Education Services for Overseas Students Amendment (Streamlining Regulation) Bill 2015

No. , 2015

(Education and Training)

A Bill for an Act to amend the law relating to education services for overseas students, and for other purposes
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A Bill for an Act to amend the law relating to education services for overseas students, and for other purposes

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the Education Services for Overseas Students Amendment (Streamlining Regulation) Act 2015.

2 Commencement

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

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provisions</td>
<td>Commencement</td>
<td>Date/Details</td>
</tr>
<tr>
<td>1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table</td>
<td>The day this Act receives the Royal Assent.</td>
<td></td>
</tr>
<tr>
<td>2. Schedules 1 to 5</td>
<td>A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.</td>
<td></td>
</tr>
</tbody>
</table>

Note: This table relates only to the provisions of this Act as originally enacted.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

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(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
Schedule 1—Streamlining registration

Education Services for Overseas Students Act 2000

1 Paragraph 4B(1)(b)

Repeal the paragraph, substitute:

(b) a reference in a provision of this Act to the designated State authority included a reference to the Territories Minister.

2 Paragraph 4B(2)(a)

Omit “designated authority”, substitute “designated State authority”.

3 Paragraph 4B(2)(b)

Repeal the paragraph, substitute:

(b) paragraph 6D(1)(a);

4 Subsection 4B(3)

Omit “designated authority”, substitute “designated State authority”.

5 Section 5 (definition of approved provider)

Repeal the definition.

6 Section 5

Insert:

approved school provider means a school provider approved (however described) by a designated State authority to provide courses to:

(a) if the school provider is located in Tasmania or the Australian Capital Territory—students for that State or Territory; or

(b) otherwise—overseas students for the State (other than Tasmania or the Australian Capital Territory).

7 Section 5 (definition of approved unit of study)

Repeal the definition.
8  Section 5 (definition of authorised employee)
   Repeal the definition.

9  Section 5
   Insert:

   authorised officer of the ESOS agency for a registered provider
   has the meaning given by section 6A.

10 Section 5 (definition of condition)
   Omit “section 9AD or 9AE”, substitute “section 10B”.

11 Section 5 (definition of designated authority)
   Repeal the definition.

12 Section 5
   Insert:

   designated State authority for a provider or registered provider to
   the extent the provider is an approved school provider means the
   person responsible under the law of a State for approving (however
   described) school providers to provide courses to:
   (a) if the school provider is located in Tasmania or the
       Australian Capital Territory—students for that State or
       Territory; or
   (b) otherwise—overseas students for the State (other than
       Tasmania or the Australian Capital Territory).

   DSA assessment certificate has the meaning given by
   subsection 6B(1).

   DSA recommendation certificate has the meaning given by
   subsection 6B(2).

   ESOS agency for a provider or registered provider has the meaning
   given by section 6C.

   exempt provider has the meaning given by section 6D.
Streamlining registration

Schedule 1

13 Section 5 (definition of first entry to market charge)

Omit “entry to market charge referred to in table item 1 of the table”, substitute “first entry to market charge referred to”.

14 Section 5

Insert:

Foundation Program means a non-award course provided to overseas students for the purpose of enabling them to seek entry into a course provided by a registered higher education provider or registered VET provider.

15 Section 5 (definition of higher education provider)

Repeal the definition.

16 Section 5

Insert:

meets the registration requirements has the meaning giving by section 11.

17 Section 5 (paragraph (a) of the definition of monitoring purpose)

Repeal the paragraph, substitute:

(a) whether a registered provider is complying, or has complied, with:
   (i) this Act; or
   (ii) the national code; or
   (iii) if the ELICOS Standards or Foundation Program Standards apply in relation to the provider—those Standards; or

18 Section 5

Insert:

non-referring State has the same meaning as in the NVETR Act.
Schedule 1  Streamlining registration

1  NVETR Act means the National Vocational Education and Training Regulator Act 2011.

2  NVR registered training organisation has the same meaning as in the NVETR Act.

3  preparatory course provider means a person or entity that provides:

4    (a) an English Language Intensive Course for Overseas Students;

5    or

6    (b) a Foundation Program.

19 Section 5 (definition of provider)

19  Repeal the definition, substitute:

20  provider has the meaning given by section 6E.

20  Section 5

21  Insert:

22  registered higher education provider has the same meaning as in the TEQSA Act.

21  Section 5 (definition of registered provider)

23  Repeal the definition, substitute:

24  registered provider for a course for a location means a provider that is registered to provide the course at the location.

22  Section 5

25  Insert:

26  registered training organisation has the same meaning as in the NVETR Act.

27  registered VET provider means:

28    (a) an NVR registered training organisation; or

28    (b) a registered training organisation (other than an NVR registered training organisation) that provides, or seeks to
provide, courses to overseas students at locations in a non-referring State.

related person of a provider has the meaning given by subsection 7A(3).

relevant individual of a registered provider means:

(a) an officer or employee of the provider; or
(b) a consultant to the provider; or
(c) if the provider is a partnership—a partner in the partnership; or
(d) if the provider is a sole trader—the provider; or
(e) an officer or employee of an administrator or liquidator of the provider or a former registered provider.

23 Section 5 (definition of risk assessment)

Repeal the definition.

24 Section 5

Insert:

school provider means a person or entity that provides courses of education at a level that, under section 15 of the Australian Education Act 2013, constitutes primary education, or secondary education, for the provider.

25 Section 5 (definition of second or third entry to market charge)

Repeal the definition.

26 Section 5

Insert:

second entry to market charge means the second entry to market charge referred to in subsection 6(4) of the Education Services for Overseas Students (Registration Charges) Act 1997.
third entry to market charge means the third entry to market charge referred to in subsection 6(6) of the Education Services for Overseas Students (Registration Charges) Act 1997.

27 Section 5 (definition of TPS levy)

Repeal the definition, substitute:

TPS levy means the TPS levy imposed under the Education Services for Overseas Students (TPS Levies) Act 2012.

28 Section 5A (heading)

Repeal the heading, substitute:

5A When registered higher education providers are taken to have the principal purpose of providing education

29 Section 5A

Omit “subparagraphs 9AB(1)(f)(ii) and 14(1)(a)(ii) and paragraphs 9AH(c) and 83(1C)(a), a higher education provider”, substitute “paragraphs 11(d) and 83(1C)(a), a registered higher education provider”.

30 After section 6

Insert:

6A Meaning of authorised officer

(1) The following table sets out who is an authorised officer of the ESOS agency for a registered provider:

<table>
<thead>
<tr>
<th>Authorised officer</th>
<th>If the ESOS agency for a registered provider is:</th>
<th>a person is an authorised officer of the agency if:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Item 1</td>
<td>TEQSA</td>
<td>the person is: (a) a Commissioner (within the meaning of the TEQSA Act), or (b) the Chief Executive Officer of TEQSA;</td>
</tr>
</tbody>
</table>

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Streamlining registration  Schedule 1

Authorised officer

<table>
<thead>
<tr>
<th>Item</th>
<th>If the ESOS agency for a registered provider is:</th>
<th>a person is an authorised officer of the agency if:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>or (c) an authorised officer (within the meaning of that Act)</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>the National VET Regulator</td>
<td>the person is: (a) a Commissioner (within the meaning of the NVETR Act); or (b) an authorised officer (within the meaning of that Act)</td>
</tr>
<tr>
<td>3</td>
<td>the Secretary</td>
<td>the person is appointed under subsection (2)</td>
</tr>
<tr>
<td>4</td>
<td>an entity that is not covered by another item of this table</td>
<td>the person is appointed under subsection (3)</td>
</tr>
</tbody>
</table>

(2) If the ESOS agency for a registered provider is the Secretary, the agency may, in writing, appoint a person as an authorised officer of the agency if:

(a) the person is an APS employee in the Department; and
(b) the person holds or performs the duties of an APS position or higher, or an equivalent position; and
(c) the agency is satisfied that the person has suitable qualifications and experience.

(3) If the ESOS agency for a registered provider is an entity that is covered by item 4 of the table in subsection (1), the agency may, in writing, appoint a person as an authorised officer of the agency if:

(a) the person is an employee or constituent member of the agency; and
(b) the agency is satisfied that the person has suitable qualifications and experience.
6B Meaning of DSA assessment certificate and DSA recommendation certificate

DSA assessment certificate

(1) A DSA assessment certificate is a certificate given by the designated State authority for an approved school provider that:
   (a) states that the authority is satisfied that the provider is complying, or will comply, with:
       (i) this Act; and
       (ii) the national code; and
       (iii) if the ELICOS Standards or Foundation Program Standards apply in relation to the provider—those Standards; and
   (b) if the provider is not an exempt provider—states that the authority is satisfied that the provider is fit and proper to be registered; and
   (c) states that the authority is satisfied that the provider has the principal purpose of providing education; and
   (d) states that the authority has no reason to believe that the provider has not been providing, or will not provide, education of a satisfactory standard to overseas students; and
   (e) recommends the conditions (if any) that should be imposed on the provider’s registration; and
   (f) recommends a period not longer than 7 years for which the provider should be registered; and
   (g) sets out any other matters prescribed by the regulations.

Note: The designated State authority must have regard to the matters in subsection 7A(2) in deciding whether it is satisfied that the provider is fit and proper to be registered.

DSA recommendation certificate

(2) A DSA recommendation certificate is a certificate given by the designated State authority for an approved school provider that:
   (a) recommends that the ESOS agency for the provider should add one or more courses at one or more locations to the provider’s registration; and
(b) recommends the conditions (if any) that should be imposed on the provider’s registration; and
(c) sets out any other matters prescribed by the regulations.

Form of certificates

(3) A DSA assessment certificate or DSA recommendation certificate must be in the form approved, in writing, by the ESOS agency for the approved school provider to which the certificate relates.

6C Meaning of ESOS agency

(1) Subject to subsection (3), the following table sets out the ESOS agency for a provider or registered provider:

<table>
<thead>
<tr>
<th>Item</th>
<th>To the extent that a provider or registered provider is:</th>
<th>the ESOS agency for the provider or registered provider is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>a registered higher education provider</td>
<td>TEQSA</td>
</tr>
<tr>
<td>2</td>
<td>a registered VET provider</td>
<td>the National VET Regulator</td>
</tr>
<tr>
<td>3</td>
<td>an approved school provider</td>
<td>the Secretary</td>
</tr>
<tr>
<td>4</td>
<td>a preparatory course provider</td>
<td>the entity determined under subsection (2)</td>
</tr>
<tr>
<td>5</td>
<td>a provider or registered provider that is not covered by another item of this table</td>
<td>the entity determined under subsection (2)</td>
</tr>
</tbody>
</table>

(2) The Minister may, by legislative instrument, determine that an entity is the ESOS agency for a provider or registered provider covered by item 4 or 5 of the table in subsection (1).

