



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

No. 114 of 1991

TABLE OF PROVISIONS

Section	
1.	Short title
2.	Commencement
3.	Interpretation
4.	Only registered providers may provide courses to overseas students
5.	Registration of providers
6.	Financial arrangements
7.	Insurance
8.	Returns and other information
9.	Suspension of sections 6, 7 and 8 in a State
10.	Suspension of registration
11.	Automatic suspension of registration
12.	Cancellation by Minister of registration
13.	Automatic cancellation of registration
14.	Review of suspension or cancellation
15.	Effect of suspension
16.	Effect of cancellation
17.	Delegation
18.	Offences by unincorporated bodies
19.	Regulations
20.	Cessation of operation of Act



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

No. 114 of 1991

**An Act to regulate the export of education services and
training, and for related purposes**

[Assented to 27 June 1991]

The Parliament of Australia enacts:

Short title

1. This Act may be cited as the *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991*.

Commencement

2. This Act commences on the day on which it receives the Royal Assent.

Interpretation

3. In this Act, unless the contrary intention appears:
“**approved provider**”, in relation to a course in relation to a State, means
an institution or other body or person to which or to whom the

*Education Services for Overseas Students (Registration
of Providers and Financial Regulation) No. 114, 1991*

designated authority of the State has granted, under the law of the State, an approval to provide that course to overseas students in the State, other than an approval that has been withdrawn by that authority;

“bank” means a bank as defined by the *Banking Act 1959*;

“course” means a course of education or training;

“designated authority”, in relation to a State, means the person responsible under the law of the State for granting approvals to institutions or other bodies or persons to provide courses to overseas students in the State;

“intending overseas student” means a person who wishes or proposes to undertake a course provided by an institution or other body or person in Australia and is required for the purpose of undertaking that course:

- (a) to have a visa issued under regulations under the *Migration Act 1958* that permits the person to travel to Australia for the purpose of undertaking the course; or
- (b) in the case of a person present in Australia—to have a temporary entry permit granted under regulations under the *Migration Act 1958* that permits the person to remain in Australia while undertaking the course;

“overseas student” means a person who:

- (a) has a visa issued under regulations under the *Migration Act 1958* that permits the person to travel to Australia for the purpose of undertaking a course provided by an institution or other body or person in Australia; or
- (b) in the case of a person present in Australia—has a temporary entry permit granted under regulations under the *Migration Act 1958* that permits the person to remain in Australia while undertaking a course provided by an institution or other body or person in Australia;

“principal executive officer”, in relation to a provider that is not a natural person, means the person who has executive responsibility for the operation of the provider;

“provider” means an institution or other body or person in Australia that provides or seeks to provide courses to overseas students;

“Register” means the register kept under section 5;

“registered” means registered under section 5;

“registered provider”, in relation to a course in relation to a State, means an institution or other body or person that is registered as a provider in respect of the course in respect of that State;

“Secretary” means Secretary to the Department;

“special account” means a separate account for the holding of funds in trust;

“State” includes the Australian Capital Territory and the Northern Territory.

*Education Services for Overseas Students (Registration
of Providers and Financial Regulation) No. 114, 1991*

Only registered providers may provide courses to overseas students

4. (1) On and after a day to be fixed by the Minister by notice published in the *Gazette*, an institution or other body or person must not:

- (a) provide a course to overseas students; or
- (b) make an offer to an intending overseas student to provide a course to that student; or
- (c) invite an intending overseas student to undertake, or to apply to undertake, a course; or
- (d) hold itself, himself or herself out as able or willing to provide a course to overseas students;

unless the institution or other body or person is a registered provider in respect of the course in respect of the State or each State in which the course is, or is proposed to be, provided.

Penalty: \$10,000.

(2) Subsection (1) does not apply to a matter to the extent that a law of a State applies to that matter.

