

Education Services for Overseas Students Regulations 2001 2001 No. 96

EXPLANATORY STATEMENT

STATUTORY RULES 2001 No. 96

Issued by Authority of the Minister for Education, Training and Youth Affairs

Education Services for Overseas Students Act 2000

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

Education Services for Overseas Students Regulations 2001

Section 177 of the *Education Services for Overseas Students Act 2000* (the Act) provides that the Governor-General may make regulations for the purposes of the Act and item 6 of schedule 2 to the *Education Services for Overseas Students (Consequential and Transitional) Act 2000* (Transitional Act) provides that the regulations may provide for the transition from the *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991* (the old ESOS Act) to the Act.

The ESOS Act 2000 is the major Act in a package of legislation designed to protect and enhance the good reputation of Australia's education and training export industry. Proclamations are being sought to fix 4 June 2001 as the date for commencement of the ESOS Act 2000 and the Transitional Act.

The purpose of the regulations is to provide for the orderly transition from the regime in the old ESOS Act to the new regime in the ESOS Act 2000. The ESOS Act 2000 strengthens the regulatory framework for the education/training industry and authorises the making of regulations:

- to specify what information is to be included on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) [para. 10(4)(d)];
- prescribing what details about accepted students are to be provided to the Secretary of the Department of Education, Training and Youth Affairs [para. 19(1)(a)];
- prescribing details to be provided to the Secretary about students who do not begin their course when expected [para. 19(1)(c)];
- that prescribe details of records that must be kept by registered providers of education/training services [subsection 21(2)];
- to exempt providers from the requirement to belong to a tuition assurance scheme [subsection 22(3)];
- excluding providers from receiving any funds under a law of the Commonwealth for recurring expenditure [para.24(2)(b)];
- to specify providers to be exempt from the requirement to pay an annual Fund contribution [para.24(2)(c)];
- prescribing the amounts relating to expenses incurred by a provider for the student, that are to be deducted from any refund to be made to a student [para.29(1)(b)];

- that make it an offence to breach prescribed provisions of the National Code of Practice for Registration Authorities and providers of Education and Training to Overseas Students and provide for penalties for breach of certain provisions of the national code (section 44); and that provide for the Minister to give a registered provider an infringement notice requiring payment of a penalty for an offence against subsection 104(1) or section 105 as an alternative to prosecution for the offence [subsection 106(1)].

A Regulatory Impact Statement covering a suite of four ESOS legislation and referring to the proposed Regulations was tabled with the *Education Services for Overseas Students Act 2000*.

The Regulations commenced on 4 June 2001.

Details of the Regulations are attached.

ATTACHMENT

DETAILS OF THE EDUCATION SERVICES FOR OVERSEAS STUDENTS REGULATIONS 2001

PART 1 INTRODUCTION

Regulation 1.01: Name of Regulations

Provides that the Regulations may be cited as the *Education Services for Overseas Students Regulations 2001*.

Regulation 1.02: Commencement

Provides that the Regulations are to commence on 4 June 2001.

Regulation 1.03: Definitions

Defines the terms used in the Regulations.

PART 2 REGISTRATION OF APPROVED PROVIDERS

Regulation 2.01: Information to be entered on the Register

Prescribes the information that must be entered onto the Commonwealth Register of Institutions and Courses for Overseas Students under paragraph 10(4)(d) of the Act.

PART 3 OBLIGATIONS ON REGISTERED PROVIDERS

Division 3.1 Information and Records

Regulation 3.01 Prescribed details about accepted students

Prescribes the details concerning an accepted student that a provider must give to the Secretary under paragraph 19(1)(a) of the Act.

Regulation 3.02 Prescribed information about accepted students who do not begin courses when expected

Prescribes the information concerning accepted students who do not begin their course when expected, that providers are required to give to the Secretary under paragraph 19(1)(c) of the Act.

Regulation 3.03 Other prescribed matters relating to accepted students

Prescribes the information concerning accepted students who terminate their studies before completion of the course, or who change the identity or duration of their courses that the provider must give to the Secretary under paragraph 19(1)(f) of the Act.

Regulation 3.04 Details of which a registered provider must keep records.

Prescribes what details concerning an accepted student (other than those in section 21 of the Act), that the registered provider must keep a record of

Division 3.2 Tuition assurance scheme

Regulation 3.05 Establishment of a tuition assurance scheme

Provides that a tuition assurance scheme is established in accordance with the Regulations only if the Minister has approved the scheme and the approval has not been revoked.

Regulation 3.06 Application for approval of a tuition assurance scheme

Specifies the requirements for an application for approval of a tuition assurance scheme.

Regulation 3.07 Deciding an application for approval of a tuition assurance scheme

Specifies the requirements for the Minister when deciding an application for approval of a tuition assurance scheme.

Regulation 3.08 Arrangements under paragraph 3.07 (2) (a)

Specifies for what are considered satisfactory arrangements for the purposes of paragraph 3.07 (2)(a) of the Regulations.

Regulation 3.09 Reporting requirements - operator of a tuition assurance scheme

Provides that the operator of a tuition assurance scheme must report to the Secretary and the Fund Manager. It also specifies the requirements for reporting.

Regulation 3.10 Revocation of approval of a tuition assurance scheme

Specifies the circumstances under which the Minister may revoke approval of a tuition assurance scheme, and the requirements for revocation.

Regulation 3.11 Exemption from requirement to be a member of a tuition assurance scheme and to comply with rules of the scheme

Specifies which providers are exempt from the requirement to be a member of a tuition assurance scheme.

