Education Services for Overseas Students Act 2000

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About this compilation

This compilation

This is a compilation of the *Education Services for Overseas Students Act 2000* that shows the text of the law as amended and in force on 1 January 2022 (the ***compilation date***).

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

Uncommenced amendments

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

Application, saving and transitional provisions for provisions and amendments

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

Editorial changes

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

Modifications

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

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act to regulate education services for overseas students, and for related purposes

Part 1—Introduction

Division 1—Preliminary

1 Short title

This Act may be cited as the *Education Services for Overseas Students Act 2000*.

2 Commencement

(1) This section and section 1 commence on the day on which this Act receives the Royal Assent.

(2) The remaining provisions of this Act commence on a day or days to be fixed by Proclamation.

(3) However, if a provision of this Act does not commence under subsection (2) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

3 Crown to be bound

(1) This Act binds the Crown in each of its capacities.

(2) However, nothing in this Act makes the Crown in any capacity liable to be prosecuted for an offence.

4 *Criminal Code* applies

The *Criminal Code* applies to all offences against this Act.

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4A Objects

The principal objects of this Act are:

(a) to provide tuition assurance, and refunds, for overseas students for courses for which they have paid; and

(b) to protect and enhance Australia's reputation for quality education and training services; and

(c) to complement Australia's migration laws by ensuring providers collect and report information relevant to the administration of the law relating to student visas.

4B Extension of this Act to Norfolk Island, Christmas Island and Cocos (Keeling) Islands

(1) Subject to subsection (2), this Act applies in relation to Norfolk Island, the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands as if:

(a) a reference in a provision of this Act to a State included a reference to Norfolk Island, the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands; and

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

(2) Paragraph (1)(a) does not apply in relation to the following provisions:

(a) the definitions of ***designated State authority*** and ***State*** in section 5;

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

(c) paragraph 31(a);

(f) paragraph 127(3)(b);

(g) paragraph 152(3)(b);

(h) paragraph 175(1)(e).

(3) The Territories Minister may, by signed writing, delegate all or any of his or her functions or powers as a designated State authority under this Act to:

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(a) an APS employee who is an SES employee or acting SES employee; or
(b) an officer or employee of a State.

5 Definitions

In this Act, unless the contrary intention appears:

accepted student of a registered provider means a student (whether within or outside Australia):
(a) who is accepted for enrolment, or enrolled, in a course provided by the provider; and
(b) who is, or will be, required to hold a student visa to undertake or continue the course.

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

agent of a provider means a person (whether within or outside Australia) who represents or acts on behalf of the provider, or purports to do so, in dealing with overseas students or intending overseas students.

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

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

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).

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associate of a person has the meaning given by section 6.

attendance notice means a notice given under section 116.

Australian Qualifications Framework has the same meaning as in the *Higher Education Support Act 2003*.

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

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

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

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

compliance audit has the meaning given by section 112A.

condition, in relation to a provider's registration, means a condition imposed on the registration under section 10B or subsection 83(3).

course has the meaning given by section 5AA.

CRICOS annual registration charge means CRICOS annual registration charge imposed by the *Education Services for Overseas Students (Registration Charges) Act 1997*.

default:

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

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

default day, in relation to a default, means:

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

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

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

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

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

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

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

document includes a copy of a document.

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

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

ELICOS means English Language Intensive Course for Overseas Students.

ELICOS Standards has the meaning given by section 176B.

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

exempt provider has the meaning given by section 6D.

Foundation Program Standards has the meaning given by section 176C.

high managerial agent of a provider means an employee, agent or officer of the provider with duties of such responsibility that his or

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her conduct may fairly be assumed to represent the provider in relation to the business of providing courses.

Immigration Minister means any of the Ministers who administer the *Migration Act 1958* from time to time.

Immigration Minister's suspension certificate means a certificate given under Division 2 of Part 6.

Immigration Secretary means the Secretary of the Department administered by the Immigration Minister.

intending overseas student means a person (whether within or outside Australia) who intends to become, or who has taken any steps towards becoming, an overseas student.

internal reviewer means:

(a) the ESOS agency for an affected provider; or

(b) a delegate referred to in paragraph 169AE(1)(b).

late payment penalty means the penalty imposed by section 172.

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

monitoring purpose means a purpose of determining:

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

(i) this Act; or

(ii) the national code; or

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

(b) whether, because of financial difficulty or any other reason, the provider might not be able to:

(i) provide courses to its accepted students; or

(ii) refund amounts to its accepted students under Division 2 of Part 5.

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national code means the National Code of Practice for Providers of Education and Training to Overseas Students in force under Part 4.

National VET Regulator has the same meaning as in the *National Vocational Education and Training Regulator Act 2011*.

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

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

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

old ESOS Act means the *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991*.

OSTF: see Overseas Students Tuition Fund.

overseas student means a person (whether within or outside Australia) who holds a student visa, but does not include students of a kind prescribed in the regulations.

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

premises means:

(a) an area of land or any other place, whether or not it is enclosed or built on; or

(b) a building or other structure; or

(c) a vehicle or vessel;

and includes a part of any such premises.

principal executive officer of a provider that is not an individual means the person who has executive responsibility for the operation of the provider.

production notice means a notice given under section 113 or 113A.

provide a course includes participate in providing the course.

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provider has the meaning given by section 6E.

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

Register means the Register kept under section 14A.

registered means registered under Part 2.

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

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

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

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

registered VET provider means:

(a) an NVR registered training organisation; or

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

Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*.

reinstatement fee means the fee referred to in section 171.

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

relevant individual of a registered provider means:

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

(b) a consultant to the provider; or

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(c) if the provider is a partnership—a partner in the partnership; or
(d) if the provider is a sole trader—the provider; or
(e) an officer or employee of an administrator, liquidator or restructuring practitioner (within the meaning of the *Corporations Act 2001*) of the provider or a former registered provider.

resident means:
(a) in the case of a company, a company incorporated in Australia that carries on business in Australia and that has its central management and control in Australia; or
(b) in the case of an unincorporated body, a body that carries on business in Australia and that has its central management and control in Australia.

reviewable decision has the meaning given by section 169AB.

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

schools initial registration charge means schools initial registration charge imposed by the *Education Services for Overseas Students (Registration Charges) Act 1997*.

schools renewal registration charge means schools renewal registration charge imposed by the *Education Services for Overseas Students (Registration Charges) Act 1997*.

Secretary means the Secretary of the Department.

State includes the Australian Capital Territory and the Northern Territory.

student visa has the meaning given by the regulations.

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TEQSA (short for Tertiary Education Quality and Standards Agency) means the body established by section 132 of the TEQSA Act.

TEQSA Act means the *Tertiary Education Quality and Standards Agency Act 2011*.

Territories Minister means the Minister responsible for administering the *Christmas Island Act 1958*.

this Act includes the regulations.

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

TPS officer means:

(a) an APS employee in the Department who assists the TPS Director in the performance of the TPS Director's functions; or

(b) a consultant engaged by the TPS Director under section 54L.

tribunal member means a member of the Administrative Appeals Tribunal.

tuition fees has the meaning given by section 7.

5AA Definition of *course*

(1) A ***course*** is a course of education or training that satisfies one or more of the following:

(a) the course leads to a qualification recognised in the Australian Qualifications Framework;

(b) the course is a course of education at a level that, under section 15 of the *Australian Education Act 2013*, constitutes primary education or secondary education;

(c) the course is a Foundation Program;

(d) the course is an ELICOS;

(e) the course is offered by a registered higher education provider;

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(f) the course is a VET course within the meaning of the *National Vocational Education and Training Regulator Act 2011*.

(2) The Minister may, by legislative instrument, determine that a course of education or training is a ***course***.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

(3) The Minister may, by legislative instrument, determine that a course of education or training is not a ***course***.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

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

For the purposes of paragraphs 11(d) and 83(1C)(a), a registered higher education provider is taken to have the principal purpose of providing education if its principal purpose is either or both of the following:

(a) providing education;

(b) conducting research.

6 Meaning of *associate*

(1) In this Act:

associate of a person means:

(a) the spouse or de facto partner of the person; or

(b) a child of the person, or of the person's spouse or de facto partner; or

(c) a parent of the person, or of the person's spouse or de facto partner; or

(d) a sibling of the person; or

(e) if the person is a company:

(i) an officer of the company; or

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(ii) an officer of a company that is related to the first-mentioned company; or

(iii) a person who holds a substantial ownership interest in the company; or

(f) if the person is an association or a co-operative—the principal executive officer or a member of the body (however described) that governs, manages, or conducts the affairs of the association or co-operative; or

(g) if the person is a body corporate established for a public purpose by or under an Australian law and another body is responsible for the management or the conduct of the affairs of the body corporate—the principal executive officer or a member of that other body; or

(h) if the person is any other kind of body corporate established for a public purpose by or under an Australian law—the principal executive officer or a member of the body corporate; or

(i) if the person is a partnership:

(i) the principal executive officer or an individual, or a body corporate, that is a member of the partnership; or

(ii) an individual who is an officer of a company, or a member of any other body corporate, that is a member of the partnership.

Related companies

(2) For the purposes of subsection (1), the question of whether companies are ***related*** to each other is to be determined in the same manner as the question of whether bodies corporate (within the meaning of the *Corporations Act 2001*) are related to each other is determined under section 50 of the *Corporations Act 2001*.

Substantial ownership interest

(3) For the purposes of subsection (1), a person holds a ***substantial ownership interest*** in a company if the total of all amounts paid on the shares in the company in which the person holds interests

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equals or exceeds 15% of the total of all amounts paid on all shares in the company.

Interests in shares

(4) For the purposes of subsection (3):

(a) a person ***holds an interest in a share*** if the person has any legal or equitable interest in the share; and

(b) without limiting the generality of paragraph (a), a person ***holds an interest in a share*** if the person, although not the registered holder of the share, is entitled to exercise, or control the exercise of, a right attached to the share, otherwise than because the person has been appointed as a proxy or representative to vote at a meeting of members of a company or of a class of its members.

Mutual associates

(5) If, under this section, one person is an associate of a second person, then the second person is an ***associate*** of the first person.

Chains of associates

(6) If, under this section:

(a) one person is an associate of a second person (including because of a previous application of this subsection); and

(b) the second person is an associate of a third person;

then the first person is an ***associate*** of the third person.

Other definitions

(7) In this section:

child: without limiting who is a child of a person for the purposes of this section, someone is the ***child*** of a person if he or she is a child of the person within the meaning of the *Family Law Act 1975*.

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de facto partner of a person has the meaning given by the *Acts Interpretation Act 1901*.

parent: without limiting who is a parent of a person for the purposes of this section, someone is the ***parent*** of a person if the person is his or her child because of the definition of ***child*** in this section.

person includes a provider.

Certain family relationships

(8) For the purposes of paragraph (d) of the definition of ***associate*** in subsection (1), if one person is the child of another person because of the definition of ***child*** in this section, relationships traced to or through the person are to be determined on the basis that the person is the child of the other person.

6A Meaning of *authorised officer*

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

Authorised officer		
Item	**If the ESOS agency for a registered provider is:**	**a person is an *authorised officer* 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; or (c) an authorised officer (within the meaning of that Act)
2	the National VET Regulator	the person is: (a) the National VET Regulator; or (b) an authorised officer (within the meaning of the NVETR Act)

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Authorised officer		
Item	**If the ESOS agency for a registered provider is:**	**a person is an *authorised officer* of the agency if:**
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)

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

(a) the person is an APS employee in the Department; and

(b) the person holds or performs the duties of an APS 5 position or higher, or an equivalent position; and

(c) the agency is satisfied that the person has suitable qualifications and experience.

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

(a) the person is an employee or constituent member of the agency; and

(b) the agency is satisfied that the person has suitable qualifications and experience.

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

DSA assessment certificate

(1) A ***DSA assessment certificate*** is a certificate given by the designated State authority for an approved school provider that:

(a) states that the authority is satisfied that the provider is complying, or will comply, with:

(i) this Act; and

(ii) the national code; and

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

(b) if the provider is not an exempt provider—states that the authority is satisfied that the provider is fit and proper to be registered; and

(c) states that the authority is satisfied that the provider has the principal purpose of providing education; and

(d) states that the authority has no reason to believe that:

(i) the provider does not have the clearly demonstrated capacity to provide education of a satisfactory standard; or

(ii) the provider has not been providing, or will not provide, education of a satisfactory standard; and

(e) recommends the conditions (if any) that should be imposed on the provider's registration; and

(f) recommends a period not longer than 7 years for which the provider should be registered; and

(g) sets out any other matters prescribed by the regulations.

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

DSA recommendation certificate

(2) A ***DSA recommendation certificate*** is a certificate given by the designated State authority for an approved school provider that:

(a) recommends that the ESOS agency for the provider should add one or more courses at one or more locations to the provider's registration; and

(b) recommends the conditions (if any) that should be imposed on the provider's registration; and

(c) sets out any other matters prescribed by the regulations.

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Form of certificates

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

6C Meaning of *ESOS agency*

(1) Subject to subsections (3) and (4), the following table sets out the ***ESOS agency*** for a provider or registered provider:

ESOS agency

Item	To the extent that a provider or registered provider is:	the *ESOS agency* 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 person or entity that provides an ELICOS or a Foundation Program	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)

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

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

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

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

(4) If subparagraph 83(2A)(d)(i) or (2B)(d)(i) or paragraph 83(2C)(c) applies in relation to a registered provider, disregard that

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subparagraph or paragraph in determining the ESOS agency for the provider for the purposes of subsection 83(2A), (2B) or (2C).

6D Meaning of *exempt provider*

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

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

6E Meaning of *provider*

(1) A ***provider*** is:
  (a) a registered higher education provider; or
  (b) a registered VET provider; or
  (c) an approved school provider; or
  (d) a person or entity that provides an ELICOS or a Foundation Program; or
  (e) another person or entity (other than a person or entity specified under subsection (2));

that provides, or seeks to provide, courses to overseas students.

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

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7 Meaning of *tuition fees*

In this Act:

tuition fees:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) become bankrupt; or

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

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

(iv) made an assignment of the remuneration of the provider or person for the benefit of one or more creditors of the provider or person; and

(f) whether the provider or a related person of the provider has ever been disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001*; and

(g) whether the provider or a related person of the provider was involved in the business of the provision of courses by another provider who is covered by any of the above paragraphs at the time of any of the events that gave rise to the relevant conviction or other action; and

(ga) the matters (if any) specified by the Minister in an instrument under subsection (2A); and

(h) any other relevant matter.

(2A) The Minister may, by legislative instrument, make a determination specifying matters for the purposes of paragraph (2)(ga).

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

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

(b) a high managerial agent of the provider.

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

(5) If:

(a) the Minister determines that an entity is an ESOS agency for a provider or a registered provider under subsection 6C(2) or (3); and

(b) the entity is not a Commonwealth authority (within the meaning of section 85ZL of the *Crimes Act 1914*);

the entity is taken to be a Commonwealth authority for the purposes of Part VIIC of the *Crimes Act 1914*.

7AA No duty imposed on designated State authorities

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

7AB Application to former registered providers

(1) This Act continues to apply in relation to a person or entity that was a registered provider as if the person or entity were still a registered provider.

(2) Subsection (1) applies:

(a) for the purposes of dealing with or resolving any matter that arose during, or that relates to, the period when the person or entity was a registered provider; and

(b) without limiting paragraph (a)—for the purposes of dealing with or resolving any matter that relates to:

(i) tuition fees or other money received by the person or entity, or money owed by the person or entity, in accordance with this Act (whether or not the money is received, or the debt arises, while the person or entity is a registered provider); or

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(ii) a default (whether or not the default occurs while the person or entity is a registered provider).

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Division 2—Guide to this Act

7B Guide to this Act

- This Act regulates providers who provide courses to overseas students.
- A person who provides a course at a location to an overseas student must be registered to provide that course at that location (or do so in accordance with an arrangement with a provider who is so registered).
- This Act, the national code, the ELICOS Standards and the Foundation Program Standards impose obligations on registered providers, including obligations relating to record keeping and financial requirements.
- In particular, there are obligations on registered providers when the provider or an overseas student of the provider defaults, and does not start or finish a course. The provider is required to provide a refund to the student. For a provider default, the provider may instead provide an alternative course for the student at the provider's expense.
- If a provider that has defaulted does not discharge its obligations to an overseas student, the TPS Director must provide the student with options for suitable alternative courses (if any such courses are available).
- In the case of a default, a call is made on the Overseas Students Tuition Fund to pay for alternative courses, or to provide refunds to students, if providers have not already done so.

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Part 2—Registration of providers

Division 1—Guide to this Part

8A Guide to this Part

- A person who provides a course at a location to an overseas student must be registered to provide that course at that location (or do so in accordance with an arrangement with a provider who is so registered).
- Division 2 creates an offence for a person who contravenes that requirement. It is also an offence for a registered provider to offer courses, or hold itself out as able to provide a course, to overseas students without being appropriately registered (or doing so in accordance with an appropriate arrangement).
- Division 3 provides for the registration of providers by the ESOS agency for a provider. A provider may be registered (for a period of up to 7 years) to provide one or more courses at one or more locations to overseas students if the provider meets the registration requirements. Conditions may be imposed on the registration of a provider and those conditions may be varied or revoked.
- Division 3 also provides for the renewal of registrations, the addition of one or more courses at one or more locations to a registered provider's registration and the extension or continuation of registration periods in certain circumstances.
- Division 4 requires the Secretary to cause a Register to be kept that contains specified information about the registration of all registered providers. The Secretary is also required to ensure that the Register is kept up-to-date.

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

8 Offence: providing or promoting a course without a registered provider

(1) A person commits an offence if:

(a) the person:

(i) provides a course at a location to an overseas student; or

(ii) makes an offer to an overseas student or an intending overseas student to provide a course at a location to that student; or

(iii) invites an overseas student or intending overseas student to undertake, or to apply to undertake, a course at a location; or

(iv) holds himself, herself or itself out as able or willing to provide a course at a location to overseas students; and

(b) the person is not registered to provide that particular course at that particular location.

Penalty: Imprisonment for 2 years.

(2) Subsection (1) does not apply if the provision, offer, inviting or holding out is in accordance with an arrangement that the person has with a registered provider for that particular course for that particular location.

Note 1: This means that, if 2 or more providers jointly provide a course, then only one of the providers needs to be registered.

