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Education Services for Overseas Students Regulations 2001

Statutory Rules 2001 No. 1

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I, WILLIAM PATRICK DEANE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Education Services for Overseas Students Act 2000* and the *Education Services for Overseas Students (Consequential and Transitional) Act 2000*.

Dated 16 MAY 2001 2001

WILLIAM DEANE

Governor-General

By His Excellency's Command

DAVID KEMP

Minister for Education, Training and Youth Affairs

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Part 1 Introduction

1.01 Name of Regulations

These Regulations are the *Education Services for Overseas Students Regulations 2001*.

1.02 Commencement

These Regulations commence on 4 June 2001.

1.03 Definitions

In these Regulations:

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

agreed starting day, for a course or part of a course provided to a student, means the day on which the course or part of a course is scheduled to start, or a later day agreed between the provider for the course or part of a course and the student.

non-government school means a school in a State that is not conducted by or on behalf of the Government of a State, but does not include a school conducted for profit.

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parent organisation, for a provider, means a body corporate of which the provider is a subsidiary within the meaning of the Corporations Law.

PRISMS (Provider Registration and International Student Management System) means the electronic system of that name used to process information given to the Secretary in the form approved under subsection 19 (3) of the Act.

student visa means a visa described in the *Migration Regulations 1994* as a Student (Temporary) (Class TU) visa, other than such a visa for:

- (a) a person who satisfies the secondary criteria, but not the primary criteria, under those Regulations for the grant of the visa; or
- (b) an exchange student or AusAID student within the meaning of those Regulations; or
- (c) an overseas student who has been approved by the Minister for Defence to undertake a course of study or training under a scholarship scheme or training program approved by the Minister for Defence; or
- (d) an overseas student who has been approved under another scholarship scheme, or an exchange scheme, sponsored by the Commonwealth to undertake a course of study or training in Australia.

university means an institution of higher education specified in Table A of the definition of **institution** in subsection 4 (1) of the *Higher Education Funding Act 1988*.

Note The following expressions are defined in the Act (section 5) and have the same meaning in these Regulations:

- accepted student
- annual Fund contribution
- approved provider
- course
- course money
- designated authority
- Fund Manager
- Immigration Minister
- national code
- overseas student

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- Panel
- provide
- provider
- Register
- registered provider
- Secretary
- State
- tuition assurance scheme.

Part 2 Registration of approved providers

2.01 Information to be entered on the Register

For paragraph 10 (4) (d) of the Act, the following information must be entered on the Register for each approved provider registered to provide a course or courses in a State:

- (a) the address of the provider's place of business;
- (b) if the provider is not an individual — the address of the provider's registered office;
- (c) the provider's postal address (if different from the address mentioned in paragraph (a) or (b));
- (d) the provider's telephone number, facsimile number and e-mail address (if any);
- (e) if the designated authority for the State has specified a period of approval for the provider to provide the course or courses to overseas students — the first and last days of that period;
- (f) the maximum number of overseas students, approved by the designated authority, to whom the provider may provide the course or courses;
- (g) the duration, level and field of study of the course or courses;
- (h) for each course the provider is registered to provide:
 - (i) the estimated total amount payable by a student for the course; and
 - (ii) if the course duration is 2 or more whole years — the estimated annual amount payable by a student for the course.

Examples of levels of study of courses for paragraph (g)

- 1 Primary.
- 2 Secondary.
- 3 Diploma.
- 4 Bachelor degree.

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5 Masters coursework.

6 PhD.

7 Non award.

8 Foundation studies.

Examples of fields of study of courses for paragraph (g)

1 Business administration.

2 English language study.

3 Visual and performing arts.

4 Education.

Part 3 Obligations on registered providers

Division 3.1 Information and records

3.01 Prescribed details about accepted students

For paragraph 19 (1) (a) of the Act, the following details are prescribed for a person who becomes an accepted student of a provider:

- (a) the student's full name;
- (b) the student's gender;
- (c) the student's date of birth;
- (d) the student's country of birth;
- (e) the student's nationality;
- (f) the alphanumeric code used to identify the course for which the student is accepted;
- (g) the agreed starting day of the course;
- (h) the day when the student is expected to complete the course;
- (i) the amount of course money that the provider received for the student for the course before confirming the student's enrolment using PRISMS;
- (j) an estimate of the total amount that the student is required to pay to the provider, directly or indirectly, to undertake the full course;
- (k) whether premiums have been paid for health insurance for the student (for example, overseas student health cover) before the course starts;
- (l) if the student has undertaken a test to determine the student's level of comprehension of English, the name of the test and the score the student received for the test;
- (m) the office of the Immigration Minister's Department where the student's application for a student visa was made or is expected to be made;

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- (n) if the student was in Australia when he or she became an accepted student, the number of the student's passport;
- (o) if the student holds an Australian visa, the number of the visa.

