

EXPOSURE DRAFT

2013-2014-2015

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT

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

4 The Parliament of Australia enacts:

5 **1 Short title**

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

8 **2 Commencement**

9 (1) Each provision of this Act specified in column 1 of the table
10 commences, or is taken to have commenced, in accordance with
11 column 2 of the table. Any other statement in column 2 has effect
12 according to its terms.
13

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedules 1 to 5	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.	
Note:	This table relates only to the provisions of this Act as originally enacted.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.	

14
15
16

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Schedule 1 Streamlining registration

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

4 **3 Schedules**

5 Legislation that is specified in a Schedule to this Act is amended or
6 repealed as set out in the applicable items in the Schedule
7 concerned, and any other item in a Schedule to this Act has effect
8 according to its terms.

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Regulation) Bill 2015* No. , 2015

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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.

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Schedule 1 Streamlining registration

1 **8 Section 5 (definition of *authorised employee*)**

2 Repeal the definition.

3 **9 Section 5**

4 Insert:

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

7 **10 Section 5 (definition of *condition*)**

8 Omit “section 9AD or 9AE”, substitute “section 10B”.

9 **11 Section 5 (definition of *designated authority*)**

10 Repeal the definition.

11 **12 Section 5**

12 Insert:

13 *designated State authority* for a provider or registered provider to
14 the extent the provider is an approved school provider means the
15 person responsible under the law of a State for approving (however
16 described) school providers to provide courses to:

- 17 (a) if the school provider is located in Tasmania or the
18 Australian Capital Territory—students for that State or
19 Territory; or
20 (b) otherwise—overseas students for the State (other than
21 Tasmania or the Australian Capital Territory).

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

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

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

28 *exempt provider* has the meaning given by section 6D.

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Streamlining registration **Schedule 1**

1 **13 Section 5 (definition of *first entry to market charge*)**

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

4 **14 Section 5**

5 Insert:

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

10 **15 Section 5 (definition of *higher education provider*)**

11 Repeal the definition.

12 **16 Section 5**

13 Insert:

14 *meets the registration requirements* has the meaning giving by
15 section 11.

16 **17 Section 5 (paragraph (a) of the definition of *monitoring***
17 ***purpose*)**

18 Repeal the paragraph, substitute:

19 (a) whether a registered provider is complying, or has complied,
20 with:

21 (i) this Act; or

22 (ii) the national code; or

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

26 **18 Section 5**

27 Insert:

28 *non-referring State* has the same meaning as in the NVETR Act.

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Schedule 1 Streamlining registration

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

3 *NVR registered training organisation* has the same meaning as in
4 the NVETR Act.

5 *preparatory course provider* means a person or entity that
6 provides:

- 7 (a) an English Language Intensive Course for Overseas Students;
8 or
9 (b) a Foundation Program.

10 **19 Section 5 (definition of *provider*)**

11 Repeal the definition, substitute:

12 *provider* has the meaning given by section 6E.

13 **20 Section 5**

14 Insert:

15 *registered higher education provider* has the same meaning as in
16 the TEQSA Act.

17 **21 Section 5 (definition of *registered provider*)**

18 Repeal the definition, substitute:

19 *registered provider* for a course for a location means a provider
20 that is registered to provide the course at the location.

21 **22 Section 5**

22 Insert:

23 *registered training organisation* has the same meaning as in the
24 NVETR Act.

25 *registered VET provider* means:

- 26 (a) an NVR registered training organisation; or
27 (b) a registered training organisation (other than an NVR
28 registered training organisation) that provides, or seeks to

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Streamlining registration **Schedule 1**

1 provide, courses to overseas students at locations in a
2 non-referring State.

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

5 *relevant individual* of a registered provider means:

6 (a) an officer or employee of the provider; or

7 (b) a consultant to the provider; or

8 (c) if the provider is a partnership—a partner in the partnership;
9 or

10 (d) if the provider is a sole trader—the provider; or

11 (e) an officer or employee of an administrator or liquidator of the
12 provider or a former registered provider.

13 **23 Section 5 (definition of *risk assessment*)**

14 Repeal the definition.

15 **24 Section 5**

16 Insert:

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

21 **25 Section 5 (definition of second or third entry to market 22 charge)**

23 Repeal the definition.

24 **26 Section 5**

25 Insert:

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

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

4 **27 Section 5 (definition of TPS levy)**

5 Repeal the definition, substitute:

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

8 **28 Section 5A (heading)**

9 Repeal the heading, substitute:

10 **5A When registered higher education providers are taken to have**
11 **the principal purpose of providing education**

12 **29 Section 5A**

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

17 **30 After section 6**

18 Insert:

19 **6A Meaning of *authorised officer***

20 (1) The following table sets out who is an *authorised officer* of the
21 ESOS agency for a registered provider:
22

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

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

1

- 2 (2) If the ESOS agency for a registered provider is the Secretary, the
3 agency may, in writing, appoint a person as an ***authorised officer***
4 of the agency if:
- 5 (a) the person is an APS employee in the Department; and
 - 6 (b) the person holds or performs the duties of an APS 5 position
7 or higher, or an equivalent position; and
 - 8 (c) the agency is satisfied that the person has suitable
9 qualifications and experience.
- 10 (3) If the ESOS agency for a registered provider is an entity that is
11 covered by item 4 of the table in subsection (1), the agency may, in
12 writing, appoint a person as an ***authorised officer*** of the agency if:
- 13 (a) the person is an employee or constituent member of the
14 agency; and
 - 15 (b) the agency is satisfied that the person has suitable
16 qualifications and experience.

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1 **6B Meaning of *DSA assessment certificate* and *DSA recommendation***
2 ***certificate***

3 *DSA assessment certificate*

- 4 (1) A ***DSA assessment certificate*** is a certificate given by the
5 designated State authority for an approved school provider that:
- 6 (a) states that the authority is satisfied that the provider is
7 complying, or will comply, with:
- 8 (i) this Act; and
9 (ii) the national code; and
10 (iii) if the ELICOS Standards or Foundation Program
11 Standards apply in relation to the provider—those
12 Standards; and
- 13 (b) if the provider is not an exempt provider—states that the
14 authority is satisfied that the provider is fit and proper to be
15 registered; and
- 16 (c) states that the authority is satisfied that the provider has the
17 principal purpose of providing education; and
- 18 (d) states that the authority has no reason to believe that the
19 provider has not been providing, or will not provide,
20 education of a satisfactory standard to overseas students; and
- 21 (e) recommends the conditions (if any) that should be imposed
22 on the provider's registration; and
- 23 (f) recommends a period not longer than 7 years for which the
24 provider should be registered; and
- 25 (g) sets out any other matters prescribed by the regulations.

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

29 *DSA recommendation certificate*

- 30 (2) A ***DSA recommendation certificate*** is a certificate given by the
31 designated State authority for an approved school provider that:
- 32 (a) recommends that the ESOS agency for the provider should
33 add one or more courses at one or more locations to the
34 provider's registration; and

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- 1 (b) recommends the conditions (if any) that should be imposed
2 on the provider's registration; and
3 (c) sets out any other matters prescribed by the regulations.

4 *Form of certificates*

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

8 **6C Meaning of *ESOS agency***

- 9 (1) Subject to subsection (3), the following table sets out the *ESOS*
10 *agency* for a provider or registered provider:
11

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

12

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

- 16 (3) If a provider or registered provider is covered by more than one
17 item of the table in subsection (1), the Minister may, by legislative
18 instrument:

- 19 (a) determine that one or more entities are the *ESOS agencies*
20 for the provider; and

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- 1 (b) specify the circumstances in which each of those entities is
2 the *ESOS agency* for the provider.

3 **6D Meaning of *exempt provider***

- 4 (1) A provider or registered provider is an *exempt provider* if:
5 (a) the provider is administered by a State education authority; or
6 (b) the provider:
7 (i) is entitled to receive funds under a law of the
8 Commonwealth for recurrent expenditure for the
9 provision of education or training; and
10 (ii) is not a provider prescribed by the regulations for the
11 purposes of this subparagraph; or
12 (c) the provider is specified in the regulations.
- 13 (2) To avoid doubt, a private corporate body established in connection
14 with a provider covered by paragraph (1)(a) or (b) is not itself, by
15 virtue of that connection alone, a provider covered by that
16 paragraph.

17 **6E Meaning of *provider***

- 18 (1) A *provider* is:
19 (a) a registered higher education provider; or
20 (b) a registered VET provider; or
21 (c) an approved school provider; or
22 (d) a preparatory course provider; or
23 (e) another person or entity (other than a person or entity
24 specified under subsection (2));
25 that provides, or seeks to provide, courses to overseas students.
- 26 (2) The Minister may, by legislative instrument, specify a person or
27 entity for the purposes of paragraph (1)(e).

28 **31 Section 7A**

- 29 Repeal the section, substitute:
-

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1 **7A Deciding whether a provider or registered provider is fit and**
2 **proper to be registered etc.**

3 (1) This section applies if it is necessary for the purposes of a
4 provision of this Act for:

5 (a) the ESOS agency for a provider or registered provider to
6 decide whether:

7 (i) the agency is satisfied, or no longer satisfied, that the
8 provider is fit and proper to be registered; or

9 (ii) the agency believes on reasonable grounds that the
10 provider is not fit and proper to be registered; or

11 (b) the designated State authority for a provider or registered
12 provider that is an approved school provider to decide
13 whether the authority is satisfied that the provider is fit and
14 proper to be registered.