(3) If a provider or registered provider is covered by more than one item of the table in subsection (1), the Minister may, by legislative instrument:
(a) determine that one or more entities are the ESOS agencies for the provider; and
(b) specify the circumstances in which each of those entities is
the ESOS agency for the provider.

6D Meaning of exempt provider

(1) A provider or registered provider is an exempt provider if:
   (a) the provider is administered by a State education authority; or
   (b) the provider:
      (i) is entitled to receive funds under a law of the
          Commonwealth for recurrent expenditure for the
          provision of education or training; and
      (ii) is not a provider prescribed by the regulations for the
           purposes of this subparagraph; or
   (c) the provider is specified in the regulations.

(2) To avoid doubt, a private corporate body established in connection
    with a provider covered by paragraph (1)(a) or (b) is not itself, by
    virtue of that connection alone, a provider covered by that
    paragraph.

6E Meaning of provider

(1) A provider is:
   (a) a registered higher education provider; or
   (b) a registered VET provider; or
   (c) an approved school provider; or
   (d) a preparatory course provider; or
   (e) another person or entity (other than a person or entity
       specified under subsection (2));
       that provides, or seeks to provide, courses to overseas students.

(2) The Minister may, by legislative instrument, specify a person or
    entity for the purposes of paragraph (1)(e).

31 Section 7A

Repeal the section, substitute:
7A Deciding whether a provider or registered provider is fit and proper to be registered etc.

(1) This section applies if it is necessary for the purposes of a provision of this Act for:
   (a) the ESOS agency for a provider or registered provider to decide whether:
       (i) the agency is satisfied, or no longer satisfied, that the provider is fit and proper to be registered; or
       (ii) the agency believes on reasonable grounds that the provider is not fit and proper to be registered; or
   (b) the designated State authority for a provider or registered provider that is an approved school provider to decide whether the authority is satisfied that the provider is fit and proper to be registered.

(2) In deciding the matter, the ESOS agency or designated State authority must have regard to:
   (a) whether the provider or a related person of the provider has ever been convicted of an offence; and
   (b) whether the registration of the provider or a related person of the provider has ever been cancelled or suspended under this Act or the old ESOS Act; and
   (c) whether the provider or a related person of the provider has ever been issued with an Immigration Minister’s suspension certificate; and
   (d) whether a condition has ever been imposed under this Act on the registration of the provider or a related person of the provider; and
   (e) whether the provider or a related person of the provider has ever:
       (i) become bankrupt; or
       (ii) taken steps to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
       (iii) compounded with one or more creditors of the provider or person; or
(iv) made an assignment of the remuneration of the provider
or person for the benefit of one or more creditors of the
provider or person; and
(f) whether the provider or a related person of the provider has
ever been disqualified from managing corporations under
Part 2D.6 of the Corporations Act 2001; and
(g) whether the provider or a related person of the provider was
involved in the business of the provision of courses by
another provider who is covered by any of the above
paragraphs at the time of any of the events that gave rise to
the relevant conviction or other action; and
(h) any other relevant matter.

(3) A related person of a provider or registered provider is:

(a) an associate of the provider who has been, is or will be,
involved in the business of the provision of courses by the
provider; or
(b) a high managerial agent of the provider.

(4) Nothing in subsection (2) affects the operation of Part VIIC of the
Crimes Act 1914 (which deals with spent convictions).

7AA No duty imposed on designated State authorities

Nothing in this Act imposes a duty on a designated State authority.

32 Section 7B

Omit:

- This Act and the national code impose obligations on
  registered providers, such as notification, record keeping and
  financial requirements.

substitute:

- This Act, the national code, the ELICOS Standards and the
  Foundation Program Standards impose obligations on
Streamlining registration

registered providers, including obligations relating to record keeping and financial requirements.

33 Part 2 (heading)
Repeal the heading, substitute:

Part 2—Registration of providers

34 Section 8A (paragraphs relating to Divisions 3 and 4)
Repeal the paragraphs, substitute:

• Division 3 provides for the registration of providers by the ESOS agency for a provider. A provider may be registered (for a period of up to 7 years) to provide one or more courses at one or more locations to overseas students if the provider meets the registration requirements. Conditions may be imposed on the registration of a provider and those conditions may be varied or revoked.

• Division 3 also provides for the renewal of registrations, the addition of one or more courses at one or more locations to a registered provider’s registration and the extension or continuation of registration periods in certain circumstances.

• Division 4 requires the Secretary to cause a Register to be kept that contains specified information about the registration of all registered providers. The Secretary is also required to ensure that the Register is kept up-to-date.

35 Division 3 of Part 2 (heading)
Repeal the heading, substitute:

Division 3—Registration of providers

36 Subdivision A of Division 3 of Part 2
Repeal the Subdivision, substitute:
Subdivision A—Application for registration

9 Provider may apply to be registered

(1) A provider may apply to be registered to provide a course or courses at a location or locations to overseas students.

(2) The application must be made to the ESOS agency for the provider.

Note: See section 11A for further rules about applications.

10 ESOS agency for provider may register provider

(1) If a provider makes an application under section 9, the ESOS agency for the provider may register the provider to provide a course or courses at a location or locations if the provider meets the registration requirements.

(2) The ESOS agency for the provider must use a risk management approach when considering whether to register the provider.

10A Notice of registration

(1) If:

(a) a provider makes an application under section 9; and

(b) the ESOS agency for the provider decides to register the provider;

the agency must, as soon as practicable after making the decision, give the provider written notice of the registration.

(2) The notice must set out:

(a) the name of the provider; and

(b) if the provider is not an individual—the name of the principal executive officer of the provider; and

(c) the name of the course or courses that the provider is registered to provide; and

(d) the location or locations at which the provider is registered to provide that course or those courses; and
(e) the period of registration (which must not be longer than 7 years); and

(f) any conditions imposed on the provider’s registration under section 10B at the time of registration and when any such conditions take effect; and

(g) any other matters relating to the registration that the ESOS agency for the provider considers appropriate.

(3) If the provider is an approved school provider, the ESOS agency for the provider must, in determining the provider’s period of registration, have regard to the period of registration recommended in the DSA assessment certificate given to the agency by the designated State authority for the provider.

Subdivision B—Conditions of registration

10B Conditions of registration

(1) The ESOS agency for a provider or registered provider may at any time:

(a) impose a condition on the provider’s registration; or

(b) vary or remove a condition of the provider’s registration.

(2) The ESOS agency for the provider or registered provider must use a risk management approach in deciding whether to impose, vary or remove a condition.

(3) A condition may be:

(a) imposed generally on a provider’s registration; or

(b) imposed in respect of either or both of the following:

(i) one or more of the courses that a provider is registered to provide;

(ii) one or more of the locations at which a provider is registered to provide a course.

(4) If the ESOS agency for a registered provider does either of the following after the commencement of the provider’s registration:

(a) imposes a condition on the provider’s registration;

(b) varies or removes a condition of the provider’s registration;

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the agency must include in the notice of the decision given to the
provider under section 169AC a statement about when the
imposition, variation or removal takes effect.

Note: Section 169AC requires the ESOS agency to give notice of certain
decisions.

10C Conditions imposed by designated State authorities on the
approval of school providers after registration

(1) If:
(a) a registered provider for a course for a location is an
approved school provider; and
(b) at any time while the provider is registered, the designated
State authority for the provider imposes a condition on the
authority’s approval of the provider that relates to the
provision of the course;
the ESOS agency for the provider may impose that condition on
the provider’s registration under section 10B.

(2) In deciding whether to impose the condition under section 10B, the
ESOS agency for the registered provider must have regard to any
advice of the designated State authority for the provider.

(3) This section does not limit section 10B.

Subdivision C—Renewal of registration

10D Registered provider may apply to renew registration

(1) A registered provider may apply to renew the provider’s
registration to provide a course or courses at a location or locations
to overseas students.

(2) The application must be:
(a) made to the ESOS agency for the register provider; and
(b) made within the period determined under subsection (3).

Note: See section 11A for further rules about applications.

Education Services for Overseas Students Amendment (Streamlining Regulation) Bill 2015
(3) The ESOS agency for a registered provider may, by legislative instrument, determine the period within which applications under this section must be made.

10E ESOS agency for registered provider may renew registration

(1) If a registered provider makes an application under section 10D, the ESOS agency for the provider may renew the provider’s registration to provide a course or courses at a location or locations if the provider meets the registration requirements.

(2) The ESOS agency for the registered provider must use a risk management approach when considering whether to renew the registration of the provider.

10F Registration continues until decision on renewal is made

(1) If:
   (a) a registered provider makes an application under section 10D; and
   (b) the ESOS agency for the provider has not made a decision on the application before the end of the day on which the provider’s registration is due to expire;

   the provider’s registration continues until the agency makes a decision on the application.

(2) Subsection (1) does not apply if the registered provider’s registration is cancelled under this Act.

10G Notice of renewal of registration

(1) If:
   (a) a registered provider makes an application under section 10D; and
   (b) the ESOS agency for the provider decides to renew the provider’s registration;

   the agency must, as soon as practicable after making the decision, give the provider written notice of the renewal.

(2) The notice must set out:
Schedule 1 Streamlining registration

(a) the name of the registered provider; and
(b) if the provider is not an individual—the name of the principal executive officer of the provider; and
(c) the name of the course or courses that the provider is registered to provide; and
(d) the location or locations at which the provider is registered to provide that course or those courses; and
(e) the period of registration (which must not be longer than 7 years); and
(f) any conditions imposed on the provider’s registration under section 10B at the time of the renewal of the registration and when any such conditions take effect; and
(g) any other matters relating to the renewal of the registration that the ESOS agency for the provider considers appropriate.

(3) If the registered provider is an approved school provider, the ESOS agency for the provider must, in determining the provider’s period of registration, have regard to the period of registration recommended in the DSA assessment certificate given to the agency by the designated State authority for the provider.

Subdivision D—Changes to registration etc.

10H Registered provider may apply to add one or more courses at one or more locations to registration

(1) A registered provider may apply to add one or more courses at one or more locations to the provider’s registration.

(2) The application:
   (a) must be made to the ESOS agency for the registered provider; and
   (b) if the provider is an approved school provider—must be accompanied by a DSA recommendation certificate given by the designated State authority for the provider.

Note: See section 11A for further rules about applications.
10J  ESOS agency for registered provider may add one or more courses at one or more locations to registration

(1) If a registered provider makes an application under section 10H to add one or more courses at one or more locations to the provider’s registration, the ESOS agency for the provider may add those courses at those locations to the provider’s registration.

(2) The ESOS agency for the registered provider must use a risk management approach when considering whether to add one or more courses at one or more locations to the provider’s registration.

(3) If the ESOS agency for the registered provider decides to add one or more courses at one or more locations to the provider’s registration, the addition does not affect the provider’s period of registration.

10K  Notice of addition of one or more courses at one or more locations to registration

(1) If:
   (a) a registered provider makes an application under section 10H; and
   (b) the ESOS agency for the provider decides to add one or more courses at one or more locations to the provider’s registration;

   the agency must, as soon as practicable after making the decision, give the provider written notice of the decision.