Examples of English tests for paragraph (l)

- 1 The International English Language Testing System test.
- 2 An Occupational English Test conducted by the National Language and Literacy Institute of Australia.
- 3 Teaching of English as a Foreign Language test.

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

- (1) For paragraph 19 (1) (c) of the Act, the following information is prescribed for an accepted student who does not begin his or her course when expected:
 - (a) the information mentioned in paragraphs 3.01 (a) to (h) for the student (if the provider has not already given that information to the Secretary using PRISMS);
 - (b) the student's current residential address (if the student has given that information to the provider);
 - (c) the office of the Immigration Minister's Department where the student's application for a student visa was made.
- (2) However, the information need not be given about an accepted student if, before the student's expected starting day:
 - (a) the student asks the provider for a later starting day; and
 - (b) the request is made on health or compassionate grounds; and
 - (c) the provider agrees to a later starting day for the student.

3.03 Other prescribed matters relating to accepted students

- (1) For paragraph 19 (1) (f) of the Act, the following are prescribed matters relating to an accepted student who terminates his or her studies before the course is completed:
 - (a) the information mentioned in paragraphs 3.01 (a) to (h) for the student (if the provider has not already given that information to the Secretary using PRISMS);
 - (b) the student's current residential address (if the student has given that information to the provider);
 - (c) the office of the Immigration Minister's Department in Australia to which the Secretary is to give the information received under this regulation.
- (2) For paragraph 19 (1) (f) of the Act, the following are prescribed matters relating to an accepted student who changes his or her course, or whose course changes in duration:
 - (a) the information mentioned in paragraphs 3.01 (a) to (h) for the student (if the provider has not already given that information to the Secretary using PRISMS);
 - (b) the student's current residential address (if the student has given that information to the provider);
 - (c) the office of the Immigration Minister's Department in Australia to which the Secretary is to give the information received under this regulation.

3.04 Details of which a registered provider must keep records

For subsection 21 (2) of the Act, the records of each accepted student who is enrolled with a provider or who has paid any course money for a course provided by the provider must include the following details:

- (a) the amounts of course money that the student has paid to the provider;
- (b) for an amount of course money that the student has paid to the provider for a course:
 - (i) whether the amount was paid for the full course or part of the course; and

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- (ii) if the amount was paid for the full course, the duration of the course; and
- (iii) if the amount was paid for part of the course, the duration of that part of the course;
- (c) copies of written agreements to which the provider and student are parties;
- (d) any amounts that:
 - (i) have become payable, directly or indirectly, to the provider by the student for the student to undertake a course; and
 - (ii) have not been paid.

Division 3.2 Tuition assurance scheme

3.05 Establishment of a tuition assurance scheme

For paragraph 22 (1) (a) of the Act, a tuition assurance scheme is established in accordance with these Regulations only if the Minister has approved the scheme and the approval has not been revoked under regulation 3.10.

3.06 Application for approval of a tuition assurance scheme

- (1) An application for approval of a tuition assurance scheme may be made to the Minister at the national office of the Department in Canberra.
- (2) The application must be in writing and must include the following information:
 - (a) the name of the operator of the scheme;
 - (b) the address of the operator's place of business;
 - (c) if the operator is not an individual, the address of the operator's registered office;
 - (d) how the scheme is to be operated, including details of the arrangements for providing suitable alternative courses to students if a provider cannot provide the courses that the students have paid for;

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- (e) each registered provider who is, or has applied to become, a member of the scheme;
 - (f) each course that:
 - (i) is offered by a registered provider who is, or has applied to become, a member of the scheme; and
 - (ii) will be covered by the scheme.
- (3) The Minister may ask an applicant to give any further information that is reasonably required for a proper consideration of the application.

3.07 Deciding an application for approval of a tuition assurance scheme

- (1) As soon as practicable after the Minister receives an application for approval of a tuition assurance scheme, the Minister must approve, or refuse to approve, the scheme.
- (2) The Minister must approve the scheme if there are reasonable grounds for believing that:
 - (a) the scheme includes the arrangements mentioned in subregulation 3.08 (1); and
 - (b) the scheme provides for the circumstances in which a provider's membership of the tuition assurance scheme may be cancelled; and
 - (c) the operator of the scheme has, as an expressed object, the operation of a tuition assurance scheme under the Act.
- (3) As soon as practicable after approving, or refusing to approve, the scheme, the Minister must:
 - (a) give the applicant written notice of the decision; and
 - (b) if the decision is a refusal, mention in the notice the reasons for the refusal and that the applicant may apply to the Administrative Appeals Tribunal for review of the decision.

