



# **Education Services for Overseas Students Amendment (Streamlining Regulation) Act 2015**

**No. 171, 2015**

**An Act to amend the law relating to education  
services for overseas students, and for other  
purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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**An Act to amend the law relating to education  
services for overseas students, and for other  
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*[Assented to 11 December 2015]*

The Parliament of Australia enacts:

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*No. 171, 2015      Education Services for Overseas Students Amendment (Streamlining  
Regulation) Act 2015*

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## 1 Short title

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

## 2 Commencement

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

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	11 December 2015
2. Schedules 1 to 4	1 July 2016.	1 July 2016
3. Schedule 5, Part 1	The day after this Act receives the Royal Assent.	12 December 2015
4. Schedule 5, Part 2	1 July 2016.	1 July 2016
5. Schedule 6, Part 1	The day after this Act receives the Royal Assent.	12 December 2015
6. Schedule 6, Parts 2 and 3	1 July 2016.	1 July 2016
7. Schedule 6, item 7	The day after this Act receives the Royal Assent.	12 December 2015
8. Schedule 6, items 8 to 13	1 July 2016.	1 July 2016

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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

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

### **3 Schedules**

Legislation 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.

## Schedule 1—Streamlining registration

### *Education Services for Overseas Students Act 2000*

#### **1 Paragraph 4B(1)(b)**

Repeal the paragraph, substitute:

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

#### **2 Paragraph 4B(2)(a)**

Omit “*designated authority*”, substitute “*designated State authority*”.

#### **3 Paragraph 4B(2)(b)**

Repeal the paragraph, substitute:

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

#### **4 Subsection 4B(3)**

Omit “designated authority”, substitute “designated State authority”.

#### **5 Section 5 (definition of *approved provider*)**

Repeal the definition.

#### **6 Section 5**

Insert:

*approved school provider* means a school provider approved (however described) by a designated State authority to provide courses to:

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

#### **7 Section 5 (definition of *approved unit of study*)**

Repeal the definition.

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

Repeal the definition.

**9 Section 5**

Insert:

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

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

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

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

Repeal the definition.

**12 Section 5**

Insert:

*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).

*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.

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

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

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

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

**14 Section 5 (definition of *higher education provider*)**

Repeal the definition.

**15 Section 5**

Insert:

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

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

Repeal the paragraph, substitute:

- (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

**17 Section 5**

Insert:

*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.

**18 Section 5 (definition of *provider*)**

Repeal the definition, substitute:

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

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## **19 Section 5**

Insert:

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

## **20 Section 5 (definition of *registered provider*)**

Repeal the definition, substitute:

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

## **21 Section 5**

Insert:

*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.

*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
- (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 or liquidator of the provider or a former registered provider.

## **22 Section 5 (definition of *risk assessment*)**

Repeal the definition.

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**23 Section 5**

Insert:

*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.

**24 Section 5 (definition of *second or third entry to market charge*)**

Repeal the definition.

**25 Section 5**

Insert:

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

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

**26 Section 5 (definition of *TPS levy*)**

Repeal the definition, substitute:

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

**27 Section 5A (heading)**

Repeal the heading, substitute:

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

**28 Section 5A**

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

**29 After section 6**

Insert:

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

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

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

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- (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
    - (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.

*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:

## Schedule 1 Streamlining registration

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<b>ESOS agency</b>		
<b>Item</b>	<b>To the extent that a provider or registered provider is:</b>	<b>the <i>ESOS agency</i> for the provider or registered provider is:</b>
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)

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- (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 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).

### **30 Section 7A**

Repeal the section, substitute:

#### **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:
- (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
  - (h) any other relevant matter.
- (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).

### **7AA No duty imposed on designated State authorities**

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

### **31 Section 7B**

Omit:

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

substitute:

- 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.

### **32 Part 2 (heading)**

Repeal the heading, substitute:

## **Part 2—Registration of providers**

### **33 Section 8A (paragraphs relating to Divisions 3 and 4)**

Repeal the paragraphs, substitute:

- 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.

### **34 Division 3 of Part 2 (heading)**

Repeal the heading, substitute:

### **Division 3—Registration of providers**

### **35 Subdivision A of Division 3 of Part 2**

Repeal the Subdivision, substitute:

### **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.

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- (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
  - (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:
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- (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;
    - (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.

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- (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.

### **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.

### **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.

**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 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.

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

**36 Subdivision B of Division 3 of Part 2 (heading)**

Repeal the heading substitute:

**Subdivision E—Other registration provisions**

**37 Sections 9AH and 9B**

Repeal the sections, substitute:

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## 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 ESOS agency for the provider a DSA assessment certificate; and
- (g) if the provider is not a registered provider—the provider has paid:
  - (i) the first entry to market charge (if the provider is liable to pay that charge); 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) annual registration charge; or
  - (ii) the second entry to market charge; or
  - (iii) the third entry to market charge; 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 1: For when a registered higher education provider has the principal purpose of providing education, see section 5A.