(2) The notice must set out:
   (a) the name of the additional course or courses that the provider is registered to provide; and
   (b) the additional location or locations at which the provider is registered to provide that course or those courses; and
   (c) any conditions imposed on the provider’s registration under section 10B at the time of the decision and when any such conditions take effect; and
(d) any other matters relating to the decision that the ESOS agency for the provider considers appropriate.

10L Extension of a registered provider’s period of registration

(1) The ESOS agency for a registered provider that is a registered higher education provider may extend the provider’s period of registration for the purpose of aligning the period with the provider’s period of registration under the TEQSA Act.

(2) The ESOS agency for a registered provider that is a registered VET provider may extend the provider’s period of registration for the purpose of aligning the period with the provider’s period of registration under the NVETR Act.

(3) The ESOS agency for a registered provider that is an approved school provider may extend the provider’s period of registration for the purpose of aligning the period with the provider’s period of approval as an approved school provider.

(4) The ESOS agency for a registered provider must not extend a particular period of registration under subsection (1), (2) or (3) more than once.

(5) The ESOS agency for a registered provider must use a risk management approach when considering whether to extend the provider’s period of registration.

10M Registration continues until registered provider finishes providing a course

(1) This section applies if:

(a) a registered provider is registered to provide a course at a location; and

(b) the registered provider’s registration for the course at the location is due to expire before the provider has finished providing the course at the location; and

(c) that registration has not been cancelled under this Act.

(2) The registered provider’s registration for the course at the location continues until the provider has finished providing the course at the
location to the students who were enrolled in the course before the expiry of that registration.

(3) Despite subsection (2), the registered provider must not do anything for the purpose of recruiting or enrolling overseas students, or intending overseas students, for the course at the location after the day on which the provider’s registration would have expired but for this section.

37 Subdivision B of Division 3 of Part 2 (heading)

Repeal the heading substitute:

Subdivision E—Other registration provisions

38 Sections 9AH and 9B

Repeal the sections, substitute:

11 When a provider or registered provider meets the registration requirements

A provider or registered provider meets the registration requirements if:

(a) the provider is:
   (i) a resident; or
   (ii) a Table C provider (within the meaning of the Higher Education Support Act 2003); and

(b) the ESOS agency for the provider is satisfied that the provider is complying, or will comply, with:
   (i) this Act; and
   (ii) the national code; and
   (iii) if the ELICOS Standards or Foundation Program Standards apply in relation to the provider—those Standards; and

(c) if the provider is not an exempt provider—the ESOS agency for the provider is satisfied that the provider is fit and proper to be registered; and
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(d) the ESOS agency for the provider is satisfied that the
provider has the principal purpose of providing education;
and
(e) the ESOS agency for the provider has no reason to believe
that the provider has not been providing, or will not provide,
education of a satisfactory standard to overseas students; and
(f) if the provider is an approved school provider—the
designated State authority for the provider has given the
ESOS agency for the provider a DSA assessment certificate;
and
(g) if the provider is not a registered provider—the provider has
paid:
(i) the first entry to market charge (if the provider is liable
to pay that charge); and
(ii) its first TPS levy; and
(h) if the provider is a registered provider or has previously been
registered—the provider is not liable to pay an amount of:
(i) annual registration charge; or
(ii) the second entry to market charge; or
(iii) the third entry to market charge; or
(iv) TPS levy; or
(v) late payment penalty for any such charge or levy; and
(i) any other requirements prescribed by the regulations are
satisfied.

Note 1: For when a registered higher education provider has the principal
purpose of providing education, see section 5A.

Note 2: For when a provider is liable to pay the entry to market charges, see
section 6 of the Education Services for Overseas Students
(Registration Charges) Act 1997.

11A Rules relating to applications for registration etc.

(1) This section applies in relation to:

(a) an application made to the ESOS agency for a provider under
section 9; and

(b) an application made to the ESOS agency for a registered
provider under section 10D or 10H.
Form of application etc.

(2) The application must be:
   (a) made in the form approved, in writing, by the ESOS agency
       for the provider or registered provider; and
   (b) accompanied by any information and documents required by
       the agency.

Withdrawal of application

(3) The provider or registered provider may withdraw the application
    at any time before a decision is made on the application by giving
    written notice to the ESOS agency for the provider.

Consideration of application

(4) When considering the application, the ESOS agency for the
    provider or registered provider may:
    (a) consider any information in the possession of the agency that
        is relevant to the application; and
    (b) may conduct an audit of any matter relating to the
        application.

11B ESOS agency may request further information or documents

(1) This section applies in relation to:
    (a) an application made to the ESOS agency for a provider under
        section 9; and
    (b) an application made to the ESOS agency for a registered
        provider under section 10D or 10H.

(2) If the ESOS agency for the provider or registered provider needs
    further information or documents to decide the application, the
    agency may request any or all of the following to give the agency
    the further information or documents:
    (a) the provider;
    (b) if the provider is an approved school provider—the
        designated State authority for the provider;
    (c) another ESOS agency.
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(3) The request:
   (a) must be made in writing; and
   (b) must specify the period within which the further information or documents are to be given (which must be at least 14 days after the request is made); and
   (c) contain a statement setting out the effect of subsection (4).

(4) The ESOS agency for the provider or registered provider may decline to consider, or further consider, the application until the further information or documents are given.

11C Copies of decision notices to be given by the ESOS agency

Notice of registration etc.

(1) If the ESOS agency for a provider or registered provider gives the provider a notice under section 10A, 10G or 10K, the agency must give a copy of the notice to:
   (a) if the provider is an approved school provider—the designated State authority for the provider; and
   (b) if the ESOS agency for the provider is not the Secretary—the Secretary.

Notice of refusal to register an approved school provider

(2) If the ESOS agency for a provider that is an approved school provider refuses to register the provider under section 10, the agency must give a copy of the notice of the decision given to the provider under section 169AC to the designated State authority for the provider.

Notice of registration conditions etc.

(3) If the ESOS agency for a registered provider:
   (a) imposes a condition on, or varies or removes a condition of, the provider’s registration under section 10B after the commencement of the registration; or
   (b) refuses to renew the provider’s registration under section 10E; or
(c) refuses to add one or more courses at one or more locations
to the provider’s registration under section 10J; or
(d) extends the provider’s period of registration under
section 10L;
the agency must give a copy of the notice of the decision given to
the provider under section 169AC to:
(e) if the provider is an approved school provider—the
designated State authority for the provider; and
(f) if the ESOS agency for the provider is not the Secretary—the
Secretary.
Note: Section 169AC requires the ESOS agency to give notice of certain
decisions.

39 Subsection 12(1) (note 1)
Repeal the note, substitute:

Note 1: A provider is liable to pay 3 entry to market charges under section 6 of
the Education Services for Overseas Students (Registration Charges)
Act 1997. A provider must pay the first entry to market charge before
the provider can be registered: see subparagraph 11(g)(i) of this Act.

40 Paragraph 12(2)(a)
Omit “Secretary registers the provider under section 9AB”, substitute
“provider is registered”.

41 Paragraph 12(2)(b)
After “second”, insert “entry to market charge”.

42 Subsection 13(1)
Omit “Secretary registers the provider under section 9AB”, substitute
“provider is registered”.

43 Section 14
Repeal the section, substitute:

14 Notifying designated State authorities for approved school
providers of non-compliance with this Act etc.

(1) This section applies if:
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(a) an approved school provider applies for registration under section 9; and
(b) the ESOS agency for the provider has information suggesting that:
   (i) the provider is not complying, or will not comply, with this Act or the national code; or
   (ii) if the ELICOS Standards or Foundation Program Standards apply in relation to the provider—the provider is not complying, or will not comply, with those Standards; or
   (iii) the provider does not have the principal purpose of providing education; or
   (iv) the provider has not been providing, or will not provide, education of a satisfactory standard to overseas students; and
(c) the source of the information is not the designated State authority for the provider.

(2) Before deciding the application for registration, the ESOS agency must:
   (a) give the information to the designated State authority; and
   (b) allow the authority at least 7 days to respond, in writing, to the information.

44 Paragraph 14A(4)(f)
   Repeal the paragraph.

45 Paragraph 14A(4)(h)
   Repeal the paragraph, substitute:
   (h) any conditions of the provider’s registration and when any such conditions take effect;

46 Subsection 14A(6)
   Repeal the subsection.

47 Section 15 (note)
   Repeal the note, substitute:
1 Note: If a registered provider breaches this section, the ESOS agency for the provider may take action under Division 1 of Part 6 against the provider.

48 Section 16 (note)
Repeal the note, substitute:

Note: If a registered provider breaches this section, the ESOS agency for the provider may take action under Division 1 of Part 6 against the provider.

49 Section 17 (heading)
Repeal the heading, substitute:

17 Registered providers must notify their ESOS agency of offences etc. by associates and high managerial agents

50 Subsection 17(1)
Omit “Secretary”, substitute “ESOS agency for the provider”.

51 Subsection 17(1) (note)
Repeal the note, substitute:

Note: If a registered provider breaches this section, the ESOS agency for the provider may take action under Division 1 of Part 6 against the provider.

52 Subsection 18(1A) (note)
Repeal the note, substitute:

Note: If a registered provider breaches this section, the ESOS agency for the provider may take action under Division 1 of Part 6 against the provider.

53 Subsections 19(1) and (2)
Omit “the Secretary”.

54 Subsection 19(3)
Repeal the subsection, substitute:
(3) A registered provider must give the information required by this section by entering the information in the computer system established by the Secretary under section 109.

Note 1: If a registered provider breaches this section, the ESOS agency for the provider may take action under Division 1 of Part 6 against the provider.

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

55 Subsection 19(4)

Omit “the Secretary”.

56 Subsection 20(1) (note 1)

Repeal the note, substitute:

Note 1: If a registered provider breaches this section, the ESOS agency for the provider may take action under Division 1 of Part 6 against the provider.

57 Paragraph 21(2B)(a)

Omit “an approved unit”, substitute “a unit”.

58 Subsection 21(3) (note)

Repeal the note, substitute:

Note: If a registered provider breaches this section, the ESOS agency for the provider may take action under Division 1 of Part 6 against the provider.

59 Subsection 21(7)

Repeal the subsection.

60 Subsection 21A(1) (note)

Repeal the note, substitute:

Note: If a registered provider breaches this section, the ESOS agency for the provider may take action under Division 1 of Part 6 against the provider.

61 Subsection 24(2) (note)

Repeal the note, substitute:
Note: If a registered provider breaches this section, the ESOS agency for the provider may take action under Division 1 of Part 6 against the provider.

62 Subsection 26(3) (note 1)
Repeal the note, substitute:

Note 1: If a registered provider breaches this section, the ESOS agency for the provider may take action under Division 1 of Part 6 against the provider.

63 Section 33A
Omit:

- Designated authorities investigate breaches of the code.