3.08 Arrangements under paragraph 3.07 (2) (a)

- (1) For paragraph 3.07 (2) (a), the arrangements must ensure that, for an overseas student who has paid course money to a

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member of the scheme for a course, subregulation (2) is satisfied if:

- (a) the course does not start on the agreed starting day of the course and the student has not withdrawn before that day; or
 - (b) the member ceases to provide the course after it starts but before it is completed and the student has not withdrawn before the day when the member ceased to provide the course; or
 - (c) the member does not provide the course in full to the student because a sanction has been imposed on the member under Part 6 of the Act and the student has not withdrawn before the day when the sanction was imposed.
- (2) For subregulation (1), the student:
- (a) must be provided with a suitable alternative course to the course that the member has not started to provide, has ceased to provide or does not provide in full; and
 - (b) must not be required to pay any additional amount to undertake a part of the alternative course for which course money has been paid to the member.

3.09 Reporting requirements — operator of a tuition assurance scheme

- (1) This regulation applies to a tuition assurance scheme established in accordance with these Regulations.
- (2) Within 28 days after the end of a reporting period, the operator of a tuition assurance scheme must give to the Secretary and the Fund Manager the following information for the period about each provider who was a member of the scheme during the period:
 - (a) the name of the member and the address of the member's place of business;
 - (b) the name of each course, provided by the member, that was covered by the scheme;
 - (c) the number of students who paid to the member course money for a course before the agreed starting day of the course;

- (d) the number of overseas students for whom a suitable alternative course:
- (i) was required to be provided under the scheme; and
 - (ii) was provided under the scheme.
- (3) In subregulation (2):
- reporting period* means any of the following:
- (a) the 2000–01 financial year;
 - (b) the period starting on 1 July 2001 and ending on 31 December 2001;
 - (c) the 2002 calendar year;
 - (d) a subsequent calendar year.
- (4) The Secretary may, at any time by notice in writing, ask the operator of a tuition assurance scheme to provide any further information relevant to assessing whether the scheme continues to comply with paragraphs 3.07 (2) (a), (b) and (c).
- (5) The operator must provide the further information within a reasonable period specified in the notice.
- (6) The operator of the scheme must give the Secretary written notice of any change in the information provided for a scheme under subregulation (2) or (4) or regulation 3.06 within 14 days after the change.
- (7) An operator of a tuition assurance scheme who rejects an application by a provider to become a member of the scheme, or cancels a provider's membership of the scheme, must, within 14 days after the rejection or cancellation, tell the Secretary and the Fund Manager:
- (a) the provider's name and the address of the provider's place of business; and
 - (b) the reasons for rejecting the application or cancelling the membership.

Regulation 3.10

3.10 Revocation of approval of a tuition assurance scheme

- (1) The Minister may revoke approval of a tuition assurance scheme if:
 - (a) there are reasonable grounds for believing that paragraphs 3.07 (2) (a), (b) and (c) are not satisfied for the scheme; or
 - (b) the operator of the scheme fails to comply with regulation 3.09.
- (2) If the Minister revokes approval of a tuition assurance scheme, the Minister must:
 - (a) give the operator of the scheme written notice of the revocation; and
 - (b) mention in the notice the reasons for the revocation and that the applicant may apply to the Administrative Appeals Tribunal for review of the decision to revoke the approval.

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

For subsection 22 (3) of the Act, the following providers are exempt from the requirements of section 22 of the Act:

- (a) a provider who, under subsection 24 (2) of the Act, is exempt from the requirement to pay annual Fund contributions;
- (b) a provider who has a bank guarantee:
 - (i) that, in the circumstances mentioned in section 27 of the Act, indemnifies the provider for amounts that the provider may be required to pay under section 28 or 29 of the Act; and
 - (ii) that is approved by the Minister;
- (c) a provider who is a body corporate and who has an indemnity agreement, in writing:
 - (i) with another body corporate that is a parent organisation of the provider and is incorporated in Australia; and

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- (ii) that provides either of the following:
 - (A) in the circumstances mentioned in section 27 of the Act, the parent organisation indemnifies the provider for amounts that the provider may be required to pay under section 28 or 29 of the Act;
 - (B) if the provider cannot provide a course for which a student has paid the provider, the parent organisation will arrange, and pay for, provision of a suitable alternative course to the student; and
- (iii) that is approved by the Minister;
- (d) a provider who the Minister believes on reasonable grounds should not be expected to become a member of a tuition assurance scheme established in accordance with these Regulations.

Examples of circumstances in which a provider should not be expected to become a member of a tuition assurance scheme

- 1 Tuition assurance schemes do not cover the courses provided by the provider.
- 2 Each tuition assurance scheme that covers the kind of courses provided by the provider has rejected the provider's application for membership.