Note 2: For when a provider is liable to pay the entry to market charges, see section 6 of the *Education Services for Overseas Students (Registration Charges) Act 1997*.

### **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.
- (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.

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

**38 Subsection 12(1) (note 1)**

Repeal the note, substitute:

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

**39 Paragraph 12(2)(a)**

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

**40 Paragraph 12(2)(b)**

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

**41 Subsection 13(1)**

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

**42 Section 14**

Repeal the section, substitute:

**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
  - (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.

**43 Paragraph 14A(4)(f)**

Repeal the paragraph.

**44 Paragraph 14A(4)(h)**

Repeal the paragraph, substitute:

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

**45 Subsection 14A(6)**

Repeal the subsection.

**46 Section 15 (note)**

Repeal the note, substitute:

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.

**47 Section 16 (note)**

Repeal the note, substitute:

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.

**48 Section 17 (heading)**

Repeal the heading, substitute:

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

**49 Subsection 17(1)**

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

**50 Subsection 17(1) (note)**

Repeal the note, substitute:

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.

**51 Subsection 18(1A) (note)**

Repeal the note, substitute:

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.

**52 Subsections 19(1) and (2)**

Omit “the Secretary”.

**53 Subsection 19(3)**

Repeal the subsection, substitute:

(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.

**54 Subsection 19(4)**

Omit “the Secretary”.

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**55 Subsection 20(1) (note 1)**

Repeal the note, substitute:

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.

**56 Paragraph 21(2B)(a)**

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

**57 Subsection 21(3) (note)**

Repeal the note, substitute:

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.

**58 Subsection 21(7)**

Repeal the subsection.

**59 Subsection 21A(1) (note)**

Repeal the note, substitute:

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.

**60 Subsection 24(2) (note)**

Repeal the note, substitute:

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.

**61 Subsection 26(3) (note 1)**

Repeal the note, substitute:

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.

**62 Section 33A**

Omit:

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

**63 Section 40 (note)**

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

**64 Section 43**

Repeal the section.

**65 Subsection 46A(4)**

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

**66 Subsection 46A(5)**

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

**67 Paragraph 46A(5)(b)**

Repeal the paragraph, substitute:

- (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.

**68 Subsection 46B(1) (note)**

Repeal the note, substitute:

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.

**69 Subsection 46B(2) (heading)**

Repeal the heading, substitute:

*Notifying the ESOS agency and TPS Director*

**70 Subsection 46B(2)**

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

**71 Section 46C**

Repeal the section.

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**72 Subsection 46F(1) (note)**

Repeal the note, substitute:

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.

**73 Subsection 46F(2)**

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

**74 Subsection 47H(1) (note)**

Repeal the note, substitute:

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.

**75 Subsection 47H(2)**

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

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

Repeal the note, substitute:

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).

**77 Section 53C (heading)**

Repeal the heading, substitute:

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

**78 Subsection 53C(1)**

Repeal the subsection, substitute:

- (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).

**79 Subsection 53C(3)**

Repeal the subsection.

**80 Subsection 53D(3)**

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

**81 Section 83A**

Omit:

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

substitute:

- 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.

**82 Section 83A (paragraph relating to Division 1)**

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

**83 Section 83A (paragraph relating to Division 4)**

Repeal the paragraph, substitute:

- The ESOS agency for a registered provider may accept a written undertaking under Division 4 relating to the provider’s compliance with a provision of this Act, the national code, the ELICOS Standards, the Foundation Program Standards or a condition of the provider’s registration. The ESOS agency may apply to a court to enforce the undertaking.

**84 Section 83 (heading)**

Repeal the heading, substitute:

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**83 ESOS agency may impose sanctions for non-compliance etc.****85 Subsection 83(1)**

Repeal the subsection, substitute:

*Circumstances in which ESOS agency may take action*

- (1) The ESOS agency for a registered provider may take one or more of the actions mentioned in subsection (3) against the provider if the agency believes on reasonable grounds that the provider, or an associate or high managerial agent of the provider, is breaching or has breached:
- (a) this Act; or
  - (b) the national code; or
  - (c) if the ELICOS Standards or Foundation Program Standards apply in relation to the provider—those Standards; or
  - (d) a condition of the provider’s registration.

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

**86 Subsection 83(1A)**

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

**87 Subsection 83(1A)**

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

**88 Subsection 83(1B)**

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

**89 Subsection 83(1B)**

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

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

Repeal the note, substitute:

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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.

