



# **Education Services for Overseas Students (Registration of Providers and Financial Regulation) Amendment Act 1993**

**No. 114 of 1993**

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

[Assented to 24 December 1993]

The Parliament of Australia enacts:

**Short title etc.**

**1.(1)** This Act may be cited as the *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Amendment Act 1993*.

**(2)** In this Act, “**Principal Act**” means the *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991*<sup>1</sup>.

**Commencement**

**2.(1)** Subject to this section, this Act commences on the day on which it receives the Royal Assent.

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(2) Subsection 3(2), sections 5 and 6, subsections 9(2) and 10(2) and section 11 commence on a day to be fixed by Proclamation. However, if those provisions do not commence by Proclamation within the period of 6 months beginning on the day on which this Act receives the Royal Assent, then they commence on the first day after the end of that period.

(3) Subject to subsections (4) and (5), section 8 of this Act commences on the date on which regulations are made under the Principal Act to provide for the establishment of a tuition assurance scheme for the purpose of section 7A of that Act.

(4) If regulations under the Principal Act to provide for the establishment of a tuition assurance scheme for the purposes of section 7A of that Act are disallowed by either House of the Parliament, section 7A of that Act is deemed to have been repealed on the date of the disallowance.

(5) If regulations under the Principal Act to provide for the establishment of a tuition assurance scheme for the purposes of section 7A of that Act are not made by 30 June 1994, section 7A of that Act is deemed to have been repealed on that date.

(6) Section 8 commences on a day to be fixed by Proclamation. However, if that section does not commence by Proclamation within the period of 6 months beginning on the day on which this Act receives the Royal Assent, then it commences on the first day after the end of that period.

(7) Section 7 and subsection 10(3) commence on the first day after the end of the period of 2 months beginning on the day on which section 8 commences.

### **Interpretation**

3.(1) Section 3 of the Principal Act is amended by omitting the definitions of “intending overseas student” and “overseas student” and substituting the following definitions:

“**‘intending overseas student’** means a person who intends to become an overseas student;

**‘overseas student’** means a person who holds a student visa issued under regulations made under the *Migration Act 1958*.”

(2) Section 3 of the Principal Act is amended by omitting the definitions of “bank” and “special account”.

### **Only registered providers may provide courses to overseas students**

4. Section 4 of the Principal Act is amended:

(a) by omitting the penalty at the foot of subsection (1); and

(b) by inserting after subsection (1) the following subsection:

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“(1A) A person who intentionally or recklessly contravenes subsection (1) is guilty of an offence punishable by imprisonment for up to 2 years.”.

**Repeal of section 6 and substitution of new sections**

**5.(1)** Section 6 of the Principal Act is repealed and the following sections are substituted:

**Provider must operate trust account**

“6A.(1) A provider must:

- (a) as soon as practicable after the commencement of this section, pay into a notified trust account all course money that, at the commencement of this section, was in a special account maintained by the provider for the purposes of section 6 of this Act (as in force before the commencement of this section); and
- (b) as soon as practicable after receipt, pay into a notified trust account all course money that the provider receives after the commencement of this section.

“(2) A provider must not withdraw or pay money out of a notified trust account except as permitted by the regulations.

“(3) For each notified trust account into which the provider has paid money, the provider must keep a record of the following amounts for each student for each course:

- (a) the amounts paid into the account;
- (b) withdrawals or payments out of the account;
- (c) the balance remaining in the account.

“(4) A provider who intentionally or recklessly contravenes subsection (1), (2) or (3) is guilty of an offence punishable by imprisonment for up to 12 months.

“(5) The regulations may make provision for or in relation to exempting providers from the requirements of this section.

“(6) In this section:

**‘course money’** means money received by the provider, directly or indirectly, from an overseas student, or intending overseas student, in relation to a course that the provider is providing, or offering to provide, to the student. For this purpose, money received in relation to a course includes:

- (a) tuition fees;
- (b) any amount that the provider is to pay, on behalf of the student, to Medibank Private or another prescribed hospital benefits organisation;

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- (c) any other amount that the student had to pay in order to undertake the course;

**‘notified trust account’** means an account that meets all the following requirements:

- (a) the account is a trust account maintained by the provider with a branch in Australia of a bank (within the meaning of the *Banking Act 1959*);
- (b) details of the account have been notified to the Secretary in writing;
- (c) the bank has been notified that the account is a trust account.