3.12 Application for approval of a bank guarantee

- (1) For subparagraph 3.11 (b) (ii), a provider may apply to the Minister for approval of a bank guarantee.
- (2) The application must be in writing and must include the following:
 - (a) a copy of the guarantee;
 - (b) information showing that the individuals signing the agreement for the provider have the authority to do so;
 - (c) information showing that the individuals signing the agreement for the bank have the authority to do so.

Regulation 3.13

3.13 Deciding an application for approval of a bank guarantee

- (1) As soon as practicable after the Minister receives an application by a provider for approval of a bank guarantee, the Minister must approve, or refuse to approve, the guarantee.
- (2) The Minister must approve the guarantee if there are reasonable grounds for believing that the bank that indemnifies the provider under the guarantee has, and will continue to have, financial resources, or access to financial resources, to pay the amounts for which the guarantee is given.
- (3) As soon as practicable after approving, or refusing to approve, the guarantee, the Minister must:
 - (a) give the applicant written notice of the decision; and
 - (b) if the decision is a refusal, mention in the notice the reasons for the refusal and that the applicant may apply to the Administrative Appeals Tribunal for review of the decision.

3.14 Application for approval of an indemnity agreement

- (1) For subparagraph 3.11 (c) (iii), a provider may apply to the Minister for approval of an indemnity agreement.
- (2) The application must be in writing and must include the following :
 - (a) a copy of the agreement;
 - (b) information showing that:
 - (i) the provider is a body corporate; and
 - (ii) the body corporate that indemnifies the provider under the agreement is a parent organisation of the provider; and
 - (iii) the provider and the parent organisation are different bodies corporate; and
 - (iv) the parent organisation is incorporated in Australia;
 - (c) information showing that the parent organisation has financial resources, or access to financial resources, to pay the amounts for which the indemnity is given, including

the most recent audited balance sheet and profit and loss account of the parent organisation;

- (d) information showing that the individuals signing the agreement for the provider have the authority to do so;
- (e) information showing that the individuals signing the agreement for the parent organisation have the authority to do so.

3.15 Deciding an application for approval of an indemnity agreement

- (1) As soon as practicable after the Minister receives an application by a provider for approval of an indemnity agreement, the Minister must approve, or refuse to approve, the agreement.
- (2) The Minister must approve the agreement if there are reasonable grounds for believing that the body corporate that indemnifies the provider under the agreement has, and will continue to have, financial resources, or access to financial resources, to pay the amounts for which the indemnity is given.
- (3) As soon as practicable after approving, or refusing to approve, the agreement, the Minister must:
 - (a) give the applicant written notice of the decision; and
 - (b) if the decision is a refusal, mention in the notice the reasons for the refusal and that the applicant may apply to the Administrative Appeals Tribunal for review of the decision.

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

A provider who is exempt from the requirements of section 22 of the Act under paragraph 3.11 (b) or (c) must, within 28 days after the end of a calendar year, give the Secretary and the Fund Manager:

- (a) written notice explaining why the provider is exempt from the requirements of section 22 of the Act; and
- (b) a copy of the bank guarantee or indemnity agreement mentioned in paragraph 3.11 (b) or (c).

Division 3.3 Annual Fund contributions

3.17 Providers who are not exempt from paying annual Fund contributions

The following providers are excluded from the scope of paragraph 24 (2) (b) of the Act:

- (a) a provider who is an institution of higher education specified in Table B of the definition of *institution* in subsection 4 (1) of the *Higher Education Funding Act 1988*;
- (b) a provider who is not a non-government school or a university.

3.18 Providers who are exempt from paying annual Fund contributions

- (1) For paragraph 24 (2) (c) of the Act, the following providers are exempt from the requirement to pay annual Fund contributions in a calendar year:
 - (a) a provider who, throughout the year, is administered by:
 - (i) the council of a TAFE college established under the **Vocational Education and Training Act 1990** of Victoria; or
 - (ii) the governing board of an adult education institution established under the **Adult, Community and Further Education Act 1991** of Victoria;
 - (b) a provider who satisfies subregulation (2) or (3) for each accepted student of the provider throughout the year.
- (2) A provider satisfies this subregulation for an accepted student if:
 - (a) any tuition fees payable for the student to undertake a full course provided by the provider are payable after the student has completed the full course; and
 - (b) the provider has a tuition payment in arrears agreement with the student.