15 (2) In deciding the matter, the ESOS agency or designated State
16 authority must have regard to:

17 (a) whether the provider or a related person of the provider has
18 ever been convicted of an offence; and

19 (b) whether the registration of the provider or a related person of
20 the provider has ever been cancelled or suspended under this
21 Act or the old ESOS Act; and

22 (c) whether the provider or a related person of the provider has
23 ever been issued with an Immigration Minister's suspension
24 certificate; and

25 (d) whether a condition has ever been imposed under this Act on
26 the registration of the provider or a related person of the
27 provider; and

28 (e) whether the provider or a related person of the provider has
29 ever:

30 (i) become bankrupt; or

31 (ii) taken steps to take the benefit of any law for the relief of
32 bankrupt or insolvent debtors; or

33 (iii) compounded with one or more creditors of the provider
34 or person; or

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- 1 (iv) made an assignment of the remuneration of the provider
2 or person for the benefit of one or more creditors of the
3 provider or person; and
4 (f) whether the provider or a related person of the provider has
5 ever been disqualified from managing corporations under
6 Part 2D.6 of the *Corporations Act 2001*; and
7 (g) whether the provider or a related person of the provider was
8 involved in the business of the provision of courses by
9 another provider who is covered by any of the above
10 paragraphs at the time of any of the events that gave rise to
11 the relevant conviction or other action; and
12 (h) any other relevant matter.
- 13 (3) A *related person* of a provider or registered provider is:
14 (a) an associate of the provider who has been, is or will be,
15 involved in the business of the provision of courses by the
16 provider; or
17 (b) a high managerial agent of the provider.
- 18 (4) Nothing in subsection (2) affects the operation of Part VIIC of the
19 *Crimes Act 1914* (which deals with spent convictions).

7AA No duty imposed on designated State authorities

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

32 Section 7B

21 Omit:

- 22
- 23
- 24
- 25
- 26
- This Act and the national code impose obligations on registered providers, such as notification, record keeping and financial requirements.

27 substitute:

- 28
- 29
- This Act, the national code, the ELICOS Standards and the Foundation Program Standards impose obligations on

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

33 Part 2 (heading)

4 Repeal the heading, substitute:

5 Part 2—Registration of providers

6 34 Section 8A (paragraphs relating to Divisions 3 and 4)

7 Repeal the paragraphs, substitute:

- 8
- 9 • Division 3 provides for the registration of providers by the
10 ESOS agency for a provider. A provider may be registered
11 (for a period of up to 7 years) to provide one or more courses
12 at one or more locations to overseas students if the provider
13 meets the registration requirements. Conditions may be
14 imposed on the registration of a provider and those conditions
may be varied or revoked.
 - 15 • Division 3 also provides for the renewal of registrations, the
16 addition of one or more courses at one or more locations to a
17 registered provider's registration and the extension or
18 continuation of registration periods in certain circumstances.
 - 19 • Division 4 requires the Secretary to cause a Register to be kept
20 that contains specified information about the registration of all
21 registered providers. The Secretary is also required to ensure
22 that the Register is kept up-to-date.

23 35 Division 3 of Part 2 (heading)

24 Repeal the heading, substitute:

25 Division 3—Registration of providers

26 36 Subdivision A of Division 3 of Part 2

27 Repeal the Subdivision, substitute:

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1 **Subdivision A—Application for registration**

2 **9 Provider may apply to be registered**

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

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

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

8 **10 ESOS agency for provider may register provider**

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

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

15 **10A Notice of registration**

16 (1) If:

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

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

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

22 (2) The notice must set out:

23 (a) the name of the provider; and

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

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

28 (d) the location or locations at which the provider is registered to
29 provide that course or those courses; and

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- 1 (e) the period of registration (which must not be longer than 7
2 years); and
3 (f) any conditions imposed on the provider's registration under
4 section 10B at the time of registration and when any such
5 conditions take effect; and
6 (g) any other matters relating to the registration that the ESOS
7 agency for the provider considers appropriate.
- 8 (3) If the provider is an approved school provider, the ESOS agency
9 for the provider must, in determining the provider's period of
10 registration, have regard to the period of registration recommended
11 in the DSA assessment certificate given to the agency by the
12 designated State authority for the provider.

13 **Subdivision B—Conditions of registration**

14 **10B Conditions of registration**

- 15 (1) The ESOS agency for a provider or registered provider may at any
16 time:
17 (a) impose a condition on the provider's registration; or
18 (b) vary or remove a condition of the provider's registration.
- 19 (2) The ESOS agency for the provider or registered provider must use
20 a risk management approach in deciding whether to impose, vary
21 or remove a condition.
- 22 (3) A condition may be:
23 (a) imposed generally on a provider's registration; or
24 (b) imposed in respect of either or both of the following:
25 (i) one or more of the courses that a provider is registered
26 to provide;
27 (ii) one or more of the locations at which a provider is
28 registered to provide a course.
- 29 (4) If the ESOS agency for a registered provider does either of the
30 following after the commencement of the provider's registration:
31 (a) imposes a condition on the provider's registration;
32 (b) varies or removes a condition of the provider's registration;

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

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

6 **10C Conditions imposed by designated State authorities on the** 7 **approval of school providers after registration**

8 (1) If:

- 9 (a) a registered provider for a course for a location is an
10 approved school provider; and
11 (b) at any time while the provider is registered, the designated
12 State authority for the provider imposes a condition on the
13 authority's approval of the provider that relates to the
14 provision of the course;

15 the ESOS agency for the provider may impose that condition on
16 the provider's registration under section 10B.

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

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

21 **Subdivision C—Renewal of registration**

22 **10D Registered provider may apply to renew registration**

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

26 (2) The application must be:

- 27 (a) made to the ESOS agency for the register provider; and
28 (b) made within the period determined under subsection (3).

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

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- 1 (3) The ESOS agency for a registered provider may, by legislative
2 instrument, determine the period within which applications under
3 this section must be made.

4 **10E ESOS agency for registered provider may renew registration**

- 5 (1) If a registered provider makes an application under section 10D,
6 the ESOS agency for the provider may renew the provider's
7 registration to provide a course or courses at a location or locations
8 if the provider meets the registration requirements.
- 9 (2) The ESOS agency for the registered provider must use a risk
10 management approach when considering whether to renew the
11 registration of the provider.

12 **10F Registration continues until decision on renewal is made**

- 13 (1) If:
14 (a) a registered provider makes an application under
15 section 10D; and
16 (b) the ESOS agency for the provider has not made a decision on
17 the application before the end of the day on which the
18 provider's registration is due to expire;
19 the provider's registration continues until the agency makes a
20 decision on the application.
- 21 (2) Subsection (1) does not apply if the registered provider's
22 registration is cancelled under this Act.

23 **10G Notice of renewal of registration**

- 24 (1) If:
25 (a) a registered provider makes an application under
26 section 10D; and
27 (b) the ESOS agency for the provider decides to renew the
28 provider's registration;
29 the agency must, as soon as practicable after making the decision,
30 give the provider written notice of the renewal.
- 31 (2) The notice must set out:
-

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- 1 (a) the name of the registered provider; and
2 (b) if the provider is not an individual—the name of the principal
3 executive officer of the provider; and
4 (c) the name of the course or courses that the provider is
5 registered to provide; and
6 (d) the location or locations at which the provider is registered to
7 provide that course or those courses; and
8 (e) the period of registration (which must not be longer than 7
9 years); and
10 (f) any conditions imposed on the provider’s registration under
11 section 10B at the time of the renewal of the registration and
12 when any such conditions take effect; and
13 (g) any other matters relating to the renewal of the registration
14 that the ESOS agency for the provider considers appropriate.
- 15 (3) If the registered provider is an approved school provider, the ESOS
16 agency for the provider must, in determining the provider’s period
17 of registration, have regard to the period of registration
18 recommended in the DSA assessment certificate given to the
19 agency by the designated State authority for the provider.

20 **Subdivision D—Changes to registration etc.**

21 **10H Registered provider may apply to add one or more courses at** 22 **one or more locations to registration**

- 23 (1) A registered provider may apply to add one or more courses at one
24 or more locations to the provider’s registration.
- 25 (2) The application:
26 (a) must be made to the ESOS agency for the registered
27 provider; and
28 (b) if the provider is an approved school provider—must be
29 accompanied by a DSA recommendation certificate given by
30 the designated State authority for the provider.

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

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1 **10J ESOS agency for registered provider may add one or more**
2 **courses at one or more locations to registration**

- 3 (1) If a registered provider makes an application under section 10H to
4 add one or more courses at one or more locations to the provider's
5 registration, the ESOS agency for the provider may add those
6 courses at those locations to the provider's registration.
- 7 (2) The ESOS agency for the registered provider must use a risk
8 management approach when considering whether to add one or
9 more courses at one or more locations to the provider's
10 registration.
- 11 (3) If the ESOS agency for the registered provider decides to add one
12 or more courses at one or more locations to the provider's
13 registration, the addition does not affect the provider's period of
14 registration.