**91 Subsection 83(1C)**

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

**92 Subsection 83(1C)**

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

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

Repeal the paragraph, substitute:

- (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.

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

Before “higher”, insert “registered”.

**95 Subsection 83(2)**

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

**96 Subsection 83(2)**

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

**97 After subsection 83(2)**

Insert:

- (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
  - (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.

Note: Section 93 (which is about the procedure for action) does not apply in relation to this subsection.

## **98 Subsection 83(3) (heading)**

Repeal the heading, substitute:

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*Actions the ESOS agency may take*

**99 Subsection 83(4)**

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

**100 Subsection 83(4)**

Omit “a registered”, substitute “the”.

**101 Subsection 83(4)**

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

**102 Section 84**

Repeal the section, substitute:

**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.

**103 Section 85 (heading)**

Repeal the heading, substitute:

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

**104 Section 85**

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

**105 Subsections 86(1) and (2)**

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

**106 At the end of Subdivision A of Division 1 of Part 6**

Add:

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**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.
- (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.

**107 Sections 89 and 89A**

Repeal the sections, substitute:

**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:
- (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;
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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.

### **108 Section 91**

Repeal the section.

### **109 Section 93**

Repeal the section, substitute:

### **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 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.

**110 Section 94 (heading)**

Repeal the heading, substitute:

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

**111 Subsection 94(1)**

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

**112 Subsection 94(2)**

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

**113 Subsection 94(3)**

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

**114 Subsection 94(4)**

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

**115 Subsection 95(3)**

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

**116 Subsection 106(1)**

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

**117 Subsection 109(1)**

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

**118 Subsection 109(1)**

Omit “to the Secretary”.

**119 Subsection 110A(1)**

Repeal the subsection, substitute:

- (1) The ESOS agency for a registered provider may accept a written undertaking given by the provider that:
  - (a) the provider will take, or refrain from taking, specified action in order for the provider to comply with:
    - (i) a provision of 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
    - (iv) 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:
    - (i) a provision of 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
- (iv) a condition of the provider’s registration.

**120 Subsections 110A(2), (3) and (4)**

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

**121 Subsection 110B(1)**

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

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

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

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

Omit “Secretary”, substitute “ESOS agency”.

**124 Section 111A**

Omit:

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

substitute:

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

**125 Section 111A (paragraph relating to Division 2)**

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

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

Repeal the paragraphs, substitute:

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

**127 Subsection 113(1)**

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

**128 Subsection 113(2)**

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

**129 Paragraphs 113(2)(a), (b) and (c)**

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

**130 Subsection 113(2) (note)**

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

**131 Subsection 113(4)**

Repeal the subsection.

**132 Subsection 115(1)**

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

**133 Subparagraph 115(1)(b)(i)**

Omit “Secretary”, substitute “ESOS agency”.

**134 Paragraph 115(1)(c)**

Omit “Secretary”, substitute “ESOS agency”.

**135 Subsection 115(2)**

Omit “Secretary”, substitute “ESOS agency”.

**136 Subsection 116(1)**

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

**137 Subsection 116(2)**

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

**138 Subsection 116(2)**

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

**139 Subsection 116(2) (note)**

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

**140 Subsection 116(3)**

Repeal the subsection.

**141 Subsection 117(1)**

After “attendance notice”, insert “given to a relevant individual of a registered provider”.

**142 Subsection 117(2)**

Omit “individual”, substitute “relevant individual of a registered provider”.

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**143 Subsection 122(1)**

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

**144 Subsection 122(1)**

After “notice”, insert “given by the agency”.

**145 Subsection 124(1)**

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

**146 Subsection 124(1)**

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

**147 Paragraphs 124(1)(a) and (c)**

Omit “employee”, substitute “officer”.

**148 Subsection 124(2)**

Repeal the subsection, substitute:

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

**149 Section 125 (heading)**

Repeal the heading, substitute:

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

**150 Subsection 125(1)**

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

**151 Subsection 125(1)**

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

**152 Subsection 125(1)**

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

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**153 Subsection 125(2)**

Omit “employee”, substitute “officer”.

**154 Subsection 125(2) (note)**

Omit “employee”, substitute “officer”.

**155 Subsection 125(3)**

Repeal the subsection, substitute:

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

**156 Subsection 126(1)**

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

**157 Subsection 126(3)**

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

**158 Section 128 (heading)**

Repeal the heading, substitute:

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

**159 Subsection 128(1)**

Repeal the subsection, substitute:

- (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.

**160 Paragraph 128(2)(a)**

Omit “employee”, substitute “officer”.