- (3) A provider satisfies this subregulation for an accepted student if:
- (a) any tuition fees payable for the student to undertake a part of a course provided by the provider are payable after the student has completed the part of the course; and
 - (b) the provider has a tuition payment in arrears agreement with the student; and
 - (c) the provider has a current credit transfer agreement; and
 - (d) the provider tells the student about the credit transfer agreement before the student starts the course.
- (4) For paragraphs (2) (b) and (3) (b), a ***tuition payment in arrears agreement*** must:
- (a) be in writing; and
 - (b) be made before the agreed starting day of the course; and
 - (c) set out the following information about the course for which the student is accepted:
 - (i) the duration, level and field of study of the course;
 - (ii) the cost of the course;
 - (iii) the alphanumeric code used to identify the course; and
 - (d) set out the date or dates by which the student must pay any tuition fees payable for the course, or the part of a course (which must be after the student completes the course or part); and
 - (e) state that the provider may require payment of course money for items other than tuition fees before the student completes the course or part.

Examples of items for paragraph (e)

- 1 Books, equipment and other materials needed for the course.
- 2 Travel, accommodation and other domestic services provided to the student.
- 3 Health insurance cover for the student.

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- (5) For paragraph (3) (c), a *credit transfer agreement* must:
- (a) be in writing; and
 - (b) be made between the provider (*original provider*) for the course (*original course*) and another provider (*alternative provider*) who provides a suitable alternative course to the original course; and
 - (c) be made before the agreed starting day of the original course; and
 - (d) provide that the alternative provider will accept an application by an accepted student of the original provider to transfer to the alternative course if the original provider is unable to provide the original course or the part of the original course; and
 - (e) provide that, if the accepted student of the original provider completes the part of the original course, the part and the grade awarded for it by the original provider will be recognised by the alternative provider as if:
 - (i) the part of the course were provided to the student by the alternative provider; and
 - (ii) the grade were awarded by the alternative provider; and
 - (f) provide that no additional amount is payable to the alternative provider for the part of the course for which course money has been paid to the original provider.

Division 3.4 Refunds of course money

3.19 Amounts to be subtracted from course money

- (1) For paragraph 29 (1) (b) of the Act, the amount for a student in the circumstances mentioned in subsection 27 (1) of the Act is nil.
- (2) For paragraph 29 (1) (b) of the Act, the amounts for a student in the circumstances mentioned in subsection 27 (2) of the Act are the following:
 - (a) administration expenses totalling no more than the lesser of:
 - (i) \$250; and

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- (ii) 5% of the total amount of course money that the provider received in respect of the student for the course before the default day;
 - (b) the part of expenses for travel, accommodation and other domestic services that cannot be offset by providing the services to someone else;
 - (c) the amount of compulsory union fees;
 - (d) the cost of books, equipment and other materials needed for the course;
 - (e) the proportion of the course money that the provider received in respect of the student before the default day that is equal to the proportion of the course that was provided to the student before the default day.
- (3) When a registered provider refunds an amount to a student under section 29 of the Act, the provider must give the student a statement that explains how the amount has been worked out.

Regulation 4.01

Part 4 Penalties for the national code**4.01 Offences for breaching certain provisions of the national code**

- (1) For section 44 of the Act, a breach of a provision of the national code mentioned in the following table is an offence punishable by a fine not exceeding the penalty units mentioned in the table for the provision.

Provision of the national code	Penalty units
Paragraph 14	10
Paragraph 21	1
Paragraph 22	3
Paragraph 34	1
Paragraph 35	1
Paragraph 51	1

- (2) Breach of a provision of the national code mentioned in the table in subregulation (1) is not an offence unless, before the conduct (including an omission) constituting the breach occurred, the text of the provision was set out in Schedule 1.
- (3) An offence created by subregulation (1) is a strict liability offence.

Note Schedule 1 sets out the text of the provisions of the national code mentioned in the table as in force at the commencement of these Regulations. In considering the application of these provisions, you should refer to the full text of the national code available from www.detya.gov.au/esos.

Part 5 The ESOS Assurance Fund

5.01 Procedures of the Contributions Review Panel

For subsection 57 (2) of the Act, the following procedures apply to the Panel:

- (a) the Chair of the Panel must preside at all meetings of the Panel;
- (b) a quorum for a meeting of the Panel is the Chair and 6 other members of the Panel.

5.02 Application for review by the Panel

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

5.03 Fees for review by Fund Manager or Panel

For subsection 70 (1) of the Act, the fee for an application for review by the Fund Manager or the Panel is \$300.

Regulation 6.01

Part 6 Enforcement — infringement notices

6.01 Purpose of Part 6

For section 106 of the Act, this Part provides a procedure under which a registered provider who is alleged to have committed an offence against subsection 104 (1) or section 105 of the Act may, as an alternative to having the matter dealt with by a court, dispose of the matter by payment of a monetary penalty (an *infringement notice penalty*) specified in a notice (an *infringement notice*) served on the provider.