Note 2: However, a provider of a course who is not registered must identify the registered provider in any written material promoting the course (see section 107) and must not engage in misleading or deceptive conduct in relation to the course (see subsection 83(2)).

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

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Defence: surveys etc. to assess demand for a course

(3) Subsection (1) does not apply as a result of subparagraph (1)(a)(iv) if:

(a) the relevant conduct was only for either or both of the following purposes:

(i) carrying out surveys or other investigations to assess the demand for the course; or

(ii) negotiating with another institution or other body or person in connection with designing or developing the course; and

(b) the person took reasonable steps to ensure that:

(i) overseas students and intending overseas students who were, or might become, interested in undertaking the course; and

(ii) any institution or other body or person who might also provide the course;

were aware that:

(iii) the person was not a registered provider for the course for the location; and

(iv) the relevant conduct was not carried out in accordance with an arrangement that the person had with a registered provider for the course for the location; and

(c) the person neither invited nor accepted any amount for the course from overseas students or intending overseas students, or from the students' agents.

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

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Division 3—Registration of providers

Subdivision A—Application for registration

9 Provider may apply to be registered

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

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

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

10 ESOS agency for provider may register provider

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

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

10A Notice of registration

(1) If:

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

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

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

(2) The notice must set out:

(a) the name of the provider; and

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

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

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

Subdivision B—Conditions of registration

10B Conditions of registration

(1) The ESOS agency for a provider or registered provider may at any time:
(a) impose a condition on the provider's registration; or
(b) vary or remove a condition of the provider's registration.

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

(3) A condition may be:
(a) imposed generally on a provider's registration; or
(b) imposed in respect of either or both of the following:
(i) one or more of the courses that a provider is registered to provide;

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

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

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

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

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

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

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

(1) If:

(a) a registered provider for a course for a location is an approved school provider; and

(b) at any time while the provider is registered, the designated State authority for the provider imposes a condition on the authority's approval of the provider that relates to the provision of the course;

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

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

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

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Subdivision C—Renewal of registration

10D Registered provider may apply to renew registration

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

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

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

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

10E ESOS agency for registered provider may renew registration

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

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

10F Registration continues until decision on renewal takes effect

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

the provider's registration continues until the agency's decision on the application is stated to take effect.

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10G Notice of renewal of registration

(1) If:

(a) a registered provider makes an application under section 10D; and

(b) the ESOS agency for the provider decides to renew the provider's registration;

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

(2) The notice must set out:

(a) the name of the registered provider; and

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

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

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

(e) the period of registration (which must not be longer than 7 years); and

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

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

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

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Subdivision D—Changes to registration etc.

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

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

(2) The application:

(a) must be made to the ESOS agency for the registered provider; and

(b) if the provider is an approved school provider—must be accompanied by a DSA recommendation certificate given by the designated State authority for the provider.

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

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

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

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

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

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

(1) If:

(a) a registered provider makes an application under section 10H; and

(b) the ESOS agency for the provider decides to add one or more courses at one or more locations to the provider's registration;

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

(2) The notice must set out:

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

(b) the additional location or locations at which the provider is registered to provide that course or those courses; and

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

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

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

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

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

(3) The ESOS agency for a registered provider that is an approved school provider may extend the provider's period of registration

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for the purpose of aligning the period with the provider's period of approval as an approved school provider.

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

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

10M Continuation of registration if provider has not finished providing course before expiry of registration

(1) This section applies if:
  (a) a registered provider is registered to provide a course at a location; and
  (b) the provider's registration for the course at the location is due to expire before the provider has finished providing the course at the location; and
  (c) the provider has not applied under section 10D to renew that registration.

(2) The registered provider's registration for the course at the location continues until:
  (a) if the provider is an approved school provider—the end of the year in which the provider's registration would have expired but for this section; or
  (b) otherwise—the provider has finished providing the course at the location to the students who were enrolled in, and had commenced, the course before the day on which the provider's registration would have expired but for this section.

(3) Despite subsection (2), the registered provider must not do anything for the purpose of recruiting or enrolling overseas students, or intending overseas students, for the course at the

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location after the day on which the provider's registration would have expired but for this section.

Subdivision E—Other registration provisions

11 When a provider or registered provider meets the registration requirements

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

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

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

(c) if the provider is not an exempt provider—the ESOS agency for the provider is satisfied that the provider is fit and proper to be registered; and

(d) the ESOS agency for the provider is satisfied that the provider has the principal purpose of providing education; and

(e) the ESOS agency for the provider has no reason to believe that:
  (i) the provider does not have the clearly demonstrated capacity to provide education of a satisfactory standard; or
  (ii) the provider has not been providing, or will not provide, education of a satisfactory standard; and

(f) if the provider is an approved school provider—the designated State authority for the provider has given the

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ESOS agency for the provider a DSA assessment certificate; and

(g) if the provider is not a registered provider—the provider has paid:

(i) schools initial registration charge (if the provider is liable to pay that charge); and

(ia) National VET Regulator annual registration charge imposed by section 6A of the *National Vocational Education and Training Regulator (Charges) Act 2012* (if the provider is liable to pay that charge); and

(ib) a fee determined under section 232 of the *National Vocational Education and Training Regulator Act 2011* (if the provider is liable to pay that fee); and

(ic) a fee determined under section 158 of the *Tertiary Education Quality and Standards Agency Act 2011* (if the provider is liable to pay that fee); and

(ii) its first TPS levy; and

(h) if the provider is a registered provider or has previously been registered—the provider is not liable to pay an amount of:

(i) CRICOS annual registration charge; or

(ii) schools renewal registration charge; or

(iii) National VET Regulator annual registration charge imposed by section 6A of the *National Vocational Education and Training Regulator (Charges) Act 2012*; or

(iiia) charge payable under section 7 of the *National Vocational Education and Training Regulator (Charges) Act 2012*; or

(iiib) charge payable under section 10 of the *National Vocational Education and Training Regulator (Charges) Act 2012*; or

(iiic) a fee determined under section 232 of the *National Vocational Education and Training Regulator Act 2011*; or

(iiid) a fee determined under section 158 of the *Tertiary Education Quality and Standards Agency Act 2011*; or

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(iiie) charge imposed by the *Tertiary Education Quality and Standards Agency (Charges) Act 2021*; or

(iv) TPS levy; or

(v) late payment penalty for any such charge or levy; and

(i) any other requirements prescribed by the regulations are satisfied.

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

11A Rules relating to applications for registration etc.

(1) This section applies in relation to:

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

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

Form of application etc.

(2) The application must be:

(a) made in the form approved, in writing, by the ESOS agency for the provider or registered provider; and

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

Withdrawal of application

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

Consideration of application

(4) When considering the application, the ESOS agency for the provider or registered provider may:

(a) consider any information in the possession of the agency that is relevant to the application; and

(b) conduct an audit of any matter relating to the application.

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(5) Subsection (4) does not limit the things that the ESOS agency for the provider or registered provider may do when considering the application.

11B ESOS agency may request further information or documents

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

(2) If the ESOS agency for the provider or registered provider needs further information or documents to decide the application, the agency may request any or all of the following to give the agency the further information or documents:
  (a) the provider;
  (b) if the provider is an approved school provider—the designated State authority for the provider;
  (c) another ESOS agency.

(3) The request:
  (a) must be made in writing; and
  (b) must specify the period within which the further information or documents are to be given (which must be at least 14 days after the request is made); and
  (c) contain a statement setting out the effect of subsection (4).

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

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

Notice of registration etc.

(1) If the ESOS agency for a provider or registered provider gives the provider a notice under section 10A, 10G or 10K, the agency must give a copy of the notice to:

(a) if the provider is an approved school provider—the designated State authority for the provider; and

(b) if the ESOS agency for the provider is not the Secretary—the Secretary.

Notice of refusal to register an approved school provider

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

Notice of registration conditions etc.

(3) If the ESOS agency for a registered provider:

(a) imposes a condition on, or varies or removes a condition of, the provider's registration under section 10B after the commencement of the registration; or

(b) refuses to renew the provider's registration under section 10E; or

(c) refuses to add one or more courses at one or more locations to the provider's registration under section 10J; or

(d) extends the provider's period of registration under section 10L;

the agency must give a copy of the notice of the decision given to the provider under section 169AC to:

(e) if the provider is an approved school provider—the designated State authority for the provider; and

(f) if the ESOS agency for the provider is not the Secretary—the Secretary.

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

13 TPS Director may require information

(1) The TPS Director may request a provider who is not yet registered to give the TPS Director information that is relevant to determining the provider's amount of TPS levy at any time before the provider is registered.

Note: A person could commit an offence if the person provides false or misleading information in complying or purporting to comply with this section: see section 108.

(2) The TPS Director does not have to determine the amount of the provider's TPS levy under section 53A until the provider complies with the request.

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

(1) This section applies if:

(a) an approved school provider applies for registration under section 9; and

(b) the ESOS agency for the provider has information suggesting that:

(i) the provider is not complying, or will not comply, with this Act or the national code; or

(ii) if the ELICOS Standards or Foundation Program Standards apply in relation to the provider—the provider is not complying, or will not comply, with those Standards; or

(iii) the provider does not have the principal purpose of providing education; or

(iv) the provider does not have the clearly demonstrated capacity to provide education of a satisfactory standard; or

(v) the provider has not been providing, or will not provide, education of a satisfactory standard; and

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(c) the source of the information is not the designated State authority for the provider.

(2) Before deciding the application for registration, the ESOS agency must:

(a) give the information to the designated State authority; and

(b) allow the authority at least 7 days to respond, in writing, to the information.

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Division 4—The Register

14A The Register

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

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

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

Contents of the Register

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

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

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

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

(d) a unique identifier allocated to the provider;

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

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

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

(i) any other matters prescribed by the regulations.

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

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14B Updating the Register

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

(2) Without limiting subsection (1), the Secretary must cause the Register to be altered appropriately if:

(a) a provider's registration is suspended or cancelled for any one or more courses for any one or more locations; or

(b) a provider's registration has a condition imposed on it; or

(c) a provider's registration has a suspension or condition removed, or a condition varied; or

(d) a provider applies for review of a decision to suspend or cancel, or to impose a condition on, the provider's registration.

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

(3) However, a failure to keep the Register up-to-date does not affect the validity of any action referred to in subsection (2).

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Part 3—Obligations on registered providers

Division 1A—Guide to this Part

15A Guide to this Part

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

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Division 1—General obligations

15 Registered providers must not engage in misleading or deceptive conduct

A registered provider must not engage in misleading or deceptive conduct in connection with:

(a) the recruitment of overseas students or intending overseas students; or

(b) the provision of courses to overseas students.

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

16 Only Australian residents and Table C providers may be registered

A registered provider must be:

(a) a resident of Australia; or

(b) a Table C provider (within the meaning of the *Higher Education Support Act 2003*).

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

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

(1) A registered provider must tell the ESOS agency for the provider as soon as practicable if the provider becomes aware that an associate or high managerial agent of the provider:

(a) has been convicted of an offence under this Act or the old ESOS Act at any time during the last 5 years; or

(aa) has been convicted of an offence against any other law of the Commonwealth, or against a law of a State, punishable by:

(i) imprisonment for 2 years or longer; or

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(ii) a fine of 120 penalty units or more;

at any time during the last 5 years; or

(b) has ever had the associate's or agent's registration cancelled or suspended for any one or more courses for any one or more locations under this Act or the old ESOS Act; or

(ba) if the associate or agent is or has ever been approved (however described) to provide a program, service or activity on behalf of, or with funding from, the Commonwealth or a State—has ever had the associate's or agent's approval cancelled or suspended other than at the request of the associate or agent; or

(c) has ever had an Immigration Minister's suspension certificate issued in respect of the associate or agent; or

(d) has ever had a condition imposed on the associate's or agent's registration under this Act; or

(da) if the associate or agent is or has ever been approved (however described) to provide a program, service or activity on behalf of, or with funding from, the Commonwealth or a State—has ever had disciplinary, remedial or other compliance action taken in relation to the approval; or

(e) was involved in the provision of a course by another provider who is covered by any of paragraphs (a) to (da) at the time of any of the events that gave rise to the relevant prosecution or other action.

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

No effect on Part VIIC of the Crimes Act

(2) Nothing in subsection (1) affects the operation of Part VIIC of the *Crimes Act 1914* (which, in certain cases, relieves persons from any requirement to disclose spent convictions).

(3) If:

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(a) the Minister determines that an entity is an ESOS agency for a provider or a registered provider under subsection 6C(2) or (3); and

(b) the entity is not a Commonwealth authority (within the meaning of section 85ZL of the *Crimes Act 1914*);

the entity is taken to be a Commonwealth authority for the purposes of Part VIIC of the *Crimes Act 1914*.

17A Registered providers must notify their ESOS agency of certain other events

(1) A registered provider must notify the ESOS agency for the provider of the occurrence of an event that would significantly affect the provider's ability to comply with this Act.

(2) Notice under subsection (1) must be given within 10 business days after the event occurs.

(3) A registered provider must notify the ESOS agency for the provider of:

(a) any prospective changes to the ownership of the registered provider as soon as practicable before the change takes effect; or

(b) any prospective or actual change in relation to a related person of the provider:

(i) if the change cannot be determined until it takes effect—within 10 business days of the change taking effect; or

(ii) otherwise—as soon as practicable before the change takes effect.

(4) Notice under subsection (3) must be accompanied by information on the new owner or the related person of the provider to enable the making of a decision under section 7A as to whether:

(a) the ESOS agency is satisfied, or no longer satisfied, that the provider is fit and proper to be registered; or

(b) the ESOS agency believes on reasonable grounds that the provider is not fit and proper to be registered.

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(5) A notice under this section must be provided in the manner and form specified by the ESOS agency for the provider for the purposes of this subsection.

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

18 Payments to providers

(1) If a registered provider for a course enters into an arrangement with one or more other providers to provide the course jointly, the arrangement must:

(a) be such that the students pay their tuition fees to the registered provider and not directly to the other providers; or

(b) both:

(i) be in writing; and

(ii) provide for the receipt and disbursement of any tuition fees paid by students directly to any of the other providers.

(1A) However, for the purpose of determining the registered provider's obligations under this Act, any tuition fees paid by students directly to any of the other providers is taken to have been paid directly to the registered provider.

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

19 Giving information about accepted students

(1) A registered provider must give the following information within the applicable number of days after the event specified below occurs:

(a) the name and any other prescribed details of each person who becomes an accepted student of that provider;

(b) for each person who becomes an accepted student—the name, starting day and expected duration of the course for which the student is accepted;

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(c) the prescribed information about an accepted student who does not begin his or her course when expected;

(d) any termination of an accepted student's studies (whether as a result of action by the student or the provider or otherwise) before the student's course is completed;

(e) any change in the identity or duration of an accepted student's course;

(f) any other prescribed matter relating to accepted students.

(1A) The ***applicable number of days*** is:

(a) if the accepted student is less than 18 years old and the information is of a kind referred to in paragraph (1)(c) or (d)—14 days; or

(b) otherwise—31 days.

(2) A registered provider must give particulars of any breach by an accepted student of a prescribed condition of a student visa as soon as practicable after the breach occurs.

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

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

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

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

Unincorporated registered providers

(4) If the registered provider is an unincorporated body, then it is instead the principal executive officer of the provider who must give the information as required under this section.

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(5) A registered provider, or the principal executive officer of a registered provider that is an unincorporated body, who fails to comply with this section commits an offence.

Penalty: 60 penalty units.

(6) An offence under subsection (5) is an offence of strict liability.

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

21 Record keeping

Records of students' details

(1) A registered provider must keep records of each accepted student who is enrolled with the provider or who has paid any tuition fees for a course provided by the provider.

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

(a) the student's current residential address;

(b) the student's mobile phone number (if any);

(c) the student's email address (if any);

(d) any other details prescribed by the regulations.

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

(a) the provider confirms, in writing, the details referred to in subsection (2) with the student; and

(b) the records are updated accordingly.

Records of assessment

(2B) If:

(a) an accepted student of a registered provider completes a unit of study for a course; and

(b) the student's progress in that unit is assessed;

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

(2C) A record under subsection (2B) must be:

(a) kept in accordance with any requirements prescribed by the regulations; and

(b) kept up-to-date.

Retention of records

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

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

Unincorporated registered providers

(4) If the registered provider is an unincorporated body, then it is instead the principal executive officer who must keep and retain the records as required under this section.

Offence

(5) A registered provider, or the principal executive officer of a registered provider that is an unincorporated body, who fails to comply with this section commits an offence.

Penalty: 60 penalty units.

(6) An offence under subsection (5) is an offence of strict liability.

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

21A Obligations relating to the agents of registered providers

(1) A registered provider must:

(a) maintain a list of all the provider's agents; and

(b) publish that list:

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(i) on its website; and

(ii) in any other manner prescribed by the regulations; and

(c) comply with any requirements of regulations made for the purposes of subsection (2).

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

(1A) A registered provider who fails to comply with subsection (1) commits an offence.

Penalty: 60 penalty units.

(1B) An offence under subsection (1A) is an offence of strict liability.

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

(2) The regulations may prescribe requirements that registered providers must comply with in relation to their agents.

23 CRICOS annual registration charge

(1) If a registered provider is liable to pay CRICOS annual registration charge for a year, the Secretary must give the registered provider a written notice (the ***first notice***) that:

(a) specifies the amount of the charge payable by the provider; and

(b) determines that the amount is due for payment at the end of the 30-day period beginning on the day after the first notice is given to the provider.

Note: CRICOS annual registration charge is imposed by section 5 of the *Education Services for Overseas Students (Registration Charges) Act 1997*.

(2) If the registered provider did not pay the amount of CRICOS annual registration charge at or before the time when it became due for payment, the Secretary must give the provider a written notice (the ***second notice***) that:

(a) specifies the amount of the charge payable by the provider; and

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(b) states that the provider must pay that amount by the end of the 7-day period beginning on the day after the second notice is given to the provider; and

(c) sets out the effect of section 90.

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

(3) If:

(a) the registered provider fails to comply with the second notice; and

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

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

(4) A notice under this section is not a legislative instrument.

24 TPS levies

(1) A registered provider must pay a TPS levy for each calendar year.

Note: Subdivision B of Division 2 of Part 5A, and the *Education Services for Overseas Students (TPS Levies) Act 2012*, have details about how amounts of TPS levy are determined.

(2) A registered provider who is required to pay an amount of TPS levy for a calendar year must pay it to the TPS Director by the day stated in the notice that the TPS Director gives the provider under section 53B.