**Refund if provider defaults**

“6B.(1) This section applies to a student in relation to a course if:

- (a) the course does not start on the agreed starting date; or
- (b) the provider ceases to provide the course at any time after it starts but before it is completed;

and the student has not withdrawn before the default date.

“(2) The provider must pay the student the difference between:

- (a) the amounts received by the provider before the default date that the provider was required by subsection 6A(1) to pay into a notified trust account for the student in relation to the course (whether or not the provider actually paid the amounts into a notified trust account); and
- (b) any part of those amounts that the provider became entitled to withdraw from the account before the default date.

“(3) The provider must pay within 2 weeks after the default date.

“(4) The student is entitled to recover the amount as a debt, by action in a court of competent jurisdiction.

“(5) If the provider has a liability apart from this section to pay an additional amount to the student, then this section does not affect that liability.

“(6) A provider who intentionally or recklessly contravenes this section is guilty of an offence punishable by imprisonment for up to 12 months.

“(7) In this section:

**‘agreed starting date’** means the date on which the course was scheduled to start, or a later date agreed between the provider and the student;

**‘default date’** means:

- (a) the agreed starting date, if paragraph (1)(a) applies; or
- (b) the date on which the provider ceased to provide the course, if paragraph (1)(b) applies.

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**Refund if student defaults**

“6C.(1) This section applies to a student in relation to a course if:

- (a) the course starts on the agreed starting date, but the student does not start the course on that date (and has not previously withdrawn); or
- (b) the student withdraws from the course (either before or after the agreed starting date).

“(2) If the provider and student have a written agreement that covers the refund consequences of the situation that caused this section to apply, the provider must pay the student the amount (if any) required by the agreement.

“(3) If the provider and student do not have a written agreement that covers the refund consequences of the situation that caused this section to apply, the provider must pay the student the difference between:

- (a) the amounts received by the provider before the default date that the provider was required by subsection 6A(1) to pay into a notified trust account for the student in relation to the course (whether or not the provider actually paid the amounts into a notified trust account); and
- (b) any part of those amounts that the provider became entitled to withdraw from the account before the default date.

“(4) The provider must pay within 6 weeks after receiving a written claim from the student.

“(5) The student is entitled to recover the amount as a debt, by action in a court of competent jurisdiction.

“(6) A provider who intentionally or recklessly contravenes this section is guilty of an offence punishable by imprisonment for up to 12 months.

“(7) In this section:

**‘agreed starting date’** means the date on which the course was scheduled to start, or a later date agreed between the provider and the student;

**‘default date’** means:

- (a) the agreed starting date, if paragraph (1)(a) applies; or
- (b) the date on which the student withdrew, if paragraph (1)(b) applies.”.

(2) If, at the commencement of this section:

- (a) money is in a special account maintained by a provider for the purposes of section 6 of the Principal Act; and
- (b) the account also qualifies as a notified trust account for the purposes of section 6A of the Principal Act as amended by this Act;

sections 6A, 6B and 6C of the amended Act apply as if the provider had paid that money into that account in compliance with subsection 6A(1) of the amended Act.

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**Arrangements to ensure capacity to make refunds**

6. Section 7 of the Principal Act is amended by omitting from subsection (1) “the requirements of subsection 6(5)” and substituting “sections 6B and 6C”.

**Arrangements to ensure capacity to make refunds**

7. Section 7 of the Principal Act is repealed.

**Insertion of new section**

8. Before section 8 of the Principal Act the following section is inserted:

**Provider must be member of tuition assurance scheme**

“7A.(1) After the end of 2 months after the commencement of this section, a provider must at all times:

- (a) be a member of a tuition assurance scheme established in accordance with the regulations; and
- (b) comply with the rules of the scheme.

“(2) A provider who is not a member of a tuition assurance scheme as required by subsection (1) contravenes that subsection even though the reason for not being a member is that:

- (a) the provider’s application for membership was rejected; or
- (b) the provider’s membership of a scheme has been cancelled.

“(3) The regulations may make provision for or in relation to exempting providers from the requirements of this section.