6.02 Infringement notices

- (1) If there are reasonable grounds for believing that a registered provider has committed an offence against subsection 104 (1) or section 105 of the Act, the Minister may serve an infringement notice, or cause an infringement notice to be served, on the provider in accordance with regulation 6.03.
- (2) The notice must set out the following information:
 - (a) the name of the provider served and the address of the provider's place of business;
 - (b) the provision of the Act that it is alleged has been contravened;
 - (c) details of the alleged offence, including the day, and (if appropriate) the time, on which it is alleged to have been committed;
 - (d) the maximum penalty that may be imposed by a court for the offence;
 - (e) the amount payable as the infringement notice penalty;
 - (f) a statement that, if the provider prefers that the matter not be dealt with by a court, the provider may signify that preference by paying the infringement notice penalty:
 - (i) before the end of 28 days after the day the notice is served; or

Regulation 6.02

- (ii) if a further period is allowed by the Minister under regulation 6.04 — before the end of that further period; or
 - (iii) if payment by instalments is permitted under regulation 6.05 — in accordance with the permission;
 - (g) how, and where, the infringement notice penalty may be paid;
 - (h) a statement that if, before the end of 28 days after service of the notice, the provider notifies the Minister, in the manner set out in the infringement notice, of any facts or matters that the provider believes ought to be taken into account in relation to the alleged offence:
 - (i) time for payment of the penalty will be extended to the extent necessary to enable a decision to be made about those facts or matters; and
 - (ii) the Minister must consider the matters mentioned in subregulation 6.06 (5);
 - (i) a statement of the matters, mentioned in subregulation 6.06 (5), that the Minister must consider;
 - (j) a statement that, if the infringement notice penalty is paid in time:
 - (i) the provider's liability for the offence is discharged; and
 - (ii) further proceedings cannot be taken against the provider for the offence; and
 - (iii) the provider is not taken to have been convicted of the offence;
 - (k) a statement to the effect that, if none of the things mentioned in paragraph (f) or (h) is done within the time specified, the provider may be prosecuted for the alleged offence;
 - (l) the name of the person who serves the notice.
- (3) An infringement notice may contain any other information that the Minister considers necessary.
- (4) The notice must be served on the provider not more than 12 months after the alleged commission of the offence.

Regulation 6.03

Note The infringement notice penalty in respect of an offence is:

- (a) for an individual — 4 penalty units; or
- (b) for a body corporate — 20 penalty units.

See Act, subsection 106 (2).

6.03 Service of infringement notices

- (1) An infringement notice may be served on an individual:
 - (a) personally; or
 - (b) by sending it by pre-paid post to the last-known place of residence or business of the individual; or
 - (c) by leaving the notice:
 - (i) at the last-known place of residence or business of the individual; and
 - (ii) with a person, apparently over the age of 16 years, who appears to live or work at the place.
- (2) An infringement notice may be served on a body corporate:
 - (a) by sending it by pre-paid post to the last-known place of business or the registered office of the body corporate; or
 - (b) by leaving the notice:
 - (i) at the last-known place of business or the registered office of the body corporate; and
 - (ii) with a person, apparently over the age of 16 years, who appears to live or work at the place.

6.04 Extension of time to pay

- (1) On written application by a provider on whom an infringement notice has been served, the Minister may grant, if satisfied that in all the circumstances it is reasonable to do so, a further period for payment of the infringement notice penalty, whether or not the period of 28 days after the date of service of the notice has ended.
- (2) If application is made after the end of the 28 day period, the application must include an explanation why the alleged offender could not deal with the notice within that period.

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- (3) The Minister must:
 - (a) grant or refuse a further period; and
 - (b) give the applicant written notice of the decision; and
 - (c) if the decision is a refusal — mention in the notice the reasons for refusal.
- (4) The provider must pay the penalty:
 - (a) if a further period is granted — before the end of that period; or
 - (b) if the decision is a refusal — before the end of the later of:
 - (i) 7 days after receiving notice of the refusal; or
 - (ii) the 28 day period.

6.05 Payment by instalments

- (1) If the Minister is satisfied that in all the circumstances it is proper to do so, he or she may make an arrangement with a provider on whom an infringement notice has been served (whether or not the period of 28 days after the date of service of the notice has ended) for the payment of the amount of the infringement notice penalty by instalments.
- (2) The Minister must:
 - (a) grant or refuse to make an arrangement; and
 - (b) give the provider written notice of the decision; and
 - (c) if the decision is a refusal — mention in the notice the reasons for refusal.
- (3) The provider must pay the penalty:
 - (a) if an arrangement is made — in accordance with the arrangement; or
 - (b) if the decision is a refusal — before the end of the later of:
 - (i) the 28 day period; and
 - (ii) 7 days after receiving notice of the refusal.