15 **10K Notice of addition of one or more courses at one or more**
16 **locations to registration**

- 17 (1) If:
18 (a) a registered provider makes an application under
19 section 10H; and
20 (b) the ESOS agency for the provider decides to add one or more
21 courses at one or more locations to the provider's
22 registration;
23 the agency must, as soon as practicable after making the decision,
24 give the provider written notice of the decision.
- 25 (2) The notice must set out:
26 (a) the name of the additional course or courses that the provider
27 is registered to provide; and
28 (b) the additional location or locations at which the provider is
29 registered to provide that course or those courses; and
30 (c) any conditions imposed on the provider's registration under
31 section 10B at the time of the decision and when any such
32 conditions take effect; and

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- 1 (d) any other matters relating to the decision that the ESOS
2 agency for the provider considers appropriate.

3 **10L Extension of a registered provider's period of registration**

- 4 (1) The ESOS agency for a registered provider that is a registered
5 higher education provider may extend the provider's period of
6 registration for the purpose of aligning the period with the
7 provider's period of registration under the TEQSA Act.
- 8 (2) The ESOS agency for a registered provider that is a registered VET
9 provider may extend the provider's period of registration for the
10 purpose of aligning the period with the provider's period of
11 registration under the NVETR Act.
- 12 (3) The ESOS agency for a registered provider that is an approved
13 school provider may extend the provider's period of registration
14 for the purpose of aligning the period with the provider's period of
15 approval as an approved school provider.
- 16 (4) The ESOS agency for a registered provider must not extend a
17 particular period of registration under subsection (1), (2) or (3)
18 more than once.
- 19 (5) The ESOS agency for a registered provider must use a risk
20 management approach when considering whether to extend the
21 provider's period of registration.

22 **10M Registration continues until registered provider finishes** 23 **providing a course**

- 24 (1) This section applies if:
25 (a) a registered provider is registered to provide a course at a
26 location; and
27 (b) the registered provider's registration for the course at the
28 location is due to expire before the provider has finished
29 providing the course at the location; and
30 (c) that registration has not been cancelled under this Act.
- 31 (2) The registered provider's registration for the course at the location
32 continues until the provider has finished providing the course at the
-

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1 location to the students who were enrolled in the course before the
2 expiry of that registration.

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

8 **37 Subdivision B of Division 3 of Part 2 (heading)**

9 Repeal the heading substitute:

10 **Subdivision E—Other registration provisions**

11 **38 Sections 9AH and 9B**

12 Repeal the sections, substitute:

13 **11 When a provider or registered provider meets the registration** 14 **requirements**

15 A provider or registered provider *meets the registration*
16 *requirements* if:

- 17 (a) the provider is:
- 18 (i) a resident; or
 - 19 (ii) a Table C provider (within the meaning of the *Higher*
20 *Education Support Act 2003*); and
- 21 (b) the ESOS agency for the provider is satisfied that the
22 provider is complying, or will comply, with:
- 23 (i) this Act; and
 - 24 (ii) the national code; and
 - 25 (iii) if the ELICOS Standards or Foundation Program
26 Standards apply in relation to the provider—those
27 Standards; and
- 28 (c) if the provider is not an exempt provider—the ESOS agency
29 for the provider is satisfied that the provider is fit and proper
30 to be registered; and

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- 1 (d) the ESOS agency for the provider is satisfied that the
2 provider has the principal purpose of providing education;
3 and
4 (e) the ESOS agency for the provider has no reason to believe
5 that the provider has not been providing, or will not provide,
6 education of a satisfactory standard to overseas students; and
7 (f) if the provider is an approved school provider—the
8 designated State authority for the provider has given the
9 ESOS agency for the provider a DSA assessment certificate;
10 and
11 (g) if the provider is not a registered provider—the provider has
12 paid:
13 (i) the first entry to market charge (if the provider is liable
14 to pay that charge); and
15 (ii) its first TPS levy; and
16 (h) if the provider is a registered provider or has previously been
17 registered—the provider is not liable to pay an amount of:
18 (i) annual registration charge; or
19 (ii) the second entry to market charge; or
20 (iii) the third entry to market charge; or
21 (iv) TPS levy; or
22 (v) late payment penalty for any such charge or levy; and
23 (i) any other requirements prescribed by the regulations are
24 satisfied.
- 25 Note 1: For when a registered higher education provider has the principal
26 purpose of providing education, see section 5A.
- 27 Note 2: For when a provider is liable to pay the entry to market charges, see
28 section 6 of the *Education Services for Overseas Students*
29 (*Registration Charges*) Act 1997.

30 **11A Rules relating to applications for registration etc.**

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

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1 *Form of application etc.*

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

7 *Withdrawal of application*

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

11 *Consideration of application*

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

18 **11B ESOS agency may request further information or documents**

- 19 (1) This section applies in relation to:
- 20 (a) an application made to the ESOS agency for a provider under
- 21 section 9; and
- 22 (b) an application made to the ESOS agency for a registered
- 23 provider under section 10D or 10H.
- 24 (2) If the ESOS agency for the provider or registered provider needs
- 25 further information or documents to decide the application, the
- 26 agency may request any or all of the following to give the agency
- 27 the further information or documents:
- 28 (a) the provider;
- 29 (b) if the provider is an approved school provider—the
- 30 designated State authority for the provider;
- 31 (c) another ESOS agency.

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- 1 (3) The request:
2 (a) must be made in writing; and
3 (b) must specify the period within which the further information
4 or documents are to be given (which must be at least 14 days
5 after the request is made); and
6 (c) contain a statement setting out the effect of subsection (4).
- 7 (4) The ESOS agency for the provider or registered provider may
8 decline to consider, or further consider, the application until the
9 further information or documents are given.

10 **11C Copies of decision notices to be given by the ESOS agency**

11 *Notice of registration etc.*

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

19 *Notice of refusal to register an approved school provider*

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

25 *Notice of registration conditions etc.*

- 26 (3) If the ESOS agency for a registered provider:
27 (a) imposes a condition on, or varies or removes a condition of,
28 the provider's registration under section 10B after the
29 commencement of the registration; or
30 (b) refuses to renew the provider's registration under
31 section 10E; or

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- 1 (c) refuses to add one or more courses at one or more locations
2 to the provider’s registration under section 10J; or
3 (d) extends the provider’s period of registration under
4 section 10L;
5 the agency must give a copy of the notice of the decision given to
6 the provider under section 169AC to:
7 (e) if the provider is an approved school provider—the
8 designated State authority for the provider; and
9 (f) if the ESOS agency for the provider is not the Secretary—the
10 Secretary.

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

13 **39 Subsection 12(1) (note 1)**

14 Repeal the note, substitute:

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

19 **40 Paragraph 12(2)(a)**

20 Omit “Secretary registers the provider under section 9AB”, substitute
21 “provider is registered”.

22 **41 Paragraph 12(2)(b)**

23 After “second”, insert “entry to market charge”.

24 **42 Subsection 13(1)**

25 Omit “Secretary registers the provider under section 9AB”, substitute
26 “provider is registered”.

27 **43 Section 14**

28 Repeal the section, substitute:

29 **14 Notifying designated State authorities for approved school** 30 **providers of non-compliance with this Act etc.**

31 (1) This section applies if:

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- 1 (a) an approved school provider applies for registration under
2 section 9; and
3 (b) the ESOS agency for the provider has information suggesting
4 that:
5 (i) the provider is not complying, or will not comply, with
6 this Act or the national code; or
7 (ii) if the ELICOS Standards or Foundation Program
8 Standards apply in relation to the provider—the
9 provider is not complying, or will not comply, with
10 those Standards; or
11 (iii) the provider does not have the principal purpose of
12 providing education; or
13 (iv) the provider has not been providing, or will not provide,
14 education of a satisfactory standard to overseas
15 students; and
16 (c) the source of the information is not the designated State
17 authority for the provider.
- 18 (2) Before deciding the application for registration, the ESOS agency
19 must:
20 (a) give the information to the designated State authority; and
21 (b) allow the authority at least 7 days to respond, in writing, to
22 the information.

23 **44 Paragraph 14A(4)(f)**

24 Repeal the paragraph.

25 **45 Paragraph 14A(4)(h)**

26 Repeal the paragraph, substitute:

- 27 (h) any conditions of the provider's registration and when any
28 such conditions take effect;

29 **46 Subsection 14A(6)**

30 Repeal the subsection.

31 **47 Section 15 (note)**

32 Repeal the note, substitute:

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

4 48 Section 16 (note)

5 Repeal the note, substitute:

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

9 49 Section 17 (heading)

10 Repeal the heading, substitute:

11 **17 Registered providers must notify their ESOS agency of offences**
12 **etc. by associates and high managerial agents**

13 50 Subsection 17(1)

14 Omit “Secretary”, substitute “ESOS agency for the provider”.

15 51 Subsection 17(1) (note)

16 Repeal the note, substitute:

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

20 52 Subsection 18(1A) (note)

21 Repeal the note, substitute:

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

25 53 Subsections 19(1) and (2)

26 Omit “the Secretary”.

27 54 Subsection 19(3)

28 Repeal the subsection, substitute:

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1 (3) A registered provider must give the information required by this
2 section by entering the information in the computer system
3 established by the Secretary under section 109.