64 Section 40 (note)
Omit “section 9AB”, substitute “section 11”.

65 Section 43
Repeal the section.

66 Subsection 46A(4)
Omit “Minister”, substitute “ESOS agency for the provider”.

67 Subsection 46A(5)
Omit “Minister”, substitute “ESOS agency for the registered provider”.

68 Paragraph 46A(5)(b)
Repeal the paragraph, substitute:

(b) any advice provided by another ESOS agency; and
(c) if the provider is an approved school provider—any advice of the State designated authority for the provider.

69 Subsection 46B(1) (note)
Repeal the note, substitute:
Note: If a registered provider breaches this section, the ESOS agency for the provider may take action under Division 1 of Part 6 against the provider.

70 Subsection 46B(2) (heading)
Repeal the heading, substitute:

Notifying the ESOS agency and TPS Director

71 Subsection 46B(2)
Omit “Secretary”, substitute “ESOS agency for the provider”.

72 Section 46C
Repeal the section.

73 Subsection 46F(1) (note)
Repeal the note, substitute:

Note: If a registered provider breaches this section, the ESOS agency for the provider may take action under Division 1 of Part 6 against the provider.

74 Subsection 46F(2)
Omit “Secretary”, substitute “ESOS agency for the provider”.

75 Subsection 47H(2)
Omit “Secretary”, substitute “ESOS agency for the provider”.

76 Subsection 53B(1) (note 1)
Repeal the note, substitute:

Note: There is no particular due date for unregistered providers but they cannot be registered until they have paid their first TPS levy: see subparagraph 11(g)(ii).

77 Section 53C (heading)
Repeal the heading, substitute:
53C Notifying the ESOS agency in relation to payment of TPS levy

78 Subsection 53C(1)
Repeal the subsection, substitute:

Payment of first TPS levy

(1) If a provider who is not yet registered has paid its first TPS levy, the TPS Director must notify the ESOS agency for the provider of the payment.

Note: The ESOS agency needs to know when the first TPS levy has been paid so that the provider can be registered: see subparagraph 11(g)(ii).

79 Subsection 53C(3)
Repeal the subsection substitute:

Non-payment of later TPS levies

(3) If a registered provider has not paid a TPS levy for a year by the end of the period referred to in paragraph 53D(2)(b), the TPS Director must notify the ESOS agency for the provider of the failure to pay the levy.

80 Subsection 53D(3)
Omit “Secretary if the registered”, substitute “ESOS agency for the registered provider if the”.

81 Section 83A
Omit:

• Compliance with this Act, the national code and any conditions on a provider’s registration is enforced under this Part.

substitute:

• Action may be taken under this Part if a registered provider is not complying with this Act, the national code, the ELICOS
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82 Section 83A (paragraph relating to Division 1)
Omit “Minister”, substitute “ESOS agency for a registered provider”.

83 Section 83A (paragraph relating to Division 4)
Repeal the paragraph, substitute:

• The ESOS agency for a registered provider may accept a written undertaking under Division 4 relating to the provider’s compliance with a provision of this Act, the national code, the ELICOS Standards, the Foundation Program Standards or a condition of the provider’s registration. The ESOS agency may apply to a court to enforce the undertaking.

84 Section 83 (heading)
Repeal the heading, substitute:

83 ESOS agency may impose sanctions for non-compliance etc.

85 Subsection 83(1)
Repeal the subsection, substitute:

Circumstances in which ESOS agency may take action

(1) The ESOS agency for a registered provider may take one or more of the actions mentioned in subsection (3) against the provider if the agency believes on reasonable grounds that the provider, or an associate or high managerial agent of the provider, is breaching or has breached:

(a) this Act; or
(b) the national code; or
(c) if the ELICOS Standards or Foundation Program Standards apply in relation to the provider—those Standards; or
(d) a condition of the provider’s registration.
Note: Section 93 sets out the procedure for taking the action.

86 Subsection 83(1A)
Omit “The Minister”, substitute “The ESOS agency for a registered provider”.

87 Subsection 83(1A)
Omit “a registered provider if the Minister”, substitute “the provider if the agency”.

88 Subsection 83(1B)
Omit “The Minister”, substitute “The ESOS agency for a registered provider”.

89 Subsection 83(1B)
Omit “a registered provider (other than a provider covered by subsection 9B(1)) if the Minister”, substitute “the provider (other than an exempt provider) if the agency”.

90 Subsection 83(1B) (note 2)
Repeal the note, substitute:

Note 2: The ESOS agency must have regard to the matters referred to in subsection 7A(2) in deciding whether it believes on reasonable grounds that the provider is not fit and proper to be registered.

91 Subsection 83(1C)
Omit “The Minister”, substitute “The ESOS agency for a registered provider”.

92 Subsection 83(1C)
Omit “a registered provider if the Minister”, substitute “the registered provider if the agency”.

93 Paragraph 83(1C)(b)
Repeal the paragraph, substitute:

(b) has not been providing, or has not provided, education of a satisfactory standard to overseas students.
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94 Subsection 83(1C) (note 2)
Before “higher”, insert “registered”.

95 Subsection 83(2)
Omit “The Minister”, substitute “The ESOS agency for a registered provider”.

96 Subsection 83(2)
Omit “a registered provider for a course if the Minister”, substitute “the registered provider for a course if the agency”.

97 Subsection 83(3) (heading)
Repeal the heading, substitute:

        Actions the ESOS agency may take

98 Subsection 83(4)
Omit “The Minister”, substitute “The ESOS agency for a registered provider”.

99 Subsection 83(4)
Omit “a registered”, substitute “the”.

100 Subsection 83(4)
Omit “the Minister”, substitute “the agency”.

101 Section 84
Repeal the section, substitute:

84 ESOS agency may take further action
The ESOS agency for a registered provider may take action under section 83 even if other action has already been taken under that section in relation to the same matter.

102 Section 85 (heading)
Repeal the heading, substitute:

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85 ESOS agency may take action for breaches occurring before provider was registered

103 Section 85
Omit “Minister may take action against a registered provider”, substitute “ESOS agency for a registered provider may take action against the provider”.

104 Subsections 86(1) and (2)
Omit “Minister”, substitute “ESOS agency for a registered provider”.

105 At the end of Subdivision A of Division 1 of Part 6
Add:

87 Breaches of this Act etc. by approved school providers

(1) This section applies if:
(a) a registered provider is an approved school provider; and
(b) the ESOS agency for the provider has information suggesting that the provider may have breached:
(i) this Act; or
(ii) the national code; or
(iii) if the ELICOS Standards or Foundation Program Standards apply in relation to the provider—those Standards; and
(c) the source of the information is not the designated State authority for the provider.

(2) Before the ESOS agency takes any action under this Act in relation to the possible breach, the agency:
(a) must notify the designated State authority of the possible breach; and
(b) may request the authority to investigate the matter or take any other suitable action.

(3) Despite subsection (2), the ESOS agency may take any action under this Act in relation to the possible breach if, in the ESOS
agency’s opinion, the circumstances of the possible breach require urgent action.

106 Sections 89 and 89A

Repeal the sections, substitute:

89 Automatic suspension if registered provider is no longer fit and proper

ESOS agency no longer satisfied registered provider is fit and proper

(1) If the ESOS agency for a registered provider (other than an exempt provider) is no longer satisfied that the provider is fit and proper to be registered, the registration of the provider is suspended for all courses for all locations by force of this subsection.

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

Designated State authority no longer satisfied that registered provider is fit and proper

(2) If:

(a) a registered provider (other than an exempt provider) is an approved school provider in relation to a State; and

(b) the designated State authority for the provider tells the ESOS agency for the provider that the authority is no longer satisfied that the provider is fit and proper to be registered;

the registration of the provider is suspended for all courses for all locations in the State by force of this subsection.

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

Notification of suspension

(3) If the registration of a provider has been suspended by force of subsection (1) or (2), the ESOS agency for the provider must, in writing, notify the following of the suspension:

(a) the provider;
b) if the ESOS agency considers it is appropriate to inform another ESOS agency for a provider of the suspension—the other ESOS agency.

Removal of suspension

(4) If:
   a) the registration of a provider has been suspended by force of subsection (1) or (2); and
   b) either:
      i) in the case of a suspension under subsection (1)—the ESOS agency for the provider becomes satisfied that the provider is fit and proper to be registered again; or
      ii) in the case of a suspension under subsection (2)—the designated State authority for the provider tells the ESOS agency for the provider that the authority has become satisfied that the provider is fit and proper to be registered again;

the agency may give the provider a notice that sets out the effect of subsection (5).

(5) If the ESOS agency for a provider gives the provider a notice under subsection (4), the suspension of the provider’s registration under subsection (1) or (2) is removed by force of this subsection when the provider has paid the associated reinstatement fee.

Note 1: The ESOS agency and designated State authority must have regard to the matters referred to in subsection 7A(2) in deciding whether they are satisfied that the provider is fit and proper to be registered.

Note 2: For the amount of the associated reinstatement fee, see section 171.

107 Section 91

Repeal the section, substitute:

91 Automatic cancellation if registered provider ceases to be a registered higher education provider etc.

Registered higher education providers

(1) If:

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(a) a registered provider is a registered higher education provider; and

(b) the provider is registered under Part 2 of this Act to provide a course at one or more locations; and

(c) the course is an accredited course (within the meaning of the TEQSA Act) in relation to the provider; and

(d) either:
   (i) the provider ceases to be a registered higher education provider in relation to the course; or
   (ii) the course ceases to be an accredited course (within the meaning of that Act) in relation to the provider;

the provider’s registration under Part 2 of this Act is cancelled for that course for all of those locations by force of this subsection.

Registered VET providers

(2) If:

(a) a registered provider is a registered VET provider; and

(b) the provider is registered under Part 2 of this Act to provide a course at one or more locations; and

(c) the course is a VET accredited course (within the meaning of the NVETR Act) in relation to the provider; and

(d) either:
   (i) the provider ceases to be a registered VET provider in relation to the course; or
   (ii) the course ceases to be a VET accredited course (within the meaning of that Act) in relation to the provider;

the provider’s registration under Part 2 of this Act for that course for all of those locations is cancelled by force of this subsection.

Approved school providers

(3) If:

(a) a registered provider is an approved school provider in relation to a State; and

(b) the provider is registered to provide a course at one or more locations in the State; and
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(c) the provider ceases to be an approved school provider in
relation to the provision of the course at those locations in the
State;
the provider’s registration is cancelled for that course for all of
those locations in the State by force of this subsection.

108 Section 93
Repeal the section, substitute:

93 Procedure for taking action etc.

(1) This section applies if:
(a) the ESOS agency for a provider or registered provider is
considering imposing a condition on the provider’s
registration under section 10B; or
(b) the ESOS agency for a registered provider is considering
taking action under Subdivision A of this Division; or
(c) the ESOS agency for a provider is considering not giving the
provider a notice under subsection 89(4).