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

26 Disclosure obligations of registered providers

(1) A registered provider who is required to pay a TPS levy for a year must tell the TPS Director as soon as practicable of any matter that might cause the TPS Director to increase the amount of levy the provider would be required to pay for that or a later year.

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(2) The obligation in subsection (1) continues to apply even after the registered provider has paid its TPS levy for the year.

TPS Director may request information

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

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

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

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Division 2—Tuition fees

27 Tuition fees

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

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

(a) either of the following choose to pay more than 50% of the overseas student's, or intending overseas student's, total tuition fees for a course before the student has begun the course:

(i) the student;

(ii) a person who is responsible for paying those fees; or

(b) the course has a duration of 25 weeks or less.

28 Obligation for registered provider to maintain account

Requirement to maintain account

(1) A registered provider who receives, in respect of an overseas student or intending overseas student, tuition fees for a course before the student has begun the course must maintain an account in accordance with this section.

Note 1: Providers covered by section 31 are not required to comply with this section.

Note 2: The obligation to maintain an account under this section may continue to apply to a person or entity that ceases to be a registered provider until matters relating to tuition fees paid into the account in accordance with section 29 have been dealt with or resolved (see section 7AB).

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Account to be maintained with an Australian ADI

(2) The account must be maintained with an Australian ADI (within the meaning of section 9 of the *Corporations Act 2001*).

29 Obligations in relation to account money

Tuition fees received before course begins to be paid to credit of account

(1) A registered provider who receives, in respect of an overseas student or intending overseas student, tuition fees for a course before the student has begun the course must pay the fees to the credit of an account maintained in accordance with section 28.

Note: Providers covered by section 31 are not required to comply with this section.

(2) The provider must pay the fees into the account within 5 business days of receiving the fees.

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

Requirement in relation to withdrawing money from account

(3) The provider must ensure that, at all times, there is a sufficient amount (the ***protected amount***) standing to the credit of the account to repay all tuition fees to every overseas student or intending overseas student (a ***relevant student***):

(a) in respect of whom tuition fees have been paid to the provider; and

(b) who has not yet begun the course that the provider is to provide to the student.

(4) An amount may be withdrawn from the account, so as to reduce the balance of the account below the protected amount, only if:

(a) the amount is withdrawn to pay a refund under section 46D, 47D or 47E to, or in relation to, a relevant student; or

(b) both of the following apply:

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(i) the provider arranges, under section 46D, for a relevant student to be offered a place in an alternative course at the provider's expense;

(ii) the amount is withdrawn to pay the alternative provider in relation to the relevant student; or

(c) the amount is withdrawn to pay the TPS Director under section 50C in relation to the relevant student.

Note 1: Tuition fees of a relevant student cease to be part of the protected amount (and may therefore be withdrawn from the account) once the student begins the course that the provider is to provide to the student: see subsection (3).

Note 2: There are no limits on withdrawals from the account as long as the balance of the account remains above the protected amount.

(5) An amount withdrawn in accordance with subsection (4) must not be more than the amount of the tuition fees received by the provider in respect of the relevant student before the student begins the course.

Account money not available for payment of debts etc.

(6) To avoid doubt, the protected amount:

(a) is not available for the payment of a debt of any creditor of the provider, other than as referred to in subsection (4); and

(b) is not liable to be attached or taken in execution under the order or process of a court at the instance of any creditor of the provider, other than as referred to in subsection (4).

30 Regulations

The regulations may provide additional requirements in relation to:

(a) tuition fees for a course received by a provider, in respect of an overseas student or intending overseas student, before the student has begun the course; or

(b) accounts maintained under this Division.

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

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31 Exemption from requirement

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

(a) a provider that is administered by a State education authority;

(b) any other provider that is entitled to receive funds under a law of the Commonwealth for recurrent expenditure for the provision of education or training, other than one excluded by the regulations from the scope of this paragraph;

(c) any other provider specified in the regulations.

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

32 Offence

(1) A person commits an offence if:

(a) either:

(i) the person is a registered provider; or

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

(b) the person engages in conduct; and

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

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

Penalty: 60 penalty units.

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

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

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

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Part 4—The national code

Division 1—Guide to this Part

33A Guide to this Part

- The Minister makes a national code under this Part.
- 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.
- Enforcement action (such as imposing conditions, or suspending or cancelling a registration) can be taken under Part 6 in relation to a registered provider who breaches the code.

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Division 2—The national code

33 The national code

(1) The Minister may make a national code by legislative instrument.

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

(2) The code is to be called the National Code of Practice for Providers of Education and Training to Overseas Students.

(3) The Minister must ensure as far as practicable that there is a national code in force at all times.

34 Purpose of the national code

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 registered providers.

38 Contents of the national code

The national code must contain some or all of the following:

(b) standards and procedures required of registered providers in providing courses to overseas students;

(d) standards required of registered providers in connection with their dealings with their agents;

(e) standards required of a registered provider of a course in connection with the provider's dealings with other providers of the course;

(g) standards and procedures required of registered providers in making agreements with overseas students or intending overseas students;

(h) standards required of the content of such agreements;

(i) any other matters that are necessary or convenient to give effect to the purpose of the national code.

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40 Legal effects of the national code

The only legal effects of the national code are the effects that this Act expressly provides for.

Note: This Act provides that compliance with the national code is a prerequisite for registration (see section 11) and that sanctions under Division 1 of Part 6 may be imposed on a registered provider who breaches the national code.

41 Notification of the national code

(1) The Secretary must give each registered provider written notice of:
  (a) the making or amendment of the national code; and
  (b) the day on which the code or amendment takes effect for the provider; and
  (c) the way in which the provider can get access to the text of the code in force on that day.

(2) A notice given under subsection (1) is not a legislative instrument.

(3) However, a breach of this section does not affect the validity of the national code or an amendment of the code.

44 Regulations may prescribe penalties

(1) The regulations may make it an offence to breach prescribed provisions of the national code.

(2) The offence must be punishable by a fine of no more than 10 penalty units.

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Part 5—Tuition protection service

Division 1—Guide to this Part

45 Guide to this Part

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

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

Subdivision A—Provider defaults

46A When a registered provider defaults

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

(a) either of the following occurs:

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

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

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

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

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

Ceasing to provide courses

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

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

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(5) In deciding whether to give the notice, the ESOS agency for the registered provider must have regard to:
  (a) the effect of the change on the delivery of courses and outcomes for students; and
  (b) any advice provided by another ESOS agency; and
  (c) if the provider is an approved school provider—any advice of the State designated authority for the provider.

46B Registered providers to notify of provider default

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

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

Notifying the ESOS agency and TPS Director

(2) The provider must notify, in writing, the ESOS agency for the provider and the TPS Director of the default within 3 business days of the default occurring.

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

(3) The notice must include the following:
  (a) the circumstances of the default;
  (b) the details of the students in relation to whom the provider has defaulted;
  (c) advice as to:
    (i) whether the provider intends to discharge its obligations to those students under section 46D; and
    (ii) (if appropriate) how the provider intends to discharge those obligations.

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Notifying students

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

Notice requirements

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

Legislative instrument

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

46D Obligations on registered providers in case of provider default

(1) This section applies if a registered provider defaults in relation to an overseas student or intending overseas student and a course at a location.

(2) The provider must discharge its obligations to the student, in accordance with subsection (3), within the period (the ***provider obligation period***) of 14 days after the default day.

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

(3) The provider discharges its obligations to the student if:

(a) both of the following apply:

(i) the provider arranges for the student to be offered a place in a course in accordance with subsection (4);

(ii) the student accepts the offer in writing; or

(b) the provider provides a refund in accordance with subsection (6).

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Arranging alternative courses

(4) The provider may arrange for the student to be offered a place in an alternative course at the provider's expense.

(5) The student may accept, in writing, the offer under subsection (4).

Providing a refund

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

Note: For providers who are required to maintain an account in accordance with section 28, the refund might be paid out of the account: see section 29.

(7) The Minister may, by legislative instrument, specify a method for working out the amount of unspent tuition fees for the purposes of subsection (6).

46E Offence for failure to discharge obligations

(1) A person commits an offence if:

(a) either:

(i) the person is a registered provider; or

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

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

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

Penalty: 60 penalty units.

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

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

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

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

46F Registered providers to notify of outcome of discharge of obligations

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

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

(2) The provider must give a notice to the ESOS agency for the provider and the TPS Director within 7 days after the end of the provider obligation period.

Notice requirements

(3) The notice must include the following:
- (a) whether the provider discharged its obligations to the students in accordance with section 46D;
- (b) if the provider arranged alternative courses:
  - (i) details of the students the provider arranged alternative courses for; and
  - (ii) details of the courses arranged; and
  - (iii) evidence of each student's acceptance of an offer of a place in an alternative course;
- (c) if the provider provided refunds:
  - (i) details of the students the provider provided refunds to; and
  - (ii) details of the amounts of the refunds provided.

(4) The notice must comply with any requirements of a legislative instrument made under subsection (5).

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Legislative instrument

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

Subdivision B—Student defaults

47A When a student defaults

(1) An overseas student or intending overseas student ***defaults***, in relation to a course at a location, if:

(a) the course starts at the location on the agreed starting day, but the student does not start the course on that day (and has not previously withdrawn); or

(b) the student withdraws from the course at the location (either before or after the agreed starting day); or

(c) the registered provider of the course refuses to provide, or continue providing, the course to the student at the location because of one or more of the following events:

(i) the student failed to pay an amount he or she was liable to pay the provider, directly or indirectly, in order to undertake the course;

(ii) the student breached a condition of his or her student visa;

(iii) misbehaviour by the student.

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

Note 2: For an exception to subparagraph (1)(c)(iii), see subsection (3).

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

(3) An overseas student or intending overseas student does not default under subparagraph (1)(c)(iii) unless the registered provider

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accords the student natural justice before refusing to provide, or continue providing, the course to the student at the location.

47B Requirement to make written agreement about student default

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

(a) sets out the refund requirements that apply if the student defaults in relation to a course at a location; and

(b) meets the requirements (if any) set out in the national code.

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

47D Refund under a written agreement about student default

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

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

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

Provider to pay refund

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

Note: For providers who are required to maintain an account in accordance with section 28, the refund might be paid out of the account: see section 29.

(3) The provider must pay the refund to the following person:

(a) the student;

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

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

Exception—refusal of student visa

(5) A registered provider is not required to provide a refund under this section if:
  (a) the student was refused a student visa; and
  (b) the refusal was a reason for one or more of the following acts or omissions by the student that directly or indirectly caused the student to default in relation to the course at the location:
    (i) the student's failure to start the course at the location on the agreed starting day;
    (ii) the student's withdrawal from the course at that location;
    (iii) the student's failure to pay an amount he or she was liable to pay the provider, directly or indirectly, in order to undertake the course at that location.

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

47E Refund in other cases

(1) A registered provider must provide a refund under this section if:
  (a) an overseas student or an intending overseas student defaults in relation to a course at a location; and
  (b) either:
    (i) the provider has not entered into an agreement with the student that meets the requirements of section 47B; or
    (ii) the provider is not required to pay a refund to the student because of subsection 47D(5) (refusal of student visa).

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

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(2) The provider must pay the student a refund of the amount worked out in accordance with an instrument under subsection (4).

Note: For providers who are required to maintain an account in accordance with section 28, the refund might be paid out of the account: see section 29.

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

Legislative instrument

(4) The Minister may, by legislative instrument, specify a method for working out the amount of a refund for the purposes of subsection (2).

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

(1) A person commits an offence if:

(a) either:

(i) the person is a registered provider; or

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

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

Penalty: 60 penalty units.

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

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

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

47G Offence for failure to provide refund

(1) A person commits an offence if:

(a) either:

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(i) the person is a registered provider; or

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

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

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

Penalty: 60 penalty units.

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

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

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

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

47H Registered providers to notify of outcome of discharge of obligations

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

(a) an overseas student or intending overseas student defaults in relation to a course provided by the provider at a location; and

(b) the provider is required to provide a refund under section 47E.

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

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(2) The provider must give a notice to the ESOS agency for the provider and the TPS Director within 7 days after the end of the provider obligation period.

(3) The notice must include the following:
   (a) whether the provider provided a refund under section 47E;
   (b) details of the student the provider provided the refund to;
   (c) details of the amount of the refund provided.

(4) The notice must comply with any requirements of a legislative instrument made under subsection (5).

Legislative instrument

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

Subdivision C—Recovering an amount

48 Recovering an amount

(1) An overseas student or intending overseas student may recover an amount owing to the student under this Division as a debt by action in a court of competent jurisdiction (unless subsection (2) applies).

Note: This section is also affected by section 50C.

(2) If:
   (a) a registered provider owes an amount to a student under section 47D; and
   (b) a person (other than the student) is specified in the agreement entered into between the provider and the student under section 47B;

the specified person, rather than the student, may recover the amount as a debt by action in a court of competent jurisdiction.

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

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Division 3—Student placement service

49 Student placement service

(1) This section applies if the TPS Director determines that:

(a) a registered provider has defaulted in relation to an overseas student or intending overseas student and a course at a location; and

(b) either:

(i) the provider has failed to discharge its obligations under section 46D to the student by the end of the provider obligation period; or

(ii) the provider is unlikely to be able to discharge its obligations under section 46D to the student by the end of the provider obligation period.

Suitable alternative courses

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

Accepting an alternative course

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

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

(4) An acceptance must:

(a) be in writing; and

(b) be made within the period specified in subsection (5).

(5) For the purposes of subsection (4), the period is:

(a) the period of 30 days after the end of the provider obligation period; or

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(b) if the TPS Director determines that exceptional circumstances apply:

(i) any shorter period determined in writing by the TPS Director; or

(ii) any longer period determined in writing by the TPS Director, and agreed to by the student.

Legislative instrument

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

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Division 4—Calls on the OSTF

50A When a call is made on the OSTF

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

Provider default, no place accepted by student

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

Provider default, place accepted by student

(3) A ***call*** is made on the OSTF if the TPS Director determines that:
  (a) a registered provider has defaulted in relation to an overseas student or intending overseas student and a course at a location; and
  (b) the provider has failed to discharge its obligations under section 46D to the student by the end of the provider obligation period; and
  (c) the student accepts a place in an alternative course in accordance with section 49.

Student default, refund not provided by registered provider

(4) A ***call*** is made on the OSTF if the TPS Director determines that:
  (a) a student has defaulted in relation to a course provided by a registered provider at a location; and

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(b) the provider fails to provide a refund in accordance with section 47D or 47E (as the case requires) by the end of the provider obligation period.

No call on the OSTF after a year

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

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

TPS Director must pay amount

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

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

(2) If the student accepts a place in an alternative course in accordance with section 49, the TPS Director may spend more than the amount of that refund entitlement if the TPS Director considers that to do so:

(a) would best protect the interests of the student; and

(b) would not jeopardise the sustainability of the OSTF.

Who TPS Director pays amount to

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

(a) if the student has accepted a place in an alternative course in accordance with section 49—the registered provider of that course; and

(b) if a refund was required to be paid under section 47D, and a person (other than the student) is specified in the agreement

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made with the student under section 47B to receive any refund under this section—the specified person; and

(c) otherwise—the student.

(4) If:

(a) the TPS Director is required under subsection (3) to pay a registered provider for providing an alternative course; and

(b) the amount required to be paid is more than the cost of the course;

the TPS Director must pay the difference to the person specified in paragraph (3)(b) or (c) (as the case requires).

Legislative instrument

(5) The Minister may, by legislative instrument, specify requirements for payments made under this section.

50C Consequences of a payment under section 50B

Cessation of claim

(1) If:

(a) either:

(i) a registered provider defaults in relation to an overseas student or intending overseas student and a course at a location; or

(ii) an overseas student or intending overseas student defaults in relation to a course provided by a registered provider at a location; and

(b) the TPS Director pays an amount in accordance with section 50B in relation to the student;

the student, and any person specified in paragraph 50B(3)(b), cease to have any claim against the provider in respect of the student's fees to which the refund requirements under Division 2 relate.

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Provider must pay back TPS Director

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

(2A) If the provider is required to maintain an account in accordance with section 28, the payment of that amount must be made out of the account to the extent that there is a sufficient amount standing to the credit of the account.

(2B) To avoid doubt, subsection (2A) is subject to subsections 29(4) and (5).

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

TPS Director may enforce security

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

50D TPS Director to notify Immigration Secretary

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

Note 1: This section constitutes authorisation for the purposes of other laws, such as paragraph 6.2(b) of Australian Privacy Principle 6.

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

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

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

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

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

(a) the right may be cancelled, revoked, terminated or varied by or under later legislation; and

(b) no compensation is payable if the right is so cancelled, revoked, terminated or varied.

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

Division 1—Guide to this Part

51 Guide to this Part

- This Part establishes the Overseas Students Tuition Fund, the TPS Director and the TPS Advisory Board.
- Division 2:
    (a) establishes the Overseas Students Tuition Fund (the OSTF); and
    (b) sets out the money that goes into, and can be paid out of, the OSTF; and
    (c) has rules relating to TPS levies.

  The OSTF provides the money for refunds under Part 5 for defaults where registered providers fail to discharge their obligations to overseas students. The money in the OSTF is mostly made up of the TPS levies collected from registered providers each year.
- Division 3 of this Part establishes the office of the TPS Director, and his or her terms and conditions. The TPS Director is responsible for:
    (a) assisting students to find suitable alternative courses, and providing refunds, in the case of defaults; and

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(b) working out the amount of the TPS levy each year; and

(c) managing the OSTF.

- Division 4 establishes the TPS Advisory Board, the Board members' terms and conditions, and how Board meetings are to be conducted. The Board is responsible for providing advice and making recommendations to the TPS Director on setting the TPS levy each year.

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Division 2—Overseas Students Tuition Fund and TPS levies

Subdivision A—Overseas Students Tuition Fund

52A Name of Fund

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

(2) The Fund is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

52B Credits to the OSTF

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

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

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

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

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

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

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

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

52C Purposes of the OSTF

(1) The purposes of the OSTF are as follows:

(a) making payments as a result of calls being made on the OSTF under Division 4 of Part 5;

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(b) paying or discharging the costs, expenses and other obligations incurred by the Commonwealth in the performance of the TPS Director's functions, including in managing the OSTF (subject to subsection (2));

(c) paying any remuneration and allowances payable to the TPS Director.

