF;
- 28 (e) managing the OSTF in a way that ensures that it is able to
29 meet all its liabilities from time to time (including entering
30 into a loan agreement for the benefit of the OSTF);
- 31 (f) making the legislative instrument each year for the purposes
32 of subsections 9(3) and 10(2) of the *Education Services for*
33 *Overseas Students (TPS Levies) Act 2011*;

1 (g) any other function conferred by this Act.

2 **54C Remuneration and allowances**

3 (1) The TPS Director is to be paid the remuneration that is determined
4 by the Remuneration Tribunal. If no determination of that
5 remuneration by the Tribunal is in operation, the TPS Director is to
6 be paid the remuneration that is prescribed by the regulations.

7 (2) The TPS Director is to be paid the allowances that are prescribed
8 by the regulations.

9 (3) This section has effect subject to the *Remuneration Tribunal Act*
10 *1973*.

11 **54D Leave of absence**

12 (1) The TPS Director has the recreation leave entitlements that are
13 determined by the Remuneration Tribunal.

14 (2) The Minister may grant the TPS Director leave of absence, other
15 than recreation leave, on the terms and conditions as to
16 remuneration or otherwise that the Minister determines.

17 **54E Restrictions on outside employment**

18 The TPS Director must not engage in paid employment outside the
19 duties of his or her office without the Minister's approval.

20 **54F Disclosure of interests**

21 The TPS Director must give written notice to the Minister of all
22 interests, pecuniary or otherwise, that the TPS Director has or
23 acquires that could conflict with the proper performance of the TPS
24 Director's functions.

25 **54G Resignation**

26 (1) The TPS Director may resign his or her appointment by giving the
27 Minister a written resignation.

- 1 (2) The resignation takes effect on the day it is received by the
2 Minister or, if a later day is specified in the resignation, on that
3 later day.

4 **54H Termination of appointment**

- 5 (1) The Minister may terminate the appointment of the TPS Director
6 for:
7 (a) misbehaviour; or
8 (b) physical or mental incapacity.
- 9 (2) The Minister may terminate the appointment of the TPS Director
10 if:
11 (a) the TPS Director:
12 (i) becomes bankrupt; or
13 (ii) applies to take the benefit of any law for the relief of
14 bankrupt or insolvent debtors; or
15 (iii) compounds with his or her creditors; or
16 (iv) makes an assignment of his or her remuneration for the
17 benefit of his or her creditors; or
18 (b) the TPS Director is absent, except on leave of absence, for 14
19 consecutive days or for 28 days in any 12 months; or
20 (c) the TPS Director engages, except with the Minister's
21 approval, in paid employment outside the duties of his or her
22 office (see section 54E); or
23 (d) the TPS Director fails, without reasonable excuse, to comply
24 with section 54F (disclosure of interests).

25 **54J Other terms and conditions**

26 The TPS Director holds office on the terms and conditions (if any)
27 in relation to matters not covered by this Division that are
28 determined by the Minister.

29 **54K Acting TPS Director**

30 The Minister may appoint a person to act as the TPS Director:
31 (a) during a vacancy in the office of the TPS Director (whether
32 or not an appointment has previously been made to the
33 office); or

1 (b) during any period, or during all periods, when the TPS
2 Director is absent from duty or from Australia, or is, for any
3 reason, unable to perform the duties of the office.

4 Note: For rules that apply to acting appointments, see section 33A of the
5 *Acts Interpretation Act 1901*.

6 **54L Consultants**

7 The TPS Director may, on behalf of the Commonwealth, engage
8 consultants to assist in the performance of the TPS Director's
9 functions.

10 **54M Indemnity**

11 (1) The TPS Director is not personally subject to any liability to any
12 person (other than the Commonwealth) in respect of anything
13 done, or omitted to be done, in good faith in the exercise or
14 performance of powers or functions under this Act or the
15 *Education Services for Overseas Students (TPS Levies) Act 2011*.

16 (2) However, this section does not affect the operation of the *Privacy*
17 *Act 1988*.

18 **Division 4—TPS Advisory Board**

19 **Subdivision A—Appointment of Board members**

20 **55A Establishment**

21 The TPS Advisory Board is established by this section.

22 **55B Function of the Board**

23 The Board's function is, either on its own initiative or at the
24 request of the TPS Director, to provide advice and make
25 recommendations to the TPS Director in relation to the making of a
26 legislative instrument each year under subsections 9(3) and 10(2)
27 of the *Education Services for Overseas Students (TPS Levies) Act*
28 *2011*.

1 **55C Membership**

- 2 (1) The Board consists of the following members:
3 (a) a representative from each of the following agencies:
4 (i) the Department;
5 (ii) the Department whose Minister administers the
6 *Financial Management and Accountability Act 1997*;
7 (iii) the Department administered by the Immigration
8 Minister;
9 (iv) the Australian Government Actuary;
10 (v) the Australian Prudential Regulation Authority;
11 (b) up to 7 other members.

12 *Requirements for Board members appointed under*
13 *paragraph (1)(b)*

- 14 (2) A person is not eligible for appointment as a Board member under
15 paragraph (1)(b) unless the Minister is satisfied that he or she has
16 qualifications or experience that the Minister considers relevant to
17 the performance of the Board's function.

18 *Chair and Deputy Chair*

- 19 (3) The Minister must appoint, in writing, one of the Board members
20 to be the Chair, and another Board member to be the Deputy Chair.

21 **55D Appointment of Board members**

- 22 (1) Board members are to be appointed by the Minister by written
23 instrument.

24 Note: Board members are eligible for reappointment: see section 33AA of
25 the *Acts Interpretation Act 1901*.

- 26 (2) A Board member holds office for the period specified in the
27 instrument of appointment. The period must not exceed 2 years.
28 (3) A Board member is to be appointed on a part-time basis.

29 **55E Remuneration and allowances**

- 30 (1) A Board member appointed under paragraph 55C(1)(b) is to be
31 paid the remuneration that is determined by the Remuneration

1 Tribunal. If no determination of that remuneration by the Tribunal
2 is in operation, such a Board member is to be paid the
3 remuneration that is prescribed by the regulations.

4 (2) A Board member appointed under paragraph 55C(1)(b) is to be
5 paid the allowances that are prescribed by the regulations.

6 (3) This section has effect subject to the *Remuneration Tribunal Act*
7 *1973*.

8 **55F Leave of absence**

9 *Chair*

10 (1) The Minister may grant leave of absence to the Chair on the terms
11 and conditions that the Minister determines.

12 *Other members*

13 (2) The Chair may grant leave of absence to any other Board member
14 on the terms and conditions that the Chair determines.

15 **55G Restrictions on outside employment**

16 A Board member must not engage in any paid employment that, in
17 the Minister's opinion, conflicts or may conflict with the proper
18 performance of his or her duties.

19 **55H Disclosure of interests**

20 A Board member must give written notice to the Minister of all
21 interests, pecuniary or otherwise, that the member has or acquires
22 that could conflict with the proper performance of the member's
23 functions.

24 **55J Disclosure of interests to the Board**

25 (1) A Board member who has an interest, pecuniary or otherwise, in a
26 matter being considered or about to be considered by the Board
27 must disclose the nature of the interest to a meeting of the Board.

28 (2) The disclosure must be made as soon as possible after the relevant
29 facts have come to the Board member's knowledge.

- 1 (3) The disclosure must be recorded in the minutes of the meeting of
2 the Board.
- 3 (4) Unless the Board determines otherwise, the Board member:
4 (a) must not be present during any deliberation by the Board on
5 the matter; and
6 (b) must not take part in any decision of the Board with respect
7 to the matter.
- 8 (5) In addition, the Board member:
9 (a) must not be present during any deliberation of the Board for
10 the purpose of making a determination under subsection (4);
11 and
12 (b) must not take part in making the determination.
- 13 (6) A determination under subsection (4) must be recorded in the
14 minutes of the meeting of the Board.

15 **55K Resignation**

- 16 (1) A Board member may resign his or her appointment by giving the
17 Minister a written resignation.
- 18 (2) The Chair or Deputy Chair may resign his or her appointment as
19 the Chair or Deputy Chair (as the case requires) without resigning
20 his or her appointment as a Board member.
- 21 (3) A resignation takes effect on the day it is received by the Minister
22 or, if a later day is specified in the resignation, on that later day.

23 **55L Termination**

- 24 (1) The Minister may terminate the appointment of a Board member
25 for:
26 (a) misbehaviour; or
27 (b) physical or mental incapacity.
- 28 (2) The Minister may terminate the appointment of a Board member if:
29 (a) the Board member:
30 (i) becomes bankrupt; or
31 (ii) applies to take the benefit of any law for the relief of
32 bankrupt or insolvent debtors; or

- 1 (iii) compounds with his or her creditors; or
2 (iv) makes an assignment of his or her remuneration for the
3 benefit of his or her creditors; or
4 (b) the Board member is absent, except on leave of absence,
5 from 2 consecutive meetings of the Board; or
6 (c) the Board member engages in paid employment that, in the
7 Minister's opinion, conflicts or may conflict with the proper
8 performance of his or her duties (see section 55G); or
9 (d) the Board member fails, without reasonable excuse, to
10 comply with section 55H or 55J (disclosure of interests).

11 **55M Other terms and conditions**

12 A Board member holds office on the terms and conditions (if any)
13 in relation to matters not covered by this Division that are
14 determined by the Minister.

15 **55N Acting appointments**

16 *Acting Board member*

- 17 (1) The Minister may appoint a person to act as a Board member:
18 (a) during a vacancy in the office of the Board member, whether
19 or not an appointment has previously been made to the
20 office; or
21 (b) during any period, or during all periods, when the Board
22 member:
23 (i) is absent from duty or from Australia; or
24 (ii) is, for any reason, unable to perform the duties of the
25 office.

26 Note: For rules that apply to acting appointments, see section 33A of the
27 *Acts Interpretation Act 1901*.

28 *Acting Chair*

- 29 (2) The Minister may appoint a Board member to act as the Chair if
30 the Deputy Chair is unable to act as the Chair:
31 (a) during a vacancy in the office of the Chair, whether or not an
32 appointment has previously been made to the office; or
33 (b) during any period, or during all periods, when the Chair:

- 1 (i) is absent from duty or from Australia; or
2 (ii) is, for any reason, unable to perform the duties of the
3 office.

4 **Subdivision B—Meetings of the TPS Advisory Board**

5 **56A Convening meetings**

6 (1) The Board must hold the meetings that are necessary for the
7 efficient performance of its function.

8 (2) Meetings are to be held at the times and places that the Chair
9 determines.

10 Note: See also section 33B of the *Acts Interpretation Act 1901*, which
11 contains extra rules about meetings by telephone etc.

12 (3) The Chair:

- 13 (a) may convene a meeting; and
14 (b) must convene at least 2 meetings each calendar year; and
15 (c) must convene a meeting if requested in writing by:
16 (i) 7 or more other Board members; or
17 (ii) the Minister.

18 **56B Presiding at meetings**

19 (1) The Chair must preside at all meetings at which he or she is
20 present.

21 (2) If the Chair is not present at a meeting, the Deputy Chair must
22 preside.

23 **56C Quorum**

24 (1) At a meeting of the Board, a quorum is constituted by 6 Board
25 members, one of whom must be either the Chair or the Deputy
26 Chair.

27 (2) However, if:

- 28 (a) section 55J prevents a Board member from participating in
29 the deliberations or decisions of the Board with respect to a
30 particular matter; and

- 1 (b) when the Board member leaves the meeting concerned there
2 is no longer a quorum present; and
3 (c) either the Chair or the Deputy Chair still remains at the
4 meeting;
5 the remaining Board members at the meeting constitute a quorum
6 for the purpose of any deliberation or decision at that meeting with
7 respect to that matter.