(2) Before the ESOS agency for the provider or registered provider
decided to do the thing referred to in paragraph (1)(a), (b) or (c),
the agency must give the provider a written notice that:
(a) states that the agency is considering doing that thing; and
(b) requests the provider to give the agency written submissions
about the matter within at least the period referred to in
subsection (3).

(3) The period is:
(a) if paragraph (1)(a) applies—72 hours; or
(b) if paragraph (1)(b) applies:
   (i) if the agency is of the opinion that the circumstances
       require urgent action—24 hours; or
   (ii) otherwise—72 hours; or
(c) if paragraph (1)(c) applies—7 days.

(4) If, after considering any submissions received within the period
mentioned in paragraph (2)(b), the ESOS agency for the provider

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or registered provider considers that the agency should decide to do
the thing referred to in paragraph (1)(a), (b) or (c), the agency:

(a) may so decide; and

(b) must give the provider written notice of the decision.

109 Section 94 (heading)
Repeal the heading, substitute:

94 ESOS agency may remove condition of registration or suspension
of registration

110 Subsection 94(1)
Omit “Minister”, substitute “ESOS agency for the provider”.

111 Subsection 94(2)
Omit “Minister has given a provider”, substitute “ESOS agency for a
provider has given the provider”.

112 Subsection 94(3)
Omit “Minister”, substitute “ESOS agency for the provider”.

113 Subsection 94(4)
Omit “Minister has given a provider”, substitute “ESOS agency for a
provider has given the provider”.

114 Subsection 95(3)
Omit “Minister may give to a provider whose registration is
suspended”, substitute “ESOS agency for a provider whose registration
is suspended may give the provider”.

115 Subsection 106(1)
Omit “Minister to give a registered provider”, substitute “ESOS agency
for a registered provider to give the provider”.

116 Subsection 109(1)
After “established”, insert “by the Secretary”.

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117 Subsection 109(1)
Omit “to the Secretary”.

118 Subsection 110A(1)
Repeal the subsection, substitute:

(1) The ESOS agency for a registered provider may accept a written
undertaking given by the provider that:

(a) the provider will take, or refrain from taking, specified action
in order for the provider to comply with:

(i) a provision of this Act; or

(ii) the national code; or

(iii) if the ELICOS Standards or Foundation Program
Standards apply in relation to the provider—those
Standards; or

(iv) a condition of the provider’s registration; or

(b) the provider will take specified action directed towards
ensuring that in the future the provider does not, or is
unlikely to, contravene:

(i) a provision of this Act; or

(ii) the national code; or

(iii) if the ELICOS Standards or Foundation Program
Standards apply in relation to the provider—those
Standards; or

(iv) a condition of the provider’s registration.

119 Subsections 110A(2), (3) and (4)
Omit “Secretary”, substitute “ESOS agency for the provider”.

120 Subsection 110B(1)
Omit “The Secretary”, substitute “The ESOS agency for a registered
provider”.

121 Paragraph 110B(1)(a)
Omit “a registered provider”, substitute “the provider”.

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122 Paragraph 110B(1)(c)

Omit “Secretary”, substitute “ESOS agency”.

123 Section 111A

Omit:

- Registered providers’ compliance with this Act and the national code is monitored under this Part.

substitute:

- This Part provides for the monitoring of registered providers’ compliance with this Act, the national code, the ELICOS Standards or the Foundation Program Standards.

124 Section 111A (paragraph relating to Division 2)

Omit “Secretary”, substitute “ESOS agency for a registered provider”.

125 Section 111A (paragraphs relating to Divisions 3 and 4)

Repeal the paragraphs, substitute:

- An authorised officer of the ESOS agency for a registered provider may apply for a monitoring warrant under Division 3. A monitoring warrant allows the authorised officer to enter and search the premises of the registered provider. If the authorised officer finds evidential material on the premises, the officer may secure the material until a search warrant can be obtained.

- Alternatively, an authorised officer of the ESOS agency for a registered provider may apply for a search warrant under Division 4. As well as allowing the authorised officer to enter and search the premises of the registered provider, the officer may also seize things under a search warrant.
Subsection 113(1)
Omit “Secretary reasonably believes that an individual specified in
subsection (4)”, substitute “ESOS agency for a registered provider
reasonably believes that a relevant individual of the provider”.

Subsection 113(2)
Omit “Secretary may give the”, substitute “ESOS agency may give the
relevant”.

Subsection 113(2) (note)
Omit “Secretary may also give the”, substitute “ESOS agency may also
give the relevant”.

Subsection 113(4)
Repeal the subsection.

Subsection 115(1)
Omit “Secretary must give a production notice to an individual”,
substitute “ESOS agency for a registered provider must give a
production notice under section 113 to a relevant individual of the
provider”.

Subparagraph 115(1)(b)(i)
Omit “Secretary”, substitute “ESOS agency”.

Paragraph 115(1)(c)
Omit “Secretary”, substitute “ESOS agency”.

Subsection 115(2)
Omit “Secretary”, substitute “ESOS agency”.

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135  **Subsection 116(1)**

Omit “Secretary reasonably believes that an individual specified in subsection (3)”, substitute “ESOS agency for a registered provider reasonably believes that a relevant individual of the provider”.

136  **Subsection 116(2)**

Omit “Secretary may give the”, substitute “ESOS agency may give the relevant”.

137  **Subsection 116(2)**

Omit “employee”, substitute “officer of the agency”.

138  **Subsection 116(2) (note)**

Omit “Secretary may also give the”, substitute “ESOS agency may also give the relevant”.

139  **Subsection 116(3)**

Repeal the subsection.

140  **Subsection 117(1)**

After “attendance notice”, insert “given to a relevant individual of a registered provider”.

141  **Subsection 117(2)**

Omit “individual”, substitute “relevant individual of a registered provider”.

142  **Subsection 122(1)**

Omit “employee”, substitute “officer of the ESOS agency for a registered provider”.

143  **Subsection 122(1)**

After “notice”, insert “given by the agency”.

144  **Subsection 124(1)**

Omit “An authorised employee”, substitute “An authorised officer of the ESOS agency for a registered provider”.

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46  *Education Services for Overseas Students Amendment (Streamlining Regulation) Bill 2015*
145 Subsection 124(1)
   Omit “employee’s”, substitute “officer’s”.

146 Paragraphs 124(1)(a) and (c)
   Omit “employee”, substitute “officer”.

147 Subsection 124(2)
   Repeal the subsection, substitute:
   (2) This subsection covers a person if the person is an employee of the
       same ESOS agency as the authorised officer.

148 Section 125 (heading)
   Repeal the heading, substitute:

125 Retaining of documents by authorised officer etc.

149 Subsection 125(1)
   Omit “An authorised employee”, substitute “An authorised officer of
   the ESOS agency for a registered provider”.

150 Subsection 125(1)
   Omit “employee’s”, substitute “officer’s”.

151 Subsection 125(1)
   Omit “employee under”, substitute “officer under”.

152 Subsection 125(2)
   Omit “employee”, substitute “officer”.

153 Subsection 125(2) (note)
   Omit “employee”, substitute “officer”.

154 Subsection 125(3)
   Repeal the subsection, substitute:
(3) This subsection covers a person if the person is an employee of the same ESOS agency as the authorised officer.

155 Subsection 126(1)
Omit “An employee retaining”, substitute “A person who retains”.

156 Subsection 126(3)
Omit “employee”, substitute “person retaining the document”.

157 Section 128 (heading)
Repeal the heading, substitute:

128 Authorised officer etc. may apply to retain document for a further period

158 Subsection 128(1)
Repeal the subsection, substitute:

(1) An authorised officer of the ESOS agency for a registered provider given a document under this Division, or another person (the permitted person) who is retaining such a document under section 125, may apply to a magistrate or tribunal member for an order that the officer or permitted person may retain the document for a further period.

159 Paragraph 128(2)(a)
Omit “employee”, substitute “officer”.

160 Subsection 128(3) (heading)
Repeal the heading, substitute:

Persons affected by notice to be notified if practicable

161 Subsection 128(3)
Omit “employee” (wherever occurring), substitute “officer or permitted person”.

Education Services for Overseas Students Amendment (Streamlining Regulation) Bill 2015
162 Section 129
   Omit “employee” (wherever occurring), substitute “person”.

163 Section 130 (heading)
   Repeal the heading, substitute:

130 Authorised officer may enter premises for a monitoring purpose

164 Subsection 130(1)
   Omit “employee”, substitute “officer of the ESOS agency for a
   registered provider”.

165 Subparagraph 130(1)(a)(i)
   Omit “a registered provider”, substitute “the provider”.

166 Subsection 130(2)
   Omit “An authorised employee”, substitute “The authorised officer”.

167 Paragraph 130(2)(a)
   Omit “employee”, substitute “officer”.

168 Section 131 (heading)
   Repeal the heading, substitute:

131 Monitoring powers of authorised officers

169 Subsection 131(1)
   Omit “an authorised employee”, insert “an authorised officer of the
   ESOS agency for a registered provider”.

170 Paragraph 131(1)(g)
   Omit “employee”, substitute “officer”.

171 Subparagraphs 131(1)(h)(i), (ii) and (iii)
   Omit “employee”, substitute “officer”.

No. 2015 Education Services for Overseas Students Amendment (Streamlining
   Regulation) Bill 2015
172 Subsection 131(5)
Omit “an authorised employee”, substitute “the authorised officer”.

173 Section 132 (heading)
Repeal the heading, substitute:

132 Authorised officer on premises with consent may ask questions

174 Section 132
Omit “An authorised employee”, substitute “An authorised officer of the ESOS agency for a registered provider”.

175 Subparagraph 132(a)(ii)
Omit “employee any document requested by the employee”, substitute “officer any document requested by the officer”.

176 Section 133 (heading)
Repeal the heading, substitute:

133 Authorised officer on premises under warrant may ask questions

177 Section 133
Omit “An authorised employee”, substitute “An authorised officer of the ESOS agency for a registered provider”.

178 Subparagraph 133(a)(ii)
Omit “employee any document requested by the employee”, substitute “authorised officer any document requested by the officer”.

179 Subsection 134(1)
Omit “employee”, substitute “authorised officer”.

180 Section 135
Omit “employee”, substitute “authorised officer”.

50 Education Services for Overseas Students Amendment (Streamlining Regulation) Bill 2015
181 Subsection 136(1)
Omit “authorised employee”, substitute “authorised officer of the ESOS agency for a registered provider”.

182 Subsection 136(1)
Omit “employee may”, substitute “authorised officer may”.

183 Section 137 (heading)
Repeal the heading, substitute:

137 Authorised officer may apply for a monitoring warrant

184 Subsection 137(1)
Omit “authorised employee”, substitute “authorised officer of the ESOS agency for a registered provider”.