Note: See section 80 of the *Public Governance, Performance and Accountability Act 2013* (which deals with special accounts).

(2) Paragraph (1)(b) does not include paying or discharging any costs, expenses or other obligations associated with services provided to the TPS Director by any employee or officer of the Department.

Subdivision B—TPS levies

53A TPS Director to work out the amount of TPS levies

(1) For each calendar year, the TPS Director must determine the amount of TPS levy required from each provider who is required to pay a contribution.

(2) The TPS Director must determine the amount in accordance with the *Education Services for Overseas Students (TPS Levies) Act 2012*.

53B Notice of amount of TPS levy

(1) The TPS Director must give a written notice to each provider who is liable to pay a TPS levy stating:

(a) the amount of the provider's levy; and

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

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

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

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(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.

53C Notifying the ESOS agency of payment of first TPS levy

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

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

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

53D Reminder notices

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

(2) The reminder notice must:
  (a) specify the amount that is still owing; and
  (b) state that the registered provider must pay the amount by the end of the seventh day after the reminder notice is given to the provider; and
  (c) set out the effect of section 90.

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

(3) The TPS Director must tell the ESOS agency for the registered provider if the provider fails to comply with the reminder notice.

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Division 3—TPS Director

54A Appointment of TPS Director

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

Note 1: The TPS Director is eligible for reappointment: see section 33AA of the *Acts Interpretation Act 1901*.

Note 2: The TPS Director is also the VSL Tuition Protection Director under the *VET Student Loans Act 2016* and the Higher Education Tuition Protection Director under the *Higher Education Support Act 2003*.

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

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

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

54B Functions of the TPS Director

The TPS Director has the following functions:

(a) facilitating and monitoring the placement of overseas students and intending overseas students in alternative courses under section 49;

(b) determining whether a call is made on the OSTF under section 50A;

(c) paying amounts out of the OSTF under section 50B;

(d) reporting to the Minister on:

(i) the operation of Part 5 (tuition protection service); and

(ii) the financial status of the OSTF;

(e) managing the OSTF in a way that ensures that it is able to meet all its liabilities from time to time;

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(f) making the legislative instrument each year for the purposes of subsections 9(3) and 10(2) of the *Education Services for Overseas Students (TPS Levies) Act 2012*;

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

(g) any other function conferred by this Act.

54C Remuneration and allowances

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

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

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

54D Leave of absence

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

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

54E Restrictions on outside employment

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

54F Disclosure of interests

The TPS Director must give written notice to the Minister of all interests, pecuniary or otherwise, that the TPS Director has or

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acquires that could conflict with the proper performance of the TPS Director's functions.

54G Resignation

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

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

54H Termination of appointment

(1) The Minister may terminate the appointment of the TPS Director for:
  (a) misbehaviour; or
  (b) physical or mental incapacity.

(2) The Minister may terminate the appointment of the TPS Director if:
  (a) the TPS Director:
    (i) becomes bankrupt; or
    (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    (iii) compounds with his or her creditors; or
    (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
  (b) the TPS Director is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
  (c) the TPS Director engages, except with the Minister's approval, in paid employment outside the duties of his or her office (see section 54E); or
  (d) the TPS Director fails, without reasonable excuse, to comply with section 54F (disclosure of interests).

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54J Other terms and conditions

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

54K Acting TPS Director

The Minister may appoint a person to act as the TPS Director:

(a) during a vacancy in the office of the TPS Director (whether or not an appointment has previously been made to the office); or

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

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

54L Consultants

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

54M Indemnity

(1) The TPS Director is not personally subject to any liability to any person (other than the Commonwealth) in respect of anything done, or omitted to be done, in good faith in the exercise or performance of powers or functions under this Act or the *Education Services for Overseas Students (TPS Levies) Act 2012*.

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

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54N Application of finance law

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

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Division 4—TPS Advisory Board

Subdivision A—Appointment of Board members

55A Establishment

The TPS Advisory Board is established by this section.

Note: The members of the TPS Advisory Board are also members of the VSL Tuition Protection Fund Advisory Board under the *VET Student Loans Act 2016* and members of the Higher Education Tuition Protection Fund Advisory Board under the *Higher Education Support Act 2003*.

55B Function of the Board

The Board's function is, either on its own initiative or at the request of the TPS Director, to provide advice and make recommendations to the TPS Director in relation to the making of a legislative instrument each year under subsections 9(3) and 10(2) of the *Education Services for Overseas Students (TPS Levies) Act 2012*.

55C Membership

(1) The Board consists of the following members:

(a) a representative from each of the following agencies:

(i) the Department;

(ia) the Department administered by the Minister administering the *VET Student Loans Act 2016*;

(ii) the Department whose Minister administers the *Public Governance, Performance and Accountability Act 2013*;

(iii) the Department administered by the Immigration Minister;

(iv) the Australian Government Actuary;

(v) the Australian Prudential Regulation Authority;

(b) up to 7 other members.

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Requirements for Board members appointed under paragraph (1)(b)

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

(2A) In appointing a Board member under paragraph (1)(b), the Minister must ensure that the Board members appointed under that paragraph, as a group, have qualifications or experience relevant to the operations of providers from across the education and training sectors.

Chair and Deputy Chair

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

55D Appointment of Board members

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

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

(2) A Board member holds office for the period specified in the instrument of appointment. The period must not exceed 2 years.

(3) A Board member is to be appointed on a part-time basis.

55E Remuneration and allowances

(1) A Board member appointed under paragraph 55C(1)(b) is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, such a Board member is to be paid the remuneration that is prescribed by the regulations.

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

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

55F Leave of absence

Chair

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

Other members

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

55G Restrictions on outside employment

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

55H Disclosure of interests

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

55J Disclosure of interests to the Board

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

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

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(3) The disclosure must be recorded in the minutes of the meeting of the Board.

(4) Unless the Board determines otherwise, the Board member:
  (a) must not be present during any deliberation by the Board on the matter; and
  (b) must not take part in any decision of the Board with respect to the matter.

(5) In addition, the Board member:
  (a) must not be present during any deliberation of the Board for the purpose of making a determination under subsection (4); and
  (b) must not take part in making the determination.

(6) A determination under subsection (4) must be recorded in the minutes of the meeting of the Board.

55K Resignation

(1) A Board member may resign his or her appointment by giving the Minister a written resignation.

(2) The Chair or Deputy Chair may resign his or her appointment as the Chair or Deputy Chair (as the case requires) without resigning his or her appointment as a Board member.

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

55L Termination

(1) The Minister may terminate the appointment of a Board member for:
  (a) misbehaviour; or
  (b) physical or mental incapacity.

(2) The Minister may terminate the appointment of a Board member if:

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(a) the Board member:
  (i) becomes bankrupt; or
  (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
  (iii) compounds with his or her creditors; or
  (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
(b) the Board member is absent, except on leave of absence, from 2 consecutive meetings of the Board; or
(c) the Board member engages in paid employment that, in the Minister's opinion, conflicts or may conflict with the proper performance of his or her duties (see section 55G); or
(d) the Board member fails, without reasonable excuse, to comply with section 55H or 55J (disclosure of interests).

55M Other terms and conditions

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

55N Acting appointments

Acting Board member

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

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

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Acting Chair

(2) The Minister may appoint a Board member to act as the Chair if the Deputy Chair is unable to act as the Chair:
  (a) during a vacancy in the office of the Chair, whether or not an appointment has previously been made to the office; or
  (b) during any period, or during all periods, when the Chair:
    (i) is absent from duty or from Australia; or
    (ii) is, for any reason, unable to perform the duties of the office.

Subdivision B—Meetings of the TPS Advisory Board

56A Convening meetings

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

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

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

(3) The Chair:
  (a) may convene a meeting; and
  (b) must convene at least 2 meetings each calendar year; and
  (c) must convene a meeting if requested in writing by:
    (i) 7 or more other Board members; or
    (ii) the Minister.

56B Presiding at meetings

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

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

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56C Quorum

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

(2) However, if:

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

(b) when the Board member leaves the meeting concerned there is no longer a quorum present; and

(c) either the Chair or the Deputy Chair still remains at the meeting;

the remaining Board members at the meeting constitute a quorum for the purpose of any deliberation or decision at that meeting with respect to that matter.

56D Voting at meetings

(1) A question arising at a meeting is to be determined by a majority of the votes of the Board members present and voting.

(2) The person presiding at a meeting has a deliberative vote and, in the event of an equality of votes, a casting vote.

56E Conduct of meetings

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

56F Minutes

The Board must keep minutes of its meetings.

56G Decisions without meetings

(1) The Board is taken to have made a decision at a meeting if:

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(a) without meeting, a majority of the Board members entitled to vote on the proposed decision indicate agreement with the decision; and

(b) that agreement is indicated in accordance with the method determined by the Board under subsection (2); and

(c) all the Board members were informed of the proposed decision, or reasonable efforts were made to inform all the members of the proposed decision.

(2) Subsection (1) applies only if the Board:

(a) has determined that it may make decisions of that kind without meeting; and

(b) has determined the method by which Board members are to indicate agreement with proposed decisions.

(3) For the purposes of paragraph (1)(a), a Board member is not entitled to vote on a proposed decision if the Board member would not have been entitled to vote on that proposal if the matter had been considered at a meeting of the Board.

(4) The Board must keep a record of decisions made in accordance with this section.

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Part 6—Conditions, suspension and cancellation etc.

Division 1A—Guide to this Part

83A Guide to this Part

- Action may be taken under this Part in certain circumstances including if a registered provider is not complying with this Act, the national code, the ELICOS Standards, the Foundation Program Standards or a condition of the provider's registration.
- The ESOS agency for a registered provider can take enforcement action (such as imposing conditions, or suspending or cancelling a registration) under Division 1. Such action can be taken in relation to a provider's registration generally or in relation to a specific course at a specific location. Division 1 also provides for automatic suspension or cancellation of a provider's registration in certain circumstances.
- The Immigration Minister can give a suspension certificate under Division 2 if a significant number of overseas students or intending overseas students are entering or remaining in Australia for a purpose not contemplated by their visas. A registered provider must not offer courses, or hold itself out as able to provide a course, to overseas students while such a certificate is in force for the provider.
- Division 3 provides for certain offences, such as failing to identify a registered provider in written material or providing false or misleading information.

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Division 1—Conditions, suspension and cancellation

Subdivision A—Sanctions for non-compliance etc.

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

Circumstances in which ESOS agency may take action

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

(a) this Act; or

(b) the national code; or

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

(d) a condition of the provider's registration.

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

(1A) The ESOS agency for a registered provider may take one or more of those actions against the provider if the agency believes on reasonable grounds that because of financial difficulty or any other reason the provider might not be able to:

(a) provide courses to its accepted students; or

(b) refund amounts to its accepted students under Division 2 of Part 5.

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

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

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(1B) The ESOS agency for a registered provider may also take one or more of those actions against the provider (other than an exempt provider) if the agency believes on reasonable grounds that the provider is not fit and proper to be registered.

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

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

(1C) The ESOS agency for a registered provider may also take one or more of those actions against the registered provider if the agency believes on reasonable grounds that the registered provider:

(a) does not have the principal purpose of providing education; or

(b) does not have the clearly demonstrated capacity to provide education of a satisfactory standard; or

(c) has not been providing, or has not provided, education of a satisfactory standard.

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

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

(2) The ESOS agency for a registered provider may also take one or more of those actions against the registered provider for a course if the agency believes on reasonable grounds that a provider that is providing the course with the registered provider is engaging, or has engaged, in misleading or deceptive conduct in connection with:

(a) the recruitment of overseas students or intending overseas students to the course; or

(b) the provision of the course to overseas students.

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

(2A) The ESOS agency for a registered provider may also take one or more of those actions against the provider if:

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

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

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

(d) either:

(i) the provider ceases to be a registered higher education provider in relation to the course; or

(ii) the course ceases to be an accredited course (within the meaning of that Act) in relation to the provider.

Note: Section 93 (which is about the procedure for action) does not apply in relation to this subsection.

(2B) The ESOS agency for a registered provider may also take one or more of those actions against the provider if:

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

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

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

(d) either:

(i) the provider ceases to be a registered VET provider in relation to the course; or

(ii) the course ceases to be a VET accredited course (within the meaning of that Act) in relation to the provider.

Note: Section 93 (which is about the procedure for action) does not apply in relation to this subsection.

(2C) The ESOS agency for a registered provider may also take one or more of those actions against the provider if:

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

(b) the provider is registered to provide a course at one or more locations in the State; and

(c) the provider ceases to be an approved school provider in relation to the provision of the course at those locations in the State.

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Note: Section 93 (which is about the procedure for action) does not apply in relation to this subsection.

Actions the ESOS agency may take

(3) The actions are:

(a) to impose one or more conditions on the registered provider's registration either generally or in respect of any one or more specified courses for any one or more specified locations (see section 86);

(b) to suspend the registered provider's registration for any one or more specified courses for any one or more specified locations (see section 95);

(c) to cancel the registered provider's registration for any one or more specified courses for any one or more specified locations.

Actions not limited to particular courses

(4) The ESOS agency for a registered provider may take action under this section against the provider's registration for a particular course for a location even if the conduct, or the situation, that results in the agency taking the action does not relate to that particular course.

84 ESOS agency may take further action

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

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

The ESOS agency for a registered provider may take action against the provider under section 83 even if the provider was not yet registered at the time of the relevant breach.

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86 Examples of conditions

(1) Examples of the conditions that the ESOS agency for a registered provider may impose under section 83 are conditions that:

(a) there be no net increase, or only a limited net increase, in the number of overseas students enrolled with the provider;

(b) the provider enrol only a limited number of new overseas students;

(c) the provider not accept any new students from a specified country;

(d) the provider not deal with a specified agent in relation to overseas students or intending overseas students;

(e) the provider not provide a specified course.

(2) The examples do not limit the kinds of condition that the ESOS agency for a registered provider may impose.

87 Breaches of this Act etc. by approved school providers

(1) This section applies if:

(a) a registered provider is an approved school provider; and

(b) the ESOS agency for the provider has information suggesting that the provider may have breached:

(i) this Act; or

(ii) the national code; or

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

(c) the source of the information is not the designated State authority for the provider.

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

(a) must notify the designated State authority of the possible breach; and

(b) may request the authority to investigate the matter or take any other suitable action.

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

Subdivision C—Automatic suspension and cancellation

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

ESOS agency no longer satisfied registered provider is fit and proper

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

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

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

(2) If:

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

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

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

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

Notification of suspension

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

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

Removal of suspension

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

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

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

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

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

90 Automatic suspension for non-payment of levy or charge

(1) The registration of a provider who:
(a) fails to comply with a reminder notice given under section 53D; or
(b) fails to comply with a notice given under section 23;

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is suspended by force of this subsection for all courses for all locations.

Note: Section 95 sets out the effect of suspension.

Removal of suspension

(2) The suspension is removed by force of this subsection when the provider has paid:
  (a) the amount owing; and
  (b) the associated late payment penalty; and
  (c) the associated reinstatement fee.

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

92 Automatic cancellation for bankruptcy

The registration of a provider is cancelled for all courses for all locations by force of this section if:
  (a) a provider who is an individual becomes bankrupt; or
  (b) a winding-up order is made in respect of a provider that is a body corporate.

Subdivision D—Common rules for conditions, suspension and cancellation

93 Procedure for taking action etc.

(1) This section applies if:
  (a) both of the following apply:
    (i) the ESOS agency for a provider or registered provider is considering imposing a condition on, or varying a condition of, the provider's registration under section 10B;
    (ii) if the provider is an approved school provider—the condition is not a condition recommended in a DSA assessment certificate, or DSA recommendation

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certificate, given to the agency by the designated State authority for the provider; or

(b) the ESOS agency for a registered provider is considering taking action under Subdivision A of this Division (other than subsection 83(2A), (2B) or (2C)); or

(c) the ESOS agency for a provider is considering not giving the provider a notice under subsection 89(4).

(2) Before the ESOS agency for the provider or registered provider decides to do the thing referred to in paragraph (1)(a), (b) or (c), the agency must give the provider a written notice that:

(a) states that the agency is considering doing that thing; and

(b) requests the provider to give the agency written submissions about the matter within at least the period referred to in subsection (3).

(3) The period is:

(a) if paragraph (1)(a) applies—72 hours; or

(b) if paragraph (1)(b) applies:

(i) if the agency is of the opinion that the circumstances require urgent action—24 hours; or

(ii) otherwise—72 hours; or

(c) if paragraph (1)(c) applies—7 days.

(4) If, after considering any submissions received within the period mentioned in paragraph (2)(b), the ESOS agency for the provider or registered provider considers that the agency should decide to do the thing referred to in paragraph (1)(a), (b) or (c), the agency:

(a) may so decide; and

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

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

Removal of condition

(1) If a condition is imposed on a provider's registration, the ESOS agency for the provider may, at any time, give the provider a written notice that:
  (a) specifies the condition; and
  (b) sets out the effect of subsection (2).

(2) If the ESOS agency for a provider has given the provider a notice under subsection (1), the condition specified in the notice is removed by force of this subsection when the provider has paid the associated reinstatement fee.

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

Removal of suspension

(3) If a provider's registration is suspended, the ESOS agency for the provider may at any time give the provider a written notice that sets out the effect of subsection (4).

(4) If the ESOS agency for a provider has given the provider a notice under subsection (3), the suspension is removed by force of this subsection when the provider has paid the associated reinstatement fee.

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

95 Effect of suspension

(1) A provider whose registration is suspended for a course for a location under this Division must not:
  (a) do any thing for the purpose of recruiting or enrolling overseas students or intending overseas students for the course at the location; or

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(b) subject to subsection (3), solicit or accept any money from an overseas student or an intending overseas student for the course at the location; or

(c) if an accepted student of the provider has not begun the course—permit the student to begin the course at the location.

(2) The provider is still registered for the course for the location for all other purposes.

(3) The ESOS agency for a provider whose registration is suspended may give the provider a notice in writing that:

(a) states that, for the whole period of the suspension, paragraph (1)(b) does not apply to the provider in relation to overseas students who have started the course; or

(b) states that, for a specified part of the period of the suspension, paragraph (1)(b) does not apply to the provider in relation to overseas students who have started the course.

The notice has effect accordingly.

(4) A notice under subsection (3) is not a legislative instrument.