8 **56D Voting at meetings**

- 9 (1) A question arising at a meeting is to be determined by a majority of
10 the votes of the Board members present and voting.
11 (2) The person presiding at a meeting has a deliberative vote and, in
12 the event of an equality of votes, a casting vote.

13 **56E Conduct of meetings**

14 The Board may regulate proceedings at its meetings as it considers
15 appropriate.

16 **56F Minutes**

17 The Board must keep minutes of its meetings.

18 **56G Decisions without meetings**

- 19 (1) The Board is taken to have made a decision at a meeting if:
20 (a) without meeting, a majority of the Board members entitled to
21 vote on the proposed decision indicate agreement with the
22 decision; and
23 (b) that agreement is indicated in accordance with the method
24 determined by the Board under subsection (2); and
25 (c) all the Board members were informed of the proposed
26 decision, or reasonable efforts were made to inform all the
27 members of the proposed decision.
28 (2) Subsection (1) applies only if the Board:
29 (a) has determined that it may make decisions of that kind
30 without meeting; and

- 1 (b) has determined the method by which Board members are to
2 indicate agreement with proposed decisions.
- 3 (3) For the purposes of paragraph (1)(a), a Board member is not
4 entitled to vote on a proposed decision if the Board member would
5 not have been entitled to vote on that proposal if the matter had
6 been considered at a meeting of the Board.
- 7 (4) The Board must keep a record of decisions made in accordance
8 with this section.
9

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2

Part 2—Consequential amendments

3

Education Services for Overseas Students Act 2000

4

2 Paragraph 4A(a)

5

Omit “financial and tuition assurance to”, substitute “tuition assurance,
6 and refunds, for”.

7

3 Paragraphs 4B(2)(c) and (e)

8

Repeal the paragraphs.

9

4 Section 5

10

Insert:

11

agreed starting day for a course means the day on which the
12 course was scheduled to start, or a later day agreed between the
13 registered provider for the course and the student.

14

5 Section 5 (definition of *annual Fund contribution*)

15

Repeal the definition.

16

6 Section 5

17

Insert:

18

Board means the TPS Advisory Board established by section 55A.

19

7 Section 5

20

Insert:

21

Board member means a member of the Board appointed under
22 section 55D, including the Chair and the Deputy Chair.

23

8 Section 5

24

Insert:

25

call: a *call* is made on the OSTF in the circumstances set out in
26 section 50A.

1 **9 Section 5 (definition of *contributions criteria*)**

2 Repeal the definition.

3 **10 Section 5**

4 Insert:

5 *default:*

6 (a) in relation to a registered provider—has the meaning given
7 by section 46A; and

8 (b) in relation to an overseas student or intending overseas
9 student—has the meaning given by section 47A.

10 **11 Section 5**

11 Insert:

12 *default day*, in relation to a default, means:

13 (a) if subparagraph 46A(1)(a)(i) or paragraph 47A(1)(a)
14 applies—the agreed starting day; or

15 (b) if subparagraph 46A(1)(a)(ii) applies—the day on which the
16 course ceases to be provided; or

17 (c) if paragraph 47A(1)(b) applies—the day on which the student
18 withdraws from the course; or

19 (d) if paragraph 47A(1)(c) applies—the day on which the
20 registered provider of the course refuses to provide, or
21 continue providing, the course to the student.

22 **12 Section 5 (definition of *Fund*)**

23 Repeal the definition.

24 **13 Section 5 (definition of *Fund Manager*)**

25 Repeal the definition.

26 **14 Section 5**

27 Insert:

28 *Immigration Secretary* means the Secretary of the Department
29 administered by the Immigration Minister.

30 **15 Section 5**

1 Insert:

2 *OSTF*: see Overseas Students Tuition Fund.

3 **16 Section 5**

4 Insert:

5 *Overseas Students Tuition Fund* means the Overseas Students
6 Tuition Fund established under section 52A.

7 **17 Section 5 (definition of *Panel*)**

8 Repeal the definition.

9 **18 Section 5**

10 Insert:

11 *provider obligation period*, in relation to a default, has the meaning
12 given by section 46D, 47D or 47E (as the case requires).

13 **19 Section 5 (definition of *special levy*)**

14 Repeal the definition.

15 **20 Section 5**

16 Insert:

17 *TPS levy* means a TPS levy that a provider is required to pay to the
18 TPS Director under paragraph 9AB(1)(d) or subsection 24(1).

19 **21 Section 5 (definition of *tuition assurance scheme*)**

20 Repeal the definition.

21 **22 Section 13**

22 Repeal the section, substitute:

23 **13 TPS Director may require information**

24 (1) The TPS Director may request a provider who is not yet registered
25 to give the TPS Director information that is relevant to determining
26 the provider's amount of TPS levy at any time before the Secretary
27 registers the provider under section 9AB.

1 *TPS Director may request information*

2 (3) At any time, the TPS Director may request a registered provider to
3 give the TPS Director information that is relevant to determining
4 the provider's amount of TPS levy. The provider must comply with
5 the request.

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

8 Note 2: It is an offence to provide false or misleading information in
9 complying or purporting to comply with this section: see section 108.

10 **26 Division 2 of Part 3**

11 Repeal the Division.

12 **27 Paragraph 90(1)(a)**

13 Omit "section 75", substitute "section 53D".

14 **28 Paragraphs 106(1A)(e) and (f)**

15 Repeal the paragraphs, substitute:

16 (e) section 46E; or

17 (f) section 47F; or

18 (g) section 47G.

19 **29 Paragraph 108(a)**

20 Omit "fund manager", substitute "TPS Director".

21 **30 After section 170A**

22 Insert:

23 **170B Annual report**

24 (1) After the end of each financial year, the TPS Director must prepare
25 and give to the Minister a report in relation to the following:

26 (a) the financial status of the OSTF during that financial year;

27 (b) the number of students placed in alternative courses under
28 section 49 during that financial year;

29 (c) the time taken to place students in alternative courses under
30 section 49 during that financial year;

- 1 (d) the number of calls made on the OSTF during that financial
2 year;
- 3 (e) the time taken to pay an amount under section 50B during
4 that financial year;
- 5 (f) the total of any amounts paid out under section 50B during
6 that financial year;
- 7 (g) an assessment of any issues affecting the operation of Part 5
8 (tuition protection service) during that financial year;
- 9 (h) an assessment of any issues that might affect the operation of
10 Part 5 in future financial years;
- 11 (i) an assessment of the outlook of the industry that provides
12 courses to overseas students, and any potential risk to the
13 OSTF as a result of that outlook.
- 14 (2) The report must be included in the Department's annual report for
15 that financial year.

16 **31 At the end of section 170**

17 Add:

18 *Immigration Secretary*

- 19 (5) The Immigration Secretary may, by signed writing, delegate his or
20 her power under section 50D (TPS Director to notify Immigration
21 Secretary) to an SES employee or acting SES employee in the
22 Department administered by the Immigration Minister.

23 **32 Paragraph 172(1)(c)**

24 Repeal the paragraph, substitute:

- 25 (c) TPS levy (other than a provider's first TPS levy);

26 **33 Paragraph 173(1)(c)**

27 Repeal the paragraph, substitute:

- 28 (c) TPS levy (other than a provider's first TPS levy).

29 **34 Subsection 173(2)**

30 Omit "the Fund, the Fund Manager", substitute "the OSTF, the TPS
31 Director".

32 **35 Section 174**

1 Omit “(Assurance Fund Contributions) Act 2000”, substitute “(TPS
2 Levies) Act 2011”.

3 **36 Subsection 175(1) (heading)**

4 Repeal the heading, substitute:

5 *Giving information to government agencies, the TPS Director etc.*

6 **37 Paragraphs 175(1)(f) and (g)**

7 Repeal the paragraphs, substitute:

8 (f) the TPS Director; or

9 (g) a Board member; or

10 **38 Before paragraph 176(1)(b)**

11 Insert:

12 (af) a decision not to notify a registered provider under subsection
13 46A(4); or

14 (ag) a decision under section 53A as to an amount of TPS levy to
15 be paid by a provider; or

16 ***Tertiary Education Quality and Standards Agency Act 2011***

17 **39 Paragraph 189(1)(e)**

18 Omit “the Fund Manager, or the operator of an applicable tuition
19 assurance scheme,”, substitute “the TPS Director,”.
20

1

2 **Part 3—Contingent amendments**

3 **Division 1—Amendment that will not commence if the**
4 **Registration Charges Acts commence first**

5 *Education Services for Overseas Students Act 2000*

6 **40 Section 90 (heading)**

7 Omit “annual Fund contribution, special levy”, substitute “TPS
8 levy”.

9 **Division 2—Amendment commencing immediately after**
10 **the later of the commencement of Part 1 of this**
11 **Schedule and the Registration Charges Acts**

12 *Education Services for Overseas Students Act 2000*

13 **41 Section 90 (heading)**

14 Omit “contribution,”.
15

Schedule 1 Tuition protection service

Part 4 Repeal of the Education Services for Overseas Students (Assurance Fund Contributions) Act 2000

1

2

Part 4—Repeal of the Education Services for Overseas Students (Assurance Fund Contributions) Act 2000

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Education Services for Overseas Students (Assurance Fund Contributions) Act 2000

6

7

42 The whole of the Act

8

Repeal the Act.

9

1

2 **Part 5—Application, saving and transitional**
3 **provisions**

4 **Division 1—Introduction**

5 **43 Definitions**

6 In this Part:

7 *asset* means:

- 8 (a) any legal or equitable estate or interest in real or personal
9 property, whether actual, contingent or prospective; and
10 (b) any right, power, privilege or immunity, whether actual,
11 contingent or prospective;

12 but does not include a right, power, privilege or immunity conferred by
13 an Act or by regulations or other subordinate legislation made under an
14 Act.

15 *ESOS Act* means the *Education Services for Overseas Students Act*
16 *2000*.

17 *liability* means any liability, duty or obligation, whether actual,
18 contingent or prospective, but does not include a liability, duty or
19 obligation imposed by an Act or by regulations or other subordinate
20 legislation made under an Act.

21 *old Fund* means the ESOS Assurance Fund established under
22 section 45 of the ESOS Act (as in force immediately before this item
23 commences).

24 **Division 2—Defaults**

25 **44 Application—defaults after commencement**

26 The amendments made by this Schedule apply in relation to any default
27 by a registered provider, or an overseas student or intending overseas
28 student, that occurs after this item commences.

29 **45 Transitional—defaults before commencement**

- 30 (1) This item sets out what happens if:
31 (a) before this item commences:

Schedule 1 Tuition protection service

Part 5 Application, saving and transitional provisions

- 1 (i) a registered provider defaults in relation to an overseas
2 student or intending overseas student and a course at a
3 location; or
4 (ii) an overseas student or intending overseas student
5 defaults in relation to a course at a location; and
6 (b) by the time this item commences:
7 (i) the student has not accepted an alternative course in
8 accordance with Division 2 of Part 3, or Division 5 of
9 Part 5, of the ESOS Act (as in force immediately before
10 this item commences); and
11 (ii) the student has not been provided with a refund under
12 one of those Divisions.
- 13 (2) Despite the repeal of Division 2 of Part 3, and Division 5 of Part 5, of
14 the ESOS Act by this Schedule, those Divisions (except subsections
15 31(4) to (5)) (as in force immediately before this item commences)
16 continue to apply after this item commences, in relation to the default,
17 with the following changes:
18 (a) references in those Divisions to the Fund Manager are taken
19 to be references to the TPS Director;
20 (b) references in those Divisions to the Fund are taken to be
21 references to the Overseas Students Tuition Fund;
22 (c) section 77 of the ESOS Act applies as if it required the TPS
23 Director to comply with that section within:
24 (i) the period of 30 days of a call being made on the Fund;
25 or
26 (ii) if the TPS Director determines that exceptional
27 circumstances apply—any longer period determined in
28 writing by the TPS Director, and agreed to by the
29 student;
30 (d) the TPS Director may pay an amount in relation to a student
31 under section 77 of the ESOS Act without having attempted
32 to place the student in a suitable alternative course.
- 33 (3) For the purposes of section 52C of the ESOS Act (as inserted by this
34 Schedule), making a payment under section 77 of the ESOS Act (as
35 continued by this item) is taken to be a purpose of the Overseas
36 Students Tuition Fund.