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

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

9 **55 Subsection 19(4)**

10 Omit “the Secretary”.

11 **56 Subsection 20(1) (note 1)**

12 Repeal the note, substitute:

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

16 **57 Paragraph 21(2B)(a)**

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

18 **58 Subsection 21(3) (note)**

19 Repeal the note, substitute:

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

23 **59 Subsection 21(7)**

24 Repeal the subsection.

25 **60 Subsection 21A(1) (note)**

26 Repeal the note, substitute:

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

30 **61 Subsection 24(2) (note)**

31 Repeal the note, substitute:

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

4 **62 Subsection 26(3) (note 1)**

5 Repeal the note, substitute:

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

9 **63 Section 33A**

10 Omit:

- 11

<ul style="list-style-type: none">• Designated authorities investigate breaches of the code.
--

12 **64 Section 40 (note)**

13 Omit “section 9AB”, substitute “section 11”.

14 **65 Section 43**

15 Repeal the section.

16 **66 Subsection 46A(4)**

17 Omit “Minister”, substitute “ESOS agency for the provider”.

18 **67 Subsection 46A(5)**

19 Omit “Minister”, substitute “ESOS agency for the registered provider”.

20 **68 Paragraph 46A(5)(b)**

21 Repeal the paragraph, substitute:

22 (b) any advice provided by another ESOS agency; and

23 (c) if the provider is an approved school provider—any advice of
24 the State designated authority for the provider.

25 **69 Subsection 46B(1) (note)**

26 Repeal the note, substitute:

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

4 **70 Subsection 46B(2) (heading)**

5 Repeal the heading, substitute:

6 *Notifying the ESOS agency and TPS Director*

7 **71 Subsection 46B(2)**

8 Omit “Secretary”, substitute “ESOS agency for the provider”.

9 **72 Section 46C**

10 Repeal the section.

11 **73 Subsection 46F(1) (note)**

12 Repeal the note, substitute:

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

16 **74 Subsection 46F(2)**

17 Omit “Secretary”, substitute “ESOS agency for the provider”.

18 **75 Subsection 47H(2)**

19 Omit “Secretary”, substitute “ESOS agency for the provider”.

20 **76 Subsection 53B(1) (note 1)**

21 Repeal the note, substitute:

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

25 **77 Section 53C (heading)**

26 Repeal the heading, substitute:

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1 **53C Notifying the ESOS agency in relation to payment of TPS levy**

2 **78 Subsection 53C(1)**

3 Repeal the subsection, substitute:

4 *Payment of first TPS levy*

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

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

10 **79 Subsection 53C(3)**

11 Repeal the subsection substitute:

12 *Non-payment of later TPS levies*

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

17 **80 Subsection 53D(3)**

18 Omit “Secretary if the registered”, substitute “ESOS agency for the
19 registered provider if the”.

20 **81 Section 83A**

21 Omit:

- 22
- 23
- 24
- Compliance with this Act, the national code and any conditions on a provider’s registration is enforced under this Part.

25 substitute:

- 26
- 27
- 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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1 Standards, the Foundation Program Standards or a condition
2 of the provider's registration.

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.

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1 Note: Section 93 sets out the procedure for taking the action.

2 **86 Subsection 83(1A)**

3 Omit “The Minister”, substitute “The ESOS agency for a registered
4 provider”.

5 **87 Subsection 83(1A)**

6 Omit “a registered provider if the Minister”, substitute “the provider if
7 the agency”.

8 **88 Subsection 83(1B)**

9 Omit “The Minister”, substitute “The ESOS agency for a registered
10 provider”.

11 **89 Subsection 83(1B)**

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

15 **90 Subsection 83(1B) (note 2)**

16 Repeal the note, substitute:

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

20 **91 Subsection 83(1C)**

21 Omit “The Minister”, substitute “The ESOS agency for a registered
22 provider”.

23 **92 Subsection 83(1C)**

24 Omit “a registered provider if the Minister”, substitute “the registered
25 provider if the agency”.

26 **93 Paragraph 83(1C)(b)**

27 Repeal the paragraph, substitute:

28 (b) has not been providing, or has not provided, education of a
29 satisfactory standard to overseas students.

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1 **94 Subsection 83(1C) (note 2)**

2 Before “higher”, insert “registered”.

3 **95 Subsection 83(2)**

4 Omit “The Minister”, substitute “The ESOS agency for a registered
5 provider”.

6 **96 Subsection 83(2)**

7 Omit “a registered provider for a course if the Minister”, substitute “the
8 registered provider for a course if the agency”.

9 **97 Subsection 83(3) (heading)**

10 Repeal the heading, substitute:

11 *Actions the ESOS agency may take*

12 **98 Subsection 83(4)**

13 Omit “The Minister”, substitute “The ESOS agency for a registered
14 provider”.

15 **99 Subsection 83(4)**

16 Omit “a registered”, substitute “the”.

17 **100 Subsection 83(4)**

18 Omit “the Minister”, substitute “the agency”.

19 **101 Section 84**

20 Repeal the section, substitute:

21 **84 ESOS agency may take further action**

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

25 **102 Section 85 (heading)**

26 Repeal the heading, substitute:

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1 **85 ESOS agency may take action for breaches occurring before**
2 **provider was registered**

3 **103 Section 85**

4 Omit “Minister may take action against a registered provider”,
5 substitute “ESOS agency for a registered provider may take action
6 against the provider”.

7 **104 Subsections 86(1) and (2)**

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

9 **105 At the end of Subdivision A of Division 1 of Part 6**

10 Add:

11 **87 Breaches of this Act etc. by approved school providers**

12 (1) This section applies if:

- 13 (a) a registered provider is an approved school provider; and
14 (b) the ESOS agency for the provider has information suggesting
15 that the provider may have breached:
16 (i) this Act; or
17 (ii) the national code; or
18 (iii) if the ELICOS Standards or Foundation Program
19 Standards apply in relation to the provider—those
20 Standards; and
21 (c) the source of the information is not the designated State
22 authority for the provider.

23 (2) Before the ESOS agency takes any action under this Act in relation
24 to the possible breach, the agency:

- 25 (a) must notify the designated State authority of the possible
26 breach; and
27 (b) may request the authority to investigate the matter or take
28 any other suitable action.

29 (3) Despite subsection (2), the ESOS agency may take any action
30 under this Act in relation to the possible breach if, in the ESOS

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1 agency's opinion, the circumstances of the possible breach require
2 urgent action.

3 **106 Sections 89 and 89A**

4 Repeal the sections, substitute:

5 **89 Automatic suspension if registered provider is no longer fit and** 6 **proper**

7 *ESOS agency no longer satisfied registered provider is fit and*
8 *proper*

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

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

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

16 (2) If:

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

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

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

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

25 *Notification of suspension*

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

29 (a) the provider;

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

4 *Removal of suspension*

- 5 (4) If:
6 (a) the registration of a provider has been suspended by force of
7 subsection (1) or (2); and
8 (b) either:
9 (i) in the case of a suspension under subsection (1)—the
10 ESOS agency for the provider becomes satisfied that the
11 provider is fit and proper to be registered again; or
12 (ii) in the case of a suspension under subsection (2)—the
13 designated State authority for the provider tells the
14 ESOS agency for the provider that the authority has
15 become satisfied that the provider is fit and proper to be
16 registered again;
17 the agency may give the provider a notice that sets out the effect of
18 subsection (5).

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

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

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

27 **107 Section 91**

28 Repeal the section, substitute:

29 **91 Automatic cancellation if registered provider ceases to be a**
30 **registered higher education provider etc.**

31 *Registered higher education providers*

- 32 (1) If:
-

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- 1 (a) a registered provider is a registered higher education
2 provider; and
3 (b) the provider is registered under Part 2 of this Act to provide a
4 course at one or more locations; and
5 (c) the course is an accredited course (within the meaning of the
6 TEQSA Act) in relation to the provider; and
7 (d) either:
8 (i) the provider ceases to be a registered higher education
9 provider in relation to the course; or
10 (ii) the course ceases to be an accredited course (within the
11 meaning of that Act) in relation to the provider;
12 the provider's registration under Part 2 of this Act is cancelled for
13 that course for all of those locations by force of this subsection.

Registered VET providers

- 14
15 (2) If:
16 (a) a registered provider is a registered VET provider; and
17 (b) the provider is registered under Part 2 of this Act to provide a
18 course at one or more locations; and
19 (c) the course is a VET accredited course (within the meaning of
20 the NVETR Act) in relation to the provider; and
21 (d) either:
22 (i) the provider ceases to be a registered VET provider in
23 relation to the course; or
24 (ii) the course ceases to be a VET accredited course (within
25 the meaning of that Act) in relation to the provider;
26 the provider's registration under Part 2 of this Act for that course
27 for all of those locations is cancelled by force of this subsection.

Approved school providers

- 28
29 (3) If:
30 (a) a registered provider is an approved school provider in
31 relation to a State; and
32 (b) the provider is registered to provide a course at one or more
33 locations in the State; and

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- 1 (c) the provider ceases to be an approved school provider in
2 relation to the provision of the course at those locations in the
3 State;
4 the provider's registration is cancelled for that course for all of
5 those locations in the State by force of this subsection.