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Division 2—Immigration Minister's suspension certificate

97 Immigration Minister may give a registered provider a suspension certificate

(1) The Immigration Minister may give an Immigration Minister's suspension certificate to a registered provider if, in the Immigration Minister's opinion, a significant number of overseas students or intending overseas students in respect of:

(a) the registered provider; or

(b) another provider that is an associate of the registered provider;

are entering or remaining in Australia for purposes not contemplated by their visas.

Matters that the Minister may consider

(2) In considering whether to give such a certificate, the Immigration Minister may have regard to any of the following:

(a) the number of applications for student visas made by overseas students and intending overseas students, in respect of the registered provider or associate, that have been refused, where there were fraudulent statements made or fraudulent documents given in connection with the application;

(b) the number of the registered provider's or associate's accepted students and former accepted students who have breached conditions of their visas;

(c) the number of accepted students and former accepted students of the registered provider or associate who remain in Australia unlawfully after finishing their courses;

(d) any other matter set out in regulations made for the purposes of this paragraph under the *Migration Act 1958*.

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(3) Subsection (2) does not limit the matters to which the Immigration Minister may have regard in considering whether to give a certificate.

(4) For the purposes of paragraph (2)(a), it is immaterial whether or not the fraudulent statements or documents were a reason for refusing the application.

Power to be exercised personally

(5) The power to give an Immigration Minister's suspension certificate must be exercised by the Immigration Minister personally.

98 Procedure for issuing certificate

Written notice of intention to give certificate

(1) Before issuing the certificate, the Immigration Minister must give the registered provider a written notice:
   (a) stating that the Immigration Minister intends to give the provider an Immigration Minister's suspension certificate, and why; and
   (b) giving the provider at least 7 days to give the Immigration Minister written submissions about the matter.

(2) After considering any submission received within that period, the Immigration Minister may give the registered provider the certificate if the Immigration Minister still considers that he or she should do so.

Tabling certificate in Parliament

(3) The Immigration Minister must table a copy of the certificate in both Houses of Parliament within 15 sitting days of giving it to the provider.

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Delegating function of giving written notice

(4) The Immigration Minister may, by signed writing, delegate to the Secretary of his or her Department, or to an SES employee or acting SES employee in that Department, the function of giving notices under subsection (1).

99 Content of certificate

An Immigration Minister's suspension certificate must:

(a) state the day on which it takes effect; and

(b) set out why it has been given; and

(c) set out the effect of sections 100, 101 and 102.

100 Duration of certificate

(1) An Immigration Minister's suspension certificate remains in effect for the period of 6 months beginning on the day that it says it takes effect.

(2) The Immigration Minister may revoke an Immigration Minister's suspension certificate at any time by giving the registered provider written notice.

101 Effect of certificate: offence

(1) A person commits an offence if the person:

(a) makes an offer to an overseas student, an intending overseas student or any other prescribed non-citizen for him or her to be provided with a course at any location by a registered provider; or

(b) invites an overseas student, an intending overseas student or a prescribed non-citizen to undertake, or apply to undertake, a course at any location offered by a registered provider; or

(c) holds a registered provider out as able or willing to provide a course at any location to overseas students or prescribed non-citizens;

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while an Immigration Minister's suspension certificate is in effect for that registered provider.

Penalty: Imprisonment for 2 years.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(2) The provider is still registered for all other purposes.

(3) In this section:

prescribed non-citizen means a non-citizen (within the meaning of the *Migration Act 1958*) who is of a kind prescribed for the purposes of this section in regulations made under that Act.

102 Further certificates

(1) Unless, by the end of the period for which an Immigration Minister's suspension certificate is in effect, the registered provider has satisfied the Immigration Minister that he or she should not be given a further certificate, the Immigration Minister may give the provider a further Immigration Minister's suspension certificate.

(2) The Immigration Minister does not have to follow the procedure in subsections 98(1) and (2) in order to give a further Immigration Minister's suspension certificate.

Tabling further certificate in Parliament

(3) However, the Immigration Minister must table a copy of the further certificate in both Houses of Parliament within 15 sitting days of giving it to the provider.

Application of this section to further certificates

(4) This section applies to a further Immigration Minister's suspension certificate or certificates in the same way as it applies to an original Immigration Minister's suspension certificate.

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103 Updating the Register

(1) The Secretary must cause the Register to be altered appropriately if the Immigration Minister has given or revoked an Immigration Minister's suspension certificate (or a further such certificate).

(2) However, a failure to do so does not affect the validity of the certificate or revocation.

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Division 3—Offences

107 Failing to identify registered provider in written material

A person commits an offence if the person in written material, including in electronic form:

(a) makes an offer to an overseas student or an intending overseas student to provide a course at a location to that student; or

(b) invites an overseas student or intending overseas student to undertake, or to apply to undertake, a course at a location; or

(c) holds himself, herself or itself out as able or willing to provide the course at a location to overseas students;

and the material fails to identify any one or more of the following:

(d) the registered provider for the course;

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

(f) any other information prescribed by the regulations.

Penalty: Imprisonment for 6 months.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

108 Providing false or misleading information

A person commits an offence if the person provides false or misleading information in complying or purporting to comply with any of the following provisions:

(a) section 13 (TPS Director may require information);

(b) section 19 (giving information about accepted students);

(d) subsection 26(1) or (3) (disclosure obligations of registered providers).

Penalty: Imprisonment for 12 months.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

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109 Access to electronic notification system

(1) This section applies if a computer system is established by the Secretary for the purpose of receiving and storing information about accepted students and former accepted students that is given under section 19.

(2) The Secretary may give any person access to the system for the purposes of this Act.

Access may be given subject to conditions

(3) The access may be given subject to conditions that the Secretary determines in writing relating to the use of the system and of the means of obtaining access to the system.

(4) The Secretary must give the person a copy of the conditions.

Offence: breaching conditions

(5) The person commits an offence if the person:
(a) intentionally breaches a condition; and
(b) knows that, or is reckless as to whether, that conduct is a breach of the condition.

Penalty for contravention of this subsection: Imprisonment for 6 months.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: A person who obtains unauthorised access to information on the system that is protected by an access control system could commit an offence against Part 10-7 of the *Criminal Code*.

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Part 7—Monitoring, investigation and enforcement

Division 1—Guide to this Part

111A Guide to this Part

- The ESOS agency for a registered provider can give a production notice (requiring a person to give information or documents) or an attendance notice (requiring a person to attend and answer questions) under Division 2. The TPS Director may also give a production notice under that Division.
- This Part also applies Parts 2, 3, 5 and 6 of the Regulatory Powers Act. Those Parts deal with monitoring, investigation, infringement notices and enforceable undertakings.

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Division 1B—Compliance audits

112A Compliance audits

(1) The ESOS agency for a registered provider may conduct an audit of the registered provider for the purpose of determining whether the registered provider is complying, or has complied, with:

(a) this Act; or

(b) the national code; or

(c) if the ELICOS Standards or Foundation Program Standards apply in relation to the registered provider—those Standards.

(2) An audit conducted under subsection (1) is to be known as a ***compliance audit***.

(3) If a compliance audit of a registered provider is being conducted by the ESOS agency for the registered provider, the registered provider must:

(a) cooperate fully with the ESOS agency in relation to the compliance audit; and

(b) provide the ESOS agency with all reasonable facilities and assistance in relation to the compliance audit.

Note: If the registered provider breaches subsection (3), the ESOS agency may take action against the registered provider under section 83.

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Division 2—Notices requiring information and documents

Subdivision A—Production notices

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

(1) This section applies if the ESOS agency for a registered provider reasonably believes that a relevant individual of the provider has, or has access to, information or documents that are relevant to a monitoring purpose.

(2) The ESOS agency may give the relevant individual a written notice requiring him or her to:

(a) give any information or documents relevant to the monitoring purpose to an authorised officer of the agency; or

(b) show any such documents to an authorised officer of the agency; or

(c) make copies of any such documents and give the copies to an authorised officer of the agency.

Note: The ESOS agency may also give the relevant individual an attendance notice: see section 116.

Information and documents may be required in a particular form

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

113A TPS Director may give a production notice

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

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(2) The TPS Director may give the relevant individual a written notice requiring the individual:
  (a) to give any such information or documents to a TPS officer; or
  (b) to show any such documents to a TPS officer; or
  (c) to make copies of any such documents and give the copies to a TPS officer.

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

114 Contents of the production notice

(1) A production notice must:
  (a) state that it is given under section 113 or 113A; and
  (b) set out the effects of sections 120 and 121; and
  (ba) if the notice is given under section 113—set out the effect of section 122; and
  (bb) if the notice is given under section 113A—set out the effect of section 122A; and
  (c) state how and by when the information or documents must be given or shown.

Time for production of information or documents

(2) In so far as the notice covers information or documents:
  (a) that relate to any extent to the calendar year in which the notice is given; and
  (b) that are required to be given or shown on the premises where they are currently located;

the time mentioned in paragraph (1)(c) must be at least 24 hours after the notice is given.

(3) In so far as the notice covers any other information or documents, the time mentioned in paragraph (1)(c) must be at least 72 hours after the notice is given.

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115 Serving production notices

(1) The ESOS agency for a registered provider must give a production notice under section 113 to a relevant individual of the provider:

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

(b) by:

(i) leaving it at the address of the individual's place of residence or business last known to the ESOS agency; and

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

(c) by sending it by ordinary or any other class of pre-paid post to the individual's place of residence or business last known to the ESOS agency.

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

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

(b) by:

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

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

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

(2) However, if the ESOS agency uses the method in paragraph (1)(c) or the TPS Director uses the method in paragraph (1A)(c), the time mentioned in paragraph 114(1)(c) must be at least 14 days after the notice is given (instead of at least 24 hours or 72 hours).

Note: Section 29 of the *Acts Interpretation Act 1901* sets out when the notice is taken to have been given if the notice is posted to the individual.

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Subdivision B—Attendance notices

116 Attendance notices

(1) This section applies if the ESOS agency for a registered provider reasonably believes that a relevant individual of the provider has, or has access to, information or documents that are relevant to a monitoring purpose.

(2) The ESOS agency may give the relevant individual written notice requiring the individual to attend before an authorised officer of the agency and answer questions about the matter.

Note: The ESOS agency may also give the relevant individual a production notice: see section 113.

117 Contents of the attendance notice

(1) An attendance notice given to a relevant individual of a registered provider must:

(a) state that it is given under section 116; and

(b) set out the effects of sections 120, 121 and 122; and

(c) state where and when the individual is to attend.

The time mentioned in paragraph (c) must be at least 14 days after the notice is given.

(2) An attendance notice may be included in the same document as a production notice, if the notices are being given to the same relevant individual of a registered provider.

Subdivision C—Common rules for production and attendance notices

118 Scales of expenses

The regulations may prescribe scales of expenses to be allowed to persons required to give information or documents under this Division.

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120 Offence: failing to comply with a notice

(1) A person who refuses or fails to comply with a production or attendance notice commits an offence.

Penalty: Imprisonment for 6 months.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(2) However, a person does not commit an offence in relation to a production notice if the person complied with the notice to the extent that it was practicable to do so within the period allowed by the notice.

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

121 Offence: giving false or misleading information

A person who gives false or misleading information in the course of complying or purporting to comply with a production or attendance notice commits an offence.

Penalty: Imprisonment for 12 months.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

122 Offence: giving false or misleading document to authorised officer

(1) A person who gives or shows an authorised officer of the ESOS agency for a registered provider a document that is false or misleading in a material particular, in the course of complying or purporting to comply with a production or attendance notice given by the agency, commits an offence.

Penalty: Imprisonment for 12 months.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

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(2) However, the person does not commit the offence if the document is accompanied by a written statement signed by the person:

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

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

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

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

(1) A person commits an offence if:

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

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

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

Penalty: Imprisonment for 12 months.

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

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

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

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

123 Information and documents that incriminate a person

(1) A person is not excused from the requirement to comply with a production or attendance notice on the ground that doing so might tend to incriminate the person or expose the person to a penalty.

(2) However, if the person is an individual:

(a) the information, document or answer to the question; or

(b) any other information, document or thing obtained as a direct or indirect result of complying with a notice;

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is not admissible in evidence against the individual in any criminal proceedings other than proceedings under, or arising out of, section 121 or 122.

124 Copies of documents

Authorised officer etc.

(1) An authorised officer of the ESOS agency for a registered provider, or a person covered by subsection (2) who has the authorised officer's permission, may:

(a) inspect a document given or shown to the authorised officer under this Division; and

(b) make and retain copies of, or take and retain extracts from, such a document; and

(c) retain a copy of a document given to the authorised officer in accordance with a requirement covered by paragraph 113(2)(c) (copies of documents given under production notices).

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

TPS Director etc.

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

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

(b) make and retain copies of, or take and retain extracts from, such a document; and

(c) retain a copy of a document given to a TPS officer under this Division.

125 Retaining of documents by authorised officer etc.

(1) An authorised officer of the ESOS agency for a registered provider, or a person covered by subsection (3) who has the

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authorised officer's permission, may retain a document given to the authorised officer under this Division:

(a) for the purposes of this Act; or

(b) for the purposes of an investigation as to whether an offence has been committed; or

(c) to enable evidence of an offence to be secured for the purposes of a prosecution.

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

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

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

125A Retaining of documents by TPS officer

(1) If a TPS officer is given a document under this Division, the TPS officer may retain the document:

(a) for the purposes of this Act; or

(b) for the purposes of an investigation as to whether an offence has been committed; or

(c) to enable evidence of an offence to be secured for the purposes of a prosecution.

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

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

126 Owner of document must be given copy

(1) A person who retains a document under section 125 must as soon as practicable:

(a) certify a copy of the document to be a true copy; and

(b) give the copy to the person (the ***owner***) otherwise entitled to possession of the document.

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(1A) If a TPS officer retains a document under section 125A, the TPS officer must as soon as practicable:

(a) certify a copy of the document to be a true copy; and

(b) give the copy to the person (the ***owner***) otherwise entitled to possession of the document.

(2) The certified copy must be received in all courts and tribunals as evidence as if it had been the original.

Owner may inspect etc. original document

(3) Until the certified copy is given, the owner, or a person authorised by the owner, may inspect and make copies of, or take and retain extracts from, the original document at the times and places that the person retaining the document, or the TPS officer, thinks appropriate.

127 Returning of documents

(1) This section applies 60 days after a document is given under this Division to either of the following persons (the ***holder***):

(a) an authorised officer of the ESOS agency for a registered provider;

(b) a TPS officer.

(2) The holder must take reasonable steps to return the document to the person who gave the holder the document or to the owner if that person is not entitled to possess it.

(3) However, the holder does not have to take those steps if:

(a) the holder may retain the document because of an order under section 129; or

(b) the holder is otherwise authorised (by a law, or an order of a court, of the Commonwealth or a State) to retain, destroy or dispose of the document.

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

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

Time limit for application

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

Persons affected by notice to be notified if practicable

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

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

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

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

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

129 Magistrate or tribunal member may order retention for further period

(1) The magistrate or tribunal member may order that the person who made the application under section 128 may retain the document if the magistrate or tribunal member is satisfied that it is necessary for the person to retain it:
  (a) for the purposes of this Act; or
  (b) for the purposes of an investigation as to whether an offence has been committed; or
  (c) to enable evidence of an offence to be secured for the purposes of a prosecution.

(2) The order must specify the period for which the person may retain the document.

Power conferred personally

(3) The power in subsection (1) conferred on a magistrate is conferred on the magistrate:
  (a) in a personal capacity; and
  (b) not as a court or a member of a court.

Power need not be accepted

(4) A magistrate need not accept the power conferred by subsection (1).

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Protection and immunity

(5) A magistrate exercising a power conferred by subsection (1) has the same protection and immunity as if the magistrate were exercising the power:

(a) as the court of which the magistrate is a member; or

(b) as a member of the court of which the magistrate is a member.

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Division 3—Monitoring

130 Monitoring powers

Provisions subject to monitoring

(1) A provision is subject to monitoring under Part 2 of the Regulatory Powers Act if it is:

(a) a provision of this Act; or

(b) a provision of the national code; or

(c) a provision of the ELICOS Standards or Foundation Program Standards; or

(d) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether this Act has been complied with. It includes powers of entry and inspection.

Information subject to monitoring

(2) Information given in compliance or purported compliance with one or more of the following provisions is subject to monitoring under Part 2 of the Regulatory Powers Act:

(a) a provision of this Act;

(b) a provision of the national code;

(c) a provision of the ELICOS Standards or Foundation Program Standards.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the information is correct. It includes powers of entry and inspection.

Matter subject to monitoring

(3) A matter is subject to monitoring under Part 2 of the Regulatory Powers Act if it is determining whether a registered provider, because of financial difficulty or any other reason, might not be able to:

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(a) provide courses to its accepted students; or
(b) refund amounts to its accepted students under Division 2 of Part 5 of this Act.

Related provisions

(4) For the purposes of Part 2 of the Regulatory Powers Act:
(a) a provision covered by subsection 115(1) of the TEQSA Act is related to the provisions mentioned in subsection (1) of this section; and
(b) a provision covered by subsection 115(2) of the TEQSA Act is related to the information mentioned in subsection (2) of this section.

Authorised applicant

(5) For the purposes of Part 2 of the Regulatory Powers Act, an authorised officer of the ESOS agency for a registered provider is an authorised applicant in relation to the provisions mentioned in subsection (1), the information mentioned in subsection (2) and the matter mentioned in subsection (3).

Authorised person

(6) For the purposes of Part 2 of the Regulatory Powers Act, an authorised officer of the ESOS agency for a registered provider is an authorised person in relation to the provisions mentioned in subsection (1), the information mentioned in subsection (2) and the matter mentioned in subsection (3).

Issuing officer

(7) For the purposes of Part 2 of the Regulatory Powers Act, a magistrate is an issuing officer in relation to the provisions mentioned in subsection (1), the information mentioned in subsection (2) and the matter mentioned in subsection (3).

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Relevant chief executive

(8) For the purposes of Part 2 of the Regulatory Powers Act, the relevant chief executive in relation to the provisions mentioned in subsection (1), the information mentioned in subsection (2) and the matter mentioned in subsection (3) is:

(a) to the extent that Part relates to an authorised person who is an authorised officer of TEQSA—the Chief Executive Officer of TEQSA; or

(b) to the extent that Part relates to an authorised person who is an authorised officer of the National VET Regulator—the National VET Regulator; or

(c) to the extent that Part relates to an authorised person who is an authorised officer of the Secretary—the Secretary; or

(d) to the extent that Part relates to an authorised person who is an authorised officer of any other entity—the head (however described) of that entity.