1 **Division 3—The old Fund and the OSTF**

2 **46 Vesting of assets of old Fund**

- 3 (1) This item applies to the assets of the old Fund immediately before this
4 item commences.
- 5 (2) At that time, the assets cease to be assets of the old Fund and become
6 assets of the Commonwealth without any conveyance, transfer or
7 assignment. The Commonwealth becomes the successor in law in
8 relation to the assets.

9 **47 Transferring amount standing to the credit of the old Fund**

10 The amount standing to the credit of the old Fund immediately before
11 this item commences is, by force of this item, transferred to the
12 Commonwealth immediately after this item commences.

13 **48 Vesting of liabilities of old Fund**

- 14 (1) This item applies to the liabilities of the old Fund immediately before
15 this item commences, other than any loan from the Commonwealth.
- 16 (2) At that time, the liabilities cease to be liabilities of the old Fund and
17 become liabilities of the Commonwealth without any conveyance,
18 transfer or assignment. The Commonwealth becomes the successor in
19 law in relation to the liabilities.

20 **49 Transitional—financial accountability**

21 Despite the repeal of section 80 of the ESOS Act by this Schedule, that
22 section (as in force immediately before this item commences) continues
23 to apply, after this item commences, with the following changes:

- 24 (a) the TPS Director (and not the Fund Manager) must arrange
25 for the independent auditor to prepare the report;
- 26 (b) the report must be prepared as soon as possible after 30 June
27 of the year in which this item commences (and not after the
28 end of a calendar year);
- 29 (c) the report must be given to the Minister only (and not the
30 Panel).

31 **50 Section 82 of the ESOS Act**

1 To avoid doubt, section 82 of the ESOS Act (as in force immediately
2 before this item commences) does not apply in relation to the repeal of
3 Division 1 of Part 5 of that Act by this Schedule.

4 **51 Seed funding for the OSTF**

5 (1) Despite section 52B of the ESOS Act (as inserted by this Schedule), the
6 amount (the *seed funding amount*) of \$5 million is, by force of this
7 item, credited to the OSTF immediately after this item commences.

8 *Returning amounts to the Commonwealth*

9 (2) The difference between:
10 (a) the seed funding amount; and
11 (b) the total of amounts debited from the OSTF under
12 section 52C of the ESOS Act (as inserted by this Schedule)
13 before the 1 July that occurs 1 year after this item
14 commences;
15 is, by force of this item, debited from the OSTF at the beginning of that
16 1 July.

17 **Division 4—The Fund Manager and the Contributions**
18 **Review Panel**

19 **52 Termination of appointment of Fund Manager**

20 A person who, immediately before this item commences, is appointed
21 as Fund Manager, ceases, by force of this item, to be Fund Manager
22 after that time.

23 **53 References in Acts and instruments—Fund Manager**

24 (1) If:
25 (a) an Act or instrument is in force immediately before this item
26 commences; and
27 (b) the Act or instrument contains a reference to the Fund
28 Manager;

29 the Act or instrument has effect after this item commences as if the
30 reference to the Fund Manager were a reference to the TPS Director.

31 **Note:** During the first year after this item commences, instruments can retrospectively amend
32 references to the Fund Manager: see item 59.

- 1 (2) The Minister may, by writing, determine that subitem (1):
2 (a) does not apply in relation to a specified reference; or
3 (b) applies, in relation to a specified reference, as if the reference
4 in that subitem to the TPS Director were a reference to the
5 Commonwealth.
6 A determination under this subitem has effect accordingly.
- 7 (3) The regulations may provide that an instrument containing a reference
8 specified in a determination under paragraph (2)(a) has effect, after this
9 item commences, as if the reference were a reference to a person or
10 body other than the TPS Director or the Commonwealth.
- 11 (4) A determination made under subitem (2) is not a legislative instrument.

12 **54 Operation of laws—Fund Manager**

- 13 (1) If, before this item commences, a thing was done by, or in relation to,
14 the Fund Manager, then, for the purposes of the operation of any law of
15 the Commonwealth after this item commences, the thing is taken to
16 have been done by, or in relation to, the TPS Director.
- 17 (2) For the purposes of subitem (1), a thing done before this item
18 commences under a provision that is amended by this Act has effect
19 from that time as if it were done under that provision as amended.
20 However, this is not taken to change the time at which the thing was
21 actually done.
- 22 (3) The Minister may, by writing, determine that subitem (1):
23 (a) does not apply in relation to a specified thing done by, or in
24 relation to, the Fund Manager; or
25 (b) applies as if the reference in that subitem to the TPS Director
26 were a reference to the Commonwealth.
27 A determination under this subitem has effect accordingly.
- 28 (4) The regulations may provide for a thing specified in a determination
29 under paragraph (3)(a) to be taken to have been done by, or in relation
30 to, a person or body other than the TPS Director or the Commonwealth.
- 31 (5) A determination made under subitem (3) is not a legislative instrument.

32 **55 Transitional—transfer of Fund Manager’s records**

1 (1) This item applies to any records or documents that are in the possession
2 of the Fund Manager immediately before this item commences.

3 (2) The records and documents are, by force of this item, transferred to the
4 Commonwealth after this item commences.

5 **56 Termination of appointment of members of Contributions** 6 **Review Panel**

7 A person who, immediately before this item commences, is a member
8 of the Contributions Review Panel, ceases, by force of this item, to hold
9 office as such a member after that time.

10 **57 References in Acts and instruments—Contributions** 11 **Review Panel**

- 12 (1) If:
- 13 (a) an Act or instrument is in force immediately before this item
14 commences; and
- 15 (b) the Act or instrument contains a reference to the
16 Contributions Review Panel;

17 the Act or instrument has effect after this item commences as if the
18 reference to the Contributions Review Panel were a reference to the
19 TPS Advisory Board.

20 Note: During the first year after this item commences, instruments can retrospectively amend
21 references to the Contributions Review Panel: see item 59.

- 22 (2) The Minister may, by writing, determine that subitem (1):
- 23 (a) does not apply in relation to a specified reference; or
24 (b) applies, in relation to a specified reference, as if the reference
25 in that subitem to the TPS Advisory Board were a reference
26 to the Commonwealth.

27 A determination under this subitem has effect accordingly.

- 28 (3) The regulations may provide that an instrument containing a reference
29 specified in a determination under paragraph (2)(a) has effect after this
30 item commences as if the reference were a reference to a person or body
31 other than the TPS Advisory Board or the Commonwealth.

- 32 (4) A determination made under subitem (2) is not a legislative instrument.

33 **58 Operation of laws—Contributions Review Panel**

- 1 (1) If, before this item commences, a thing was done by, or in relation to,
2 the Contributions Review Panel, then, for the purposes of the operation
3 of any law of the Commonwealth after this item commences, the thing
4 is taken to have been done by, or in relation to, the TPS Advisory
5 Board.
- 6 (2) For the purposes of subitem (1), a thing done before this item
7 commences under a provision that is amended by this Act has effect
8 after this item commences as if it were done under that provision as
9 amended. However, this is not taken to change the time at which the
10 thing was actually done.
- 11 (3) The Minister may, by writing, determine that subitem (1):
12 (a) does not apply in relation to a specified thing done by, or in
13 relation to, the Contributions Review Panel; or
14 (b) applies as if the reference in that subitem to the TPS
15 Advisory Board were a reference to the Commonwealth.
16 A determination under this subitem has effect accordingly.
- 17 (4) The regulations may provide for a thing specified in a determination
18 under paragraph (3)(a) to be taken to have been done by, or in relation
19 to, a person or body other than the TPS Advisory Board or the
20 Commonwealth.
- 21 (5) A determination made under subitem (3) is not a legislative instrument.

22 **59 Amending instruments may be retrospective**

- 23 (1) If:
24 (a) an instrument is made within the period of 12 months
25 beginning on the day on which this item commences; and
26 (b) a provision of the instrument amends a reference to the Fund
27 Manager or the Contributions Review Panel;
28 the provision may be expressed to take effect from the day that this item
29 commences, or a later day in the period referred to in paragraph (a), that
30 occurs before the instrument is made.
- 31 (2) This item has effect despite subsection 12(2) of the *Legislative*
32 *Instruments Act 2003*.

33 **60 Transitional—reviews**

Schedule 1 Tuition protection service

Part 5 Application, saving and transitional provisions

- 1 (1) This item applies if, before this item commences:
2 (a) a person applies for a review of the amount of its annual
3 Fund contribution under section 66 or 68 of the ESOS Act (as
4 in force immediately before this item commences); and
5 (b) a notice has not been given under section 67 or 69 (as the
6 case requires) of that Act.
- 7 (2) Despite the repeal of Subdivision B of Division 4 of Part 5 (rights of
8 review) of the ESOS Act by this Schedule, that Subdivision continues to
9 apply, after this item commences, as if:
10 (a) a reference in that Subdivision to the Fund Manager were a
11 reference to the TPS Director; and
12 (b) a reference in that Subdivision to the Panel were a reference
13 to the Secretary.

14 **Division 5—Payment of TPS levies**

15 **61 Application—payment of TPS levies**

16 The requirement to pay a TPS levy imposed by section 14 of the
17 *Education Services for Overseas Students (TPS Levies) Act 2011*
18 applies in relation to:

- 19 (a) the first calendar year that begins after the day this item
20 commences; and
21 (b) later calendar years.

22 **Division 6—Miscellaneous**

23 **62 Constitutional safety net**

- 24 (1) If the operation of this Schedule would result in an acquisition of
25 property from a person otherwise than on just terms, the
26 Commonwealth is liable to pay a reasonable amount of compensation to
27 the person.
- 28 (2) If the Commonwealth and the person do not agree on the amount of the
29 compensation, the person may institute proceedings in a court of
30 competent jurisdiction for the recovery from the Commonwealth of
31 such reasonable amount of compensation as the court determines.
- 32 (3) In this item:

1 *acquisition of property* has the same meaning as in paragraph 51(xxxi)
2 of the Constitution.

3 *just terms* has the same meaning as in paragraph 51(xxxi) of the
4 Constitution.

5 **63 Delegation by Minister**

6 (1) The Minister may, by writing, delegate all or any of his or her powers
7 and functions under this Part to a person.

8 (2) The delegate must be:

9 (a) the Secretary; or

10 (b) an SES employee, or acting SES employee, in the
11 Department.

12 Note: *SES employee* is defined in section 2B of the *Acts Interpretation Act 1901*.

13 (3) In exercising powers or functions under a delegation, the delegate must
14 comply with any directions of the Minister.
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Schedule 2—National registration

Part 1—Main amendments

Education Services for Overseas Students Act 2000

1 Section 9

Repeal the section, substitute:

Division 3—Registration of approved providers

Subdivision A—Registration of approved providers

9AA Recommendation by designated authority that approved provider be registered to provide a course at a location

- (1) A designated authority may recommend that an approved provider for a course for a location be registered under this Act to provide that course at that location to overseas students.