(3) It is a defence to a prosecution for an offence against paragraph (1) (d) in relation to a course if the defendant proves that:

- (a) the conduct in question was only for either or both of the following purposes:
 - (i) carrying out surveys and other investigations to assess the demand for the course; or
 - (ii) negotiating with another institution, body or person in connection with designing or developing the course; and
- (b) the defendant took reasonable steps to ensure that:
 - (i) overseas students who were, or might become, interested in undertaking the course; and
 - (ii) any institution, body or person who might assist in providing the course;

were aware that the defendant was not a registered provider in respect of the course as required by subsection (1); and

- (c) the defendant neither invited nor accepted any amount in respect of the course from overseas students or intending overseas students, or from their agents.

Registration of providers

5. (1) The Secretary must cause to be kept for the purposes of this Act a register to be known as the Commonwealth Register of Institutions and Courses for Overseas Students.

(2) Subject to subsection (3), the Secretary must cause to be entered in the Register:

*Education Services for Overseas Students (Registration
of Providers and Financial Regulation) No. 114, 1991*

- (a) the name of each provider that is an approved provider in respect of one or more courses in respect of a State or States; and
- (b) if the provider is not a natural person—the name of the principal executive officer of the provider; and
- (c) particulars of each course in each State in respect of which the provider is an approved provider; and
- (d) such other matters as are prescribed.

(3) Subsection (2) does not apply in relation to a provider whose registration has previously been cancelled unless the Minister is satisfied that in all the circumstances it is appropriate to register that provider.

(4) Upon the entry in the Register of the name of an approved provider and of particulars of each course in each State in respect of which the provider is an approved provider, the provider is taken to be registered as a provider in respect of the course in respect of the State.

Financial arrangements

6. (1) A provider must:

- (a) open and maintain with a bank in Australia for the purposes of this Act an account that is, or accounts each of which is, a special account; and
- (b) pay into such an account any amount (other than a non-refundable amount) that is received by, or by an agent of, the provider from, or from an agent of, a person who is an overseas student or an intending overseas student; and
- (c) in respect of any special account into which an amount has been or amounts have been so paid in respect of a person in relation to a course, keep a record of:
 - (i) that amount or those amounts; and
 - (ii) any payments out of or withdrawals from that account in respect of that person in relation to that course; and
 - (iii) the amount remaining in the account from time to time in respect of that person in relation to that course.

Penalty: \$5,000.

(2) The reference in subsection (1) to a non-refundable amount is a reference to an amount:

- (a) which, under the regulations, is not refundable to the person who paid it; and
- (b) in respect of which the provider gave written notice to the person who paid it, before the payment was made, stating that the amount would not be refundable to the person.

*Education Services for Overseas Students (Registration
of Providers and Financial Regulation) No. 114, 1991*

(3) The regulations may make provision for or in relation to the exemption of a specified provider or a specified class of providers from the requirements of subsection (1).

(4) A provider must not make a payment out of, or a withdrawal from, an account maintained under subsection (1) if the payment or withdrawal would result in a decrease in the amount remaining in the account in respect of a person in relation to a course unless the payment or withdrawal was made:

- (a) with the written authority of the person; or
- (b) for the purpose of paying an amount to Medibank Private or another prescribed hospital benefits organisation that the person was required to pay; or
- (c) in the case of a person who has commenced the course—for the purpose of meeting so much of the cost to the provider of providing the course to the person as the regulations permit the provider to meet out of an amount or amounts paid to the provider by the person.

Penalty: \$5,000.

(5) If for any reason:

- (a) a person who proposes to undertake a course provided by a provider does not commence the course; or
- (b) a person who is undertaking a course provided by a provider withdraws from the course before the end of the course;

and an amount is included in an account maintained by the provider under subsection (1) in respect of the person in relation to the course, the provider must repay to the person the amount so included less any part of that amount that the provider is entitled to pay to another person out of the account, or to withdraw from the account, in accordance with subsection (4).

Penalty: \$5,000.

(6) An amount that a provider is required to pay to a person under subsection (5) may be recovered by the person from the provider, as a debt due to the person, by action in a court of competent jurisdiction.

Insurance

7. (1) A provider must make and maintain such arrangements which will ensure that the provider can at all times comply with the requirements of subsection 6 (5).