6 **108 Section 93**

7 Repeal the section, substitute:

8 **93 Procedure for taking action etc.**

- 9 (1) This section applies if:
10 (a) the ESOS agency for a provider or registered provider is
11 considering imposing a condition on the provider's
12 registration under section 10B; or
13 (b) the ESOS agency for a registered provider is considering
14 taking action under Subdivision A of this Division; or
15 (c) the ESOS agency for a provider is considering not giving the
16 provider a notice under subsection 89(4).
- 17 (2) Before the ESOS agency for the provider or registered provider
18 decides to do the thing referred to in paragraph (1)(a), (b) or (c),
19 the agency must give the provider a written notice that:
20 (a) states that the agency is considering doing that thing; and
21 (b) requests the provider to give the agency written submissions
22 about the matter within at least the period referred to in
23 subsection (3).
- 24 (3) The period is:
25 (a) if paragraph (1)(a) applies—72 hours; or
26 (b) if paragraph (1)(b) applies:
27 (i) if the agency is of the opinion that the circumstances
28 require urgent action—24 hours; or
29 (ii) otherwise—72 hours; or
30 (c) if paragraph (1)(c) applies—7 days.
- 31 (4) If, after considering any submissions received within the period
32 mentioned in paragraph (2)(b), the ESOS agency for the provider

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1 or registered provider considers that the agency should decide to do
2 the thing referred to in paragraph (1)(a), (b) or (c), the agency:
3 (a) may so decide; and
4 (b) must give the provider written notice of the decision.

5 **109 Section 94 (heading)**

6 Repeal the heading, substitute:

7 **94 ESOS agency may remove condition of registration or suspension** 8 **of registration**

9 **110 Subsection 94(1)**

10 Omit “Minister”, substitute “ESOS agency for the provider”.

11 **111 Subsection 94(2)**

12 Omit “Minister has given a provider”, substitute “ESOS agency for a
13 provider has given the provider”.

14 **112 Subsection 94(3)**

15 Omit “Minister”, substitute “ESOS agency for the provider”.

16 **113 Subsection 94(4)**

17 Omit “Minister has given a provider”, substitute “ESOS agency for a
18 provider has given the provider”.

19 **114 Subsection 95(3)**

20 Omit “Minister may give to a provider whose registration is
21 suspended”, substitute “ESOS agency for a provider whose registration
22 is suspended may give the provider”.

23 **115 Subsection 106(1)**

24 Omit “Minister to give a registered provider”, substitute “ESOS agency
25 for a registered provider to give the provider”.

26 **116 Subsection 109(1)**

27 After “established”, insert “by the Secretary”.

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1 **117 Subsection 109(1)**

2 Omit “to the Secretary”.

3 **118 Subsection 110A(1)**

4 Repeal the subsection, substitute:

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

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

9 (i) a provision of this Act; or

10 (ii) the national code; or

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

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

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

18 (i) a provision of this Act; or

19 (ii) the national code; or

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

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

24 **119 Subsections 110A(2), (3) and (4)**

25 Omit “Secretary”, substitute “ESOS agency for the provider”.

26 **120 Subsection 110B(1)**

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

29 **121 Paragraph 110B(1)(a)**

30 Omit “a registered provider”, substitute “the provider”.

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1 **122 Paragraph 110B(1)(c)**

2 Omit “Secretary”, substitute “ESOS agency”.

3 **123 Section 111A**

4 Omit:

- 5
 - Registered providers’ compliance with this Act and the
- 6 national code is monitored under this Part.

7 substitute:

- 8
 - This Part provides for the monitoring of registered providers’
- 9 compliance with this Act, the national code, the ELICOS
- 10 Standards or the Foundation Program Standards.

11 **124 Section 111A (paragraph relating to Division 2)**

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

13 **125 Section 111A (paragraphs relating to Divisions 3 and 4)**

14 Repeal the paragraphs, substitute:

- 15
 - An authorised officer of the ESOS agency for a registered
- 16 provider may apply for a monitoring warrant under
- 17 Division 3. A monitoring warrant allows the authorised officer
- 18 to enter and search the premises of the registered provider. If
- 19 the authorised officer finds evidential material on the
- 20 premises, the officer may secure the material until a search
- 21 warrant can be obtained.
- 22
 - Alternatively, an authorised officer of the ESOS agency for a
- 23 registered provider may apply for a search warrant under
- 24 Division 4. As well as allowing the authorised officer to enter
- 25 and search the premises of the registered provider, the officer
- 26 may also seize things under a search warrant.

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1 **126 Subsection 113(1)**

2 Omit “Secretary reasonably believes that an individual specified in
3 subsection (4)”, substitute “ESOS agency for a registered provider
4 reasonably believes that a relevant individual of the provider”.

5 **127 Subsection 113(2)**

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

8 **128 Paragraphs 113(2)(a), (b) and (c)**

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

10 **129 Subsection 113(2) (note)**

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

13 **130 Subsection 113(4)**

14 Repeal the subsection.

15 **131 Subsection 115(1)**

16 Omit “Secretary must give a production notice to an individual”,
17 substitute “ESOS agency for a registered provider must give a
18 production notice under section 113 to a relevant individual of the
19 provider”.

20 **132 Subparagraph 115(1)(b)(i)**

21 Omit “Secretary”, substitute “ESOS agency”.

22 **133 Paragraph 115(1)(c)**

23 Omit “Secretary”, substitute “ESOS agency”.

24 **134 Subsection 115(2)**

25 Omit “Secretary”, substitute “ESOS agency”.

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1 **145 Subsection 124(1)**

2 Omit “employee’s”, substitute “officer’s”.

3 **146 Paragraphs 124(1)(a) and (c)**

4 Omit “employee”, substitute “officer”.

5 **147 Subsection 124(2)**

6 Repeal the subsection, substitute:

7 (2) This subsection covers a person if the person is an employee of the
8 same ESOS agency as the authorised officer.

9 **148 Section 125 (heading)**

10 Repeal the heading, substitute:

11 **125 Retaining of documents by authorised officer etc.**

12 **149 Subsection 125(1)**

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

15 **150 Subsection 125(1)**

16 Omit “employee’s”, substitute “officer’s”.

17 **151 Subsection 125(1)**

18 Omit “employee under”, substitute “officer under”.

19 **152 Subsection 125(2)**

20 Omit “employee”, substitute “officer”.

21 **153 Subsection 125(2) (note)**

22 Omit “employee”, substitute “officer”.

23 **154 Subsection 125(3)**

24 Repeal the subsection, substitute:

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1 (3) This subsection covers a person if the person is an employee of the
2 same ESOS agency as the authorised officer.

3 **155 Subsection 126(1)**

4 Omit “An employee retaining”, substitute “A person who retains”.

5 **156 Subsection 126(3)**

6 Omit “employee”, substitute “person retaining the document”.

7 **157 Section 128 (heading)**

8 Repeal the heading, substitute:

9 **128 Authorised officer etc. may apply to retain document for a** 10 **further period**

11 **158 Subsection 128(1)**

12 Repeal the subsection, substitute:

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

19 **159 Paragraph 128(2)(a)**

20 Omit “employee”, substitute “officer”.

21 **160 Subsection 128(3) (heading)**

22 Repeal the heading, substitute:

23 *Persons affected by notice to be notified if practicable*

24 **161 Subsection 128(3)**

25 Omit “employee” (wherever occurring), substitute “officer or permitted
26 person”.

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1 **162 Section 129**

2 Omit “employee” (wherever occurring), substitute “person”.

3 **163 Section 130 (heading)**

4 Repeal the heading, substitute:

5 **130 Authorised officer may enter premises for a monitoring purpose**

6 **164 Subsection 130(1)**

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

9 **165 Subparagraph 130(1)(a)(i)**

10 Omit “a registered provider”, substitute “the provider”.

11 **166 Subsection 130(2)**

12 Omit “An authorised employee”, substitute “The authorised officer”.

13 **167 Paragraph 130(2)(a)**

14 Omit “employee”, substitute “officer”.

15 **168 Section 131 (heading)**

16 Repeal the heading, substitute:

17 **131 Monitoring powers of authorised officers**

18 **169 Subsection 131(1)**

19 Omit “an authorised employee”, insert “an authorised officer of the
20 ESOS agency for a registered provider”.

21 **170 Paragraph 131(1)(g)**

22 Omit “employee”, substitute “officer”.

23 **171 Subparagraphs 131(1)(h)(i), (ii) and (iii)**

24 Omit “employee”, substitute “officer”.

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1 **172 Subsection 131(5)**

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

3 **173 Section 132 (heading)**

4 Repeal the heading, substitute:

5 **132 Authorised officer on premises with consent may ask questions**

6 **174 Section 132**

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

9 **175 Subparagraph 132(a)(ii)**

10 Omit “employee any document requested by the employee”, substitute
11 “officer any document requested by the officer”.

12 **176 Section 133 (heading)**

13 Repeal the heading, substitute:

14 **133 Authorised officer on premises under warrant may ask
15 questions**

16 **177 Section 133**

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

19 **178 Subparagraph 133(a)(ii)**

20 Omit “employee any document requested by the employee”, substitute
21 “authorised officer any document requested by the officer”.

