



Education Services for Overseas Students (Consequential and Transitional) Act 2000

No. 166, 2000



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**An Act to repeal the *Education Services for
Overseas Students (Registration of Providers and
Financial Regulation) Act 1991*, and for other
purposes**

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No. 166, 2000

An Act to repeal the *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991*, and for other purposes

[Assented to 21 December 2000]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Education Services for Overseas Students (Consequential and Transitional) Act 2000*.

2 Commencement

- (1) This section and section 1 commence on the day on which this Act receives the Royal Assent.
 - (2) Item 1 of Schedule 4 commences at the later of:
 - (a) the time when Parts 4 to 10 of the Act that establishes the Administrative Review Tribunal commence; and
 - (b) immediately after the commencement of section 5 of the *Education Services for Overseas Students Act 2000*.
- Note: The Act that establishes the Administrative Review Tribunal is either the *Administrative Review Tribunal Act 2000* or the *Administrative Review Tribunal Act 2001*.
- (3) The rest of Schedule 4 commences at the later of:
 - (a) the time when Parts 4 to 10 of the Act that establishes the Administrative Review Tribunal commence; and
 - (b) immediately after the commencement of section 176 of the *Education Services for Overseas Students Act 2000*.
 - (4) The remaining provisions of this Act commence on a day or days to be fixed by Proclamation.
 - (5) However, if any of those remaining provisions do not commence under subsection (4) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Definitions

- (1) In this Act:

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

notified trust account has the same meaning as in section 6A of the old ESOS Act.

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

- (2) Other expressions used in this Act have the same meaning as in the new ESOS Act.

Schedule 1—Repeal of the old ESOS Act

Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991

1 The whole of the Act

Repeal the Act.

Education Services for Overseas Students (Registration Charges) Act 1997

2 Section 4

Omit “*Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991*”, substitute “*Education Services for Overseas Students Act 2000*”.

Schedule 2—Application and transitional

1 Application—starting day for obligations of registered providers

Minister must publish starting day

- (1) The Minister must publish a notice in the *Gazette* specifying the starting day of the obligations in sections 19, 20 and 21 of the new ESOS Act. The starting day must be at least 28 days after the day of the publication.
- (2) The Minister must also notify in writing each registered provider of the starting day.

Notification of details about accepted students

- (3) The requirements in section 19 (giving information about accepted students) of the new ESOS Act apply to all events that happen on or after the starting day in relation to all persons who became or become accepted students on or after that day.
- (4) The requirements in paragraphs 19(1)(d) and (e) and subsection 19(2) of the new ESOS Act also apply to events that happen on or after the starting day in relation to persons who became accepted students before that day.

Notification of student visa breaches

- (5) The requirements in section 20 (sending students notice of visa breaches) of the new ESOS Act apply to all breaches that happen on or after the starting day.

Record keeping

- (6) The requirements in section 21 (record keeping) of the new ESOS Act apply to all current and future accepted students from the starting day onwards.
- (7) However, the notice under subitem (1) may prescribe a period or further period giving providers who are registered when the requirement in section 21 takes effect extra time to comply with the requirement.

2 Transitional—registration

- (1) The registration of a provider that was in effect under the old ESOS Act immediately before the commencement of this item continues to have effect after that time as if the registration had been done for the same courses under the new ESOS Act.
- (2) If that registration was suspended under the old ESOS Act immediately before the commencement of this item, the new registration has effect after that time as if it had been suspended to the same extent under the new ESOS Act.

3 Transitional—national code

The national code may prescribe a period or a further period giving providers who are registered when the code takes effect extra time to comply with the requirements of the code.

4 Application—notified trust accounts and ESOS Assurance Fund

- (1) The requirements in the old ESOS Act relating to notified trust accounts continue to apply until Part 5 of the new ESOS Act commences even if Schedule 1 to this Act repealed those requirements earlier.
- (2) The requirements in the new ESOS Act relating to the ESOS Assurance Fund apply to 2001 and later years.
- (3) However, the Minister may publish a notice in the *Gazette* stating that those Fund requirements apply instead to 2002 and later years.
- (4) In that case, the requirements in the old ESOS Act relating to notified trust accounts continue to apply until the later of:
 - (a) the beginning of 2002; and
 - (b) the commencement of Part 5 of the new ESOS Act;even if Schedule 1 to this Act repealed those requirements earlier.

5 Transitional—money in notified trust accounts

- (1) This item applies to course money that was in a notified trust account immediately before the requirements in the old ESOS Act relating to such accounts ceased to apply.

- (2) The course money is no longer considered to be held on trust after that time.

6 Transitional—regulations

Regulations under the new ESOS Act may provide for the transition from the old ESOS Act to the new ESOS Act, and for related transitional matters.

Schedule 3—Amendment of the Migration Act

Part 1—Disclosure of immigration information

Migration Act 1958

1 After subparagraph 488(2)(a)(v)

Insert:

- (vi) the *Education Services for Overseas Students Act 2000*;
- (vii) prescribed Commonwealth, State or Territory legislation;

2 At the end of subsection 488(2)

Add:

- ; or (f) authorise an employee of the Department whose Minister administers the *Education Services for Overseas Students Act 2000* to perform for the purposes of that Act one or more of those actions; or
- (g) authorise a prescribed employee of a prescribed agency of the Commonwealth, or of a State or Territory, to perform for prescribed purposes one or more of those actions.

3 After section 488

Insert:

488A Giving information to other relevant agencies

- (1) For the purposes of:
 - (a) assisting with the regulation of providers; or
 - (b) promoting compliance with the conditions of a particular student visa or visas, or of student visas generally;the Secretary may give information obtained or received for the purposes of this Act to an agency of the Commonwealth, or of a State or Territory, that is responsible for or otherwise concerned with the regulation of providers.
- (2) However, subsection (1) does not override section 488.

Note: Section 488 prohibits the disclosure etc. of movement records except in limited circumstances.

(3) In this section:

provider has the same meaning as in the *Education Services for Overseas Students Act 2000*.

Part 2—Consequential amendment

Migration Act 1958

4 At the end of subsection 504(1)

Add:

- ; and (l) making provision for matters that, under the *Education Services for Overseas Students Act 2000*, are required or permitted to be prescribed in regulations made under this Act.

Schedule 4—Changed administrative law arrangements

Education Services for Overseas Students Act 2000

1 Section 5 (definition of *Tribunal Member*)

Omit “Administrative Appeals Tribunal”, substitute “Administrative Review Tribunal”.

2 Subsection 176(1)

Omit “Administrative Appeals Tribunal”, substitute “Administrative Review Tribunal”.

3 Paragraph 176(2)(a)

Omit “Administrative Appeals Tribunal under the *Administrative Appeals Tribunal Act 1975*”, substitute “Administrative Review Tribunal under the Act that establishes that Tribunal”.

4 Paragraph 176(2)(b)

Omit “section 28”, substitute “section 57”.

5 Paragraph 176(2)(b)

Omit “a statement that includes reasons”, substitute “a statement of reasons”.

6 At the end of subsection 176(2)

Add:

Note: The Act that establishes the Administrative Review Tribunal is either the *Administrative Review Tribunal Act 2000* or the *Administrative Review Tribunal Act 2001*.

*[Minister's second reading speech made in—
House of Representatives on 30 August 2000
Senate on 10 November 2000]*

(148/00)