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**161 Subsection 128(3) (heading)**

Repeal the heading, substitute:

*Persons affected by notice to be notified if practicable*

**162 Subsection 128(3)**

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

**163 Section 129**

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

**164 Section 130 (heading)**

Repeal the heading, substitute:

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

**165 Subsection 130(1)**

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

**166 Subparagraph 130(1)(a)(i)**

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

**167 Subsection 130(2)**

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

**168 Paragraph 130(2)(a)**

Omit “employee”, substitute “officer”.

**169 Section 131 (heading)**

Repeal the heading, substitute:

**131 Monitoring powers of authorised officers**

**170 Subsection 131(1)**

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

**171 Paragraph 131(1)(g)**

Omit “employee”, substitute “officer”.

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

Omit “employee”, substitute “officer”.

**173 Subsection 131(5)**

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

**174 Section 132 (heading)**

Repeal the heading, substitute:

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

**175 Section 132**

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

**176 Subparagraph 132(a)(ii)**

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

**177 Section 133 (heading)**

Repeal the heading, substitute:

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

**178 Section 133**

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

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**179 Subparagraph 133(a)(ii)**

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

**180 Subsection 134(1)**

Omit “employee”, substitute “authorised officer”.

**181 Section 135**

Omit “employee”, substitute “authorised officer”.

**182 Subsection 136(1)**

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

**183 Subsection 136(1)**

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

**184 Section 137 (heading)**

Repeal the heading, substitute:

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

**185 Subsection 137(1)**

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

**186 Subsection 137(2)**

Omit “employee”, substitute “authorised officer”.

**187 Section 138**

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

**188 Subsection 139(1)**

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

**189 Subsection 139(3)**

Omit “employee”, substitute “authorised officer”.

**190 Paragraph 140(1)(a)**

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

**191 Subsection 140(2)**

Omit “employees”, substitute “officers”.

**192 Section 141 (heading)**

Repeal the heading, substitute:

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

**193 Subsection 141(1)**

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

**194 Subsection 141(2)**

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

**195 Subsection 141(3)**

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

**196 Paragraph 141(3)(a)**

Omit “employee”, substitute “officer”.

**197 Section 142 (heading)**

Repeal the heading, substitute:

**142 Search powers of authorised officers**

**198 Subsection 142(1)**

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

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**199 Paragraph 142(1)(f)**

Omit “employee”, substitute “officer”.

**200 Subsection 142(5)**

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

**201 Subsection 142(6)**

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

**202 Subsection 142(6)**

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

**203 Subsection 142(7)**

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

**204 Section 143 (heading)**

Repeal the heading, substitute:

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

**205 Subsection 143(1)**

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

**206 Subsection 143(2)**

Omit “employee”, substitute “authorised officer”.

**207 Subsection 145(1)**

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

**208 Subsection 145(3)**

Omit “employee”, substitute “authorised officer”.

**209 Paragraph 146(1)(a)**

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

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**210 Subsection 146(2)**

Omit “employees”, substitute “officers”.

**211 Sections 147 and 148**

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

**212 Subsection 149(1)**

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

**213 Subparagraphs 149(1)(a)(i) and (ii)**

Omit “employee”, substitute “officer”.

**214 Subsection 149(2)**

Omit “employee”, substitute “officer”.

**215 Subsection 149(3) (heading)**

Repeal the heading, substitute:

*Authorised officer must give notice*

**216 Subsection 149(3)**

Omit “employee”, substitute “officer”.

**217 Subsection 150(1)**

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

**218 Subsection 150(2)**

Omit “employee”, substitute “officer”.

**219 Subsection 151(1)**

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

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**220 Subsection 151(2)**

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

**221 Subsection 152(1)**

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

**222 Subsections 152(2) and (3)**

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

**223 Section 153 (heading)**

Repeal the heading, substitute:

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

**224 Subsection 153(1)**

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

**225 Subsection 153(2)**

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

**226 Subsection 153(3) (heading)**

Repeal the heading, substitute:

*Authorised officer must try to notify those affected*

**227 Subsection 153(3)**

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

**228 Subsection 154(1)**

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

**229 Subsection 154(1)**

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

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**230 Subsection 154(2)**

Omit “employee”, substitute “authorised officer”.

**231 Section 155 (heading)**

Repeal the heading, substitute:

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

**232 Subsection 155(1)**

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

**233 Subsection 155(1)**

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

**234 Subdivision B of Division 5 of Part 7 (heading)**

Repeal the heading, substitute:

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

**235 Subsection 156(1)**

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

**236 Subsection 156(2)**

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

**237 Subsections 157(1)**

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

**238 Subsection 157(1)**

Omit “employee”, substitute “officer”.

**239 Subsection 157(2)**

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

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**240 Subsection 158(1)**

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

**241 Subsection 159(1)**

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

**242 Subsections 159(1) and (2)**

Omit “employee”, substitute “officer”.