“(4) In this section:

**‘tuition assurance scheme’** means a scheme whose main objects include ensuring that overseas students receive the education or training for which they have paid.”.

**Returns and other information**

9.(1) Section 8 of the Principal Act is amended:

- (a) by omitting from subsection (1) “financial year” (wherever occurring) and substituting “reporting period”;
- (b) by inserting after subsection (1) the following subsection:

“(1A) At any time during a reporting period (the **‘current period’**) a provider may notify the Secretary in writing of a new ending date for the provider’s reporting periods. The effect of the notification is as follows:

- (a) if the next occurrence (after notification) of the new ending date is more than 12 months after the start of the current period:

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- (i) the current period remains in effect; and
  - (ii) the provider's next reporting period starts after the end of the current period and ends on the new ending date; and
  - (iii) after that, the provider's reporting periods are periods of 12 months ending on the new ending date;
- (b) in any other case:
- (i) the current period is replaced by the period from the start of the current period to the new ending date; and
  - (ii) after that, the provider's reporting periods are periods of 12 months ending on the new ending date.”;
- (c) by omitting from paragraph (2)(c) “an annual return” and substituting “a return”;
- (d) by omitting from subsection (3) “a particular year or particular years” and substituting “a particular reporting period or periods”;
- (e) by adding at the end the following subsection:

“(4) In this section:

**‘reporting period’**, in relation to a provider, means a financial year or some other period that applies to the provider under subsection (1A).”.

- (2) Section 8 of the Principal Act is amended:
- (a) by omitting from subsection (1) “in respect of each special account maintained by the provider under section 6” and substituting “for each account maintained by the provider for the purposes of this Act”;
  - (b) by omitting from subparagraph (1)(d)(ii) “subsections 6(1), (4) and (5)” and substituting “the financial requirements of this Act”;
  - (c) by omitting from paragraph (2)(b) “the requirements of section 6” and substituting “the financial requirements of this Act”;
  - (d) by inserting in subsection (4) the following definition:  
“**‘financial requirements of this Act’** means the provisions of this Act that:
    - (a) require the provider to pay money into an account; or
    - (b) regulate payments or withdrawals from an account; or
    - (c) require the provider to make a payment to a student;”.

**Repeal of section 9 and substitution of new section**

**10.(1)** Section 9 of the Principal Act is repealed and the following section is substituted:

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**Suspension of certain sections in a State**

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

“(2) If:

- (a) a registered provider fails to comply with the arrangements that served as a basis for suspending one or more sections in a State; and
- (b) the provider is registered in respect of another State in which one or more of the suspended sections still apply;

the failure to comply with the arrangements is to be treated for the purposes of section 10 as if it were a failure to comply with the suspended sections.

“(3) If one or more sections are suspended in a State, the provider’s registration in respect of that State cannot be suspended under section 10 on the ground of:

- (a) the provider’s failure to comply with the arrangements that served as a basis for suspending the section or sections; or
- (b) the provider’s failure to comply, in another State, with any of the suspended sections.”.

(2) Section 9 of the Principal Act is amended by omitting from subsection (1) “sections 6, 7 and 8” and substituting “sections 6A, 6B, 6C, 7 and 8”.

(3) Section 9 of the Principal Act is amended by omitting from subsection (1) “sections 6A, 6B, 6C, 7 and 8” and substituting “sections 6A, 6B, 6C, 7A and 8”.

**Suspension of registration**

11. Section 10 of the Principal Act is amended by omitting from subsection (1) “section 6, 7 or 8” and substituting “this Act”.

**Cancellation of registration by Minister**

12.(1) Section 12 of the Principal Act is amended:

(a) by inserting after paragraph (1)(a) the following paragraph:

“(aa) a provider has contravened section 15; or”;

(b) by omitting from subsection (1) “paragraph (a) or (b)” and substituting “paragraph (a), (aa) or (b)”.

(2) The amendments made by subsection (1) do not apply to contraventions that occurred before the commencement of this section.



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**Cessation of operation of Act**

**13.** Section 20 of the Principal Act is amended by omitting “1994” and substituting “1997”.

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**NOTE**

1. No. 114, 1991.

[*Minister’s second reading speech made in—  
House of Representatives on 29 September 1993  
Senate on 20 October 1993*]