Risk management approach

- (2) A designated authority must use a risk management approach when considering whether to make such a recommendation.

Recommendation may relate to new or existing registration

- (3) A designated authority may make such a recommendation:
- (a) for the purposes of the Secretary registering an approved provider under section 9AB; or
 - (b) for the purposes of the Secretary adding one or more courses at one or more locations to a provider's registration under section 9AG.

9AB Registration of approved providers by Secretary

Registering approved providers

- (1) The Secretary must register an approved provider if:

- 1 (a) a designated authority makes a recommendation under
2 section 9AA in relation to the provider; and
3 (b) the provider is:
4 (i) a resident of Australia; or
5 (ii) a Table C provider (within the meaning of the *Higher*
6 *Education Support Act 2003*); and
7 (c) the provider has paid the associated initial registration
8 charge; and
9 (d) if the provider is not a registered provider—the provider has
10 paid its first TPS levy (see Subdivision B of Division 2 of
11 Part 5A); and
12 (e) in any case—the designated authority has given the Secretary
13 a certificate in accordance with section 9AH; and
14 (f) the Secretary has no reason to believe that the provider:
15 (i) is not complying, or will not comply, with this Act or
16 the national code; or
17 (ii) does not have the principal purpose of providing
18 education; or
19 (iii) does not have the clearly demonstrated capacity to
20 provide education of a satisfactory standard; or
21 (iv) is unlikely to be able to provide education of a
22 satisfactory standard; and
23 Note 1: The Secretary must notify the relevant designated authority if the
24 Secretary has reason to believe that any of the matters set out in
25 this paragraph apply: see section 14.
26 Note 2: For when a higher education provider has the principal purpose
27 of providing education, see section 5A.
28 (g) if the provider has previously been registered—the provider
29 is not liable for an annual registration charge or late payment
30 penalty that remains unpaid after it became due for payment.
31 Note: The Secretary must determine that the provider is registered for a
32 specified period: see section 9AC.
33 (2) The Secretary must not register the provider in any other
34 circumstances.
35 (3) Nothing in subsection (1) of this section creates a duty for the
36 Secretary to seek any information about the matters mentioned.

1 *Registering courses and locations*

- 2 (4) At the time the Secretary registers an approved provider under this
3 section, the Secretary must determine:
4 (a) the course or courses that the provider is registered to
5 provide; and
6 (b) the location or locations at which the provider is registered to
7 provide that course or those courses.

8 Note 1: For when the approved provider becomes registered to provide a
9 course at a location, see subsection 14A(6).

10 Note 2: Under section 9AG, courses and locations can be added later to a
11 provider's registration.

12 *Renewing registrations*

- 13 (5) To avoid doubt, the Secretary registers a provider under this
14 section if the Secretary renews the provider's registration.

15 **9AC Period of registration**

- 16 (1) At the time the Secretary registers an approved provider under
17 section 9AB, the Secretary must determine that the provider is
18 registered for a specified period that is:
19 (a) more than 2 years; but
20 (b) no more than 5 years.
- 21 (2) To avoid doubt, subsection (1) does not limit the Minister's power
22 under section 83 to cancel a registered provider's registration
23 within the first 2 years of the provider's registration.
- 24 (3) The period specified under subsection (1) may be different from
25 the period stated by the designated authority under paragraph
26 9AH(i).
- 27 (4) The Secretary may vary the period specified under subsection (1)
28 at any time, but the varied period must not:
29 (a) end earlier than 2 years; nor
30 (b) extend beyond 5 years;
31 from the day on which the provider was registered.

1 *When registration would otherwise expire before renewal*
2 *completed*

3 (5) If:

- 4 (a) a provider's registration is due to expire; and
5 (b) before that expiry, a designated authority makes a
6 recommendation under section 9AA in relation to the
7 provider; and
8 (c) by the time the provider's registration would otherwise
9 expire, the Secretary has not yet made a decision whether to
10 register the provider under section 9AB;

11 the provider's registration is taken to continue until the Secretary
12 makes his or her decision.

13 *When registration expires before course completed*

- 14 (6) If a provider's registration is due to expire before the provider has
15 finished providing a course for which the provider is registered, the
16 provider is taken to be registered to provide the course until the
17 provider has finished providing the course to the students who
18 were enrolled in that course before that registration was due to
19 expire.

20 **9AD Imposing conditions on provider's registration when**
21 **designated authority has imposed conditions**

22 *Imposing conditions at time of registering providers*

23 (1) If:

- 24 (a) a provider is approved by a designated authority to provide
25 courses to overseas students; and
26 (b) the designated authority has imposed a condition on the
27 provider relating to its provision of those courses; and
28 (c) the provider was not registered under section 9AB at the time
29 the condition was imposed; and
30 (d) the provider subsequently becomes registered under that
31 section;

32 the Secretary may, at the time of registering the provider, impose
33 that condition on the provider's registration.

Imposing conditions on registered providers

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2 (2) If:
3 (a) a provider is approved by a designated authority to provide
4 courses to overseas students; and
5 (b) the designated authority has imposed a condition on the
6 provider relating to its provision of those courses; and
7 (c) the provider was registered under section 9AB at the time the
8 condition was imposed;
9 the Secretary or Minister may, by notifying the provider in writing,
10 impose that condition on the provider's registration.

11 *Secretary or Minister to have regard to designated authority's*
12 *advice*

- 13 (3) In deciding whether to impose a condition under this section, the
14 Secretary or Minister must:
15 (a) have regard to any advice of the relevant designated
16 authority; and
17 (b) use a risk management approach.

18 **9AE Secretary's conditions on provider's registration**

- 19 (1) The Secretary, on the Secretary's own initiative, may impose a
20 condition on a provider's registration.
21 (2) The Secretary may impose a condition:
22 (a) either:
23 (i) at the time that a provider is registered; or
24 (ii) at any time before a provider's registration expires; and
25 (b) either generally or in respect of any one or more specified
26 courses for any one or more specified locations.
27 (3) To avoid doubt, section 9AD does not limit the Secretary's power
28 to impose a condition under this section.
29 (4) The Secretary must use a risk management approach in deciding
30 whether to impose a condition under this section.

1 **9AF Variation or removal of conditions**

- 2 (1) The Secretary may vary or remove a condition that the Secretary
3 has imposed under section 9AD or 9AE.
- 4 (2) The Minister may vary or remove a condition that the Minister has
5 imposed under section 9AD.
- 6 (3) The Secretary and the Minister must use a risk management
7 approach in deciding whether to vary or remove a condition under
8 this section.

9 **9AG Changing the scope of a provider's registration**

- 10 (1) The Secretary must add a course at a specified location to a
11 provider's registration if:
- 12 (a) a designated authority makes a recommendation under
13 section 9AA that the provider be registered to provide that
14 course at that location; and
- 15 (b) if the provider is not currently registered to provide any
16 courses at the location being added—the designated authority
17 has given the Secretary a certificate in accordance with
18 section 9AH.
- 19 (2) The Secretary must not add one or more courses at one or more
20 locations to a provider's registration in any other circumstances.
- 21 (3) Nothing in subsection (1) creates a duty for the Secretary to seek
22 any information about the matters mentioned.

23 **Subdivision B—Provisions relating to registration**

24 **9AH Certificate from designated authority**

25 For the purposes of paragraphs 9AB(1)(e) and 9AG(1)(b), a
26 designated authority who recommends under section 9AA that an
27 approved provider be registered to provide a course at a location
28 must give the Secretary a certificate, in the form approved by the
29 Secretary for the purposes of this section, that:

- 30 (a) relates to the provider's compliance with the national code;
31 and

- 1 (b) except in the case of a provider mentioned in subsection
2 9B(1)—states that the provider has satisfied the designated
3 authority that the provider is fit and proper to be registered;
4 and
5 (c) in any case—states that the provider has the principal
6 purpose of providing education; and
7 (d) states that the provider has clearly demonstrated the capacity
8 to provide education of a satisfactory standard (including by
9 having an appropriate business model and access to adequate
10 financial resources, for example); and
11 (e) if applicable, states that the provider meets the ELICOS
12 Standards; and
13 (f) if applicable, states that the provider meets the Foundation
14 Program Standards; and
15 (g) states the results of the designated authority’s risk assessment
16 of the provider; and
17 (h) states the conditions (if any) that should apply to the
18 provider’s registration for the course for the location, in view
19 of the results of that risk assessment; and
20 (i) if the certificate is for the purposes of paragraph 9AB(1)(e)—
21 states the period (of no less than 2 years and no more than 5
22 years) for which the provider should be registered.

23 Note 1: For paragraph (b), the designated authority must have regard to the
24 matters referred to in section 9B in deciding whether a provider is fit
25 and proper to be registered.

26 Note 2: For paragraph (c), see section 5A for when a higher education
27 provider has the principal purpose of providing education.

28 **2 Sections 10 and 11**

29 Repeal the sections.

30 **3 Sections 14A and 14B**

31 Repeal the sections, substitute:

32 **Division 4—The Register**

33 **14A The Register**

- 34 (1) The Secretary must cause a Register to be kept for the purposes of
35 this Act.

1 (2) The Register is called the Commonwealth Register of Institutions
2 and Courses for Overseas Students.

3 (3) The Secretary may cause the contents of all or part of the Register
4 to be made available to the public by electronic or other means.

5 *Contents of the Register*

6 (4) The Secretary must cause the following information to be entered
7 on the Register in relation to each provider's registration:

8 (a) the name of each provider who is registered;

9 (b) the name of each course which the provider is registered to
10 provide, and each location at which the provider is registered
11 to provide that course;

12 (c) if the provider is not an individual—the name of the principal
13 executive officer of the provider;

14 (d) a unique identifier allocated to the provider;

15 (e) a unique identifier allocated to each course at each location
16 for which the provider is registered;

17 (f) the day on which the provider is registered;

18 (g) the period of the provider's registration;

19 (h) any conditions that are imposed on the provider's registration
20 (either generally or in relation to specific courses and
21 locations);

22 (i) any other matters prescribed by the regulations.

23 (5) The Secretary may cause any other information he or she considers
24 appropriate to be entered on the Register in relation to a provider's
25 registration.

26 *When an approved provider is registered to provide a course at a*
27 *location*

28 (6) An approved provider is registered to provide a course at a location
29 when the Secretary has entered the name of the provider, the
30 course and the location on the Register.

31 **14B Updating the Register**

32 (1) The Secretary must ensure that the Register is kept up-to-date.

Schedule 2 National registration

Part 1 Main amendments

- 1 (2) Without limiting subsection (1), the Secretary must cause the
2 Register to be altered appropriately if:
3 (a) a provider's registration is suspended or cancelled for any
4 one or more courses for any one or more locations; or
5 (b) a provider's registration has a condition imposed on it; or
6 (c) a provider's registration has a suspension or condition
7 removed, or a condition varied; or
8 (d) a provider applies to the Administrative Appeals Tribunal for
9 review of a decision to suspend or cancel, or to impose a
10 condition on, the provider's registration.

11 Note: The Register can also be updated under section 103 (Immigration
12 Minister's suspension certificate).

- 13 (3) However, a failure to keep the Register up-to-date does not affect
14 the validity of any action referred to in subsection (2).
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2 **Part 2—Consequential amendments**

3 *Education Services for Overseas Students Act 2000*

4 **4 Before section 1**

5 Insert:

6 **Division 1—Preliminary**

7 **5 Paragraph 4B(1)(b)**

8 Repeal the paragraph, substitute:

9 (b) to the extent that a reference in a provision of this Act to a
10 designated authority relates to a designated authority covered
11 by table item 4 of the table in subsection 7A(1)—the
12 reference included a reference to the Territories Minister.