Regulation 3.12 Application for approval of a bank guarantee

Provides that a provider may apply to the Minister for approval of a bank guarantee, and the requirements for an application.

Regulation 3.13 Deciding an application for approval of a bank guarantee

Provides that the Minister may decide an application for approval of a bank guarantee, and the requirements for deciding an application.

Regulation 3.14 Application for approval of an indemnity agreement

Specifies that a provider may apply to the Minister for approval of an indemnity agreement, and the requirements for an application.

Regulation 3.15 Deciding an application for approval of an indemnity agreement

Provides that the Minister must decide an application for approval of an indemnity agreement, and the requirements for deciding an application.

Regulation 3.16 Reporting requirements - providers exempt from membership of a tuition assurance scheme

Provides that a provider exempt from membership of a tuition assurance scheme must report to the Secretary and the Fund Manager, and reporting requirements.

Division 3.3 Annual Fund contributions

Regulation 3.17 Providers who are not exempt from paying annual Fund contributions

Provides that certain providers are excluded from the scope of paragraph 24(2)(b) of the Act.

Regulation 3.18 Providers who are exempt from paying annual Fund contributions

Provides that certain providers are exempt from the requirement to pay annual Fund contributions under paragraph 24(2)(c) of the Act.

Division 3.4 Refunds of course money

Regulation 3.19 Amounts to be subtracted from course money

Prescribes the amounts of money that may be subtracted from any refund of course money due to a student under the circumstances mentioned in subsections 27(1) and 27(2) of the Act, under paragraph 29(1)(b) of the Act.

PART 4 PENALTIES FOR THE NATIONAL CODE

Regulation 4.01 Offences for breaching certain provisions of the national code

Provides that a breach of the provisions of the national code is punishable and the penalty units imposed.

PART 5 THE ESOS ASSURANCE FUND

Regulation 5.01 Procedures of the Contributions Review Panel

Provides procedures applicable to the Contributions Review Panel under subsection 57(2) of the Act.

Regulation 5.02 Application for review by the Panel

Provides that an application under subsection 68(1) of the Act must be accompanied by the fee payable for the application.

Regulation 5.03 Fees for review by Fund Manager of Panel

Provides for a fee of \$300 for an application for review by the Fund Manager or the Panel under subsection 70(1) of the Act.

PART 6 ENFORCEMENT - INFRINGEMENT NOTICES

Regulation 6.01 Purpose of Part 6

Provides the procedure under which a registered provider may pay a monetary penalty as an alternative to having a matter under subsection 104(1) or section 105 of the Act dealt with by a court.

Regulation 6.02 Infringement notices

Provides that the Minister may serve an infringement notice on a provider for an offence against subsection 104(1) or section 105 of the Act, and the requirements for an infringement notice.

Regulation 6.03 Service of infringement notices

Provides the requirements for service of an infringement notice.

Regulation 6.04 Extension of time to pay

Provides that the Minister may grant an extension of time to pay an infringement notice, and the requirements for a grant of extension of time.

Regulation 6.05 Payment by instalments

Provides that the Minister may make an arrangement with a provider for the payment of an amount of an infringement notice penalty by instalments, and the requirements for an arrangement.

Regulation 6.06 If infringement notice disputed

Provides that the Minister may withdraw an infringement notice, and the requirements for a withdrawal.

Regulation 6.07 Payment of penalty if infringement notice not withdrawn

Provides that the provider must pay an infringement notice penalty if the Minister refuses to withdraw the notice, and the requirements for payment of the penalty.

Regulation 6.08 Effect of payment of infringement notice penalty

Specifies the effect of payment by a provider of an infringement notice penalty.

Regulation 6.09 Admissions under paragraph 6.02 (2) (h)

Provides that evidence of an admission made by a provider in a notice under paragraph 6.02(2)(h) of the Regulations is inadmissible in proceedings against the provider for the alleged offence.

Regulation 6.10 Matter not to be taken into account in determining sentence

Provides that a court must not, in determining a penalty to be imposed on a provider, take into account the fact that the provider chose not to pay the infringement notice penalty.

Regulation 6.11 Evidence for hearing

Sets out what certificates are evidence of the facts stated therein, and the requirements for a certificate.

Regulation 6.12 Payment of penalty by cheque

Provides that payment of an infringement notice by cheque is considered payment where the cheque is honoured at presentation.

Regulation 6.13 Infringement notice not compulsory, etc

Provides that nothing in Part 7 of the Regulations is to be taken to require the serving of an infringement notice on a provider, or to affect the liability of a provider to be prosecuted for an alleged offence if an infringement notice is not served, or if served, has been withdrawn, or to limit the penalty that may be imposed on a provider convicted of an offence.

PART 8 MISCELLANEOUS

Regulation 8.01 Review by Administrative Appeals Tribunal

Provides for a review procedure in relation to decisions made by the Minister under the Act,

PART 9 TRANSITIONAL

Regulation 9.01 Registration of new providers before first annual Fund contribution paid

Provides for transitional arrangements where the Secretary is able to register on CRICOS state-approved providers after commencement of the Act but before contributions criteria have been determined.

Regulation 9.02 Tuition assurance schemes approved under old Regulations

Provides for transitional arrangements whereby tuition assurance schemes that were approved under the Education Services for Overseas Students (Registration of Providers and Financial Regulation) Regulations (old Regulations) would be considered, for purposes of subsection 22(1) of the Act, to be tuition assurance schemes established in accordance with the Regulations until such time that the Minister has considered and approved them under the Act.