185 Subsection 137(2)
Omit “employee”, substitute “authorised officer”.

186 Section 138
Omit “employees”, substitute “officers of the ESOS agency for a registered provider”.

187 Subsection 139(1)
Omit “employee”, substitute “officer of the ESOS agency for a registered provider”.

188 Subsection 139(3)
Omit “employee”, substitute “authorised officer”.

189 Paragraph 140(1)(a)
Omit “employees”, substitute “officers of the ESOS agency for a registered provider”.

190 Subsection 140(2)
Omit “employees”, substitute “officers”.

No. 2015 Education Services for Overseas Students Amendment (Streamlining Regulation) Bill 2015
191 Section 141 (heading)
   Repeal the heading, substitute:

141 Authorised officer may enter premises to look for evidential material

192 Subsection 141(1)
   Omit “employee”, substitute “officer of the ESOS agency for a registered provider”.

193 Subsection 141(2)
   Omit “employee” (wherever occurring), substitute “officer”.

194 Subsection 141(3)
   Omit “an authorised employee”, substitute “the authorised officer”.

195 Paragraph 141(3)(a)
   Omit “employee”, substitute “officer”.

196 Section 142 (heading)
   Repeal the heading, substitute:

142 Search powers of authorised officers

197 Subsection 142(1)
   Omit “employee”, substitute “officer of the ESOS agency for a registered provider”.

198 Paragraph 142(1)(f)
   Omit “employee”, substitute “officer”.

199 Subsection 142(5)
   Omit “An authorised employee”, substitute “The authorised officer”.

200 Subsection 142(6)
   Omit “An authorised employee”, substitute “The authorised officer”.

52 Education Services for Overseas Students Amendment (Streamlining Regulation) Bill 2015
201 Subsection 142(6)
Omit “the employee”, substitute “the officer”.

202 Subsection 142(7)
Omit “an authorised employee”, substitute “the authorised officer”.

203 Section 143 (heading)
Repeal the heading, substitute:

143 Authorised officer may apply for a search warrant

204 Subsection 143(1)
Omit “employee”, substitute “officer of the ESOS agency for a registered provider”.

205 Subsection 143(2)
Omit “employee”, substitute “authorised officer”.

206 Subsection 145(1)
Omit “employee”, substitute “officer of the ESOS agency for a registered provider”.

207 Subsection 145(3)
Omit “employee”, substitute “authorised officer”.

208 Paragraph 146(1)(a)
Omit “employees”, substitute “officers of the ESOS agency for a registered provider”.

209 Subsection 146(2)
Omit “employees”, substitute “officers”.

210 Sections 147 and 148
Omit “employee”, insert “officer of the ESOS agency for a registered provider”.

No.  , 2015  Education Services for Overseas Students Amendment (Streamlining Regulation) Bill 2015
Schedule 1  Streamlining registration

211 Subsection 149(1)
Omit "if the authorised employee", substitute “if an authorised employee of the ESOS agency for a registered provider”.

212 Subparagraphs 149(1)(a)(i) and (ii)
Omit “employee”, substitute “officer”.

213 Subsection 149(2)
Omit “employee”, substitute “officer”.

214 Subsection 149(3) (heading)
Repeal the heading, substitute:

Authorised officer must give notice

215 Subsection 149(3)
Omit “employee”, substitute “officer”.

216 Subsection 150(1)
Omit “employee”, substitute “officer of the ESOS agency for a registered provider”.

217 Subsection 150(2)
Omit “employee”, substitute “officer”.

218 Subsection 151(1)
Omit “employee is on premises under section 130 or 141 if the employee”, substitute “officer of the ESOS agency for a registered provider is on premises under section 130 or 141 if the authorised officer”.

219 Subsection 151(2)
Omit “employee” (wherever occurring), substitute “officer”.

220 Subsection 152(1)
Omit “employee”, substitute “officer of the ESOS agency for a registered provider”.

Education Services for Overseas Students Amendment (Streamlining Regulation) Bill 2015
221 Subsections 152(2) and (3)
Omit “employee” (wherever occurring), substitute “officer”.

222 Section 153 (heading)
Repeal the heading, substitute:

153 Authorised officer may apply for a thing to be retained for a further period

223 Subsection 153(1)
Omit “employee”, substitute “officer of the ESOS agency for a registered provider”.

224 Subsection 153(2)
Omit “employee” (wherever occurring), substitute “officer”.

225 Subsection 153(3) (heading)
Repeal the heading, substitute:

Authorised officer must try to notify those affected

226 Subsection 153(3)
Omit “employee” (wherever occurring), substitute “officer”.

227 Subsection 154(1)
Omit “authorised employee”, substitute “authorised officer of the ESOS agency for a registered provider”.

228 Subsection 154(1)
Omit “the employee”, substitute “the officer”.

229 Subsection 154(2)
Omit “employee”, substitute “authorised officer”.

230 Section 155 (heading)
Repeal the heading, substitute:
155 Occupier to provide authorised officer with all facilities and assistance

231 Subsection 155(1)
Omit “authorised employee”, substitute “authorised officer of the ESOS agency for a registered provider”.

232 Subsection 155(1)
Omit “that employee”, substitute “that officer”.

233 Subdivision B of Division 5 of Part 7 (heading)
Repeal the heading, substitute:

Subdivision B—Obligations on authorised officers etc.

234 Subsection 156(1)
Omit “employee”, substitute “officer of the ESOS agency for a registered provider”.

235 Subsection 156(2)
Omit “employee” (wherever occurring), substitute “officer”.

236 Subsections 157(1)
Omit “obtaining”, substitute “an authorised officer of the ESOS agency for a registered provider obtains”.

237 Subsection 157(1)
Omit “employee”, substitute “officer”.

238 Subsection 157(2)
Omit “an authorised employee”, substitute “the authorised officer”.

239 Subsection 158(1)
Omit “employee”, substitute “officer of the ESOS agency for a registered provider”.

56 Education Services for Overseas Students Amendment (Streamlining Regulation) Bill 2015
240 Subsection 159(1)
Omit “If a monitoring warrant or a search warrant is being executed”,
substitute “If an authorised officer of the ESOS agency for a registered
provider is executing a monitoring warrant or a search warrant”.

241 Subsections 159(1) and (2)
Omit “employee”, substitute “officer”.

242 Subsection 162(1)
Repeal the subsection, substitute:
(1) The ESOS agency for a registered provider must give each
authorised officer of the agency an identity card.

243 Paragraph 162(2)(a)
Omit “Secretary”, substitute “ESOS agency for a registered provider”.

244 Paragraph 162(2)(b)
Omit “employee”, substitute “authorised officer of the agency”.

245 Paragraph 162(3)(b)
Omit “employee”, substitute “officer of the ESOS agency for a
registered provider”.

246 Paragraph 162(3)(c)
Omit “Secretary”, substitute “agency”.

247 Subsection 162(6) (heading)
Repeal the heading, substitute:
Authorised officer must always carry identity card

248 Subsection 162(6)
Omit “employee”, substitute “officer of the ESOS agency for a
registered provider”.

No.      , 2015 Education Services for Overseas Students Amendment (Streamlining
Regulation) Bill 2015
249  **Section 163 (heading)**

   Repeal the heading, substitute:

163  **Authorised officer must produce identity card on request**

250  **Section 163**

   Omit “An authorised employee”, substitute “An authorised officer of
   the ESOS agency for a registered provider”.

251  **Paragraphs 163(a) and (b)**

   Omit “employee”, substitute “officer”.

252  **Section 164 (heading)**

   Repeal the heading, substitute:

164  **Authorised officer may apply for warrants by telephone etc.**

253  **Subsection 164(1)**

   Omit “An authorised employee”, substitute “An authorised officer of
   the ESOS agency for a registered provider”.

254  **Subsection 164(1)**

   Omit “the employee”, substitute “the authorised officer”.

255  **Subsection 164(3)**

   Omit “employee”, substitute “officer”.

256  **Subsection 164(4)**

   Omit “employee”, substitute “authorised officer”.

257  **Paragraph 165(2)(a)**

   Omit “employees”, substitute “officers of the ESOS agency for a
   registered provider”.

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58  *Education Services for Overseas Students Amendment (Streamlining Regulation) Bill 2015*
258  Paragraph 166(2)(a)
Omit “the authorised employee”, substitute “an authorised officer of the ESOS agency for a registered provider”.

259  Subsection 166(3) (heading)
Repeal the heading, substitute:

Obligations on authorised officers

260  Subsection 166(3)
Omit “employee” (wherever occurring), substitute “officer”.

261  Subsection 167(1) (heading)
Repeal the heading, substitute:

Obligations on authorised officer

262  Subsection 167(1)
Omit “An authorised employee”, substitute “An authorised officer of the ESOS agency for a registered provider”.

263  Paragraph 167(1)(a)
Omit “employee”, substitute “officer”.

264  Subsection 170A(1)
Omit “Minister, Immigration Minister or Secretary”, substitute “ESOS agency for a provider or Immigration Minister”.

265  Subsection 170A(2)
Omit “Secretary may publish information about”, substitute “ESOS agency for the provider may publish information about the following matters in the way specified by the Secretary under subsection (4)”.

266  Paragraph 170A(2)(a)
Omit “taken; and”, substitute “taken;”.

No.  , 2015  Education Services for Overseas Students Amendment (Streamlining Regulation) Bill 2015
Schedule 1 Streamlining registration

267 Subparagraph 170A(2)(b)(i)
Omit “a provider”, substitute “the provider”.

268 Subsection 170A(3)
Omit “if the Secretary”, substitute “if the ESOS agency for the provider”.

269 Subsection 170A(3)
Omit “Secretary must”, substitute “agency must”.

270 Subsection 170A(4)
Repeal the subsection substitute:
(4) The Secretary may, by legislative instrument, specify the way in which the ESOS agency for a registered provider publishes the information referred to in subsection (2).

271 Subsections 170(1) to (4)
Repeal the subsections, substitute:

Delegation by the Minister
(1) The Minister may, by writing, delegate any or all of his or her functions or powers under this Act to:
(a) the Secretary; or
(b) an SES employee, or acting SES employee, in the Department.

Note: The expressions SES employee and acting SES employee are defined in section 2B of the Acts Interpretation Act 1901.

(2) In exercising functions or powers under a delegation under subsection (1), the delegate must comply with any directions of the Minister.

Delegation by the Secretary
(3) The Secretary may, by writing, delegate any or all of his or her functions or powers under this Act (including his or her functions...
or powers as the ESOS agency for a provider or registered provider) to:

(a) an SES employee, or acting SES employee, in the Department; or

(b) an APS employee in the Department who holds or performs the duties of an Executive Level 1 or 2 position or an equivalent position; or

(c) TEQSA; or

(d) the National VET Regulator.

Note: The expressions SES employee and acting SES employee are defined in section 2B of the Acts Interpretation Act 1901.

(4) In exercising functions or powers under a delegation under subsection (3), the delegate must comply with any directions of the Secretary.