22 **179 Subsection 134(1)**

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

24 **180 Section 135**

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

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1 **181 Subsection 136(1)**

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

4 **182 Subsection 136(1)**

5 Omit “employee may”, substitute “authorised officer may”.

6 **183 Section 137 (heading)**

7 Repeal the heading, substitute:

8 **137 Authorised officer may apply for a monitoring warrant**

9 **184 Subsection 137(1)**

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

12 **185 Subsection 137(2)**

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

14 **186 Section 138**

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

17 **187 Subsection 139(1)**

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

20 **188 Subsection 139(3)**

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

22 **189 Paragraph 140(1)(a)**

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

25 **190 Subsection 140(2)**

26 Omit “employees”, substitute “officers”.

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1 **191 Section 141 (heading)**

2 Repeal the heading, substitute:

3 **141 Authorised officer may enter premises to look for evidential**
4 **material**

5 **192 Subsection 141(1)**

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

8 **193 Subsection 141(2)**

9 Omit “employee” (wherever occurring), substitute “officer”.

10 **194 Subsection 141(3)**

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

12 **195 Paragraph 141(3)(a)**

13 Omit “employee”, substitute “officer”.

14 **196 Section 142 (heading)**

15 Repeal the heading, substitute:

16 **142 Search powers of authorised officers**

17 **197 Subsection 142(1)**

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

20 **198 Paragraph 142(1)(f)**

21 Omit “employee”, substitute “officer”.

22 **199 Subsection 142(5)**

23 Omit “An authorised employee”, substitute “The authorised officer”.

24 **200 Subsection 142(6)**

25 Omit “An authorised employee”, substitute “The authorised officer”.

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1 **201 Subsection 142(6)**

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

3 **202 Subsection 142(7)**

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

5 **203 Section 143 (heading)**

6 Repeal the heading, substitute:

7 **143 Authorised officer may apply for a search warrant**

8 **204 Subsection 143(1)**

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

11 **205 Subsection 143(2)**

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

13 **206 Subsection 145(1)**

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

16 **207 Subsection 145(3)**

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

18 **208 Paragraph 146(1)(a)**

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

21 **209 Subsection 146(2)**

22 Omit “employees”, substitute “officers”.

23 **210 Sections 147 and 148**

24 Omit “employee”, insert “officer of the ESOS agency for a registered
25 provider”.

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1 **211 Subsection 149(1)**

2 Omit “if the authorised employee”, substitute “if an authorised
3 employee of the ESOS agency for a registered provider”.

4 **212 Subparagraphs 149(1)(a)(i) and (ii)**

5 Omit “employee”, substitute “officer”.

6 **213 Subsection 149(2)**

7 Omit “employee”, substitute “officer”.

8 **214 Subsection 149(3) (heading)**

9 Repeal the heading, substitute:

10 *Authorised officer must give notice*

11 **215 Subsection 149(3)**

12 Omit “employee”, substitute “officer”.

13 **216 Subsection 150(1)**

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

16 **217 Subsection 150(2)**

17 Omit “employee”, substitute “officer”.

18 **218 Subsection 151(1)**

19 Omit “employee is on premises under section 130 or 141 if the
20 employee”, substitute “officer of the ESOS agency for a registered
21 provider is on premises under section 130 or 141 if the authorised
22 officer”.

23 **219 Subsection 151(2)**

24 Omit “employee” (wherever occurring), substitute “officer”.

25 **220 Subsection 152(1)**

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

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1 **221 Subsections 152(2) and (3)**

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

3 **222 Section 153 (heading)**

4 Repeal the heading, substitute:

5 **153 Authorised officer may apply for a thing to be retained for a**
6 **further period**

7 **223 Subsection 153(1)**

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

10 **224 Subsection 153(2)**

11 Omit “employee” (wherever occurring), substitute “officer”.

12 **225 Subsection 153(3) (heading)**

13 Repeal the heading, substitute:

14 *Authorised officer must try to notify those affected*

15 **226 Subsection 153(3)**

16 Omit “employee” (wherever occurring), substitute “officer”.

17 **227 Subsection 154(1)**

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

20 **228 Subsection 154(1)**

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

22 **229 Subsection 154(2)**

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

24 **230 Section 155 (heading)**

25 Repeal the heading, substitute:

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1 **155 Occupier to provide authorised officer with all facilities and**
2 **assistance**

3 **231 Subsection 155(1)**

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

6 **232 Subsection 155(1)**

7 Omit “that employee”, substitute “that officer”.

8 **233 Subdivision B of Division 5 of Part 7 (heading)**

9 Repeal the heading, substitute:

10 **Subdivision B—Obligations on authorised officers etc.**

11 **234 Subsection 156(1)**

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

14 **235 Subsection 156(2)**

15 Omit “employee” (wherever occurring), substitute “officer”.

16 **236 Subsections 157(1)**

17 Omit “obtaining”, substitute “an authorised officer of the ESOS agency
18 for a registered provider obtains”.

19 **237 Subsection 157(1)**

20 Omit “employee”, substitute “officer”.

21 **238 Subsection 157(2)**

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

23 **239 Subsection 158(1)**

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

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1 **240 Subsection 159(1)**

2 Omit “If a monitoring warrant or a search warrant is being executed”,
3 substitute “If an authorised officer of the ESOS agency for a registered
4 provider is executing a monitoring warrant or a search warrant”.

5 **241 Subsections 159(1) and (2)**

6 Omit “employee”, substitute “officer”.

7 **242 Subsection 162(1)**

8 Repeal the subsection, substitute:

9 (1) The ESOS agency for a registered provider must give each
10 authorised officer of the agency an identity card.

11 **243 Paragraph 162(2)(a)**

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

13 **244 Paragraph 162(2)(b)**

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

15 **245 Paragraph 162(3)(b)**

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

18 **246 Paragraph 162(3)(c)**

19 Omit “Secretary”, substitute “agency”.

20 **247 Subsection 162(6) (heading)**

21 Repeal the heading, substitute:

22 *Authorised officer must always carry identity card*

23 **248 Subsection 162(6)**

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

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1 **249 Section 163 (heading)**

2 Repeal the heading, substitute:

3 **163 Authorised officer must produce identity card on request**

4 **250 Section 163**

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

7 **251 Paragraphs 163(a) and (b)**

8 Omit “employee”, substitute “officer”.

9 **252 Section 164 (heading)**

10 Repeal the heading, substitute:

11 **164 Authorised officer may apply for warrants by telephone etc.**

12 **253 Subsection 164(1)**

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

15 **254 Subsection 164(1)**

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

17 **255 Subsection 164(3)**

18 Omit “employee”, substitute “officer”.

19 **256 Subsection 164(4)**

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

21 **257 Paragraph 165(2)(a)**

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

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1 **258 Paragraph 166(2)(a)**

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

4 **259 Subsection 166(3) (heading)**

5 Repeal the heading, substitute:

6 *Obligations on authorised officers*

7 **260 Subsection 166(3)**

8 Omit “employee” (wherever occurring), substitute “officer”.

9 **261 Subsection 167(1) (heading)**

10 Repeal the heading, substitute:

11 *Obligations on authorised officer*

12 **262 Subsection 167(1)**

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

15 **263 Paragraph 167(1)(a)**

16 Omit “employee”, substitute “officer”.

17 **264 Subsection 170A(1)**

18 Omit “Minister, Immigration Minister or Secretary”, substitute “ESOS
19 agency for a provider or Immigration Minister”.

20 **265 Subsection 170A(2)**

21 Omit “Secretary may publish information about”, substitute “ESOS
22 agency for the provider may publish information about the following
23 matters in the way specified by the Secretary under subsection (4)”.

24 **266 Paragraph 170A(2)(a)**

25 Omit “taken; and”, substitute “taken;”.

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1 **267 Subparagraph 170A(2)(b)(i)**

2 Omit “a provider”, substitute “the provider”.

3 **268 Subsection 170A(3)**

4 Omit “if the Secretary”, substitute “if the ESOS agency for the
5 provider”.

6 **269 Subsection 170A(3)**

7 Omit “Secretary must”, substitute “agency must”.

8 **270 Subsection 170A(4)**

9 Repeal the subsection substitute:

- 10 (4) The Secretary may, by legislative instrument, specify the way in
11 which the ESOS agency for a registered provider publishes the
12 information referred to in subsection (2).

13 **271 Subsections 170(1) to (4)**

14 Repeal the subsections, substitute:

15 *Delegation by the Minister*

16 (1) The Minister may, by writing, delegate any or all of his or her
17 functions or powers under this Act to:

- 18 (a) the Secretary; or
19 (b) an SES employee, or acting SES employee, in the
20 Department.

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

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

26 *Delegation by the Secretary*

27 (3) The Secretary may, by writing, delegate any or all of his or her
28 functions or powers under this Act (including his or her functions

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1 or powers as the ESOS agency for a provider or registered
2 provider) to:

- 3 (a) an SES employee, or acting SES employee, in the
4 Department; or
5 (b) an APS employee in the Department who holds or performs
6 the duties of an Executive Level 1 or 2 position or an
7 equivalent position; or
8 (c) TEQSA; or
9 (d) the National VET Regulator.

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

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

15 *Delegation by ESOS agencies*

16 (4A) The ESOS agency for a provider or registered provider (other than
17 the Secretary) may, by writing, delegate any or all of the agency's
18 functions or powers under this Act to:

- 19 (a) if the agency is TEQSA—a person or authority mentioned in
20 subsection 199(1) of the TEQSA Act; or
21 (b) if the agency is the National VET Regulator—a person or
22 authority mentioned in subsection 224(1) of the NVETR Act;
23 or
24 (c) otherwise—a person who is an employee or constituent
25 member of the agency if the agency is satisfied that the
26 person has suitable qualifications and experience.