**243 Subsection 162(1)**

Repeal the subsection, substitute:

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

**244 Paragraph 162(2)(a)**

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

**245 Paragraph 162(2)(b)**

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

**246 Paragraph 162(3)(b)**

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

**247 Paragraph 162(3)(c)**

Omit “Secretary”, substitute “agency”.

**248 Subsection 162(6) (heading)**

Repeal the heading, substitute:

*Authorised officer must always carry identity card*

**249 Subsection 162(6)**

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

**250 Section 163 (heading)**

Repeal the heading, substitute:

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

**251 Section 163**

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

**252 Paragraphs 163(a) and (b)**

Omit “employee”, substitute “officer”.

**253 Section 164 (heading)**

Repeal the heading, substitute:

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

**254 Subsection 164(1)**

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

**255 Subsection 164(1)**

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

**256 Subsection 164(3)**

Omit “employee”, substitute “officer”.

**257 Subsection 164(4)**

Omit “employee”, substitute “authorised officer”.

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**258 Paragraph 165(2)(a)**

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

**259 Paragraph 166(2)(a)**

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

**260 Subsection 166(3) (heading)**

Repeal the heading, substitute:

*Obligations on authorised officers*

**261 Subsection 166(3)**

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

**262 Subsection 167(1) (heading)**

Repeal the heading, substitute:

*Obligations on authorised officer*

**263 Subsection 167(1)**

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

**264 Paragraph 167(1)(a)**

Omit “employee”, substitute “officer”.

**265 Subsection 170A(1)**

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

**266 Subsection 170A(2)**

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

**267 Paragraph 170A(2)(a)**

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

**268 Subparagraph 170A(2)(b)(i)**

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

**269 Subsection 170A(3)**

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

**270 Subsection 170A(3)**

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

**271 Subsection 170A(4)**

Repeal the subsection substitute:

- (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).

**272 Subsections 170(1) to (4)**

Repeal the subsections, substitute:

*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*.

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

**273 After section 170**

Insert:

### **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) a Commissioner (within the meaning of the NVETR Act); or
  - (b) a member of the staff of the Regulator (within the meaning of the NVETR 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*.

### **274 Subsection 171(1)**

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

### **275 Paragraph 172(1)(b)**

Repeal the paragraph, substitute:

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

### **276 Subsection 172(1) (note)**

Repeal the note, substitute:

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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.

**277 Paragraph 173(1)(aa)**

Repeal the paragraph, substitute:

- (aa) the second entry to market charge;
- (ab) the third entry to market charge;

**278 Paragraph 175(1)(a)**

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

**279 Subsection 175(1)**

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

**280 After paragraph 175(1)(e)**

Insert:

- (ea) the ESOS agency for a provider or registered provider; or
- (eb) the Secretary; or

**281 Paragraph 175(2)(a)**

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

**282 Subsection 175(2)**

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

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

**283 Subsection 5(3)**

Omit “section 9AB of”.

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

**284 Subparagraph 204(c)(i)**

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

***Tertiary Education Quality and Standards Agency Act 2011***

**285 Paragraph 188(2)(a)**

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

## **Schedule 2—Review of decisions**

### *Education Services for Overseas Students Act 2000*

#### **1 Section 5**

Insert:

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

*internal reviewer* means:

- (a) the ESOS agency for an affected provider; or
- (b) a delegate referred to in paragraph 169AE(1)(b).

*reviewable decision* has the meaning given by section 169AB.

#### **2 Paragraph 14B(2)(d)**

Omit “to the Administrative Appeals Tribunal”.

#### **3 Subsection 53B(1) (note 2)**

Repeal the note.

#### **4 At the end of section 53B**

Add:

- (3) The notice must also include:
  - (a) the reasons for the determination referred to in section 53A; and
  - (b) a statement that an application may be made under section 169AG for review of the determination by the Administrative Appeals Tribunal.
- (4) A failure to give the notice required by this section does not affect the validity of the determination.

#### **5 After Part 7**

Insert:

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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.

### 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	The provider

<b>Reviewable decisions</b>		
<b>Item</b>	<b>Column 1 Reviewable decision</b>	<b>Column 2 Affected provider for the reviewable decision</b>
	to refuse to register the provider under section 10	
2	A decision by the ESOS agency for a registered provider to register the provider under section 10 for a particular period	The registered provider
3	A decision by the ESOS agency for a provider or registered provider to impose a condition on, or to vary or remove a condition of, the provider's registration under section 10B	The provider or registered provider
4	A decision by the ESOS agency for a registered provider to refuse to renew the provider's registration under section 10E	The registered provider
5	A decision by the ESOS agency for a registered provider to renew the provider's registration under section 10E for a particular period	The registered provider
6	A decision by the ESOS agency for a registered provider to refuse to add a course at a location to the provider's registration under section 10J	The registered provider
7	A decision by the ESOS agency for a registered provider to extend the provider's period of registration under section 10L	The registered provider
8	A decision by the ESOS agency for a registered provider not to notify the provider under subsection 46A(4)	The registered provider
9	A decision by the ESOS agency for a registered provider to take action against the provider under section 83	The registered provider
10	A decision by the ESOS agency for a registered provider not to give the provider a notice under subsection 89(4) or 95(3)	The registered provider

### **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:
  - (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



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- (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
    - (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.