Delegation by ESOS agencies

(4A) The ESOS agency for a provider or registered provider (other than the Secretary) may, by writing, delegate any or all of the agency’s functions or powers under this Act to:

(a) if the agency is TEQSA—a person or authority mentioned in subsection 199(1) of the TEQSA Act; or

(b) if the agency is the National VET Regulator—a person or authority mentioned in subsection 224(1) of the NVETR Act; or

(c) otherwise—a person who is an employee or constituent member of the agency if the agency is satisfied that the person has suitable qualifications and experience.

(4B) In exercising functions or powers under a delegation under subsection (4A), the delegate must comply with any directions of the ESOS agency.

272 After section 170

Insert:
171A  Subdelegation by TEQSA or National VET Regulator

(1) If the Secretary delegates a function or power under subsection 170(3) to TEQSA, TEQSA may, in writing, subdelegate the function or power to a member of the staff of TEQSA (within the meaning of the TEQSA Act) who:
   (a) is an SES employee, or acting SES employee; or
   (b) holds or performs the duties of an Executive Level 1 or 2 position or an equivalent position.

Note: The expressions SES employee and acting SES employee are defined in section 2B of the Acts Interpretation Act 1901.

(2) If the Secretary delegates a function or power under subsection 170(3) to the National VET Regulator, the National VET Regulator may, in writing, subdelegate the function or power to a member of the staff of the Regulator (within the meaning of the NVETR Act) who:
   (a) is an SES employee, or acting SES employee; or
   (b) holds or performs the duties of an Executive Level 1 or 2 position or an equivalent position.

Note: The expressions SES employee and acting SES employee are defined in section 2B of the Acts Interpretation Act 1901.

273  Subsection 171(1)

Omit “89(3), 89A(3)”, substitute “89(5)”.

274  Paragraph 172(1)(b)

Repeal the paragraph, substitute:
   (b) second entry to market charge; or
   (ba) third entry to market charge; or

275  Subsection 172(1) (note)

Repeal the note, substitute:

Note: If a registered provider breaches this section, the ESOS agency for the provider may take action under Division 1 of Part 6 against the provider.
276 Paragraph 173(1)(aa)

Repeal the paragraph, substitute:

(aa) the second entry to market charge;
(ab) the third entry to market charge;

277 Paragraph 175(1)(a)

Omit “and the national code”, substitute “, the national code, the
ELICOS Standards and the Foundation Program Standards”.

278 Subsection 175(1)

After “Secretary”, insert “, or the ESOS agency for a provider or
registered provider,”.

279 After paragraph 175(1)(e)

Insert:

(ea) the ESOS agency for a provider or registered provider; or
(eb) the Secretary; or

280 Paragraph 175(2)(a)

Omit “and the national code”, substitute “, the national code, the
ELICOS Standards and the Foundation Program Standards”.

281 Subsection 175(2)

After “Secretary”, insert “, or the ESOS agency for a provider or
registered provider,”.

Education Services for Overseas Students (TPS Levies) Act
2012

282 Subsection 5(3)

Omit “section 9AB of”.

No. 2015  Education Services for Overseas Students Amendment (Streamlining
Regulation) Bill 2015
Schedule 1 Streamlining registration

1  National Vocational Education and Training Regulator Act 2011

2  283 Subparagraph 204(c)(i)
   After “this Act”, insert “or the Education Services for Overseas
   Students Act 2000,”.

Tertiary Education Quality and Standards Agency Act 2011

4  284 Paragraph 188(2)(a)
   After “this Act”, insert “or the Education Services for Overseas
   Students Act 2000,”.
Schedule 2—Review of decisions

Education Services for Overseas Students Act 2000

1 Section 5

Insert:

affected provider for a reviewable decision has the meaning given by section 169AB.

internal reviewer has the meaning given by subsection 169AE(1).

reviewable decision has the meaning given by section 169AB.

2 Paragraph 14B(2)(d)

Omit “to the Administrative Appeals Tribunal”.

3 Subsection 53B(1) (note 2)

Repeal the note.

4 At the end of section 53B

Add:

(3) The notice must also include:
   (a) the reasons for the determination referred to in section 53A; and
   (b) a statement that an application may be made under section 169AG for review of the determination by the Administrative Appeals Tribunal.

(4) A failure to give the notice required by this section does not affect the validity of the determination.

5 After Part 7

Insert:
Part 7A—Review of decisions

Division 1—Introduction

169AA  Guide to this Part

This Part is about the administrative review of certain decisions made under this Act.

An affected provider for a reviewable decision may apply for internal review of the decision if the decision is made by a delegate of the ESOS agency for the provider. The decision of the internal reviewer is subject to review by the Administrative Appeals Tribunal.

A reviewable decision made personally by the ESOS agency for a provider or registered provider is subject to review by the Administrative Appeals Tribunal.

A determination by the TPS Director of an amount of TPS levy payable by a provider or registered provider under subsection 53A(1) is also subject to review by the Administrative Appeals Tribunal.

Division 2—Review of decisions

169AB  Reviewable decisions

Each decision referred to in column 1 of the following table is a reviewable decision. A provider or registered provider referred to in column 2 of that table in relation to a reviewable decision is the affected provider for the decision.
## Reviewable decisions

<table>
<thead>
<tr>
<th>Item</th>
<th>Reviewable decision</th>
<th>Affected provider for the reviewable decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>A decision by the ESOS agency for a provider to refuse to register the provider under section 10</td>
<td>The provider</td>
</tr>
<tr>
<td>2</td>
<td>A decision by the ESOS agency for a registered provider to register the provider under section 10 for a particular period</td>
<td>The registered provider</td>
</tr>
<tr>
<td>3</td>
<td>A decision by the ESOS agency for a provider or registered provider to impose a condition on, or to vary or remove a condition of, the provider’s registration under section 10B</td>
<td>The provider or registered provider</td>
</tr>
<tr>
<td>4</td>
<td>A decision by the ESOS agency for a registered provider to refuse to renew the provider’s registration under section 10E</td>
<td>The registered provider</td>
</tr>
<tr>
<td>5</td>
<td>A decision by the ESOS agency for a registered provider to renew the provider’s registration under section 10E for a particular period</td>
<td>The registered provider</td>
</tr>
<tr>
<td>6</td>
<td>A decision by the ESOS agency for a registered provider to refuse to add a course at a location to the provider’s registration under section 10J</td>
<td>The registered provider</td>
</tr>
<tr>
<td>7</td>
<td>A decision by the ESOS agency for a registered provider to extend the provider’s period of registration under section 10L</td>
<td>The registered provider</td>
</tr>
<tr>
<td>8</td>
<td>A decision by the ESOS agency for a registered provider not to notify the provider under subsection 46A(4)</td>
<td>The registered provider</td>
</tr>
<tr>
<td>9</td>
<td>A decision by the ESOS agency for a registered provider to take action against the provider under section 83</td>
<td>The registered provider</td>
</tr>
<tr>
<td>10</td>
<td>A decision by the ESOS agency for a registered provider not to give the provider a notice under subsection 89(4) or 95(3)</td>
<td>The registered provider</td>
</tr>
</tbody>
</table>
169AC  Notice of decision

(1) The ESOS agency must, as soon as practicable after making a reviewable decision, give the affected provider for the decision a written notice containing:

(a) the terms of the decision; and

(b) the reasons for the decision; and

(c) notice of the provider’s right to have the decision reviewed.

(2) A failure to give the notice required by this section does not affect the validity of the reviewable decision.

169AD  Application for internal review of reviewable decisions made by delegates

(1) If a reviewable decision is made by a delegate of the ESOS agency for an affected provider, the affected provider for the decision may apply to the agency for review of the decision.

Note: Reviewable decisions not made by a delegate of the ESOS agency may be reviewed by the Administrative Appeals Tribunal (see section 169AG).

(2) The application must:

(a) be made in the form approved, in writing, by the ESOS agency; and

(b) be accompanied by any information and documents required by the agency; and

(c) be made within:

(i) 30 days after the affected provider for the decision is notified of the decision; or

(ii) if the agency allows a longer period (whether before or after the end of that 30 day period)—that longer period.

169AE  Internal review of reviewable decisions

(1) If an application for review of a reviewable decision is made under section 169AD to the ESOS agency for an affected provider, the agency must cause the reviewable decision to be reviewed by a delegate (the internal reviewer) of the agency:
(a) who was not involved in making the decision; and
(b) who occupies a position senior to that occupied by the
delegate who made the decision.

(2) The internal reviewer may:
(a) affirm, vary or set aside the reviewable decision; and
(b) if the internal reviewer sets aside the decision—make such
other decision as he or she thinks appropriate.

(3) The decision (the internal review decision) of the internal reviewer
is taken (other than for the purposes of section 169AB) to have
been made under the provision under which the reviewable
decision was made.

(4) The internal reviewer must, as soon as practicable after making the
internal review decision, give the applicant a written notice
containing:
(a) the terms of the decision; and
(b) the reasons for the decision; and
(c) notice of the applicant’s right to have the decision reviewed
by the Administrative Appeals Tribunal.

(5) A failure to comply with subsection (4) does not affect the validity
of the internal review decision.

169AF Internal review decision must made within 90 days

(1) The internal reviewer must make a decision on an application for
review of a reviewable decision within 90 days after the
application is made under section 169AD.

(2) If the internal reviewer does not notify the applicant of its decision
on the application within that period, the internal reviewer is taken
to have made a decision under section 169AE to affirm the
reviewable decision.

169AG Review by the Administrative Appeals Tribunal

(1) Applications may be made to the Administrative Appeals Tribunal
for review of:
Schedule 2  Review of decisions

(a) a reviewable decision that was not made by a delegate of the
   ESOS agency for an affected provider for the decision; or
(b) a decision of the internal reviewer made under section 169AE
   that relates to a reviewable decision; or
(c) a determination by the TPS Director of an amount of TPS
   levy payable by a provider or registered provider under
   subsection 53A(1).

(2) An application under paragraph (1)(a) or (b) of this section may
   only be made by, or on behalf of, the affected provider for the
   reviewable decision referred to in that paragraph.

(3) An application under paragraph (1)(c) of this section may only be
   made by, or on behalf of, the provider or registered provider
   referred to in that paragraph.

6 Section 169A

Omit:

   (d) giving information to relevant bodies;
   (e) review of decisions.

substitute:

   (d) giving information to relevant bodies.

7 Section 176

Repeal the section.
Schedule 3—Ministerial directions

Education Services for Overseas Students Act 2000

1 After section 170B

Insert:

170C Minister may give directions to the ESOS agency

(1) The Minister may, by legislative instrument, give directions to the ESOS agency for a provider or registered provider about the performance of the agency’s functions under this Act.

Note: Part 6 (sunsetting) of the Legislative Instruments Act 2003 does not apply to a direction (see section 54 of that Act).

(2) However, the Minister must not give a direction under subsection (1) about, or in relation to, a particular provider or registered provider.

(3) Section 44 of the Legislative Instruments Act 2003 does not apply in relation to a direction under subsection (1) of this section.