Regulation 6.06

6.06 If infringement notice disputed

- (1) Whether or not a notice is received under subregulation (2), the Minister, if satisfied that in all the circumstances it is proper to do so, may withdraw an infringement notice.
- (2) If, before the end of 28 days after receiving an infringement notice, a provider gives the Minister notice under paragraph 6.02 (2) (h), the Minister must decide whether to withdraw the infringement notice.
- (3) The Minister must:
 - (a) withdraw, or refuse to withdraw, the notice; and
 - (b) give the provider written notice of the decision; and
 - (c) if the decision is a refusal — mention in the notice the reasons for refusal.
- (4) If the Minister decides to refuse to withdraw an infringement notice, notice of that decision must state that:
 - (a) if the amount of the infringement notice penalty is paid within 28 days after notice of the decision is given to the provider, the provider will not be prosecuted for the alleged offence; and
 - (b) if that amount is not paid in accordance with paragraph (a), the provider may be prosecuted for the alleged offence.
- (5) In making a decision, the Minister must consider:
 - (a) the facts or matters set out in the notice (if any) given under paragraph 6.02 (2) (h); and
 - (b) the circumstances in which the offence mentioned in the notice is alleged to have been committed; and
 - (c) whether the provider has been convicted previously of an offence against subsection 104 (1) or section 105 of the Act; and
 - (d) whether an infringement notice has previously been given to the provider for an offence of the same kind as the offence mentioned in the notice; and
 - (e) any other matter the Minister considers relevant to the decision.

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Note Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them.

6.07 Payment of penalty if infringement notice not withdrawn

If the Minister refuses to withdraw an infringement notice, the provider for whom the withdrawal has been refused must pay the infringement notice penalty before the end of 28 days after receiving notice of the refusal.

6.08 Effect of payment of infringement notice penalty

- (1) If a provider, who is served with an infringement notice, pays the infringement notice penalty in accordance with this Part:
 - (a) the provider's liability in respect of the offence is discharged; and
 - (b) further proceedings cannot be taken against the provider for the offence; and
 - (c) the provider is not convicted of the offence.
- (2) Subregulation (1) applies to a provider who makes an arrangement to pay the infringement notice penalty by instalments, only if the provider makes payments in accordance with the arrangement.

6.09 Admissions under paragraph 6.02 (2) (h)

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

6.10 Matter not to be taken into account in determining sentence

- (1) This regulation applies if a provider served with an infringement notice:
 - (a) elects not to pay the infringement notice penalty; and

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- (b) is prosecuted for, and convicted of, the alleged offence mentioned in the infringement notice.
- (2) In determining the penalty to be imposed, the court must not take into account the fact that the provider chose not to pay the infringement notice penalty.

6.11 Evidence for hearing

- (1) At the hearing of a prosecution for an offence mentioned in an infringement notice, the following certificates are evidence of the facts stated in the certificate:
 - (a) a certificate signed by the Minister or an authorised officer and stating that:
 - (i) the infringement notice was served on the alleged offender; and
 - (ii) the infringement notice penalty has not been paid in accordance with this Part;
 - (b) a certificate signed by the Minister or an authorised officer and stating that the notice was withdrawn on a day specified in the certificate;
 - (c) a certificate signed by the Minister and stating that:
 - (i) a further period was refused, under regulation 6.04, for payment of the infringement notice penalty; and
 - (ii) the infringement notice penalty has not been paid in accordance with this Part;
 - (d) a certificate signed by the Minister and stating that:
 - (i) for regulation 6.04, the further time mentioned in the certificate for payment of the infringement notice penalty was granted; and
 - (ii) the infringement notice penalty was not paid in accordance with the notice or within the further time.
- (2) A certificate that purports to have been signed by the Minister or an authorised officer is taken to have been signed by that person unless the contrary is proved.

Regulation 6.13

(3) In this regulation:

authorised officer means a person who:

- (a) is authorised in writing by the Secretary to exercise powers under this regulation; and
- (b) is an employee of the Department; and
- (c) is an SES employee or an acting SES employee.

6.12 Payment of penalty by cheque

If a cheque is given to the Commonwealth in payment of all or part of the amount of an infringement notice penalty, the payment is taken not to have been made unless the cheque is honoured on presentation.

6.13 Infringement notice not compulsory, etc

Nothing in this Part is to be taken:

- (a) to require that a provider suspected of having contravened subsection 104 (1) or section 105 of the Act be served an infringement notice; or
- (b) to affect the liability of a provider to be prosecuted for an alleged offence, if:
 - (i) an infringement notice is not served on the provider for the offence; or
 - (ii) an infringement notice is served, and withdrawn; or
- (c) to limit the penalty that may be imposed by a court on a provider convicted of an offence.

Note Part 7 has been reserved for future use.