27 (4B) In exercising functions or powers under a delegation under
28 subsection (4A), the delegate must comply with any directions of
29 the ESOS agency.

30 **272 After section 170**

31 Insert:

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1 171A Subdelegation by TEQSA or National VET Regulator

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

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

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

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

21 273 Subsection 171(1)

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

23 274 Paragraph 172(1)(b)

24 Repeal the paragraph, substitute:

- 25 (b) second entry to market charge; or
26 (ba) third entry to market charge; or

27 275 Subsection 172(1) (note)

28 Repeal the note, substitute:

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

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1 **276 Paragraph 173(1)(aa)**

2 Repeal the paragraph, substitute:
3 (aa) the second entry to market charge;
4 (ab) the third entry to market charge;

5 **277 Paragraph 175(1)(a)**

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

8 **278 Subsection 175(1)**

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

11 **279 After paragraph 175(1)(e)**

12 Insert:
13 (ea) the ESOS agency for a provider or registered provider; or
14 (eb) the Secretary; or

15 **280 Paragraph 175(2)(a)**

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

18 **281 Subsection 175(2)**

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

21 ***Education Services for Overseas Students (TPS Levies) Act***
22 ***2012***

23 **282 Subsection 5(3)**

24 Omit “section 9AB of”.

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1 *National Vocational Education and Training Regulator Act*
2 *2011*

3 **283 Subparagraph 204(c)(i)**

4 After “this Act”, insert “or the *Education Services for Overseas*
5 *Students Act 2000*,”.

6 *Tertiary Education Quality and Standards Agency Act 2011*

7 **284 Paragraph 188(2)(a)**

8 After “this Act”, insert “or the *Education Services for Overseas*
9 *Students Act 2000*,”.

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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:

EXPOSURE DRAFT

Schedule 2 Review of decisions

1 **Part 7A—Review of decisions**

2 **Division 1—Introduction**

3 **169AA Guide to this Part**

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

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

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

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

18 **Division 2—Review of decisions**

19 **169AB Reviewable decisions**

20 Each decision referred to in column 1 of the following table is a
21 *reviewable decision*. A provider or registered provider referred to
22 in column 2 of that table in relation to a reviewable decision is the
23 *affected provider* for the decision.
24

EXPOSURE DRAFT

Review of decisions **Schedule 2**

Reviewable decisions		
Item	Column 1 Reviewable decision	Column 2 Affected provider for the reviewable decision
1	A decision by the ESOS agency for a provider to refuse to register the provider under section 10	The provider
2	A decision by the ESOS agency for a registered provider to register the provider under section 10 for a particular period	The registered provider
3	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	The provider or registered provider
4	A decision by the ESOS agency for a registered provider to refuse to renew the provider's registration under section 10E	The registered provider
5	A decision by the ESOS agency for a registered provider to renew the provider's registration under section 10E for a particular period	The registered provider
6	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	The registered provider
7	A decision by the ESOS agency for a registered provider to extend the provider's period of registration under section 10L	The registered provider
8	A decision by the ESOS agency for a registered provider not to notify the provider under subsection 46A(4)	The registered provider
9	A decision by the ESOS agency for a registered provider to take action against the provider under section 83	The registered provider
10	A decision by the ESOS agency for a registered provider not to give the provider a notice under subsection 89(4) or 95(3)	The registered provider

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EXPOSURE DRAFT

EXPOSURE DRAFT

Schedule 2 Review of decisions

1 **169AC Notice of decision**

- 2 (1) The ESOS agency must, as soon as practicable after making a
3 reviewable decision, give the affected provider for the decision a
4 written notice containing:
5 (a) the terms of the decision; and
6 (b) the reasons for the decision; and
7 (c) notice of the provider's right to have the decision reviewed.
- 8 (2) A failure to give the notice required by this section does not affect
9 the validity of the reviewable decision.

10 **169AD Application for internal review of reviewable decisions made**
11 **by delegates**

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

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

- 18 (2) The application must:
19 (a) be made in the form approved, in writing, by the ESOS
20 agency; and
21 (b) be accompanied by any information and documents required
22 by the agency; and
23 (c) be made within:
24 (i) 30 days after the affected provider for the decision is
25 notified of the decision; or
26 (ii) if the agency allows a longer period (whether before or
27 after the end of that 30 day period)—that longer period.

28 **169AE Internal review of reviewable decisions**

- 29 (1) If an application for review of a reviewable decision is made under
30 section 169AD to the ESOS agency for an affected provider, the
31 agency must cause the reviewable decision to be reviewed by a
32 delegate (the *internal reviewer*) of the agency:
-

EXPOSURE DRAFT

Review of decisions **Schedule 2**

- 1 (a) who was not involved in making the decision; and
2 (b) who occupies a position senior to that occupied by the
3 delegate who made the decision.
- 4 (2) The internal reviewer may:
5 (a) affirm, vary or set aside the reviewable decision; and
6 (b) if the internal reviewer sets aside the decision—make such
7 other decision as he or she thinks appropriate.
- 8 (3) The decision (the *internal review decision*) of the internal reviewer
9 is taken (other than for the purposes of section 169AB) to have
10 been made under the provision under which the reviewable
11 decision was made.
- 12 (4) The internal reviewer must, as soon as practicable after making the
13 internal review decision, give the applicant a written notice
14 containing:
15 (a) the terms of the decision; and
16 (b) the reasons for the decision; and
17 (c) notice of the applicant’s right to have the decision reviewed
18 by the Administrative Appeals Tribunal.
- 19 (5) A failure to comply with subsection (4) does not affect the validity
20 of the internal review decision.

21 **169AF Internal review decision must made within 90 days**

- 22 (1) The internal reviewer must make a decision on an application for
23 review of a reviewable decision within 90 days after the
24 application is made under section 169AD.
- 25 (2) If the internal reviewer does not notify the applicant of its decision
26 on the application within that period, the internal reviewer is taken
27 to have made a decision under section 169AE to affirm the
28 reviewable decision.

29 **169AG Review by the Administrative Appeals Tribunal**

- 30 (1) Applications may be made to the Administrative Appeals Tribunal
31 for review of:
-

EXPOSURE DRAFT

Schedule 2 Review of decisions

- 1 (a) a reviewable decision that was not made by a delegate of the
2 ESOS agency for an affected provider for the decision; or
3 (b) a decision of the internal reviewer made under section 169AE
4 that relates to a reviewable decision; or
5 (c) a determination by the TPS Director of an amount of TPS
6 levy payable by a provider or registered provider under
7 subsection 53A(1).
- 8 (2) An application under paragraph (1)(a) or (b) of this section may
9 only be made by, or on behalf of, the affected provider for the
10 reviewable decision referred to in that paragraph.
- 11 (3) An application under paragraph (1)(c) of this section may only be
12 made by, or on behalf of, the provider or registered provider
13 referred to in that paragraph.

14 **6 Section 169A**

15 Omit:

- | |
|--|
| 16 (d) giving information to relevant bodies;
17 (e) review of decisions. |
|--|

18 substitute:

- | |
|---|
| 19 (d) giving information to relevant bodies. |
|---|

20 **7 Section 176**

21 Repeal the section.

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2

Schedule 3—Ministerial directions

3

Education Services for Overseas Students Act 2000

4

1 After section 170B

5

Insert:

6

170C Minister may give directions to the ESOS agency

7

- (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.

8

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11

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

12

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

15

16

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

17

18

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

19

20

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

21

22

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

23

24

National Vocational Education and Training Regulator Act 2011

25

2 Section 159

26

27

After "section 160", insert "of this Act and section 170C of the *Education Services for Overseas Students Act 2000*".

EXPOSURE DRAFT

Schedule 3 Ministerial directions

1 *Tertiary Education Quality and Standards Agency Act 2011*

2 **3 Section 135**

3 After “section 136”, insert “of this Act and section 170C of the
4 *Education Services for Overseas Students Act 2000*”.

72 *Education Services for Overseas Students Amendment (Streamlining
Regulation) Bill 2015* No. , 2015

EXPOSURE DRAFT

1 **Schedule 4—TPS Director**
2

3 *Education Services for Overseas Students Act 2000*

4 **1 Section 5 (at the end of the definition of *production notice*)**

5 Add “or 113A”.

6 **2 Section 5**

7 Insert:

8 *TPS officer* means:

- 9 (a) an APS employee in the Department who assists the TPS
10 Director in the performance of the TPS Director’s functions;
11 or
12 (b) a consultant engaged by the TPS Director under section 54L.

13 **3 After paragraph 54B(f)**

14 Insert:

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

18 **4 At the end of Division 3 of Part 5A**

19 Add:

20 **54N Application of finance law**

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

24 **5 After subsection 83(1A)**

25 Insert:

- 26 (1AA) The ESOS agency for a registered provider must consider any
27 recommendation made by the TPS Director under
28 paragraph 54B(fa) that relates to the provider in deciding whether
-

EXPOSURE DRAFT

Schedule 4 TPS Director

1 to take one or more actions against the provider under
2 subsection (1A) of this section.