Note: This means that section 42 (disallowance) of the Legislative Instruments Act 2003 applies to the direction.

(4) The ESOS agency must comply with a direction under subsection (1).

(5) The Minister may consult the Immigration Minister about the giving of a direction under subsection (1).

National Vocational Education and Training Regulator Act 2011

2 Section 159

After “section 160”, insert “of this Act and section 170C of the Education Services for Overseas Students Act 2000”.
Schedule 3  Ministerial directions

_Tertiary Education Quality and Standards Agency Act 2011_

3  **Section 135**

After “section 136”, insert “of this Act and section 170C of the _Education Services for Overseas Students Act 2000_”.

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*Education Services for Overseas Students Amendment (Streamlining Regulation) Bill 2015*
Schedule 4—TPS Director

Education Services for Overseas Students Act 2000

1 Section 5 (at the end of the definition of production notice)

   Add “or 113A”.

2 Section 5

   Insert:

   TPS officer means:
   (a) an APS employee in the Department who assists the TPS
       Director in the performance of the TPS Director’s functions;
       or
   (b) a consultant engaged by the TPS Director under section 54L.

3 After paragraph 54B(f)

   Insert:

   (fa) recommending that the ESOS agency for a registered
       provider take one or more actions against the provider under
       subsection 83(1A);

4 At the end of Division 3 of Part 5A

   Add:

54N Application of finance law

   For the purposes of the finance law (within the meaning of the
   Public Governance, Performance and Accountability Act 2013),
   the TPS Director is an official of the Department.

5 After subsection 83(1A)

   Insert:

   (1AA) The ESOS agency for a registered provider must consider any
       recommendation made by the TPS Director under
       paragraph 54B(fa) that relates to the provider in deciding whether
to take one or more actions against the provider under subsection (1A) of this section.

6 Section 111A (at the end of the paragraph relating to Division 2)

Add:

The TPS Director may also give a production notice under that Division.

7 Section 113 (heading)

Repeal the heading, substitute:

113 ESOS agency for a registered provider may give a production notice

8 After section 113

Insert:

113A TPS Director may give a production notice

(1) This section applies if the TPS Director reasonably believes that a relevant individual of a registered provider has, or has access to, information or documents that are relevant to the performance of the TPS Director’s functions under Part 5 of this Act.

(2) The TPS Director may give the relevant individual a written notice requiring the individual:

(a) to give any such information or documents to a TPS officer;

or

(b) to show any such documents to a TPS officer; or

(c) to make copies of any such documents and give the copies to a TPS officer.

(3) If the information or documents are in a particular form then the notice may require the information or documents to be given in that form.
9 Paragraph 114(1)(a)

After “section 113”, insert “or 113A”.

10 Paragraph 114(1)(b)

Repeal the paragraph, substitute:

(b) set out the effects of sections 120 and 121; and

(ba) if the notice is given under section 113—set out the effect of
section 122; and

(bb) if the notice is given under section 113A—set out the effect
of section 122A; and

11 After subsection 115(1)

Insert:

(1A) The TPS Director must give a production notice under
section 113A to a relevant individual of a registered provider:

(a) by delivering it to the relevant individual personally; or

(b) by:

(i) leaving it at the address of the relevant individual’s
place of residence or business last known to the TPS
Director; and

(ii) taking reasonably practicable action to draw the relevant
individual’s attention to the notice; or

(c) by sending it by ordinary or any other class of pre-paid post
to the relevant individual’s place of residence or business last
known to the TPS Director.

12 Subsection 115(2)

After “paragraph (1)(c)”, insert “or the TPS Director uses the method in
paragraph (1A)(c)”.

13 Section 122 (heading)

Repeal the heading, substitute:
122 Offence: giving false or misleading document to authorised officer

14 After section 122

Insert:

122A Offence: giving false or misleading document to TPS officer

(1) A person commits an offence if:
   (a) the person is given a production notice under section 113A; and
   (b) the person gives or shows a TPS officer a document in compliance or purported compliance with the notice; and
   (c) the document is false or misleading in a material particular.

Penalty: Imprisonment for 12 months.

(2) Subsection (1) does not apply to a person if the document is accompanied by a written statement signed by the person:
   (a) stating that the document is, to the person’s knowledge, false or misleading in the material particular concerned; and
   (b) setting out or referring to the material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the Criminal Code.

15 Before subsection 124(1)

Insert:

Authorised officer etc.

16 At the end of section 124

Add:

TPS Director etc.

(3) The TPS Director or a TPS officer may:
   (a) inspect a document given or shown to a TPS officer under this Division; and
(b) make and retain copies of, or take and retain extracts from, such a document; and
(c) retain a copy of a document given to a TPS officer under this Division.

17 After section 125

Insert:

125A Retaining of documents by TPS officer

(1) If a TPS officer is given a document under this Division, the TPS officer may retain the document:
(a) for the purposes of this Act; or
(b) for the purposes of an investigation as to whether an offence has been committed; or
(c) to enable evidence of an offence to be secured for the purposes of a prosecution.

(2) However, the document must not be retained for longer than 60 days after the TPS officer was given the document.

Note: The TPS officer may apply to retain the document for a further period: see section 128A.

18 After subsection 126(1)

Insert:

(1A) If a TPS officer retains a document under section 125A, the TPS officer must as soon as practicable:
(a) certify a copy of the document to be a true copy; and
(b) give the copy to the person (the owner) otherwise entitled to possession of the document.

19 Subsection 126(3)

Before “thinks”, insert “, or the TPS officer,”.

20 Section 127 (heading)

Repeal the heading, substitute:
127 Returning of documents

21 Subsection 127(1)

Omit all the words after “is given”, substitute:
under this Division to either of the following persons (the holder):
(a) an authorised officer of the ESOS agency for a registered
    provider;
(b) a TPS officer.

22 Subsection 127(2)

Omit “authorised employee”, substitute “holder”.

23 Subsection 127(2)

Omit “the employee”, substitute “the holder”.

24 Subsections 127(3)

Omit “authorised employee” (wherever occurring), substitute “holder”.

25 After section 128

Insert:

128A TPS officer may apply to retain document for a further period

(1) If a TPS officer is given a document under this Division, the TPS
    officer may apply to a magistrate or tribunal member for an order
    that the officer may retain the document for a further period.

(2) The application must be made before the end of:
(a) 60 days after the document was given to the TPS officer; or
(b) a period previously specified in an order of a magistrate or
    tribunal member under section 129.

(3) Before making the application, the TPS officer must:
(a) take reasonable steps to discover which persons’ interests
    would be affected by the retention of the document; and
(b) if it is practicable to do so, notify each person who the officer
    believes to be such a person of the proposed application.
Schedule 5—Other amendments

Education Services for Overseas Students Act 2000

1 Section 5
Insert:

*applicable number of days* has the meaning given by subsection 19(1A).

2 Section 5 (definition of *study period*)
Repeal the definition.

3 Section 15A (paragraph relating to Division 2)
Repeal the paragraph, substitute:

- Division 2 deals with tuition fees. In general, a registered provider must not receive more than 50% of the total tuition fees for a course before an overseas student begins the course.

4 Subsection 19(1)
Omit “14 days”, substitute “the applicable number of days”.

5 After subsection 19(1)
Insert:

(1A) The *applicable number of days* is:
(a) if the accepted student is less than 18 years old—14 days; or
(b) otherwise—31 days.

6 Section 22
Repeal the section.

7 Section 23
Before “A registered provider who is”, insert “(1)”.

No.  , 2015  Education Services for Overseas Students Amendment (Streamlining Regulation) Bill 2015
8 Section 23 (note 1)

Omit “Note 1”, substitute “Note”.

9 Section 23 (note 2)

Repeal the note.

10 At the end of section 23

Add:

(2) If the registered provider does not comply with subsection (1), the Secretary must give the provider a written notice that:

(a) specifies the amount of the annual registration charge that the provider is liable to pay; and

(b) states that the provider must pay that amount, and the late payment penalty for the charge, by the end of the seventh day after the notice is given to the provider; and

(c) sets out the effect of section 90.

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

(3) If:

(a) the registered provider does not comply with the notice; and

(b) the Secretary is not the ESOS agency for the provider;

the Secretary must notify the ESOS agency for the provider of the failure.

11 Section 23A

Repeal the section, substitute:

23A Second and third entry to market charges

(1) A registered provider who is liable to pay the second entry to market charge must pay the charge by the end of the day referred to in subsection 6(5) of the Education Services for Overseas Students (Registration Charges) Act 1997.

(2) A registered provider who is liable to pay the third entry to market charge must pay the charge by the end of the day referred to in
subsection 6(7) of the Education Services for Overseas Students (Registration Charges) Act 1997.

(3) If the registered provider does not comply with subsection (1) or (2) of this section, the Secretary must give the provider a written notice that:

(a) specifies the amount of the second entry to market charge or third entry to market charge that the provider is liable to pay; and

(b) states that the provider must pay that amount, and the late payment penalty for the charge, by the end of the seventh day after the notice is given to the provider; and

(c) sets out the effect of section 90.

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

(4) If:

(a) the registered provider does not comply with the notice; and

(b) the Secretary is not the ESOS agency for the provider;

the Secretary must notify the ESOS agency for the provider of the failure.

12 Subsection 27(1) (heading)

Repeal the heading.

13 Subsections 27(2) and (3)

Repeal the subsections, substitute:

(2) Subsection (1) does not apply if:

(a) a request is made by a person other than a registered provider to pay more than 50% of the student’s total tuition fees for a course before the student has begun the course; or

(b) the course has a duration of 24 weeks or less.

14 Sections 28 to 32

Repeal the sections.

No. 81, 2015 Education Services for Overseas Students Amendment (Streamlining Regulation) Bill 2015
15  Section 33A

Omit:

- 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.

substitute:

- The purpose of the national code is to provide nationally consistent standards and procedures for registered providers and persons who deliver educational services on behalf of such providers.

16  Section 34

Omit “for the conduct of registered providers and the conduct of”, substitute “and procedures for registered providers and”.

17  Paragraph 38(g)

Omit “relating to refunds under Division 2 of Part 5”, substitute “with overseas students or intending overseas students”.

18  Subsection 46D(6) (note)

Repeal the note.

19  Section 47C

Repeal the section.

20  Subsections 47D(2) and 47E(2) (note)

Repeal the note.

21  Subsection 47H(1)

Repeal the subsection, substitute:

(1) A registered provider must give a notice in accordance with this section if:
(a) an overseas student or intending overseas student defaults in relation to a course provided by the provider at a location; and
(b) the provider is required to provide a refund under section 47E.

Note: If a registered provider breaches this section, the ESOS agency for the provider may take action under Division 1 of Part 6 against the provider.

22 Paragraph 47H(3)(a)

Omit “47D or”.

23 Subsection 50C(2) (note)

Repeal the note.

24 Paragraphs 90(1)(b) and (c)

Repeal the paragraphs, substitute:
(b) fails to comply with a notice given under section 23 or 23A;