(9) The relevant chief executive covered by paragraph (8)(a), (b) or (c) may, in writing, delegate the powers and functions mentioned in subsection (10) to:

(a) for the Chief Executive Officer of TEQSA—a member of the staff of TEQSA (within the meaning of the TEQSA Act) who is:

(i) an SES employee or an acting SES employee; or

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

(b) for the National VET Regulator—a member of the staff of the Regulator (within the meaning of the NVETR Act) who is:

(i) an SES employee or an acting SES employee; or

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

(c) for the Secretary—an SES employee, or an acting SES employee, in the Department.

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(10) The powers and functions that may be delegated are:

(a) powers and functions under Part 2 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1), the information mentioned in subsection (2) and the matter mentioned in subsection (3); and

(b) powers and functions under the Regulatory Powers Act that are incidental to a power or function mentioned in paragraph (a).

(11) A person exercising powers or performing functions under a delegation under subsection (9) must comply with any directions of the relevant chief executive.

Relevant court

(12) For the purposes of Part 2 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1), the information mentioned in subsection (2) and the matter mentioned in subsection (3):

(a) the Federal Court of Australia;

(b) the Federal Circuit and Family Court of Australia (Division 2).

Person assisting

(13) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 2 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1), the information mentioned in subsection (2) and the matter mentioned in subsection (3).

Use of force in executing a monitoring warrant

(14) In executing a monitoring warrant under Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), the information mentioned in subsection (2) and the matter mentioned in subsection (3):

(a) an authorised person may use such force against things as is necessary and reasonable in the circumstances; and

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(b) a person assisting the authorised person may use such force against things as is necessary and reasonable in the circumstances.

Extension to external Territories

(15) Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), the information mentioned in subsection (2) and the matter mentioned in subsection (3), extends to each external Territory mentioned in subsection 4B(1) of this Act.

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Division 4—Investigation

131 Investigation powers

Provisions subject to investigation

(1) A provision is subject to investigation under Part 3 of the Regulatory Powers Act if it is:
  (a) an offence against this Act; or
  (b) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act.

Note: Part 3 of the Regulatory Powers Act creates a framework for investigating whether a provision has been contravened. It includes powers of entry, search and seizure.

Related provisions

(2) For the purposes of Part 3 of the Regulatory Powers Act, each of the following provisions is related to evidential material that relates to a provision mentioned in subsection (1):
  (a) an offence against the TEQSA Act;
  (b) a civil penalty provision of the TEQSA Act;
  (c) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to the TEQSA Act.

Authorised applicant

(3) For the purposes of Part 3 of the Regulatory Powers Act, an authorised officer of the ESOS agency for a registered provider is an authorised applicant in relation to evidential material that relates to a provision mentioned in subsection (1).

Authorised person

(4) For the purposes of Part 3 of the Regulatory Powers Act, an authorised officer of the ESOS agency for a registered provider is

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an authorised person in relation to evidential material that relates to a provision mentioned in subsection (1).

Issuing officer

(5) For the purposes of Part 3 of the Regulatory Powers Act, a magistrate is an issuing officer in relation to evidential material that relates to a provision mentioned in subsection (1).

Relevant chief executive

(6) For the purposes of Part 3 of the Regulatory Powers Act, the relevant chief executive in relation to evidential material that relates to a provision mentioned in subsection (1) is:
  (a) to the extent that Part relates to an authorised person who is an authorised officer of TEQSA—the Chief Executive Officer of TEQSA; or
  (b) to the extent that Part relates to an authorised person who is an authorised officer of the National VET Regulator—the National VET Regulator; or
  (c) to the extent that Part relates to an authorised person who is an authorised officer of the Secretary—the Secretary; or
  (d) to the extent that Part relates to an authorised person who is an authorised officer of any other entity—the head (however described) of that entity.

(7) The relevant chief executive covered by paragraph (6)(a), (b) or (c) may, in writing, delegate the powers and functions mentioned in subsection (8) to:
  (a) for the Chief Executive Officer of TEQSA—a member of the staff of TEQSA (within the meaning of the TEQSA Act) who is:
    (i) an SES employee or an acting SES employee; or
    (ii) an APS employee who holds or performs the duties of an Executive Level 1 or 2 position or an equivalent position; or
  (b) for the National VET Regulator—a member of the staff of the Regulator (within the meaning of the NVETR Act) who is:

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(i) an SES employee or an acting SES employee; or
(ii) an APS employee who holds or performs the duties of an Executive Level 1 or 2 position or an equivalent position; or

(c) for the Secretary—an SES employee, or an acting SES employee, in the Department.

(8) The powers and functions that may be delegated are:
(a) powers and functions under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in subsection (1); and
(b) powers and functions under the Regulatory Powers Act that are incidental to a power or function mentioned in paragraph (a).

(9) A person exercising powers or performing functions under a delegation under subsection (7) must comply with any directions of the relevant chief executive.

Relevant court

(10) For the purposes of Part 3 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to evidential material that relates to a provision mentioned in subsection (1):
(a) the Federal Court of Australia;
(b) the Federal Circuit and Family Court of Australia (Division 2).

Person assisting

(11) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in subsection (1).

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Use of force in executing an investigation warrant

(12) In executing an investigation warrant under Part 3 of the Regulatory Powers Act, as that Part applies in relation to evidential material that relates to a provision mentioned in subsection (1):

(a) an authorised person may use such force against things as is necessary and reasonable in the circumstances; and

(b) a person assisting the authorised person may use such force against things as is necessary and reasonable in the circumstances.

Extension to external Territories

(13) Part 3 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to each external Territory mentioned in subsection 4B(1) of this Act.

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Division 5—Infringement notices

132 Infringement notices

Provisions subject to an infringement notice

(1) The following provisions of this Act are subject to an infringement notice under Part 5 of the Regulatory Powers Act:

(a) subsection 19(5);
(b) subsection 20(6);
(c) subsection 21(5);
(d) subsection 21A(1A);
(e) subsection 46E(1);
(f) subsection 47F(1);
(g) subsection 47G(1).

Note: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

Infringement officer

(2) For the purposes of Part 5 of the Regulatory Powers Act, an authorised officer of the ESOS agency for a registered provider is an infringement officer in relation to the provisions mentioned in subsection (1).

Relevant chief executive

(3) For the purposes of Part 5 of the Regulatory Powers Act, the relevant chief executive in relation to the provisions mentioned in subsection (1) is:

(a) to the extent that Part relates to an infringement officer who is an authorised officer of TEQSA—the Chief Executive Officer of TEQSA; or
(b) to the extent that Part relates to an infringement officer who is an authorised officer of the National VET Regulator—the National VET Regulator; or

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(c) to the extent that Part relates to an infringement officer who is an authorised officer of the Secretary—the Secretary; or

(d) to the extent that Part relates to an infringement officer who is an authorised officer of any other entity—the head (however described) of that entity.

(4) The relevant chief executive covered by paragraph (3)(a), (b) or (c) may, in writing, delegate the relevant chief executive's powers and functions under Part 5 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1) to:

(a) for the Chief Executive Officer of TEQSA—a member of the staff of TEQSA (within the meaning of the TEQSA Act) who is:

(i) an SES employee or an acting SES employee; or

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

(b) for the National VET Regulator—a member of the staff of the Regulator (within the meaning of the NVETR Act) who is:

(i) an SES employee or an acting SES employee; or

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

(c) for the Secretary—an SES employee, or an acting SES employee, in the Department.

(5) A person exercising powers or performing functions under a delegation under subsection (4) must comply with any directions of the relevant chief executive.

Extension to external Territories

(6) Part 5 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to each external Territory mentioned in subsection 4B(1) of this Act.

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Division 6—Enforceable undertakings

133 Enforceable undertakings

Enforceable provisions

(1) A provision is enforceable under Part 6 of the Regulatory Powers Act if it is:

(a) a provision of this Act; or

(b) a provision of the national code; or

(c) a provision of the ELICOS Standards or Foundation Program Standards.

Note: Part 6 of the Regulatory Powers Act creates a framework for accepting and enforcing undertakings relating to compliance with provisions.

Authorised person

(2) For the purposes of Part 6 of the Regulatory Powers Act, an authorised person in relation to the provisions mentioned in subsection (1) is:

(a) in relation to an undertaking by a registered higher education provider—the Chief Executive Officer of TEQSA; or

(b) in relation to an undertaking by a registered VET provider—the National VET Regulator; or

(c) in relation to an undertaking by an approved school provider—the Secretary; or

(d) in relation to an undertaking by any other registered provider—the head (however described) of the ESOS agency for the registered provider.

Relevant court

(3) For the purposes of Part 6 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):

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(a) the Federal Court of Australia;
(b) the Federal Circuit and Family Court of Australia (Division 2).

Other undertakings

(4) An authorised person covered by subsection (2) may accept a written undertaking given by a registered provider that:
(a) the provider will take, or refrain from taking, specified action in order for the provider to comply with a condition of the provider's registration; or
(b) the provider will take specified action directed towards ensuring that in the future the provider does not, or is unlikely to, contravene a condition of the provider's registration.

The undertaking must be expressed to be an undertaking under this subsection.

(5) The power in subsection (4) is in addition to the power of an authorised person under subsection 114(1) of the Regulatory Powers Act.

(6) Part 6 of the Regulatory Powers Act, other than subsections 114(1) and (2) of that Act, applies to an undertaking accepted under subsection (4) of this section as if it were an undertaking accepted under subsection 114(1) of the Regulatory Powers Act.

Extension to external Territories

(7) Part 6 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1) and an undertaking accepted under subsection (4), extends to each external Territory mentioned in subsection 4B(1) of this Act.

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Part 7A—Review of decisions

Division 1—Introduction

169AA Guide to this Part

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

An affected provider for a reviewable decision may apply for internal review or review by the Administrative Appeals Tribunal. However, only reviewable decisions made by a delegate of the ESOS agency for the affected provider are subject to internal review.

A decision of the internal reviewer that relates to a reviewable decision is subject to review by the Administrative Appeals Tribunal.

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

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Division 2—Review of decisions

169AB Reviewable decisions

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

Reviewable decisions

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

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Reviewable decisions		
Item	**Column 1** **Reviewable decision**	**Column 2** **Affected provider for the reviewable decision**
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

169AC Notice of decision

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

(a) the terms of the decision; and

(b) the reasons for the decision; and

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

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

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

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

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

(2) The application must:

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(a) be made in the form approved, in writing, by the ESOS agency; and
(b) be accompanied by any information and documents required by the agency; and
(c) be made within:
(i) 30 days after the affected provider for the decision is notified of the decision; or
(ii) if the agency allows a longer period (whether before or after the end of that 30 day period)—that longer period.

169AE Internal review of reviewable decisions

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

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

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

(4) The internal reviewer must, as soon as practicable after making the internal review decision, give the applicant a written notice containing:
(a) the terms of the decision; and
(b) the reasons for the decision; and

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(c) notice of the applicant's right to have the decision reviewed by the Administrative Appeals Tribunal.

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

169AF Internal review decision must be made within 90 days

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

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

169AG Review by the Administrative Appeals Tribunal

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

(a) a reviewable decision; or

(b) a decision of the internal reviewer made under section 169AE that relates to a reviewable decision; or

(c) a determination by the TPS Director of an amount of TPS levy payable by a provider or registered provider under subsection 53A(1).

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

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

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Part 8—Miscellaneous

169A Guide to this Part

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

170A Publishing results of enforcement and monitoring

(1) This section applies if the ESOS agency for a provider or Immigration Minister takes action (including by exercising a power) in relation to a provider:

  (a) under Part 6, which deals with enforcing this Act; or

  (b) under Part 7, which deals with the monitoring of providers.

(2) The ESOS agency for the provider may publish information about the following matters in the way specified by the Secretary under subsection (4):

  (a) the action taken;

  (b) the results of taking that action, including for example:

    (i) recommendations for improvements that are given to the provider; and

    (ii) the action taken by the provider to implement those recommendations.

(3) However, if the ESOS agency for the provider does publish that information, the agency must ensure that:

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(a) if the provider applies for review of the decision to take the action—that fact, and the results of the review, are also published; and

(b) the information is accurate and kept up-to-date.

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

170B Annual report

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

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

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

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

(d) the number of calls made on the OSTF during that financial year;

(e) the time taken to pay an amount under section 50B during that financial year;

(f) the total of any amounts paid out under section 50B during that financial year;

(g) an assessment of any issues affecting the operation of Part 5 (tuition protection service) during that financial year;

(h) an assessment of any issues that might affect the operation of Part 5 in future financial years;

(i) an assessment of the outlook of the industry that provides courses to overseas students, and any potential risk to the OSTF as a result of that outlook.

(2) The report must be included in the Department's annual report for that financial year.

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170C Minister may give directions to the ESOS agency

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

Note: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to a direction (see regulations made for the purposes of paragraph 54(2)(b) of that Act).

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

(3) Regulations made for the purposes of paragraph 44(2)(b) of the *Legislation Act 2003* do not apply in relation to a direction under subsection (1) of this section.

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

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

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

170 Delegation

Delegation by the Minister

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

(a) the Secretary; or

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

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

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

Delegation by the Secretary

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

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

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

(c) TEQSA; or

(d) the National VET Regulator.

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

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

Delegation by ESOS agencies

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

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

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

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

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

Immigration Secretary

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

171A Subdelegation by TEQSA or National VET Regulator

(1) If the Secretary delegates a function or power under subsection 170(3) to TEQSA, TEQSA may, in writing, subdelegate the function or power to:

(a) a Commissioner (within the meaning of the TEQSA Act); or

(b) the Chief Executive Officer of TEQSA; or

(c) a member of the staff of TEQSA (within the meaning of the TEQSA Act) who:

(i) is an SES employee, or acting SES employee; or

(ii) holds or performs the duties of an Executive Level 1 or 2 position or an equivalent position.

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

(2) If the Secretary delegates a function or power under subsection 170(3) to the National VET Regulator, the National VET Regulator may, in writing, subdelegate the function or power to a member of the staff of the Regulator (within the meaning of the NVETR Act) who:

(a) is an SES employee, or acting SES employee; or

(b) holds or performs the duties of an Executive Level 1 or 2 position or an equivalent position.

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

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171 Reinstatement fee

(1) A registered provider must pay a reinstatement fee before the suspension of, or a condition on, the registration of the provider is removed under subsection 89(5), 90(2) or 94(2) or (4).

Amount of reinstatement fee

(4) The amount of the reinstatement fee is:
  (a) $500 for the initial year; and
  (b) for a later year (the ***current year***), the amount worked out by multiplying the reinstatement fee for the year before the current year by the indexation factor that applies to the current year.

Annual indexation

(5) The ***indexation factor*** that applies to the current year is worked out using the following formula:

$$\frac{\text{Index number for the recent September quarter}}{\text{Index number for the previous September quarter}}$$

where:

index number for a quarter means the All Groups Consumer Price Index number that is the weighted average of the 8 capital cities and is published by the Australian Statistician for that quarter.

previous September quarter means the September quarter before the recent September quarter.

recent September quarter means the September quarter in the year before the current year.

(6) The indexation factor worked out under subsection (5) must be rounded up or down to 3 places (rounding up in the case of exactly halfway between).

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(7) The amount worked out under paragraph (4)(b) must be rounded to the nearest whole dollar (rounding up in the case of 50 cents).

(8) If at any time (whether before or after the commencement of this section) the Australian Statistician has changed or changes the index reference period for the Consumer Price Index, then, for the purposes of applying this section after the change, only index numbers published in terms of the new index reference period are to be used.

*Definition of **initial year***

(9) In this section, the ***initial year*** means the first calendar year in which the reinstatement fee is $500.

172 Late payment penalty

(1) A registered provider must pay a late payment penalty for any:

(a) CRICOS annual registration charge; or

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

payable by the provider that remains unpaid after the time when it became due for payment.

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

Amount of penalty

(2) The amount of the penalty is 20% per year on the unpaid amount calculated from the day when the original amount became due for payment.

173 Debts due to the Commonwealth

(1) The following are recoverable as debts due to the Commonwealth by action in a court of competent jurisdiction:

(a) CRICOS annual registration charge;

(aa) schools initial registration charge;

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(ab) schools renewal registration charge;
(b) late payment penalty;
(c) TPS levy (other than a provider's first TPS levy).

(2) In the case of an amount that relates to the OSTF, the TPS Director may recover the debt on behalf of the Commonwealth.

174 Amounts payable by unincorporated bodies

The following persons are jointly and severally liable to pay an amount for which a registered provider that is an unincorporated body is liable under this Act, the *Education Services for Overseas Students (Registration Charges) Act 1997* or the *Education Services for Overseas Students (TPS Levies) Act 2012*:

(a) the principal executive officer of the provider at the time the liability arose;
(b) if there was a body (however described) that governed, managed or conducted the affairs of the provider at that time—each of the persons who were members of that body at that time.

175 Giving information to relevant bodies etc.

Giving information to government agencies, the TPS Director etc.

(1) For the purposes of:
(a) promoting compliance with this Act, the national code, the ELICOS Standards and the Foundation Program Standards; or
(b) assisting with the regulation of providers; or
(c) promoting compliance with the conditions of a particular student visa or visas, or of student visas generally; or
(d) facilitating the monitoring and control of immigration;

the Secretary, or the ESOS agency for a provider or registered provider, may give information obtained or received for the purposes of this Act to:

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(e) an agency of the Commonwealth, or of a State, that is responsible for or otherwise concerned with immigration or the regulation of providers; or

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

(eb) the Secretary; or

(f) the TPS Director; or

(g) a Board member; or

(ga) the Overseas Students Ombudsman; or

(h) a person specified in the regulations for the purposes of this paragraph.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

(1A) The Secretary, or the ESOS agency for a provider or registered provider, may give information obtained or received for the purposes of this Act to an enforcement body (within the meaning of the *Privacy Act 1988*), if the Secretary or the ESOS agency is satisfied that giving the information is reasonably necessary for one or more enforcement related activities (within the meaning of that Act) conducted by, or on behalf of, the enforcement body.

Giving information to registered providers

(2) For the purposes of:

(a) promoting compliance with this Act, the national code, the ELICOS Standards and the Foundation Program Standards; or

(b) promoting compliance with the conditions of a particular student visa or visas, or of student visas generally;

the Secretary, or the ESOS agency for a provider or registered provider, may give information relating to an accepted student's, or former accepted student's, student visa to the registered provider for the student.