13 **6 Paragraph 4B(2)(d)**

14 Repeal the paragraph.

15 **7 Section 5 (definition of *approved provider*)**

16 Repeal the definition, substitute:

17 *approved provider* for a course for a location means a provider
18 approved by a relevant designated authority to provide that course
19 at that location to overseas students, other than an approval that has
20 been withdrawn by that authority.

21 **8 Section 5 (definition of *Commonwealth designated***
22 ***authority*)**

23 Repeal the definition.

24 **9 Section 5 (definition of *condition*)**

25 Repeal the definition, substitute:

26 *condition*, in relation to a provider's registration, means a
27 condition imposed on the registration under section 9AD or 9AE or
28 subsection 83(3).

1 **10 Section 5 (definition of *modification*)**

2 Repeal the definition.

3 **11 Section 5 (definition of *Register*)**

4 Omit “section 10”, substitute “section 14A”.

5 **12 Section 5 (definition of *registered*)**

6 Repeal the definition, substitute:

7 *registered* means registered under Part 2.

8 Note: Other grammatical forms of the word *registered* (such as *registration*)
9 have a corresponding meaning (see section 18A of the *Acts*
10 *Interpretation Act 1901*).

11 **13 Section 5 (definition of *registered provider*)**

12 Omit “State” (wherever occurring), substitute “location”.

13 **14 After section 5**

14 Insert:

15 **5A When higher education providers are taken to have the principal**
16 **purpose of providing education**

17 For the purposes of subparagraphs 9AB(1)(f)(ii) and 14(1)(a)(ii)
18 and paragraphs 9AH(c) and 83(1C)(a), a higher education provider
19 is taken to have the principal purpose of providing education if its
20 principal purpose is either or both of the following:

- 21 (a) providing education;
22 (b) conducting research.

23 **15 Subsection 7A(1)**

24 Omit “for a State”.

25 **16 Subsection 7A(1) (cell at table item 4, column headed “the**
26 **designated authority is:”)**

27 Repeal the cell, substitute:

the person responsible under a law of a
State for approving providers to
provide courses to overseas students at

locations in the State

1 **17 Paragraphs 7A(2)(a) and (b)**

2 Omit “for the State”.

3 **18 Subsection 7A(3)**

4 Omit “for a State”.

5 **19 At the end of Part 1**

6 Add:

7 **Division 2—Guide to this Act**

8 **7B Guide to this Act**

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- This Act regulates providers who provide courses to overseas students.
 - A person who provides a course at a location to an overseas student must be registered to provide that course at that location (or do so in accordance with an arrangement with a provider who is so registered).
 - This Act and the national code impose obligations on registered providers, such as notification, record keeping and financial requirements.
 - In particular, there are obligations on registered providers when the provider or an overseas student of the provider defaults, and does not start or finish a course. The provider is required to provide a refund to the student. For a provider default, the provider may instead provide an alternative course for the student at the provider’s expense.
 - If a provider that has defaulted does not discharge its obligations to an overseas student, the TPS Director must provide the student with options for suitable alternative courses (if any such courses are available).

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- In the case of a default, a call is made on the Overseas Students Tuition Fund to pay for alternative courses, or to provide refunds to students, if providers have not already done so.

5 **20 Before section 8**

6 Insert:

7 **Division 1—Guide to this Part**

8 **8A Guide to this Part**

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- A person who provides a course at a location to an overseas student must be registered to provide that course at that location (or do so in accordance with an arrangement with a provider who is so registered).
- Division 2 creates an offence for a person who contravenes that requirement. It is also an offence for a registered provider to offer courses, or hold itself out as able to provide a course, to overseas students without being appropriately registered (or doing so in accordance with an appropriate arrangement).
- Approved providers are registered under Division 3. A provider's registration lists all of the courses that the provider is registered to provide, and the locations at which the provider is registered to provide those courses. Conditions can be imposed on a provider's registration. A registration lasts for a minimum of 2 and a maximum of 5 years.
- The Register (which contains each provider's registration) is maintained, and kept up-to-date, under Division 4.

26 **Division 2—Offence for providing or promoting a course**
27 **without a registered provider**

28 **21 Paragraphs 8(1)(a) to (d)**

29 Omit "in a State", substitute "at a location".

1 **22 Paragraph 8(1)(e)**

2 Omit “for that particular State”, substitute “at that particular location”.

3 **23 Paragraph 8(1)(f)**

4 Omit “for a State”, substitute “for that particular location”.

5 **24 Subparagraph 8(3)(b)(iii)**

6 Omit “State”, substitute “location”.

7 **25 Subparagraph 8(3)(b)(iv)**

8 Omit “for a State”, substitute “for the location”.

9 **26 Before subsection 9B(1)**

10 Insert:

11 (1A) This section applies for the purposes of the following provisions:

12 (a) paragraph 9AH(b);

13 (b) subsection 83(1B);

14 (c) subparagraphs 89A(1A)(b)(i) and (ii).

15 **27 Subsection 9B(1)**

16 Omit “Paragraphs 9(2)(ca) and 9A(2)(e)”, substitute “The provisions
17 referred to in subsection (1A)”.

18 **28 Subsection 9B(2)**

19 Omit “it is satisfied as mentioned in paragraph 9(2)(ca) or 9A(2)(e), the
20 designated authority”, substitute “to be satisfied as mentioned in a
21 provision referred to in subsection (1A), the Minister, Secretary or
22 designated authority (as the case requires)”.

23 **29 Paragraph 9B(2)(b)**

24 Omit “States”, substitute “locations”.

25 **30 Section 14 (heading)**

26 Repeal the heading, substitute:

1 **14 Notifying designated authorities if the Secretary suspects**
2 **non-compliance with this Act or the national code etc.**

3 **31 Subparagraph 14(1)(a)(iii)**

4 Omit “and”, substitute “or”.

5 **32 At the end of paragraph 14(1)(a)**

6 Add:

7 (iv) is unlikely to be able to provide education of a
8 satisfactory standard; and

9 **33 At the end of subsection 14(1)**

10 Add:

11 Note: For when a higher education provider has the principal purpose of
12 providing education, see section 5A.

13 **34 Subsection 14(1A)**

14 Repeal the subsection.

15 **35 Before Division 1 of Part 3**

16 Insert:

17 **Division 1A—Guide to this Part**

18 **15A Guide to this Part**

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- A registered provider has obligations under this Part.
 - Division 1 contains general obligations on registered providers. For example, a registered provider must not engage in misleading or deceptive conduct when recruiting or providing courses to overseas students. Other obligations relate to notification, record keeping and financial requirements.
 - Enforcement action (such as imposing conditions, or suspending or cancelling a registration) can be taken under Part 6 in relation to a registered provider who breaches this Part.

1 **36 Paragraph 17(1)(b)**

2 Omit “States”, substitute “locations”.

3 **37 Before section 33**

4 Insert:

5 **Division 1—Guide to this Part**

6 **33A Guide to this Part**

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- The Minister makes a national code under this Part.
 - The purpose of the code is to provide nationally consistent standards and procedures for registered providers in providing courses to overseas students, dealing with agents and other providers, and providing refunds.
 - Designated authorities investigate breaches of the code.
 - Enforcement action (such as imposing conditions, or suspending or cancelling a registration) can be taken under Part 6 in relation to a registered provider who breaches the code.

17 **Division 2—The national code**

18 **38 Subsection 33(1)**

19 Omit “expressed to commence on a day at least 28 days after it is
20 registered in the Federal Register of Legislative Instruments”.

21 **39 Subsection 33(1) (note)**

22 Repeal the note, substitute:

23 Note: The Minister may amend the national code by legislative instrument:
24 see subsection 33(3) of the *Acts Interpretation Act 1901*.

25 **40 Section 34**

26 Omit “registration and”.

27 **41 Section 36**

1 Repeal the section.

2 **42 Paragraphs 38(a), (c) and (f)**

3 Repeal the paragraphs.

4 **43 Section 40 (note)**

5 Omit “section 9”, substitute “section 9AB”.

6 **44 Section 43 (heading)**

7 Repeal the heading, substitute:

8 **43 Designated authorities to investigate breaches of the national**
9 **code**

10 **45 Paragraph 43(1)(a)**

11 Omit “for a State”, substitute “for a course for a location”.

12 **46 Before Division 1 of Part 6**

13 Insert:

14 **Division 1A—Guide to this Part**

15 **83A Guide to this Part**

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- Compliance with this Act, the national code and any conditions on a provider’s registration is enforced under this Part.
- The Minister can take enforcement action (such as imposing conditions, or suspending or cancelling a registration) under Division 1. Such action can be taken in relation to a provider’s registration generally or in relation to a specific course at a specific location. Division 1 also provides for automatic suspension or cancellation of a provider’s registration in certain circumstances.
- The Immigration Minister can give a suspension certificate under Division 2 if a significant number of overseas students or intending overseas students are entering or remaining in

1 Australia for a purpose not contemplated by their visas. A
2 registered provider must not offer courses, or hold itself out as
3 able to provide a course, to overseas students while such a
4 certificate is in force for the provider.

- 5 • Division 3 provides for certain offences, such as failing to
6 identify a registered provider in written material or providing
7 false or misleading information.

8 **47 Subsection 83(1B)**

9 Omit “(having regard to the matters referred to in subsection 9B(2))”.

10 **48 Subsection 83(1B) (note)**

11 Omit “Note”, substitute “Note 1”.

12 **49 At the end of subsection 83(1B)**

13 Add:

14 Note 2: The Minister must have regard to the matters referred to in section 9B
15 in deciding whether a provider is fit and proper to be registered.

16 **50 Subsection 83(1C) (note)**

17 Omit “Note”, substitute “Note 1”.

18 **51 At the end of subsection 83(1C)**

19 Add:

20 Note 2: For when a higher education provider has the principal purpose of
21 providing education, see section 5A.

22 **52 Subsection 83(1D)**

23 Repeal the subsection.

24 **53 Paragraphs 83(3)(a) to (c)**

25 Omit “States”, substitute “locations”.

26 **54 Subsection 83(4)**

27 Omit “State”, substitute “location”.

28 **55 Section 88**

29 Repeal the section.

1 **56 Subsection 89(1)**

2 Repeal the subsection, substitute:

- 3 (1) The registration of a provider for a course for a location is
4 suspended by force of this subsection if the relevant designated
5 authority suspends the provider's approval for that course for that
6 location.

7 Note: Section 95 sets out the effect of suspension.

8 **57 Subsection 89(2)**

9 Omit "State's", substitute "designated authority's".

10 **58 Subsections 89A(1) to (2)**

11 Repeal the subsections, substitute:

12 (1A) This section applies if:

13 (a) one or more designated authorities approve a provider (other
14 than a provider covered by subsection 9B(1)) to provide a
15 course at a location; and

16 (b) either:

17 (i) a designated authority mentioned in paragraph (a) tells
18 the Secretary that the authority is no longer satisfied that
19 the provider is fit and proper to be registered; or

20 (ii) the Secretary is no longer satisfied that the provider is
21 fit and proper to be registered.

22 Note: The designated authority and Secretary must have regard to the
23 matters referred to in section 9B in deciding whether a provider is fit
24 and proper to be registered.

25 *Suspension of registration of all courses at all locations*

26 (1B) The registration of the provider is suspended for all courses for all
27 locations by force of this subsection, unless subsection (1C)
28 applies.