### **6 Section 169A**

Omit:

- |   |
|---|
| <ol style="list-style-type: none"><li>(d) giving information to relevant bodies;</li><li>(e) review of decisions.</li></ol> |
|---|

substitute:

- |  |
|--|
| <ol style="list-style-type: none"><li>(d) giving information to relevant bodies.</li></ol> |
|--|

### **7 Section 176**

Repeal the section.

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## **Schedule 3—Ministerial directions**

### ***Education Services for Overseas Students Act 2000***

#### **1 After section 170B**

Insert:

#### **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).

### ***National Vocational Education and Training Regulator Act 2011***

#### **2 Section 159**

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

***Tertiary Education Quality and Standards Agency Act 2011***

**3 Section 135**

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

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## **Schedule 4—TPS Director**

### *Education Services for Overseas Students Act 2000*

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

Add “or 113A”.

#### **2 Section 5**

Insert:

*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.

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

Insert:

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

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

Add:

#### **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.

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

Insert:

- (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.

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

Add:

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

**7 Section 113 (heading)**

Repeal the heading, substitute:

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

**8 After section 113**

Insert:

**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.
- (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.

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

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

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

Repeal the paragraph, substitute:

- (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

**11 After subsection 115(1)**

Insert:

- (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.

**12 Subsection 115(2)**

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

**13 Section 122 (heading)**

Repeal the heading, substitute:

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

**14 After section 122**

Insert:

**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*.

**15 Before subsection 124(1)**

Insert:

*Authorised officer etc.*

**16 At the end of section 124**

Add:

*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.

**17 After section 125**

Insert:

**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.

**18 After subsection 126(1)**

Insert:

- (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.

**19 Subsection 126(3)**

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

**20 Section 127 (heading)**

Repeal the heading, substitute:

## **127 Returning of documents**

### **21 Subsection 127(1)**

- Omit all the words after “is given”, substitute:
- 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.

### **22 Subsection 127(2)**

Omit “authorised employee”, substitute “holder”.

### **23 Subsection 127(2)**

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

### **24 Subsections 127(3)**

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

### **25 After section 128**

Insert:

#### **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.
- (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.

## **Schedule 5—Other amendments**

### **Part 1—Amendments commencing on the day after Royal Assent**

#### *Education Services for Overseas Students Act 2000*

##### **1 Section 5**

Insert:

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

##### **2 Section 5 (definition of *study period*)**

Repeal the definition.

##### **3 Section 15A (paragraph relating to Division 2)**

Repeal the paragraph, substitute:

- Division 2 deals with tuition fees. In general, a registered provider must not receive more than 50% of the total tuition fees for a course before an overseas student begins the course. The provider must keep those fees in a separate account.

##### **4 Subsection 19(1)**

Omit “14 days”, substitute “the applicable number of days”.

##### **5 After subsection 19(1)**

Insert:

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

- (a) if the accepted student is less than 18 years old and the information is of a kind referred to in paragraph (1)(c) or (d)—14 days; or
- (b) otherwise—31 days.

**6 Section 22**

Repeal the section.

**7 Subsection 27(1) (heading)**

Repeal the heading.

**8 Subsections 27(2) and (3)**

Repeal the subsections, substitute:

- (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.

**10 Section 33A**

Omit:

- The purpose of the code is to provide nationally consistent standards and procedures for registered providers in providing courses to overseas students, dealing with agents and other providers, and providing refunds.

substitute:

- 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.

**11 Section 34**

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

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**12 Paragraph 38(g)**

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

**14 Section 47C**

Repeal the section.

**16 Subsection 47H(1)**

Repeal the subsection (not including the note), substitute:

- (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.

**17 Paragraph 47H(3)(a)**

Omit “47D or”.

## Part 2—Amendments commencing on 1 July 2016

### *Education Services for Overseas Students Act 2000*

#### **19 Section 23**

Before “A registered provider who is”, insert “(1)”.

#### **20 Section 23 (note 1)**

Omit “Note 1”, substitute “Note”.

#### **21 Section 23 (note 2)**

Repeal the note.

#### **22 At the end of section 23**

Add:

- (2) If the registered provider does not comply with subsection (1), the Secretary must give the provider a written notice that:
- (a) specifies the amount of the annual registration charge that the provider is liable to pay; and
  - (b) states that the provider must pay that amount, and the late payment penalty for the charge, by the end of the seventh day after the 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 notice.