3 **6 Section 111A (at the end of the paragraph relating to**
4 **Division 2)**

5 Add:

6

The TPS Director may also give a production notice under that 7 Division.
--

8 **7 Section 113 (heading)**

9 Repeal the heading, substitute:

10 **113 ESOS agency for a registered provider may give a production**
11 **notice**

12 **8 After section 113**

13 Insert:

14 **113A TPS Director may give a production notice**

- 15 (1) This section applies if the TPS Director reasonably believes that a
16 relevant individual of a registered provider has, or has access to,
17 information or documents that are relevant to the performance of
18 the TPS Director's functions under Part 5 of this Act.
- 19 (2) The TPS Director may give the relevant individual a written notice
20 requiring the individual:
- 21 (a) to give any such information or documents to a TPS officer;
22 or
23 (b) to show any such documents to a TPS officer; or
24 (c) to make copies of any such documents and give the copies to
25 a TPS officer.
- 26 (3) If the information or documents are in a particular form then the
27 notice may require the information or documents to be given in
28 that form.

1 **9 Paragraph 114(1)(a)**

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

3 **10 Paragraph 114(1)(b)**

4 Repeal the paragraph, substitute:

- 5 (b) set out the effects of sections 120 and 121; and
6 (ba) if the notice is given under section 113—set out the effect of
7 section 122; and
8 (bb) if the notice is given under section 113A—set out the effect
9 of section 122A; and

10 **11 After subsection 115(1)**

11 Insert:

12 (1A) The TPS Director must give a production notice under
13 section 113A to a relevant individual of a registered provider:

- 14 (a) by delivering it to the relevant individual personally; or
15 (b) by:
16 (i) leaving it at the address of the relevant individual’s
17 place of residence or business last known to the TPS
18 Director; and
19 (ii) taking reasonably practicable action to draw the relevant
20 individual’s attention to the notice; or
21 (c) by sending it by ordinary or any other class of pre-paid post
22 to the relevant individual’s place of residence or business last
23 known to the TPS Director.

24 **12 Subsection 115(2)**

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

27 **13 Section 122 (heading)**

28 Repeal the heading, substitute:

EXPOSURE DRAFT

Schedule 4 TPS Director

1 **122 Offence: giving false or misleading document to authorised**
2 **officer**

3 **14 After section 122**

4 Insert:

5 **122A Offence: giving false or misleading document to TPS officer**

6 (1) A person commits an offence if:

7 (a) the person is given a production notice under section 113A;
8 and

9 (b) the person gives or shows a TPS officer a document in
10 compliance or purported compliance with the notice; and

11 (c) the document is false or misleading in a material particular.

12 Penalty: Imprisonment for 12 months.

13 (2) Subsection (1) does not apply to a person if the document is
14 accompanied by a written statement signed by the person:

15 (a) stating that the document is, to the person's knowledge, false
16 or misleading in the material particular concerned; and

17 (b) setting out or referring to the material particular.

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

20 **15 Before subsection 124(1)**

21 Insert:

22 *Authorised officer etc.*

23 **16 At the end of section 124**

24 Add:

25 *TPS Director etc.*

26 (3) The TPS Director or a TPS officer may:

27 (a) inspect a document given or shown to a TPS officer under
28 this Division; and

- 1 (b) make and retain copies of, or take and retain extracts from,
2 such a document; and
3 (c) retain a copy of a document given to a TPS officer under this
4 Division.

5 **17 After section 125**

6 Insert:

7 **125A Retaining of documents by TPS officer**

- 8 (1) If a TPS officer is given a document under this Division, the TPS
9 officer may retain the document:
10 (a) for the purposes of this Act; or
11 (b) for the purposes of an investigation as to whether an offence
12 has been committed; or
13 (c) to enable evidence of an offence to be secured for the
14 purposes of a prosecution.
15 (2) However, the document must not be retained for longer than 60
16 days after the TPS officer was given the document.

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

19 **18 After subsection 126(1)**

20 Insert:

- 21 (1A) If a TPS officer retains a document under section 125A, the TPS
22 officer must as soon as practicable:
23 (a) certify a copy of the document to be a true copy; and
24 (b) give the copy to the person (the *owner*) otherwise entitled to
25 possession of the document.

26 **19 Subsection 126(3)**

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

28 **20 Section 127 (heading)**

29 Repeal the heading, substitute:

EXPOSURE DRAFT

Schedule 4 TPS Director

1 **127 Returning of documents**

2 **21 Subsection 127(1)**

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

8 **22 Subsection 127(2)**

9 Omit “authorised employee”, substitute “holder”.

10 **23 Subsection 127(2)**

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

12 **24 Subsections 127(3)**

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

14 **25 After section 128**

15 Insert:

16 **128A TPS officer may apply to retain document for a further period**

- 17 (1) If a TPS officer is given a document under this Division, the TPS
18 officer may apply to a magistrate or tribunal member for an order
19 that the officer may retain the document for a further period.
- 20 (2) The application must be made before the end of:
21 (a) 60 days after the document was given to the TPS officer; or
22 (b) a period previously specified in an order of a magistrate or
23 tribunal member under section 129.
- 24 (3) Before making the application, the TPS officer must:
25 (a) take reasonable steps to discover which persons’ interests
26 would be affected by the retention of the document; and
27 (b) if it is practicable to do so, notify each person who the officer
28 believes to be such a person of the proposed application.

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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)”.

EXPOSURE DRAFT

Schedule 5 Other amendments

1 **8 Section 23 (note 1)**

2 Omit “Note 1”, substitute “Note”.

3 **9 Section 23 (note 2)**

4 Repeal the note.

5 **10 At the end of section 23**

6 Add:

- 7 (2) If the registered provider does not comply with subsection (1), the
8 Secretary must give the provider a written notice that:
- 9 (a) specifies the amount of the annual registration charge that the
10 provider is liable to pay; and
 - 11 (b) states that the provider must pay that amount, and the late
12 payment penalty for the charge, by the end of the seventh day
13 after the notice is given to the provider; and
 - 14 (c) sets out the effect of section 90.

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

17 (3) If:

- 18 (a) the registered provider does not comply with the notice; and
 - 19 (b) the Secretary is not the ESOS agency for the provider;
- 20 the Secretary must notify the ESOS agency for the provider of the
21 failure.

22 **11 Section 23A**

23 Repeal the section, substitute:

24 **23A Second and third entry to market charges**

- 25 (1) A registered provider who is liable to pay the second entry to
26 market charge must pay the charge by the end of the day referred
27 to in subsection 6(5) of the *Education Services for Overseas*
28 *Students (Registration Charges) Act 1997*.
- 29 (2) A registered provider who is liable to pay the third entry to market
30 charge must pay the charge by the end of the day referred to in

EXPOSURE DRAFT

Other amendments **Schedule 5**

1 subsection 6(7) of the *Education Services for Overseas Students*
2 (*Registration Charges*) Act 1997.

- 3 (3) If the registered provider does not comply with subsection (1) or
4 (2) of this section, the Secretary must give the provider a written
5 notice that:
6 (a) specifies the amount of the second entry to market charge or
7 third entry to market charge that the provider is liable to pay;
8 and
9 (b) states that the provider must pay that amount, and the late
10 payment penalty for the charge, by the end of the seventh day
11 after the notice is given to the provider; and
12 (c) sets out the effect of section 90.

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

- 15 (4) If:
16 (a) the registered provider does not comply with the notice; and
17 (b) the Secretary is not the ESOS agency for the provider;
18 the Secretary must notify the ESOS agency for the provider of the
19 failure.

20 **12 Subsection 27(1) (heading)**

21 Repeal the heading.

22 **13 Subsections 27(2) and (3)**

23 Repeal the subsections, substitute:

- 24 (2) Subsection (1) does not apply if:
25 (a) a request is made by a person other than a registered provider
26 to pay more than 50% of the student's total tuition fees for a
27 course before the student has begun the course; or
28 (b) the course has a duration of 24 weeks or less.

29 **14 Sections 28 to 32**

30 Repeal the sections.

EXPOSURE DRAFT

Schedule 5 Other amendments

1 **15 Section 33A**

2 Omit:

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- 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.

7 substitute:

- 8
- 9
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- 11
- 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.

12 **16 Section 34**

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

15 **17 Paragraph 38(g)**

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

18 **18 Subsection 46D(6) (note)**

19 Repeal the note.

20 **19 Section 47C**

21 Repeal the section.

22 **20 Subsections 47D(2) and 47E(2) (note)**

23 Repeal the note.

24 **21 Subsection 47H(1)**

25 Repeal the subsection, substitute:

26 (1) A registered provider must give a notice in accordance with this
27 section if:

EXPOSURE DRAFT

Other amendments **Schedule 5**

- 1 (a) an overseas student or intending overseas student defaults in
2 relation to a course provided by the provider at a location;
3 and
4 (b) the provider is required to provide a refund under
5 section 47E.

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

9 **22 Paragraph 47H(3)(a)**

10 Omit “47D or”.

11 **23 Subsection 50C(2) (note)**

12 Repeal the note.

13 **24 Paragraphs 90(1)(b) and (c)**

14 Repeal the paragraphs, substitute:

15 (b) fails to comply with a notice given under section 23 or 23A;