(2) The provider will make available to the Secretary details of those arrangements.

(3) The regulations may make provision for or in relation to the exemption of a specified provider or a specified class of providers from the requirements of subsection (1).

Returns and other information

8. (1) A provider must, within 28 days after the conclusion of each financial year, give to the Secretary, in respect of each special account maintained by the provider under section 6, a return that:

- (a) is in the prescribed form; and
- (b) is signed:
 - (i) if the provider is a natural person—by that person or by another person authorised by the first-mentioned person to sign the return; or
 - (ii) otherwise—by the principal executive officer of the provider or by a person authorised by the principal executive officer to sign the return; and
- (c) contains the prescribed particulars in relation to transactions in respect of that account during that financial year and in relation to money held in that account at the end of that financial year; and
- (d) is accompanied by a report by a registered company auditor stating whether, in the opinion of the auditor:
 - (i) the particulars in the return are correct; and
 - (ii) the provider has complied with subsections 6 (1), (4) and (5).

(2) If the Minister forms a reasonable belief that a registered provider may have:

- (a) failed to comply with the requirements of subsection (1);
- (b) failed to comply with the requirements of section 6; or
- (c) provided an annual return which contains misleading or deceptive information;

the Minister may, by written notice given to a provider, require the provider to give the Minister such further information as the Minister specifies.

(3) The regulations may, either generally, or in relation to a particular year or particular years, make provision for or in relation to the exemption of a specified provider or a specified class of providers from all or any of the requirements of subsection (1).

Suspension of sections 6, 7 and 8 in a State

9. (1) The Governor-General may, by Proclamation, suspend the operation of sections 6, 7 and 8 in a State if, and so long as, the Governor-General is satisfied that arrangements in effect in that State are sufficient to achieve the purposes of those sections.

(2) If:

- (a) while sections 6, 7 and 8 are suspended in a State, a registered

*Education Services for Overseas Students (Registration
of Providers and Financial Regulation) No. 114, 1991*

provider fails to comply with a requirement of those arrangements; and

- (b) the provider is registered in respect of a State in which sections 6, 7 and 8 apply;

then, for the purposes of suspending the registration in respect of the second-mentioned State, subsection 10 (1) applies as if the failure to comply with that requirement were a failure to comply with a requirement of section 6, 7 or 8.

(3) If sections 6, 7 and 8 are suspended in a State, section 10 does not empower the Minister to suspend the registration of a provider in respect of that State, wherever the failure in question occurs.

Suspension of registration

10. (1) If the Minister forms a reasonable belief that a registered provider may have failed to comply with a requirement of section 6, 7 or 8 and that, if the failure is established, it may justify suspension of the registration of the provider, the Minister must give written notice to the provider stating that the Minister is of that opinion, setting out the grounds on which the opinion is based and giving to the provider a reasonable opportunity to make written submissions to the Minister in relation to the matter.

(2) If, after considering any submissions made by the registered provider, the Minister is satisfied that:

- (a) the registered provider failed to comply with the requirement; and

(b) the failure justifies suspension of the registration of the provider; the Minister must, by written notice to the provider, suspend the registration of the provider in respect of the State, or in respect of each State, as the case may be, in respect of which the provider is registered.

(3) Where the registration of a provider is suspended in respect of a State, the Secretary must cause particulars of the suspension to be entered in the Register.

(4) The Minister may at any time remove the suspension of the registration of a provider in respect of a State.

Automatic suspension of registration

11. (1) Where the approval of a registered provider under the law of a State is suspended, the registration of the provider in respect of that State is suspended by force of this section.

(2) Where the suspension of the approval under the law of the State is removed, the registration under this Act is restored.

Cancellation by Minister of registration

12. (1) Where the Minister has reason to believe that:

- (a) a registered provider has engaged in misleading or deceptive conduct in connection with the recruitment of intending overseas students; or
- (b) a provider whose registration is suspended in respect of the State or each State in respect of which the provider is registered is not providing courses to overseas students;

and the Minister is of the opinion that the matter referred to in paragraph (a) or (b), as the case may be, may justify the cancellation of the registration of the provider, the Minister must give written notice to the provider stating that the Minister is of that opinion, setting out the grounds on which the opinion is based and giving to the provider a reasonable opportunity to make written submissions to the Minister in relation to the matter.