29 Note: Section 95 sets out the effect of suspension.

30 *Suspension when the designated authority which notifies the*
31 *Secretary is a State designated authority*

32 (1C) The registration of the provider is suspended for all courses for all
33 locations in a State, by force of this subsection, if:

- 1 (a) subparagraph (1A)(b)(i) applies and subparagraph (1A)(b)(ii)
2 does not apply; and
3 (b) the designated authority mentioned in
4 subparagraph (1A)(b)(i) is a designated authority referred to
5 in table item 4 of the table in subsection 7A(1) in relation to
6 that particular State.

7 Note: Section 95 sets out the effect of suspension.

8 (1D) If:

- 9 (a) subsection (1C) applies in relation to the registration of a
10 provider; and
11 (b) either the National VET Regulator or TEQSA has approved
12 the provider to provide courses at one or more locations;
13 then the registration of the provider is also suspended for all of
14 those courses at all locations.

15 Note: Section 95 sets out the effect of suspension.

16 *Removal of suspension*

- 17 (2) The Minister may give the provider a notice that sets out the effect
18 of subsection (3) if:
19 (a) the designated authority mentioned in
20 subparagraph (1A)(b)(i) tells the Secretary that the authority
21 is again satisfied that the provider is fit and proper to be
22 registered; or
23 (b) the Secretary is again satisfied that the provider is fit and
24 proper to be registered;
25 as the case requires.

26 **59 Subsection 90(1)**

27 Omit “States”, substitute “locations”.

28 **60 Section 91 (heading)**

29 Repeal the heading, substitute:

30 **91 Automatic cancellation of registration for course for location if**
31 **provider ceases to be approved for that course and**
32 **location**

33 **61 Section 91**

1 Omit “State” (wherever occurring), substitute “location”.

2 **62 Section 92**

3 Omit “States”, substitute “locations”.

4 **63 Before subsection 93(1)**

5 Insert:

6 *Notice requirements before Minister makes decision*

7 **64 Subsection 93(1)**

8 Omit “subsection 14A(2)” (wherever occurring), substitute “subsection
9 9AD(2)”.

10 **65 Before subsection 93(1A)**

11 Insert:

12 *Notice requirements before Secretary makes decision*

13 **66 Subsection 93(1A)**

14 Omit “subsection 14B(1)”, substitute “subsection 9AE(1)”.

15 **67 Before subsection 93(2)**

16 Insert:

17 *Consideration of submissions received and giving notice of*
18 *decision*

19 **68 Subsection 95(1)**

20 Omit “for a State”, substitute “for a location”.

21 **69 Paragraphs 95(1)(a), (b) and (c)**

22 Omit “for the State”, substitute “at the location”.

23 **70 Subsection 95(2)**

24 Omit “State”, substitute “location”.

25 **71 Section 96**

26 Repeal the section.

1 **72 Paragraphs 101(1)(a) to (c)**

2 Omit “in any State”, substitute “at any location”.

3 **73 Subsection 107(1)**

4 Omit “(1)”.

5 **74 Paragraphs 107(1)(a) to (c)**

6 Omit “in a State”, substitute “at a location”.

7 **75 Subsection 107(1)**

8 After “identify”, insert “any one or more of the following”.

9 **76 Paragraph 107(1)(d)**

10 Omit “and”.

11 **77 Paragraph 107(1)(e)**

12 Repeal the paragraph, substitute:

13 (e) the unique identifier allocated to the registered provider
14 under paragraph 14A(4)(d);

15 **78 Before Division 1 of Part 7**

16 Insert:

17 **Division 1A—Guide to this Part**

18 **111A Guide to this Part**

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| <ul style="list-style-type: none">• Registered providers’ compliance with this Act and the national code is monitored under this Part.• The Secretary can give a production notice (requiring a person to give information or documents) or an attendance notice (requiring a person to attend and answer questions) under Division 2.• An authorised employee may apply for a monitoring warrant under Division 3. A monitoring warrant allows the employee to enter and search the premises of a registered provider. If the employee finds evidential material on the premises, the |
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employee may secure the material until a search warrant can be obtained.

- Alternatively, an authorised employee may apply for a search warrant under Division 4. As well as allowing the employee to enter and search the premises of a registered provider, the employee may also seize things under a search warrant.

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79 Before Division 1 of Part 8

Insert:

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Division 1A—Guide to this Part

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169A Guide to this Part

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- This Part contains miscellaneous provisions, such as the following:
 - (a) publication of enforcement action and annual reports;
 - (b) delegation powers;
 - (c) provisions relating to paying amounts like fees, penalties and charges;
 - (d) giving information to relevant bodies;
 - (e) review of decisions.

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80 Paragraphs 176(1)(a) to (ab)

Repeal the paragraphs, substitute:

- (aa) a decision that an approved provider should not be registered under section 9AB; or
- (ab) a decision that an approved provider be registered for a specified period under section 9AC, or a decision under that section to vary that specified period; or
- (ac) a decision to impose a condition on a provider's registration under section 9AD or 9AE; or

- 1 (ad) a decision to vary a condition under section 9AF; or
2 (ae) a decision that a course at a location should not be added to a
3 provider's registration under section 9AG; or

4 **81 Paragraph 176(1)(b)**

5 Omit "or 88".
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2 **Part 3—Contingent amendments**

3 **Division 1—Amendment that will not commence if the**
4 **Registration Charges Acts commence first**

5 *Education Services for Overseas Students Act 2000*

6 **82 Section 12 (note 1)**

7 Repeal the note, substitute:

8 Note 1: A provider cannot be registered under section 9AB until it has paid the
9 initial registration charge: see paragraph 9AB(1)(c).

10 **Division 2—Amendments commencing immediately after**
11 **the later of the commencement of Part 2 of this**
12 **Schedule and the Registration Charges Acts**

13 *Education Services for Overseas Students Act 2000*

14 **83 Paragraph 9AB(1)(c)**

15 Repeal the paragraph, substitute:

16 (c) the provider has paid the first entry to market charge (unless
17 the provider is exempt from the requirement to do so under
18 regulations made under subsection 6(4) of the *Education*
19 *Services for Overseas Students (Registration Charges) Act*
20 *1997*); and

21 **84 Paragraph 9AB(1)(g)**

22 Omit “annual registration charge or”, substitute “annual registration
23 charge, a second or third entry to market charge or a”.

24 **85 Subsection 12(1) (note 1)**

25 Repeal the note, substitute:

26 Note 1: A provider must pay 3 entry to market charges during the first 2 years
27 that the provider is first registered. A provider cannot get registered
28 under section 9AB until it has paid the first entry to market charge: see
29 paragraph 9AB(1)(c).

1 **86 Paragraph 12(2)(a)**

2 Omit “section 9”, substitute “section 9AB”.

3 *Education Services for Overseas Students Amendment*
4 *(Registration Charges Consequentials) Act 2011*

5 **87 Subitem 17(4) of Schedule 1**

6 Omit “for a State under section 9”, substitute “under section 9AB”.

7 *Education Services for Overseas Students (Registration*
8 *Charges) Amendment Act 2011*

9 **88 Subitem 14(2) of Schedule 1**

10 Omit “for a State under section 9”, substitute “under section 9AA”.

11 **Division 3—Repeal of provisions if this Act commences**
12 **before item 7 of Schedule 1 to the Registration**
13 **Charges Acts**

14 *Education Services for Overseas Students Amendment*
15 *(Registration Charges Consequentials) Act 2011*

16 **89 Item 7 of Schedule 1**

17 Repeal the item.

18 **90 Subitems 17(1) and (2) of Schedule 1**

19 Repeal the subitems.

20 **91 Subitem 17(4) of Schedule 1**

21 Omit “amendments made by items 7 and”, substitute “amendment made
22 by item”.

1 **Division 4—Repeal of provisions if this Act commences**
2 **before other items in the Registration Charges**
3 **Acts**

4 *Education Services for Overseas Students Amendment*
5 *(Registration Charges Consequential) Act 2011*

6 **92 Items 5 and 6 of Schedule 1**

7 Repeal the items.

8 **93 Items 8 and 9 of Schedule 1**

9 Repeal the items.

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Part 4—Application, saving and transitional provisions

3

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Division 1—Definition of ESOS Act

5

94 Definition of *ESOS Act*

6

In this Part:

7

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

8

9

Division 2—Application and transitional provisions for national registration

10

11

95 Application—recommendations of designated authorities

12

Recommendations made after commencement

13

- (1) The amendments made by Parts 1 to 3 of this Schedule apply in relation to any recommendation, made by a designated authority after this item commences, that an approved provider be registered under the ESOS Act to provide a course at a location to overseas students.

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Recommendations made before commencement

18

- (2) The amendments made by Parts 1 to 3 of this Schedule also apply in relation to any recommendation made by a designated authority that an approved provider be registered under the ESOS Act to provide a course for a State to overseas students if:

19

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- (a) the recommendation is made before this item commences;
and

23

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- (b) immediately before this item commences, the Secretary has not yet decided whether to register the provider for the course for the State under section 9 of that Act.

25

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- (3) If, after this item commences, the Secretary decides:

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- (a) under section 9AB of the ESOS Act (as inserted by this Schedule) to register a provider referred to in subitem (2) of this item; or

Schedule 2 National registration

Part 4 Application, saving and transitional provisions

1 (b) under section 9AG of that Act (as inserted by this Schedule)
2 to add a course to the registration of a provider referred to in
3 subitem (2) of this item;

4 the Secretary must determine the location or locations at which the
5 provider is to be registered to provide the course.

6 *Choosing a registration to add to*

7 (4) If:

8 (a) after this item commences, the Secretary decides to add a
9 course at a location to a provider's registration under
10 section 9AG of the ESOS Act (as inserted by this Schedule);
11 and

12 (b) the provider already has 2 or more other separate
13 registrations to provide courses to overseas students;

14 the Secretary may choose which registration to add the new course to.

15 (5) The Secretary must use a risk management approach when considering
16 which registration to add a new course to.

17 *Review of decisions*

18 (6) The ESOS Act applies as if section 176 of that Act included a reference
19 to:

20 (a) a decision under subitem (3) of this item to determine the
21 location or locations at which the provider is to be registered
22 to provide the course; and

23 (b) a decision under subitem (4) of this item to choose which
24 registration to add a new course to.

25 Note: Section 176 of the ESOS Act allows applications to be made to the Administrative
26 Appeals Tribunal for review of decisions.

27 **96 Transitional—requesting amalgamation of registrations**

28 (1) This item applies if, at the time this item commences, a provider has
29 more than one registration under the ESOS Act.

30 *Request to amalgamate registrations*

31 (2) The provider may, in the approved form, request the Secretary to
32 amalgamate all of the provider's registrations into one registration.

1 (3) The Secretary may approve a form for the purposes of subitem (2).

2 *Secretary may amalgamate registrations or refuse request*

3 (4) If a provider makes a request under subitem (2), the Secretary may:

4 (a) amalgamate all of the provider's registrations into one
5 registration; or

6 (b) refuse to amalgamate all of the provider's registrations into
7 one registration.

8 (5) The Secretary may choose which of the provider's registrations is to
9 become the provider's single registration under the ESOS Act.

10 (6) The Secretary must use a risk management approach when considering
11 which registration to choose to become the provider's single
12 registration.

13 (7) The Secretary may remove a provider's registration from the Register if
14 the Secretary amalgamates that registration into another registration
15 under this item.

16 *Review of decisions*

17 (8) The ESOS Act applies as if section 176 of that Act included a reference
18 to:

19 (a) a decision under subitem (4) of this item to refuse to
20 amalgamate all of the provider's registrations into one
21 registration; and

22 (b) a decision under subitem (5) of this item to choose which
23 registration is to become the provider's single registration.

24 Note: Section 176 of the ESOS Act allows applications to be made to the Administrative
25 Appeals Tribunal for review of decisions.