Regulation 8.01

Part 8 Miscellaneous**8.01 Review by Administrative Appeals Tribunal**

An application may be made to the Administrative Appeals Tribunal under the *Administrative Appeals Tribunal Act 1975* for review of a decision by the Minister:

- (a) under regulation 3.08 not to approve a tuition assurance scheme; or
- (b) under regulation 3.11 to revoke approval of a tuition assurance scheme; or
- (c) under regulation 3.14 not to approve a bank guarantee; or
- (d) under regulation 3.16 not to approve an indemnity agreement.

Part 9 Transitional

9.01 Registration of new providers before first annual Fund contribution paid

- (1) This regulation applies if:
 - (a) under subsection 9 (1) of the Act, a designated authority for a State recommends that a provider be registered under the Act; and
 - (b) contributions criteria have not been determined under Division 4 of Part 5 of the Act.
- (2) For the application of subsection 9 (2) of the Act to the provider, paragraph 9 (2) (b) of the Act does not apply.
- (3) This regulation ceases to have effect after contributions criteria are first determined under Division 4 of Part 5 of the Act.

9.02 Tuition assurance schemes approved under old Regulations

- (1) This regulation applies to a tuition assurance scheme that was approved under regulation 17 of the old Regulations (unless the approval has been revoked).
- (2) The operator of the scheme is taken to have applied for approval of the scheme under regulation 3.06.
- (3) The scheme is taken, for subsection 22 (1) of the Act, to be a tuition assurance scheme established in accordance with these Regulations.
- (4) Subregulation (3) ceases to apply:
 - (a) when the Minister approves the scheme under regulation 3.07; or
 - (b) if the Minister refuses to approve the scheme:
 - (i) unless subparagraph (ii) applies, at the end of the time within which an application for review of the Minister's decision can be made; or

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(ii) if an application for review is made, when the review decision has effect.

(5) In this regulation:

old Regulations means the Education Services for Overseas Students (Registration of Providers and Financial Regulation) Regulations.

Schedule 1 Text of national code provisions for Part 4

(regulation 4.01)


Note This Schedule sets out the text of the provisions of the national code, mentioned in the table in regulation 4.01, as in force at the commencement of these Regulations. In considering the application of these provisions, you should refer to the full text of the national code available from www.detya.gov.au/esos.

- 14 The registered provider must advise the Authority, in writing, about any change in the ownership or management of the provider within 14 days after the change is made.
- 21 The registered provider must not accept an overseas student, or an intending overseas student, for enrolment in a course if the registered provider has not given to the student:
- 21.1 The following information about the course:
- (i) a general description of the content;
 - (ii) the qualification or accreditation gained on completion;
 - (iii) the duration;
 - (iv) the teaching methods used (including any field trip or work experience requirements);
 - (v) the assessment methods used;
 - (vi) if another provider is also involved in providing the course, that fact and the location of course delivery by that provider;
 - (vii) details of any arrangements with other providers for recognition of the course or completed components of the course; and
- 21.2 A general description of:
- (i) the facilities (for example classrooms, furniture, fittings);
 - (ii) the equipment (for example audio-visual teaching aids);
 - (iii) the learning resources (for example reference texts and software)
- available to students undertaking the course; and
- 21.3 An itemised list of all fees payable to the provider; and
- 21.4 Information about the minimum level of English language proficiency, educational qualifications and work experience

required for the student to be accepted for the course (unless this is clearly not relevant).

- 22 The provider must not accept payment of any fees for a course from an overseas student, or an intending overseas student, if the registered provider has not given to the student:
- 22.1 A copy of the agreement, if the provider and the student have a written agreement in accordance with ss28(1) of the ESOS Act 2000; or
- 22.2 If there is no such agreement, a written statement to that effect.
- 34 The registered provider must keep a record of each accepted student's academic performance for each requirement of the course for which the student is enrolled.
- 35 Subject to this paragraph, the registered provider must also keep a record of an overseas student's attendance at the course except for students studying for a higher education qualification. The Secretary may, in writing, require the provider to keep the attendance records of students studying for a higher education qualification, where the Secretary considers that it is necessary to do so for monitoring compliance by the provider with the ESOS Act 2000.
- 51 The registered provider must take all reasonable steps (by including, for example, an appropriate note in the application forms) to ensure that the student providing personal information to the provider is aware that:
- 51.1 The information provided by the student to the provider may be made available to Commonwealth and State agencies and the Fund Manager of the ESOS Assurance Fund, pursuant to obligations under the ESOS Act 2000 and the National Code; and
- 51.2 The provider is required, under s19 of the ESOS Act 2000, to tell the Department about:
- (i) certain changes to the student's enrolment; and
- (ii) any breach by the student of a student visa condition relating to attendance or satisfactory academic performance.

Note

1. Notified in the *Commonwealth of Australia Gazette* on  2001.

23 May