- (3) If:
- (a) the registered provider does not comply with the 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.

#### **23 Section 23A**

Repeal the section, substitute:

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

- (1) A registered provider who is liable to pay the second entry to market charge must pay the charge by the end of the day referred to in subsection 6(5) of the *Education Services for Overseas Students (Registration Charges) Act 1997*.
- (2) A registered provider who is liable to pay the third entry to market charge must pay the charge by the end of the day referred to in subsection 6(7) of the *Education Services for Overseas Students (Registration Charges) Act 1997*.
- (3) If the registered provider does not comply with subsection (1) or (2) of this section, the Secretary must give the provider a written notice that:
  - (a) specifies the amount of the second entry to market charge or third entry to market charge that the provider is liable to pay; and
  - (b) states that the provider must pay that amount, and the late payment penalty for the charge, by the end of the seventh day after the 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 notice.

- (4) If:
  - (a) the registered provider does not comply with the 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.

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

Repeal the paragraphs, substitute:

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

## Schedule 6—Application, transitional and savings provisions

### Part 1—Definitions

#### 1 Definitions

In this Schedule:

*commencement* means the commencement of item 2 of this Schedule.

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



## **Part 2—Registration of providers etc.**

### **2 Continuation of existing registrations**

- (1) This item applies if:
  - (a) before commencement, a provider was registered to provide a course at a location; and
  - (b) immediately before commencement, the provider's registration was in force.
- (2) Despite the amendments of the ESOS Act made by Schedule 1 to this Act, the provider's registration continues in effect, and may be dealt with, after commencement as if the provider were registered under the ESOS Act, as amended by that Schedule.
- (3) If, immediately before commencement, the provider's registration was subject to any conditions, those conditions continue in effect, and may be dealt with, after commencement as if they had been imposed under section 10B of the ESOS Act, as inserted by Schedule 1 to this Act.

#### *Special rule relating to renewal of registration*

- (4) If, immediately before commencement, the provider's registration was in force because of the operation of subsection 9AC(5) of the ESOS Act, then:
  - (a) after commencement, the provider may apply to renew the provider's registration under section 10D of the ESOS Act, as inserted by Schedule 1 to this Act; and
  - (b) despite paragraph 10D(2)(b) of the ESOS Act, any such application must be made within 60 days after commencement; and
  - (c) if the provider does not make such an application within that period—the provider's registration ceases to be in force at the end of that period.

Note: If the provider makes such an application then section 10F of the ESOS Act, as inserted by that Schedule, applies in relation to the provider's registration.

*Special rules relating to continued registration*

- (5) If, immediately before commencement:
- (a) the provider was a provider of a kind covered by an item (other than item 4) of the table in subsection 7A(1) of the ESOS Act; and
  - (b) the provider's registration was in force because of the operation of subsection 9AC(6) of that Act;
- then, after commencement, the provider's registration for the course at the location continues until the provider has finished providing that course to the students who were enrolled in, and had commenced, the course immediately before commencement.
- (6) If, immediately before commencement:
- (a) the provider was a provider of a kind covered by item 4 of the table in subsection 7A(1) of the ESOS Act; and
  - (b) the provider's registration was in force because of the operation of subsection 9AC(6) of that Act;
- then, after commencement, the provider's registration for the course at the location continues until the end of 31 December 2016.
- (7) Despite subitem (5) or (6), the provider must not do anything for the purpose of recruiting or enrolling overseas students, or intending overseas students, for the course at the location after commencement.

**3 Continuation of suspension under section 89A of the ESOS Act—no removal notice given**

- (1) This item applies if:
- (a) before commencement, the registration of a provider for a course for a location was suspended by force of subsection 89A(1B), (1C) or (1D) of the ESOS Act; and
  - (b) immediately before commencement, the provider has not been given a notice under subsection 89A(2) of that Act.
- (2) Despite the repeal of section 89A of the ESOS Act by item 107 of Schedule 1 to this Act, the suspension continues to have effect, and may be dealt with, after commencement as if it were:

- (a) in the case of a suspension by force of subsection 89A(1B) of the ESOS Act—a suspension by force of subsection 89(1) of the ESOS Act, as inserted by that Schedule; or
- (b) otherwise—a suspension by force of subsection 89(2) of the ESOS Act, as inserted by that Schedule.