26 **Division 3—Other application, saving and transitional**
27 **provisions**

28 **97 Transitional—old registrations**

29 A provider who is registered under section 9 of the ESOS Act
30 immediately before this item commences is taken, after that time, to be
31 registered under section 9AB of that Act.

1 **98 Saving—cancellation or suspension of registration of**
2 **courses for States**

3 Despite the amendment of paragraphs 9B(2)(b) and 17(1)(b) of the
4 ESOS Act by this Schedule, those paragraphs continue to operate, in
5 relation to a cancellation or suspension that occurs before this item
6 commences, as if those amendments had not been made.

7 **99 Transitional—locations already in Register**

- 8 (1) This item applies if:
9 (a) immediately before this item commences, a provider is
10 registered under the ESOS Act to provide a course for a
11 State; and
12 (b) the Register also includes a reference to one or more
13 locations in that State at which the provider provides that
14 course.
- 15 (2) For the purposes of the ESOS Act as amended by this Schedule, the
16 provider is taken, after this item commences, to be registered to provide
17 that course at that location or those locations.
- 18 (3) For the purposes of the ESOS Act as amended by this Schedule, if:
19 (a) immediately before this item commences, a provider's
20 registration for a course for a State is suspended; and
21 (b) under subitem (2), the provider is taken to be registered to
22 provide the course at a location or at locations in that State;
23 the provider's registration is taken, after this item commences, to be
24 suspended for the course for that location or those locations.
- 25 (4) For the purposes of the ESOS Act as amended by this Schedule, if:
26 (a) immediately before this item commences, a provider's
27 registration for all courses for all States is suspended; and
28 (b) under subitem (2), the provider is taken to be registered to
29 provide a course at a location or locations;
30 the provider's registration is taken, after this item commences, to be
31 suspended for all courses for all locations.

32 **100 Transitional—approved form and certificates**

1 *Approved form*

- 2 (1) A form that has been approved for a State for the purposes of paragraph
3 9(2)(c) of the ESOS Act immediately before this item commences is
4 taken, after that time, to have been approved for the purposes of
5 section 9AH of that Act (as inserted by this Schedule).

6 *Certificates*

- 7 (2) If:
8 (a) a designated authority gives the Secretary a certificate under
9 paragraph 9(2)(c) of the ESOS Act before this item
10 commences; and
11 (b) immediately before this item commences, the Secretary has
12 not yet decided whether to register the provider to whom the
13 certificate relates;

14 the certificate is taken, after this item commences, to have been given
15 under section 9AH of that Act (as inserted by this Schedule).

- 16 (3) If a designated authority referred to in subitem (2) tells the Secretary in
17 writing, for the purposes of paragraph 9(2)(ca) of the ESOS Act, that
18 the provider has satisfied the designated authority that the provider is fit
19 and proper to be registered, the designated authority is taken to have
20 included such a statement in a certificate for the purposes of paragraph
21 9AH(b) of that Act (as inserted by this Schedule).

22 **101 Application—period of registration**

23 Subsection 9AC(4) of the ESOS Act (as inserted by this Schedule)
24 applies to any registration of a provider (whether the provider is
25 registered before or after this item commences).

26 **102 Application—powers in relation to conditions**

27 Sections 9AD, 9AE and 9AF of the ESOS Act (as inserted by this
28 Schedule) apply in relation to any condition imposed on a provider's
29 registration (whether before or after this item commences).

30 **103 Saving—the Register**

31 The repeal of section 10 of the ESOS Act by this Schedule does not
32 affect the continuity of the Register.

33 **104 Saving—allocated numbers**

1 If:

2 (a) before this item commences, a number has been allocated to
3 a provider under paragraph 10(4)(c) of the ESOS Act; and

4 (b) immediately before this item commences, the provider is
5 registered to provide a course for a State;

6 that number is taken, after this item commences, to be a unique
7 identifier that is allocated under paragraph 14A(4)(d) of that Act (as
8 inserted by this Schedule).

9 **105 Transitional—regulations**

10 Regulations that are in force under paragraph 10(4)(d) of the ESOS Act
11 immediately before this item commences are taken, after that time, to
12 have been made for the purposes of paragraph 14A(4)(i) of that Act (as
13 inserted by this Schedule).

14 **106 Transitional—conditions**

15 (1) A condition that is in force under section 14A of the ESOS Act
16 immediately before this item commences is taken, after that time, to
17 have been imposed under section 9AD of that Act (as inserted by this
18 Schedule).

19 (2) A condition that is in force under section 14B of the ESOS Act
20 immediately before this item commences is taken, after that time, to
21 have been imposed under section 9AE of that Act (as inserted by this
22 Schedule).

23 **107 Application—amendments to section 89**

24 The repeal of subsection 89(1) of the ESOS Act by this Schedule does
25 not affect the continuity of any suspension of the registration of a
26 provider that is in force under that subsection immediately before this
27 item commences.

28 **108 Application—amendments to section 89A**

29 (1) The amendments to section 89A of the ESOS Act made by this
30 Schedule apply in relation to any registration of a provider (whether the
31 provider is registered before or after this item commences).

32 (2) The repeal of subsections 89A(1) to (1B) of the ESOS Act by this
33 Schedule does not affect the continuity of any suspension of the

- 1 registration of a provider that is in force under any of those subsections
2 immediately before this item commences.
- 3 (3) The repeal of subsection 89A(2) of the ESOS Act by this Schedule does
4 not affect the continuity of any notice:
- 5 (a) that is given under that subsection before this item
6 commences; and
- 7 (b) in relation to which, immediately before this item
8 commences, the provider has not yet paid the associated
9 reinstatement fee.
10

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Schedule 3—Pre-paid fees

2

Part 1—Amendments

3

Division 1—Main amendments

4

Education Services for Overseas Students Act 2000

5

1 After paragraph 4B(2)(b)

6

7 Insert:

7

8 (c) paragraph 31(a);

8

2 Section 5

9

10 Insert:

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11 *pre-paid fees* means tuition fees received by a registered provider
12 in respect of an overseas student or intending overseas student, in
13 relation to a study period for a course to be provided by the
14 provider, before the student begins the study period.

11

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3 Section 5

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16 Insert:

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17 *study period* for a course provided by a provider means the study
18 period for the course set out in a written agreement made by the
19 provider under section 22.

17

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19

4 After section 21A

20

21 Insert:

21

22 Requirement to provide for study periods

22

23 *Written agreements to provide for study periods*

23

24 (1) A registered provider for a course for a location must enter into a
25 written agreement with each overseas student or intending overseas
26 student setting out:

24

25

26

27 (a) the length of each study period for the course for the location;
28 and

27

28

1 (b) the tuition fees for each study period for the course for the
2 location.

3 (2) The agreement may be included in the same document as the
4 written agreement made under section 47B (written agreement
5 about refund).

6 *Requirements for study periods*

7 (3) A study period must be no more than 24 weeks long.

8 (4) A course may have only one study period (subject to
9 subsection (3)).

10 (5) A study period for a course may (subject to subsection (3)) be
11 longer than the course.

12 **5 After Division 1 of Part 3**

13 Insert:

14 **Division 2—Pre-paid fees**

15 **27 Pre-paid fees**

16 *Limit on amount of initial pre-paid fees that may be received*

17 (1) A registered provider must not receive, in respect of an overseas
18 student or intending overseas student, more than 50% of the
19 student's total tuition fees for a course before the student has begun
20 the course.

21 (2) Subsection (1) does not apply if the course has only one study
22 period.

23 *Limit on when pre-paid fees may be received once the course*
24 *begins*

25 (3) A registered provider must not receive, in respect of an overseas
26 student or intending overseas student, tuition fees for a course
27 more than 2 weeks before the beginning of a study period for the
28 course.

1 Note: For the definition of *business day*, see section 2B of the *Acts*
2 *Interpretation Act 1901*.

3 *Requirement in relation to withdrawing money from account*

- 4 (3) The provider must ensure that, at all times, there is a sufficient
5 amount (the *protected amount*) standing to the credit of the
6 account to repay all tuition fees to every overseas student or
7 intending overseas student (a *relevant student*):
8 (a) in respect of whom tuition fees have been paid to the
9 provider; and
10 (b) who has not yet begun the course that the provider is to
11 provide to the student.
- 12 (4) An amount may be withdrawn from the account, so as to reduce
13 the balance of the account below the protected amount, only if:
14 (a) the amount is withdrawn to pay a refund under section 46D,
15 47D or 47E to, or in relation to, a relevant student; or
16 (b) both of the following apply:
17 (i) the provider arranges, under section 46D, for a relevant
18 student to be offered a place in an alternative course at
19 the provider's expense;
20 (ii) the amount is withdrawn to pay the alternative provider
21 in relation to the relevant student; or
22 (c) the amount is withdrawn to pay the TPS Director under
23 section 50C in relation to the relevant student.
- 24 Note 1: Tuition fees of a relevant student cease to be part of the protected
25 amount (and may therefore be withdrawn from the account) once the
26 student begins the course that the provider is to provide to the student:
27 see subsection (3).
- 28 Note 2: There are no limits on withdrawals from the account as long as the
29 balance of the account remains above the protected amount.
- 30 (5) An amount withdrawn in accordance with subsection (4) must not
31 be more than the amount of the tuition fees received by the
32 provider in respect of the relevant student before the student begins
33 the course.

34 *Account money not available for payment of debts etc.*

- 35 (6) To avoid doubt, the protected amount:

- 1 (a) is not available for the payment of a debt of any creditor of
2 the provider, other than as referred to in subsection (4); and
3 (b) is not liable to be attached or taken in execution under the
4 order or process of a court at the instance of any creditor of
5 the provider, other than as referred to in subsection (4).

6 **30 Regulations**

7 The regulations may provide additional requirements in relation to:

- 8 (a) tuition fees for a course received by a provider, in respect of
9 an overseas student or intending overseas student, before the
10 student has begun the course; or
11 (b) accounts maintained under this Division.

12 Note: Providers covered by section 31 are not required to comply with
13 regulations made under this section.

14 **31 Exemption from requirement**

15 The following kinds of provider are exempt from the requirements
16 in sections 28 and 29 and in regulations made under section 30:

- 17 (a) a provider that is administered by a State education authority;
18 (b) any other provider that is entitled to receive funds under a
19 law of the Commonwealth for recurrent expenditure for the
20 provision of education or training, other than one excluded
21 by the regulations from the scope of this paragraph;
22 (c) any other provider specified in the regulations.

23 To avoid doubt, any private corporate body established in
24 connection with a provider covered by paragraph (a) or (b) of this
25 section is not itself, by virtue of that connection alone, a provider
26 covered by that paragraph.

27 **32 Offence**

- 28 (1) A person commits an offence if:
29 (a) either:
30 (i) the person is a registered provider; or
31 (ii) if the registered provider is an unincorporated body—
32 the person is the principal executive officer of the
33 provider; and
34 (b) the person engages in conduct; and
-

1 (c) the conduct contravenes a requirement of section 28 or 29;
2 and

3 (d) the provider is not covered by section 31.

4 Penalty: 60 penalty units.

5 (2) To avoid doubt, subsection (1) does not apply if a person
6 contravenes a requirement of regulations made under section 30.

7 (3) Subsection (1) is an offence of strict liability.