(3) For the purposes of:

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(a) promoting compliance with this Act, the national code, the ELICOS Standards and the Foundation Program Standards; or

(b) promoting compliance with the conditions of a particular student visa or visas, or of student visas generally;

the Secretary, or the ESOS agency for a provider or registered provider, may give information relating to the exercise of functions by agents of providers to registered providers.

Publishing information about agents

(4) For the purposes of:

(a) promoting compliance with this Act, the national code, the ELICOS Standards and the Foundation Program Standards; or

(b) promoting compliance with the conditions of a particular student visa or visas, or of student visas generally;

the Secretary may cause to be published information relating to the exercise of functions by agents of providers.

(5) Without limiting subsection (3) or (4), the information given or published under those subsections may relate to:

(a) the number of applications for student visas made by or on behalf of students recruited or otherwise dealt with by an agent that have been granted, refused or withdrawn, or are invalid; or

(b) the number of student visas granted to students recruited or otherwise dealt with by an agent that have been cancelled or have ceased to be in effect; or

(c) the number of students accepted for enrolment in courses provided by registered providers by students recruited or otherwise dealt with by an agent; or

(d) the completion rates of accepted students recruited or otherwise dealt with by agents.

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176A Review of operation of tuition protection

(1) Before 1 July 2021, the Minister must commence a review of the operation of Parts 5 (about tuition protection service) and 5A (about the Overseas Students Tuition Fund and related matters).

Note: The review must be conducted at the same time as a review of the operation of Parts 5-1A and 5-1B of the *Higher Education Support Act 2003* and Parts 5A and 5B of the *VET Student Loans Act 2016* (see section 113A of the latter Act).

(2) The Minister must cause to be prepared a report of a review under subsection (1).

(3) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the completion of the report.

176B ELICOS Standards

(1) The Minister may, by legislative instrument, make the ***ELICOS Standards***.

(2) Despite subsection 14(2) of the *Legislation Act 2003*, the ELICOS Standards may apply, adopt or incorporate, with or without modification, any matter contained in any other instrument or writing, as existing:

(a) at a particular time; or

(b) from time to time.

176C Foundation Program Standards

(1) The Minister may, by legislative instrument, make the ***Foundation Program Standards***.

(2) Despite subsection 14(2) of the *Legislation Act 2003*, the Foundation Program Standards may apply, adopt or incorporate, with or without modification, any matter contained in any other instrument or writing, as existing:

(a) at a particular time; or

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(b) from time to time.

176D Refund of charge in special circumstances

The Secretary may, on behalf of the Commonwealth, refund the whole or part of a charge under the *Education Services for Overseas Students (Registration Charges) Act 1997* that is paid to the Commonwealth if the Secretary is satisfied that there are special circumstances that justify doing so.

177 Regulations

The Governor-General may make regulations prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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Endnotes

Endnote 1—About the endnotes

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

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

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

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

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

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be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation "(md)" added to the details of the amendment included in the amendment history.

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

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Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Education Services for Overseas Students Act 2000	164, 2000	21 Dec 2000	s 1 and 2: 21 Dec 2000 (s 2(1)) Remainder: 4 June 2001 (s 2(2) and gaz 2001, No S175)	
Education Services for Overseas Students (Consequential and Transitional) Act 2000	166, 2000	21 Dec 2000	Sch 4: never commenced (s 2(2), (3))	—
Corporations (Repeals, Consequentials and Transitionals) Act 2001	55, 2001	28 June 2001	Sch 3 (items 168–171): 15 July 2001 (s 2(3))	—
Cybercrime Act 2001	161, 2001	1 Oct 2001	Sch 1 (item 5): 21 Dec 2001 (s 2(2) and gaz 2001, No S529)	—
Education Services for Overseas Students Amendment Act 2002	101, 2002	10 Nov 2002	11 Nov 2002	Sch. 1 (items 20, 23, 27)
Education Services for Overseas Students Amendment Act 2005	157, 2005	19 Dec 2005	Sch 1 and 2: 20 Dec 2005 (s 2(1) items 2, 3)	Sch 1 (item 4)
Education Services for Overseas Students Legislation Amendment (2006 Measures No. 1) Act 2006	143, 2006	6 Dec 2006	1 Jan 2007	Sch. 1 (items 37, 38)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Education Services for Overseas Students Legislation Amendment (2006 Measures No. 2) Act 2006	144, 2006	6 Dec 2006	Schedule 1, Schedule 2 (item 1), Schedule 3 and Schedule 4: 1 Jan 2007 Schedule 2 (items 2–7): 1 July 2007 Remainder: Royal Assent	Sch. 1 (item 2), Sch. 2 (item 3), Sch. 3 (items 3, 5, 7, 11) and Sch. 4 (item 11)
Private Health Insurance (Transitional Provisions and Consequential Amendments) Act 2007	32, 2007	30 Mar 2007	Sch 2 (item 9): 1 Apr 2007 (s 2(1) item 7)	—
Education Services for Overseas Students Legislation Amendment Act 2007	70, 2007	28 May 2007	Schedule 1: 1 July 2007 Remainder: Royal Assent	Sch. 1 (item 23)
Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008	144, 2008	9 Dec 2008	Schedule 5 (items 1–5): 10 Dec 2008	—
Education Services for Overseas Students Amendment (Re-registration of Providers and Other Measures) Act 2010	10, 2010	3 Mar 2010	Schedule 1 (items 1–26, 31) and Schedule 2: Royal Assent	Sch. 1 (item 31)
Education Services for Overseas Students Legislation Amendment Act 2011	11, 2011	8 Apr 2011	Schedule 1: 9 Apr 2011	Sch. 1 (item 27)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
National Vocational Education and Training Regulator (Consequential Amendments) Act 2011	14, 2011	12 Apr 2011	Sch 1 (items 1–6, 9–16, 18–32): 1 July 2011 (s 2(1) items 2, 5, 7) Sch 1 (item 7): never commenced (s 2(1) item 3) Sch 1 (items 8, 17): 9 Apr 2011 (s 2(1) items 4, 6)	Sch 1 (items 30–32)
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Schedule 2 (items 548–550) and Schedule 3 (items 10, 11): 27 Dec 2011	Sch. 3 (items 10, 11)
Tertiary Education Quality and Standards Agency (Consequential Amendments and Transitional Provisions) Act 2011	74, 2011	29 June 2011	Sch 1 (items 1–14, 45, 46): 29 Jan 2012 (s 2(1) items 2, 7) Sch 1 (items 15–39): never commenced (s 2(1) items 3–5) Sch 1 (items 40–44): 29 July 2011 (s 2(1) item 6)	Sch 1 (items 13, 14)
Education Services for Overseas Students Amendment (Registration Charges Consequentials) Act 2011	106, 2011	26 Sept 2011	Sch 1 (items 1–6, 8–17): 31 Oct 2011 (s 2(1) items 2, 4) Remainder: 26 Sept 2011 (s 2(1) items 1, 3)	Sch 1 (item 17)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Act 2012	9, 2012	20 Mar 2012	Sch 2 (item 87): 1 July 2012 (s 2(1) item 8) Sch 2 (items 89–93): never commenced (s 2(1) items 9, 10)	—
Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Act 2012	9, 2012	20 Mar 2012	Sch 1 (items 1–38, 41, 43–63), Sch 2 (items 1–81, 83–86, 94–108), Sch 3 (items 1–7), Sch 4, Sch 5 (items 1–5, 8(1)), Sch 6 and Sch 8 (items 1–10): 1 July 2012 (s 2(1) items 2, 4–6, 8, 11–15, 19, 20) Sch 1 (item 40), Sch 2 (items 82) and Sch 7 (item 1): never commenced (s 2(1) items 3, 7, 16) Sch 7 (items 2, 3): 20 Mar 2012 (s 2(1) item 17, 18)	Sch 1 (items 43–63), Sch 2 (items 94–108), Sch 3 (item 7), Sch 4 (item 11), Sch 5 (item 8(1)) and Sch 6 (items 6, 7)
as amended by				
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 2 (items 2, 3): 1 July 2012 (s 2(1) item 4)	—
Migration Legislation Amendment (Student Visas) Act 2012	192, 2012	12 Dec 2012	Sch 1 (items 4, 5): 13 Apr 2013 (s 2(1) item 2)	—

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Privacy Amendment (Enhancing Privacy Protection) Act 2012	197, 2012	12 Dec 2012	Sch 5 (item 33) and Sch 6 (items 15–19): 12 Mar 2014 (s 2(1) items 3, 16) Sch 6 (item 1): 12 Dec 2012 (s 2(1) item 19)	Sch 6 (items 1, 15–19)
Federal Circuit Court of Australia (Consequential Amendments) Act 2013	13, 2013	14 Mar 2013	Sch 1 (item 116): 12 Apr 2013 (s 2(1) item 2)	—
Education Services for Overseas Students Amendment Act 2014	2, 2014	28 Feb 2014	Sch 1: 1 July 2014 (s 2(1) item 2) Remainder: 28 Feb 2014 (s 2(1) item 1)	Sch 1 (item 23)
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 8 (items 140–143) and Sch 14: 1 July 2014 (s 2(1) items 6, 14)	Sch 14
as amended by				
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (items 175, 176): 5 Mar 2016 (s 2(1) item 2)	—
Statute Law Revision Act (No. 2) 2015	145, 2015	12 Nov 2015	Sch 4 (item 8): 10 Dec 2015 (s 2(1) item 7)	—
Education Services for Overseas Students Amendment (Streamlining Regulation) Act 2015	171, 2015	11 Dec 2015	Sch 1 (items 1–282), Sch 2, Sch 3 (item 1), Sch 4, Sch 5 (items 19–24), and Sch 6 (items 2–6, 8–13): 1 Jul 2016 (s 2(1) items 2, 4, 6, 8) Sch 5 (items 1–17) and Sch 6 (items 1, 7): 12 Dec 2015 (s 2(1) items 3, 5, 7)	Sch 6
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 140–146, 367–372): 10 Mar 2016 (s 2(1) item 6)	—
Territories Legislation Amendment Act 2016	33, 2016	23 Mar 2016	Sch 5 (item 41): 1 July 2016 (s 2(1) item 7)	—
Statute Update Act 2016	61, 2016	23 Sept 2016	Sch 2 (items 34–43): 21 Oct 2016 (s 2(1) item 1)	—
Education Legislation Amendment (Provider Integrity and Other Measures) Act 2017	83, 2017	16 Aug 2017	Sch 1: 17 Aug 2017 (s 2(1) item 1)	Sch 1 (item 16)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Education Services for Overseas Students Amendment Act 2017	97, 2017	14 Sept 2017	Sch 1: 15 Sept 2017 (s 2(1) item 2)	Sch 1 (item 4)
Statute Update (Autumn 2018) Act 2018	41, 2018	22 May 2018	Sch 1 (item 2): 19 June 2018 (s 2(1) item 2)	—
Education Legislation Amendment (Tuition Protection and Other Measures) Act 2019	111, 2019	6 Dec 2019	Sch 1 (items 43–50): 1 Jan 2020 (s 2(1) item 2)	—
National Vocational Education and Training Regulator Amendment (Governance and Other Matters) Act 2020	77, 2020	3 Sept 2020	Sch 1 (items 61–63): 1 Jan 2021 (s 2(1) item 2)	—
Education Legislation Amendment (Up-front Payments Tuition Protection) Act 2020	101, 2020	20 Nov 2020	Sch 3 (items 1–3): 1 Jan 2021 (s 2(1) item 1)	—
Territories Legislation Amendment Act 2020	154, 2020	17 Dec 2020	Sch 4 (items 7–10): 18 Dec 2020 (s 2(1) item 12)	—
Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021	13, 2021	1 Mar 2021	Sch 2 (item 331): 1 Sept 2021 (s 2(1) item 5)	—
Education Services for Overseas Students Amendment (Refunds of Charges and Other Measures) Act 2021	18, 2021	2 Mar 2021	Sch 1 (items 1, 2): 1 July 2021 (s 2(1) item 2) Sch 1 (items 3–6): 3 Mar 2021 (s 2(1) item 3)	Sch 1 (items 2, 6)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Regulatory Powers (Standardisation Reform) Act 2021	32, 2021	26 Mar 2021	Sch 3: 26 Sept 2021 (s 2(1) items 5–7)	Sch 3 (items 13–17)
Education Legislation Amendment (2021 Measures No. 2) Act 2021	55, 2021	24 June 2021	Sch 2: 25 June 2021 (s 2(1) item 4)	—
Education Services for Overseas Students Amendment (Cost Recovery and Other Measures) Act 2021	83, 2021	27 Aug 2021	Sch 1 and 2: 1 Jan 2022 (s 2(1) items 2, 3)	Sch 1 (items 22–25)
Treasury Laws Amendment (2021 Measures No. 5) Act 2021	127, 2021	7 Dec 2021	Sch 2 (item 46): 8 Dec 2021 (s 2(1) item 3)	—

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Endnote 4—Amendment history

Provision affected	How affected
Part 1	
Division 1	
Division 1 heading	ad. No. 9, 2012
s. 4A	ad. No. 70, 2007
	am. No. 9, 2012
s 4B	ad No 70, 2007
	am No 10, 2010; No 9, 2012; No 171, 2015; No 154, 2020
s 4C	ad No 33, 2016
	rep No 154, 2020
s 5	am No 101, 2002; No 157, 2005; No 143, 2006; No 144, 2006; No 70, 2007; No 10, 2010; No 11, 2011; No 14, 2011; No 74, 2011; No 106, 2011; No 9, 2012; No 2, 2014; No 171, 2015; No 18, 2021; No 32, 2021; No 83, 2021; No 127, 2021
s 5AA	ad No 18, 2021
s. 5A	ad. No. 9, 2012
	am No 171, 2015
s. 6	am. No. 55, 2001; No. 144, 2008
s 6A	ad No 171, 2015
	am No 77, 2020
s 6B	ad No 171, 2015
s 6C	ad No 171, 2015
s 6D	ad No 171, 2015
s 6E	ad No 171, 2015
s. 7	am. No. 32, 2007
	rs. No. 9, 2012
s 7A	ad No 74, 2011
	am No 9, 2012
	rs No 171, 2015
	am No 83, 2017

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Endnote 4—Amendment history

Provision affected	How affected
s 7AA	ad No 171, 2015
s 7AB	ad No 55, 2021
Division 2	
Division 2	ad. No. 9, 2012
s. 7B	ad. No. 9, 2012
	am No 171, 2015
Part 2	
Part 2 heading	rs No 171, 2015
Division 1	
Division 1	ad. No. 9, 2012
s. 8A	ad. No. 9, 2012
	am No 171, 2015
Division 2	
Division 2 heading	ad. No. 9, 2012
s 8	am No 101, 2002; No 70, 2007; No 9, 2012; No 4, 2016; No 61, 2016; No 55, 2021
s. 9	am. No. 55, 2001; No. 101, 2002; No. 157, 2005; Nos. 143 and 144, 2006; No. 70, 2007; No. 10, 2010; Nos. 11, 14 and 106, 2011
	rep. No. 9, 2012
Division 3	
Division 3 heading	ad. No. 9, 2012
	rs No 171, 2015
Subdivision A	
Subdivision A	rs No 171, 2015
s. 9AA	ad. No. 9, 2012
	rep No 171, 2015
s. 9AB	ad. No. 9, 2012
	am. No. 9, 2012
	rep No 171, 2015
s. 9AC	ad. No. 9, 2012
	rep No 171, 2015

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Provision affected	How affected
s. 9AD	ad. No. 9, 2012
	rep No 171, 2015
s. 9AE	ad. No. 9, 2012
	rep No 171, 2015
s. 9AF	ad. No. 9, 2012
	rep No 171, 2015
s. 9AG	ad. No. 9, 2012
	rep No 171, 2015
s 9	ad No 171, 2015
s 10	ad No 171, 2015
s 10A	ad No 171, 2015
Subdivision B	
Subdivision B heading	rs and renum No 171, 2015
Subdivision B	ad No 171, 2015
s 10B	ad No 171, 2015
s 10C	ad No 171, 2015
Subdivision C	
Subdivision C	ad No 171, 2015
s 10D	ad No 171, 2015
s 10E	ad No 171, 2015
s 10F	ad No 171, 2015
s 10G	ad No 171, 2015
Subdivision D	
Subdivision D	ad No 171, 2015
s 10H	ad No 171, 2015
s 10J	ad No 171, 2015
s 10K	ad No 171, 2015
s 10L	ad No 171, 2015
s 10M	ad No 171, 2015

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Endnote 4—Amendment history

Provision affected	How affected
Subdivision E	
Subdivision E (prev Subdivision B) heading	rs and renum No 171, 2015
s. 9AH	ad. No. 9, 2012
	rep No 171, 2015
s. 9A	ad. No. 10, 2010
	am. Nos. 11, 14 and 106, 2011
	rep. No. 9, 2012
s. 9B	ad. No. 10, 2010
	am. No. 9, 2012
	rep No 171, 2015
s. 10	am. No. 70, 2007; No. 10, 2010; Nos. 14 and 106, 2011
	rep. No. 9, 2012
s 11	am No 101, 2002; No 143, 2006
	rep No 9, 2012
	ad No 171, 2015
	am No 83, 2021
s 11A	ad No 171, 2015
s 11B	ad No 171, 2015
s 11C	ad No 171, 2015
s 12	rs No 143, 2006
	am No 10, 2010
	rs No. 106, 2011; No. 9, 2012
	am No 171, 2015
	rep No 83, 2021
s. 13	rs. No. 9, 2012
	am No 171, 2015; No 4, 2016
s. 14	am. No. 101, 2002; No. 10, 2010; No. 14, 2011; No. 9, 2012
	rs No 171, 2015
Division 4	
Division 4 heading	ad. No. 9, 2012