#### **4 Continuation of suspension under section 89A of the ESOS Act—removal notice given**

- (1) This item applies if:
  - (a) before commencement:
    - (i) the registration of a provider for a course for a location was suspended by force of subsection 89A(1B), (1C) or (1D) of the ESOS Act; and
    - (ii) the provider was given a notice under subsection 89A(2) of that Act; and
  - (b) immediately before commencement, the provider has not paid the associated reinstatement fee referred to in subsection 89A(3) of that Act.
- (2) Despite the repeal of section 89A of the ESOS Act by item 107 of Schedule 1 to this Act, the suspension and the notice continue to have effect after commencement as if the repeal had not happened.

#### **5 Saving of notice given under section 93 of the ESOS Act**

- (1) This item applies if:
  - (a) before commencement, a registered provider was given a notice under subsection 93(1) or (1A) of the ESOS Act; and
  - (b) immediately before commencement, the applicable period referred to in paragraph 93(1)(d) or (1A)(b) of that Act has not ended.
- (2) Despite the repeal of section 93 of the ESOS Act by item 109 of Schedule 1 to this Act, the notice continues to have effect after commencement as if:
  - (a) the notice had been given by the ESOS agency for the registered provider under section 93 of the ESOS Act, as inserted by that Schedule; and

**Schedule 6** Application, transitional and savings provisions

**Part 2** Registration of providers etc.

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- (b) if the notice related to a decision to impose a condition on the provider's registration under subsection 9AD(2) or 9AE(1) of the ESOS Act—the notice related to a decision to impose a condition on the provider's registration under section 10B of the ESOS Act, as inserted by that Schedule; and
- (c) if the notice related to a decision not to give the registered provider a notice under subsection 89A(2) of the ESOS Act—the notice related to a decision not to give the registered provider a notice under subsection 89(4) of the ESOS Act, as inserted by that Schedule.

## **Part 3—Review of decisions**

### **6 Transitional—review of certain decisions made before commencement**

- (1) This item applies to a decision of a kind mentioned in section 176 of the ESOS Act, as in force immediately before commencement, if:
  - (a) the decision was made before commencement; and
  - (b) immediately before commencement, both of the following apply:
    - (i) an application for review of the decision by the Administration Appeals Tribunal has not been made;
    - (ii) the time for a person to make such an application has not ended (including any extensions of that time under section 29 of the *Administrative Appeals Tribunal Act 1975*).
- (2) Despite the repeal of section 176 of the ESOS Act by item 7 of Schedule 2 to this Act, that section, as in force immediately before commencement, continues to apply in relation to the decision as if the repeal had not happened.

## **Part 4—Other matters**

### **7 Application—amendments of section 19 of the ESOS Act commencing on the day after Royal Assent**

The amendments of section 19 of the ESOS Act made by items 4 and 5 of Schedule 5 to this Act apply in relation to an event that occurs before or after the commencement of those items.

### **8 Application—amendments of section 19 of the ESOS Act commencing on 1 July 2016**

The amendments of section 19 of the ESOS Act made by items 52 to 54 of Schedule 1 to this Act apply in relation to an event that occurs before or after commencement.

### **9 Application—subsections 23(2) and (3) of the ESOS Act**

Subsections 23(2) and (3) of the ESOS Act, as inserted by item 22 of Schedule 5 to this Act, apply in relation to a registered provider who does not comply with subsection 23(1) of that Act after commencement.

### **10 Application—subsection 83(1) of the ESOS Act**

Subsection 83(1) of the ESOS Act, as inserted by item 85 of Schedule 1 to this Act, applies in relation to the following breaches:

- (a) a breach of the ESOS Act, the national code or a condition of a registered provider's registration that occurs before or after commencement;
- (b) a breach of the ELICOS Standards or Foundation Program Standards that occurs after commencement.

### **11 Application—section 87 of the ESOS Act**

Section 87 of the ESOS Act, as inserted by item 106 of Schedule 1 to this Act, applies in relation to the following breaches:

- (a) a possible breach of the national code, ELICOS Standards or Foundation Program Standards that occurs before or after commencement;
- (b) a possible breach of the ESOS Act that occurs after commencement.

## **12 Application—amendments of section 170A of the ESOS Act**

The amendments of section 170A of the ESOS Act made by items 265 to 271 of Schedule 1 to this Act apply in relation to action taken under Division 2 of Part 6 of that Act if the action is taken after commencement.

## **13 Transitional rules**

- (1) The Minister may, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by this Act.
- (2) To avoid doubt, the rules may not do the following:
  - (a) create an offence or civil penalty provision;
  - (b) provide:
    - (i) powers of arrest or detention; or
    - (ii) powers relating to entry, search or seizure;
  - (c) impose a tax;
  - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
  - (e) directly amend the text of this Act.
- (3) This Act (other than subitem (2)) does not limit the rules that may be made for the purposes of subitem (1).

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*[Minister's second reading speech made in—  
House of Representatives on 17 September 2015  
Senate on 9 November 2015]*

(167/15)

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