(2) If, after considering any submissions made by the registered provider the Minister is satisfied that the registration of the provider should be cancelled, the Minister must, by written notice to the provider, cancel that registration.

Automatic cancellation of registration

13. (1) Where a registered provider ceases to be an approved provider in respect of a State:

- (a) if the provider continues to be an approved provider in respect of another State or other States—the provider ceases to be registered in respect of the first-mentioned State and the Secretary must cause the particulars of the registration of the provider to be altered accordingly; or
- (b) if the provider is not an approved provider in respect of any other State—the registration of the provider is cancelled by force of this subsection.

(2) If:

- (a) a registered provider who is a natural person becomes bankrupt; or
 - (b) a winding-up order is made in respect of a registered provider that is a body corporate; or
 - (c) a registered provider that is a body corporate ceases to exist;
- the registration of the provider is cancelled by force of this subsection.

(3) If:

- (a) a provider is registered in respect of a course in respect of a State; and
- (b) the approval of the provider in respect of the course is withdrawn by the designated authority of the State;

*Education Services for Overseas Students (Registration
of Providers and Financial Regulation) No. 114, 1991*

the registration of the provider in respect of the course in respect of the State is cancelled by force of this subsection.

Review of suspension or cancellation

14. (1) An application may be made to the Administrative Appeals Tribunal for the review of:

- (a) a decision under subsection 10 (2) to suspend the registration of a provider; or
- (b) a decision under subsection 12 (2) to cancel the registration of a provider.

(2) Where a decision of a kind referred to in subsection (1) is made and a written notice of the decision is given to a person whose interests are affected by the decision, the notice must include:

- (a) a statement to the effect that application may be made to the Administrative Appeals Tribunal under the *Administrative Appeals Tribunal Act 1975* for review of the decision; and
- (b) a statement to the effect that a person who is entitled to apply to the Administrative Appeals Tribunal for the review of a decision may, under section 28 of that Act, request a statement that includes reasons for the decision.

(3) Paragraph (2) (b) does not apply in relation to a case to which subsection 28 (4) of the *Administrative Appeals Tribunal Act 1975* applies.

(4) A contravention of subsection (2) in relation to a decision does not affect the validity of the decision.

Effect of suspension

15. While the registration of a provider is suspended in respect of a State:

- (a) the provider must not do any act or thing for the purpose of recruiting or enrolling intending overseas students in respect of courses provided or to be provided by the provider in that State; and
- (b) the provider must not solicit or accept any money from an overseas student or an intending overseas student in respect of a course provided or to be provided by the provider in that State; and
- (c) if an overseas student or intending overseas student has applied or been enrolled to undertake a course provided or to be provided by the provider in that State but has not commenced the course—the provider must not permit the student to commence the course.

*Education Services for Overseas Students (Registration
of Providers and Financial Regulation) No. 114, 1991*

Effect of cancellation

16. Where the registration of a provider is cancelled, the Secretary must cause the name and other particulars of or in relation to the provider to be removed from the Register.

Delegation

17. The Minister may, by writing signed by the Minister, delegate to the Secretary, or to an officer of the Senior Executive Service in the Department, all or any of the Minister's powers under this Act.

Offences by unincorporated bodies

18. Where a provision of this Act is contravened in respect of a provider that is an unincorporated body of persons:

- (a) the principal executive officer of the provider at the time of the contravention is taken to have contravened the provision at that time; and
- (b) if there was a governing body of the provider at that time—each of the persons who were members of that governing body at that time is also taken to have contravened the provision at that time.

Regulations

19. The Governor-General may make regulations, not inconsistent with this Act, 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.

Cessation of operation of Act

20. This Act, unless sooner repealed, shall cease to be in force on 1 January 1994.

*[Minister's second reading speech made in—
House of Representatives on 8 November 1990
Senate on 26 November 1990]*