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Provision affected	How affected
s. 14A	ad. No. 10, 2010
	am. Nos. 11 and 14, 2011
	rs. No. 9, 2012
	am No 171, 2015
s. 14B	ad. No. 11, 2011
	am. No. 14, 2011
	rs. No. 9, 2012
	am No 171, 2015
Part 3	
Division 1A	
Division 1A	ad. No. 9, 2012
s. 15A	ad. No. 9, 2012
	am. No. 9, 2012; No 171, 2015
Division 1	
s 15	am No 171, 2015
s. 16	rs. No. 157, 2005
	am No 171, 2015
s 17	am No 101, 2002; No 143, 2006; No 9, 2012; No 171, 2015; No 83, 2017
s 17A	ad No 83, 2017
s. 18	am. No. 157, 2005; No. 143, 2006; No. 9, 2012; No 171, 2015
s. 19	am. No. 144, 2006; No. 11, 2011; No. 9, 2012; No 171, 2015
s 20	am No 144, 2006; No 70, 2007; No 11, 2011; No 9, 2012; No 192, 2012; No 171, 2015
	rep No 55, 2021
s. 21	am. No. 11, 2011; No. 9, 2012; No 171, 2015
s. 21A	ad. No. 10, 2010
	am. No. 11, 2011; No 171, 2015
s. 22	am. No. 143, 2006
	rs. No. 9, 2012
	rep No 171, 2015
s 23	am No 143, 2006; No 171, 2015; No 83, 2017

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Endnote 4—Amendment history

Provision affected	How affected
	rs No 83, 2021
s 23A	ad No 106, 2011
	rs No 171, 2015
	am No 83, 2017
	rep No 83, 2021
s. 24	rs. No. 9, 2012
	am No 171, 2015
s. 25	rep. No. 9, 2012
s. 26	rs. No. 9, 2012
	am No 101, 2002; No 171, 2015
Division 2	
Division 2 heading	rs No 2, 2014
Division 2	rs. No. 9, 2012
s. 27	am. No. 144, 2006; No. 10, 2010; No. 14, 2011
	rs. No. 9, 2012
	am No 2, 2014; No 171, 2015
s 28	am No 101, 2002; No 144, 2006; No 70, 2007; No 11, 2011
	rs No 9, 2012
	am No 2, 2014; No 55, 2021
s. 29	am. No. 70, 2007; No. 11, 2011
	rs. No. 9, 2012
	am No 2, 2014
s. 30	am. No. 101, 2002
	rs. No. 9, 2012
s. 31	rs. No. 143, 2006
	am. No. 10, 2010
	rs. No. 9, 2012
s. 32	am. No. 143, 2006
	rs. No. 9, 2012

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Provision affected	How affected
Part 4	
Division 1	
Division 1	ad. No. 9, 2012
s. 33A	ad. No. 9, 2012
	am No 171, 2015
Division 2	
Division 2 heading	ad. No. 9, 2012
s. 33	am. No. 157, 2005; No. 144, 2006; No. 9, 2012; No 2, 2014
s. 34	am. No. 9, 2012; No 171, 2015
s. 35	rep. No. 144, 2006
s. 36	am. No. 144, 2006
	rep. No. 9, 2012
s. 37	rep. No. 144, 2006
s. 38	am. No. 9, 2012; No 2, 2014; No 171, 2015
s. 39	rep. No. 144, 2006
s 40	am. No. 10, 2010; No. 9, 2012; No 171, 2015
s. 41	am. No. 144, 2006
s. 42	rep. No. 144, 2006
s. 43	am. No. 70, 2007; No. 14, 2011; No. 9, 2012
	rep No 171, 2015
Part 5	
Part 5	rs. No. 9, 2012
Division 1	
s. 45	rs. No. 9, 2012
s. 46	rep. No. 9, 2012
Division 2	
Subdivision A	
s. 46A	ad. No. 9, 2012
	am No 171, 2015
s 46B	ad No 9, 2012
	am No 171, 2015; No 55, 2021

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Endnote 4—Amendment history

Provision affected	How affected
s. 46C	ad. No. 9, 2012
	rep No 171, 2015
s 46D	ad No 9, 2012
	am No 2, 2014; No 55, 2021
s. 46E	ad. No. 9, 2012
s 46F	ad No 9, 2012
	am No 171, 2015; No 55, 2021
s. 47	rep. No. 9, 2012
Subdivision B	
s. 47A	ad. No. 9, 2012
s. 47B	ad. No. 9, 2012
s. 47C	ad. No. 9, 2012
	rep No 171, 2015
s 47D	ad No 9, 2012
	am No 2, 2014; No 55, 2021
s 47E	ad No 9, 2012
	am No 2, 2014; No 55, 2021
s. 47F	ad. No. 9, 2012
s. 47G	ad. No. 9, 2012
s 47H	ad No 9, 2012
	am No 171, 2015; No 55, 2021
Subdivision C	
s 48	rs No 9, 2012
	am No 55, 2021
Division 3	
s 49	rs No 9, 2012
	am No 55, 2021
s. 50	rep. No. 9, 2012
Division 4	
s. 50A	ad. No. 9, 2012
s. 50B	ad. No. 9, 2012

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Provision affected	How affected
s 50C	ad No 9, 2012
	am No 2, 2014; No 55, 2021
s. 50D	ad. No. 9, 2012
	am No 197, 2012
s. 50E	ad. No. 9, 2012
Part 5A	
Part 5A	ad. No. 9, 2012
Division 1	
s. 51	rs. No. 9, 2012
	am No 97, 2017
s. 52	am. No. 46, 2011
	rep. No. 9, 2012
Division 2	
Subdivision A	
s. 52A	ad. No. 9, 2012
	am No 62, 2014
s. 52B	ad. No. 9, 2012
	am No 62, 2014
s 52C	ad No 9, 2012
	am No 62, 2014; No 111, 2019
s. 53	rep. No. 9, 2012
Subdivision B	
s. 53A	ad. No. 9, 2012
	am No 97, 2017
s. 53B	ad. No. 9, 2012
	am No 171, 2015
s. 53C	ad. No. 9, 2012
	am No 171, 2015
s 53D	ad No 9, 2012
	am No 171, 2015; No 83, 2017
s. 54	rep. No. 9, 2012

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Endnote 4—Amendment history

Provision affected	How affected
Division 3	
s 54A	ad No 9, 2012
	am No 111, 2019; No 101, 2020
s 54B	ad No 9, 2012
	am No 171, 2015; No 101, 2020
s. 54C	ad. No. 9, 2012
s. 54D	ad. No. 9, 2012
s. 54E	ad. No. 9, 2012
s. 54F	ad. No. 9, 2012
s. 54G	ad. No. 9, 2012
s. 54H	ad. No. 9, 2012
s. 54J	ad. No. 9, 2012
s. 54K	ad. No. 9, 2012
s. 54L	ad. No. 9, 2012
s. 54M	ad. No. 9, 2012
s 54N	ad No 171, 2015
s. 55	rep. No. 9, 2012
Division 4	
Subdivision A	
s 55A	ad No 9, 2012
	am No 111, 2019; No 101, 2020
s. 55B	ad. No. 9, 2012
s 55C	ad No 9, 2012
	am No 62, 2014; No 111, 2019
s. 55D	ad. No. 9, 2012
s. 55E	ad. No. 9, 2012
s. 55F	ad. No. 9, 2012
s. 55G	ad. No. 9, 2012
s. 55H	ad. No. 9, 2012
s. 55J	ad. No. 9, 2012
s. 55K	ad. No. 9, 2012

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Provision affected	How affected
s. 55L	ad. No. 9, 2012
s. 55M	ad. No. 9, 2012
s. 55N	ad. No. 9, 2012
s. 56	rep. No. 9, 2012
Subdivision B	
s. 56A	ad. No. 9, 2012
s. 56B	ad. No. 9, 2012
s. 56C	ad. No. 9, 2012
s. 56D	ad. No. 9, 2012
s. 56E	ad. No. 9, 2012
s. 56F	ad. No. 9, 2012
s. 56G	ad. No. 9, 2012
s. 57	rep. No. 9, 2012
s. 58	rep. No. 9, 2012
s. 59	rep. No. 9, 2012
s. 60	am. No. 143, 2006
	rep. No. 9, 2012
s. 61	rep. No. 9, 2012
s. 62	rep. No. 9, 2012
s. 63	am. No. 10, 2010
	rep. No. 9, 2012
s. 64	rs. No. 10, 2010
	rep. No. 9, 2012
s. 65	am. No. 10, 2010
	rep. No. 9, 2012
s. 66	am. No. 10, 2010
	rep. No. 9, 2012
s. 67	am. No. 10, 2010
	rep. No. 9, 2012
s. 68	rep. No. 9, 2012
s. 69	am. No. 10, 2010

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Provision affected	How affected
	rep. No. 9, 2012
s. 70	rep. No. 9, 2012
s. 71	rep. No. 9, 2012
s. 72	rep. No. 9, 2012
s. 73	rep. No. 9, 2012
s. 74	rep. No. 9, 2012
s. 74A	ad. No. 10, 2010
	rep. No. 9, 2012
s. 75	rep. No. 9, 2012
Division 5	rep. No. 9, 2012
s. 76	am. No. 101, 2002; Nos. 143 and 144, 2006; No. 10, 2010
	rep. No. 9, 2012
s. 77	am. No. 101, 2002; No. 144, 2006; No. 10, 2010
	rep. No. 9, 2012
s. 77A	ad. No. 144, 2006
	rep. No. 9, 2012
s. 78	am. No. 101, 2002
	rep. No. 9, 2012
s. 79	rep. No. 9, 2012
s. 80	am. No. 55, 2001
	rep. No. 9, 2012
s. 80A	ad. No. 10, 2010
	rep. No. 9, 2012
s. 81	rep. No. 9, 2012
s. 82	rep. No. 9, 2012
Part 6	
Part 6 heading	rs No 32, 2021
Division 1A	
Division 1A	ad. No. 9, 2012
s 83A	ad No 9, 2012
	am No 9, 2012; No 171, 2015; No 32, 2021

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Provision affected	How affected
Division 1	
Subdivision A	
s. 83	am. No. 101, 2002; No. 143, 2006; No. 10, 2010; No. 9, 2012; No 2, 2014; No 171, 2015
s 84	rs No 171, 2015
s 85	am No 171, 2015
s 86	am No 171, 2015
Subdivision B heading	rep. No. 101, 2002
s. 87	rep. No. 101, 2002
	ad No 171, 2015
s. 88	am. No. 70, 2007
	rep. No. 9, 2012
Subdivision C	
s. 89	am. No. 143, 2006; No. 14, 2011; No. 9, 2012
	rs No 171, 2015
s. 89A	ad. No. 143, 2006
	am. No. 10, 2010; Nos. 14 and 74, 2011; No. 9, 2012
	rep No 171, 2015
s 90	rs No 143, 2006
	am No 106, 2011; No 9, 2012; No 171, 2015; No 83, 2021
s. 91	am. No. 9, 2012
	rep No 171, 2015
s. 92	am. No. 9, 2012
s. 92A	ad. No. 10, 2010
	rep. No. 9, 2012
s. 92B	ad. No. 10, 2010
	am. No. 14, 2011
	rep. No. 9, 2012
Subdivision D	
s. 93	am. No. 101, 2002; No. 143, 2006; No. 10, 2010; No. 11, 2011; No. 9, 2012

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Endnote 4—Amendment history

Provision affected	How affected
	rs No 171, 2015
s. 94	rs. No. 143, 2006
	am. No. 10, 2010; No 171, 2015
s. 95	rs. No. 101, 2002
	am. No. 10, 2010; No. 9, 2012; No 171, 2015
s. 96	am. No. 101, 2002; No. 11, 2011
	rep. No. 9, 2012
Division 2	
s. 97	am. No. 9, 2012
s. 101	am. No. 9, 2012; No 4, 2016; No 61, 2016
Division 3	
s. 104	am. No. 144, 2006
	rep. No. 11, 2011
s. 105	rep. No. 11, 2011
s 106	am No 11, 2011; No 9, 2012; No 171, 2015
	rep No 32, 2021
s. 107	am. No. 70, 2007; No. 9, 2012; No 4, 2016; No 61, 2016
s 108	am No 9, 2012; No 4, 2016; No 61, 2016; No 55, 2021
s. 109	am. No 161, 2001; No. 9, 2012; No 171, 2015; No 4, 2016; No 61, 2016
s. 110	rep. No. 9, 2012
Division 4	
Division 4	ad No 9, 2012
	rep No 32, 2021
s 110A	ad No 9, 2012
	am No 171, 2015
	rep No 32, 2021
s 110B	ad No 9, 2012
	am No 13, 2013; No 171, 2015; No 13, 2021
	rep No 32, 2021
Part 7	
Part 7 heading	rs No 32, 2021

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Provision affected	How affected
Division 1A	
Division 1 (prev Division 1A)	
Division 1A	ad No 9, 2012
	renum No 83, 2021
s 111A	ad No 9, 2012
	am No 171, 2015
	rs No 32, 2021
	am No 83, 2021 (md not incorp)
Division 1	
Division 1 heading	am No 83, 2021 (amdt never applied (Sch 1 item 18))
Division 1	rep No 32, 2021
s 111	rep No 32, 2021
s 112	rep No 32, 2021
Division 1B	
Division 1B	ad No 83, 2021
s 112A	ad No 83, 2021
Division 2	
Subdivision A	
s. 113	am. No. 9, 2012; No 171, 2015
s 113A	ad No 171, 2015
s 114	am No 171, 2015
s 115	am No 171, 2015
Subdivision B	
s. 116	am. No. 9, 2012; No 171, 2015
s 117	am No 171, 2015
Subdivision C	
s. 119	rep. No. 11, 2011
s 120	am No 4, 2016; No 61, 2016
s 121	am No 4, 2016; No 61, 2016
s 122	am No 171, 2015; No 4, 2016; No 61, 2016

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Endnote 4—Amendment history

Provision affected	How affected
s 122A	ad No 171, 2015
s 124	am. No. 74, 2011; No 171, 2015
s 125	am. No. 74, 2011; No 171, 2015
s 125A	ad No 171, 2015
s 126	am No 171, 2015
s 127	am No 171, 2015
s 128	am No 171, 2015
s 128A	ad No 171, 2015
s 129	am No 171, 2015; No 32, 2021
Division 3	
Division 3	rs No 32, 2021
s 130	am No 171, 2015
	rs No 32, 2021
	am No 32, 2021
Division 4	
Division 4	rs No 32, 2021
s 131	am No 171, 2015
	rs No 32, 2021
	am No 32, 2021
Division 5	
Division 5	rs No 32, 2021
s 132	am No 171, 2015; No 4, 2016
	rs No 32, 2021
	am No 32, 2021
Division 6	
Division 6 heading	ad No 32, 2021
s 133	am No 171, 2015; No 4, 2016
	rs No 32, 2021
	am No 32, 2021
s 134	am No 171, 2015; No 4, 2016; No 61, 2016
	rep No 32, 2021

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Provision affected	How affected
s 135	am No 171, 2015; No 4, 2016; No 61, 2016
	rep No 32, 2021
s 136	am No 171, 2015; No 4, 2016; No 61, 2016
	rep No 32, 2021
s 137	am No 171, 2015
	rep No 32, 2021
s 138	am No 171, 2015
	rep No 32, 2021
s 139	am No 171, 2015
	rep No 32, 2021
s 140	am No 171, 2015
	rep No 32, 2021
s 141	am No 171, 2015
	rep No 32, 2021
s 142	am No 171, 2015
	rep No 32, 2021
s 143	am No 171, 2015
	rep No 32, 2021
s 144	rep No 32, 2021
s 145	am No 171, 2015
	rep No 32, 2021
s 146	am No 171, 2015
	rep No 32, 2021
s 147	am No 171, 2015
	rep No 32, 2021
s 148	am No 171, 2015
	rep No 32, 2021
s 149	am No 171, 2015
	ed C29
	am No 41, 2018
	rep No 32, 2021

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Endnote 4—Amendment history

Provision affected	How affected
s 150	am No 171, 2015
	rep No 32, 2021
s 151	am No 171, 2015
	rep No 32, 2021
s 152	am No 171, 2015
	rep No 32, 2021
s 153	am No 171, 2015
	rep No 32, 2021
s 154	am No 171, 2015
	rep No 32, 2021
s 155	am No 171, 2015; No 4, 2016; No 61, 2016
	rep No 32, 2021
Subdivision B heading	rs No 171, 2015
	rep No 32, 2021
s 156	am No 171, 2015
	rep No 32, 2021
s 157	am No 171, 2015
	rep No 32, 2021
s 158	am No 171, 2015
	rep No 32, 2021
s 159	am No 171, 2015
	rep No 32, 2021
s 160	rep No 32, 2021
s 161	rep No 32, 2021
s 162	am No 171, 2015; No 4, 2016; No 61, 2016
	rep No 32, 2021
s 163	am No 171, 2015
	rep No 32, 2021
s 164	am No 171, 2015
	rep No 32, 2021
s 165	am No 171, 2015

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Provision affected	How affected
	rep No 32, 2021
s 166	am No 171, 2015
	rep No 32, 2021
s 167	am No 171, 2015
	rep No 32, 2021
s 168	rep No 32, 2021
s 169	rep No 32, 2021
Part 7A	
Part 7A	ad No 171, 2015
Division 1	
s 169AA	ad No 171, 2015
Division 2	
s 169AB	ad No 171, 2015
s 169AC	ad No 171, 2015
s 169AD	ad No 171, 2015
s 169AE	ad No 171, 2015
s 169AF	ad No 171, 2015
s 169AG	ad No 171, 2015
Part 8	
s 169A	ad No 9, 2012
	am No 171, 2015
s. 170A	ad. No. 11, 2011
	am No 171, 2015
s. 170B	ad. No. 9, 2012
s 170C	ad No 171, 2015
s. 170	rs. No. 14, 2011
	am. No. 74, 2011; No. 9, 2012; No 171, 2015
s 171A	ad No 171, 2015
	am No 77, 2020
s. 171	am. No. 143, 2006; No. 106, 2011; No 145, 2015; No 171, 2015

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Provision affected	How affected
s 172	am No 143, 2006; No 70, 2007; No 106, 2011; No 9, 2012; No 171, 2015; No 83, 2021
s 173	am No 143, 2006; No 106, 2011; No 9, 2012; No 171, 2015; No 83, 2021
s. 174	am. No. 9, 2012
s 175	am No 143, 2006; No 9, 2012; No 126, 2015; No 171, 2015; No 83, 2017
s. 176	am. No. 101, 2002; No. 143, 2006; No. 10, 2010; No. 11, 2011; No. 9, 2012
	rep No 171, 2015
s 176A	rep No 9, 2012
	ad No 111, 2019
	ed C34
s 176B	ad. No. 14, 2011
	am No 126, 2015
s 176C	ad No 14, 2011
	am No 126, 2015
s 176D	ad No 18, 2021

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