8 Note: For strict liability, see section 6.1 of the *Criminal Code*.

9 **Division 2—Consequential amendment**

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

11 **6 Section 15A (after the paragraph relating to Division 1)**

12 Insert:

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- | |
|---|
| <ul style="list-style-type: none">• Division 2 sets out requirements for providers who receive tuition fees from a student before the student has begun to study with the provider. The provider must keep those fees in a separate account and generally cannot access the fees until the student begins the first study period with the provider. |
|---|

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2 **Part 2—Application provision**

3 **7 Application**

4 The amendments made by this Schedule apply in relation to any tuition
5 fees for a course that are received, after Division 1 of Part 1 of this
6 Schedule commences, by a registered provider, in respect of an overseas
7 student or intending overseas student, before the student has begun the
8 course.
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Schedule 4—Tuition fees

Part 1—Amendments

Education Services for Overseas Students Act 2000

1 Section 5 (definition of *course money*)

Repeal the definition.

2 Section 5 (subparagraph (b)(ii) of the definition of *monitoring purpose*)

Omit “course money”, substitute “pre-paid fees”.

3 Section 5

Insert:

tuition fees has the meaning given by section 7.

4 Section 7

Repeal the section, substitute:

7 Meaning of *tuition fees*

In this Act:

tuition fees:

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

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

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

that are directly related to the provision of a course that the provider is providing, or offering to provide, to the student; and

(b) without limiting paragraph (a), includes any classes of fees prescribed by the regulations for the purposes of this paragraph; and

Schedule 4 Tuition fees

Part 1 Amendments

1 (c) without limiting paragraph (a), excludes any classes of fees
2 prescribed by the regulations for the purposes of this
3 paragraph.

4 **5 Subsection 18(1)**

5 Omit “course money” (wherever occurring), substitute “tuition fees”.

6 **6 Subsection 18(1A)**

7 Omit “course money”, substitute “tuition fees”.

8 **7 Subsection 18(2) (not including the note)**

9 Repeal the subsection.

10 **8 Subsection 21(1)**

11 Omit “course money”, substitute “tuition fees”.

12 **9 Paragraph 38(g)**

13 Omit “course money”, substitute “pre-paid fees”.

14 **10 Paragraph 83(1A)(b)**

15 Omit “course money”, substitute “pre-paid fees”.

16

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2 **Part 2—Application provision**

3 **11 Application**

4 The amendments made by this Schedule apply in relation to any tuition
5 fees for a course that are received by a registered provider after this
6 item commences.
7

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Schedule 5—Former accepted students

2

Part 1—Amendments

3

Education Services for Overseas Students Act 2000

4

1 After subsection 19(2)

5

6 Insert:

6

7 (2A) A registered provider must give particulars of a breach by a student
8 under subsection (2) even if the student has ceased to be an
9 accepted student of the provider.

7

8

9

2 After subsection 20(1)

10

11 Insert:

11

12 (1A) A registered provider must send a notice to a student under
13 subsection (1) even if the student has ceased to be an accepted
14 student of the provider.

12

13

14

3 Paragraph 97(2)(b)

15

16 After “accepted students”, insert “and former accepted students”.

16

4 Subsection 109(1)

17

18 After “accepted students”, insert “and former accepted students”.

18

5 Subsection 175(2)

19

20 Omit “accepted student’s student visa to the registered provider for the
21 accepted student”, substitute “accepted student’s, or former accepted
22 student’s, student visa to the registered provider for the student”.

20

21

22

Ombudsman Act 1976

23

6 Subsection 19ZJ(3)

24

25 Omit “or an accepted student,”, substitute “an accepted student, or a
26 former accepted student,”.

25

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1 **7 Subsection 19ZK(5) (definition of *statutory complaint***
2 ***handler*)**

3 Omit “or an accepted student, “, substitute “an accepted student, or a
4 former accepted student,”.
5

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2 **Part 2—Application provision**

3 **8 Application**

- 4 (1) The amendments to the *Education Services for Overseas Students Act*
5 *2000* that are made by this Schedule apply in relation to:
- 6 (a) any breach of a student visa that occurs after this item
7 commences; and
- 8 (b) any information that relates to an accepted student or former
9 accepted student (whether the information was obtained
10 before or after this item commences).
- 11 (2) The amendments to the *Ombudsman Act 1976* that are made by this
12 Schedule apply in relation to any complaint made, or investigation
13 commenced, after commencement.
14

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2 **Schedule 6—Record keeping requirements**

3 **Part 1—Amendments**

4 *Education Services for Overseas Students Act 2000*

5 **1 Section 5**

6 Insert:

7 *approved unit of study* has the meaning given by section 21.

8 **2 Before subsection 21(1)**

9 Insert:

10 *Records of students' details*

11 **3 Subsections 21(2) and (3)**

12 Repeal the subsections, substitute:

13 (2) The records must consist of the following details for each accepted
14 student:

- 15 (a) the student's current residential address;
16 (b) the student's mobile phone number (if any);
17 (c) the student's email address (if any);
18 (d) any other details prescribed by the regulations.

19 (2A) A registered provider must have a procedure to ensure that, at least
20 every 6 months, while the student remains an accepted student of
21 the provider:

- 22 (a) the provider confirms, in writing, the details referred to in
23 subsection (2) with the student; and
24 (b) the records are updated accordingly.

25 *Records of assessment*

26 (2B) If:

- 27 (a) an accepted student of a registered provider completes an
28 approved unit of study for a course; and
29 (b) the student's progress in that unit is assessed;
-

Schedule 6 Record keeping requirements
Part 1 Amendments

1 the provider must record the outcome of the student's assessment
2 for the unit.

- 3 (2C) A record under subsection (2B) must be:
4 (a) kept in accordance with any requirements prescribed by the
5 regulations; and
6 (b) kept up-to-date.

7 *Retention of records*

- 8 (3) The provider must retain records kept under this section for at least
9 2 years after the person ceases to be an accepted student. However,
10 the records do not need to be kept up-to-date after the cessation.

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

13 **4 Before subsection 21(5)**

14 Insert:

15 *Offence*

16 **5 At the end of section 21**

17 Add:

18 *Meaning of approved unit of study*

- 19 (7) In this Act:

20 *approved unit of study* for a course means a unit of study (however
21 described) that has been approved for the course by a designated
22 authority.
23

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Part 2—Application and transitional provision

3

6 Application

4

(1) The amendments made by this Schedule (including the amendments made in relation to student details) apply in relation to any approved unit of study that an accepted student begins after this item commences.

5

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7

(2) The amendments made by this Schedule (including the amendments made in relation to student details) also apply in relation to an approved unit of study that:

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10

(a) an accepted student begins before this item commences; but

11

(b) is not completed by the time this item commences.

12

However, the amendments apply only in relation to the part of the unit of study that occurs after this item commences.

13

14

7 Transitional—regulations

15

Regulations that are in force under subsection 21(2) of the *Education Services for Overseas Students Act 2000* immediately before this item commences are taken, after that time, to have been made for the purposes of paragraph 21(2)(d) of that Act (as inserted by this Schedule).

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Schedule 7 Definition of designated authority

Part 1 Amendment that will not commence if the TEQSA Consequential Act commences first

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2 **Schedule 7—Definition of designated**
3 **authority**

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4

4 **Part 1—Amendment that will not commence if the**
5 **TEQSA Consequential Act commences first**

5

6

6 *Education Services for Overseas Students Act 2000*

7

7 **1 Section 5 (after paragraph (a) of the definition of**
8 ***designated authority*)**

8

9

Insert:

10

(aa) to the extent that the provider:

11

(i) is a registered training organisation (within the meaning
12 of that Act), but not an NVR registered training
13 organisation; and

13

14

(ii) is seeking to provide courses to overseas students for a
15 non-referring State (within the meaning of that Act);

15

16

the National VET Regulator; or

17

1

2 **Part 2—Amendment commencing immediately after**
3 **the later of Royal Assent and the**
4 **commencement of the TEQSA**
5 **Consequential Act**

6 *Education Services for Overseas Students Act 2000*

7 **2 Subsection 7A(1) (after table item 2)**

8 Insert:

9

- 2A a provider that: the National VET Regulator
- (a) is a registered training organisation
(within the meaning of that Act), but
not an NVR registered training
organisation; and
 - (b) is seeking to provide courses to
overseas students for a non-referring
State (within the meaning of that Act)

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**Part 3—Amendment commencing immediately after
the commencement of Division 2 of this Part**

3

4

Education Services for Overseas Students Act 2000

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**3 Subsection 7A(1) (paragraph (b) of cell at table item 2A,
column headed “For a provider, to the extent that it
is:”)**

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Omit “courses to overseas students for”, substitute “courses to overseas students at locations in”.

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Schedule 8—Miscellaneous

Part 1—Main amendments

Education Services for Overseas Students Act 2000

1 Section 9A

Repeal the section.

2 Section 40 (note)

Omit “or re-registration (see section 9A)”.

3 Sections 92A and 92B

Repeal the sections.

4 Section 110

Repeal the section.

5 At the end of Part 6

Add:

Division 4—Enforceable undertakings

110A Acceptance of undertakings

- (1) The Secretary may accept any of the following undertakings:
- (a) a written undertaking given by a registered provider that the provider will take specified action in order for the provider to comply with a provision of this Act, the national code or a condition of the provider’s registration;
 - (b) a written undertaking given by a registered provider that the provider will refrain from taking specified action in order for the provider to comply with a provision of this Act, the national code or a condition of the provider’s registration;
 - (c) a written undertaking given by a registered provider that the provider will take specified action directed towards ensuring that, in the future, the provider does not (or is unlikely to)

- 1 contravene a provision of this Act, the national code or a
2 condition of the provider's registration.
- 3 (2) The provider may withdraw or vary the undertaking at any time,
4 but only with the written consent of the Secretary.
- 5 (3) The consent of the Secretary is not a legislative instrument.
- 6 (4) The Secretary may, by written notice given to the provider, cancel
7 the undertaking.

8 **110B Enforcement of undertakings**

- 9 (1) The Secretary may apply to the Federal Court of Australia, or the
10 Federal Magistrates Court, for an order under subsection (2) if:
11 (a) a registered provider has given an undertaking under
12 section 110A; and
13 (b) the undertaking has not been withdrawn or cancelled; and
14 (c) the Secretary considers that the provider has breached the
15 undertaking.
- 16 (2) If the Court is satisfied that the provider has breached the
17 undertaking, the Court may make any or all of the following
18 orders:
19 (a) an order directing the provider to comply with the
20 undertaking;
21 (b) an order directing the provider to pay to the Commonwealth
22 an amount up to the amount of any financial benefit that the
23 provider has obtained directly or indirectly and that is
24 reasonably attributable to the breach;
25 (c) any order that the Court considers appropriate directing the
26 provider to compensate any person who has suffered loss or
27 damage as a result of the breach;
28 (d) any other order that the Court considers appropriate.

29 **6 At the end of subsection 113(4)**

- 30 Add:
31 ; or (e) an officer or employee of an administrator or liquidator of a
32 registered provider or former registered provider.

33 **7 At the end of subsection 116(3)**

1 Add:
2 ; or (e) an officer or employee of an administrator or liquidator of a
3 registered provider or former registered provider.

4 **8 After subsection 170(2)**

5 Insert:
6 (2AA) Without limiting subsection (2), the Secretary may, by signed
7 writing, delegate all or any of the Secretary's power under
8 Subdivision A of Division 2 of Part 7 (production notices) to a
9 person in the Department who holds, or is acting in, an Executive
10 Level 1 or 2, or equivalent, position.

11 **9 Section 176A**

12 Repeal the section.
13

1

2 **Part 2—Consequential amendment**

3 *Education Services for Overseas Students Act 2000*

4 **10 At the end of section 83A**

5 Add:

6

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- The Secretary may accept a written undertaking under Division 4 relating to complying with a provision of this Act, the national code or a provision of a provider's registration. The Secretary may apply to a court to enforce the undertaking.