



Education Services for Overseas Students Regulations 2019

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 04 April 2019

Peter Cosgrove
Governor-General

By His Excellency's Command

Dan Tehan
Minister for Education

Contents

Part 1—Preliminary	1
Division 1—Preliminary	1
1 Name.....	1
2 Commencement	1
3 Authority.....	1
4 Schedules	1
Division 2—Definitions	2
5 Definitions	2
6 Meaning of <i>student visa</i>	3
7 Tuition fees	3
Part 2—Registration of providers	5
8 Information to be entered on the Register	5
Part 3—Obligations on registered providers	7
Division 1—Giving information about accepted students	7
9 Students who become accepted.....	7
10 Students who do not begin courses when expected.....	8
11 Other prescribed matters	8
12 Prescribed condition of student visa.....	10
Division 2—Record keeping	11
13 Details of which a registered provider must keep records.....	11
14 Fees for accessing records.....	12
Part 4—Infringement notices	13
15 Purpose of this Part	13
16 Infringement notices	13
17 Service of infringement notices	14
18 Extension of time to pay	14
19 Payment by instalments	15
20 If infringement notice disputed	15
21 Payment of penalty if infringement notice not withdrawn	16
22 Effect of payment of infringement notice penalty.....	16
23 Admissions under paragraph 16(2)(h).....	17
24 Matter not to be taken into account in determining sentence	17
25 Evidence for hearing.....	17
26 Payment of penalty by cheque	18
27 Infringement notice not compulsory etc.....	18
Part 5—Application and transitional provisions	19
Division 1—Provisions for this instrument as originally made	19
28 Definitions	19
29 Things done under the old regulations	19
Schedule 1—Repeals	20
<i>Education Services for Overseas Students Regulations 2001</i>	20

Part 1—Preliminary

Division 1—Preliminary

1 Name

This instrument is the *Education Services for Overseas Students Regulations 2019*.

2 Commencement

- (1) Each provision of this instrument 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.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 October 2019.	1 October 2019

Note: This table relates only to the provisions of this instrument as originally made.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

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

3 Authority

This instrument is made under the *Education Services for Overseas Students Act 2000*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Section 5

Division 2—Definitions

5 Definitions

- Note: A number of expressions used in this instrument are defined in the Act, including the following:
- (a) accepted student;
 - (b) agent;
 - (c) ESOS agency;
 - (d) provider.

In this instrument:

ABN (short for Australian Business Number) has the same meaning as in the *A New Tax System (Australian Business Number) Act 1999*.

ACN (short for Australian Company Number) has the same meaning as in the *Corporations Act 2001*.

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

Australian Qualifications Framework means the framework for recognition and endorsement of qualifications:

- (a) that is established by the Council consisting of the Ministers for the Commonwealth and each State and Territory responsible for higher education; and
- (b) that is to give effect to agreed standards in relation to the provision of education in Australia.

infringement notice has the meaning given by subsection 15(2).

infringement notice penalty has the meaning given by subsection 15(2).

non-tuition fees, for a course, means an amount of money that:

- (a) a provider receives, directly or indirectly, from:
 - (i) an overseas student who is accepted for enrolment, or enrolled, in the course; or
 - (ii) an intending overseas student who intends to become, or who has taken any steps towards becoming, accepted for enrolment, or enrolled, in the course; or
 - (iii) another person who pays the amount on behalf of such an overseas student or intending overseas student; and
- (b) is not tuition fees.

public provider means:

- (a) a government school; or
- (b) a registered VET provider that is owned or controlled (whether directly or indirectly) by a State or Territory; or
- (c) a Table A provider (within the meaning of the *Higher Education Support Act 2003*).

registered migration agent has the same meaning as in Part 3 of the *Migration Act 1958*.

registered office of a body corporate means the office of the body corporate that is the registered office in accordance with the Commonwealth, State, Territory or foreign law by or under which the body corporate is incorporated.

6 Meaning of *student visa*

For the purposes of the definition of **student visa** in section 5 of the Act, a visa of a subclass mentioned in the definition of **student visa** in regulation 1.03 of the *Migration Regulations 1994* is a student visa unless it is granted to:

- (a) a Foreign Affairs student (within the meaning of the *Migration Regulations 1994*); or
- (b) a Defence student (within the meaning of the *Migration Regulations 1994*); or
- (c) a secondary exchange student (within the meaning of the *Migration Regulations 1994*); or
- (d) an overseas student who has been approved under a scholarship scheme, or an exchange scheme, sponsored by the Commonwealth to undertake a course of study or training in Australia; or
- (e) a person who satisfies the secondary criteria, but not the primary criteria, under the *Migration Regulations 1994* for the grant of the visa.

7 Tuition fees

- (1) This section applies to a class of fees that a provider receives, directly or indirectly, from:
 - (a) an overseas student or intending overseas student; or
 - (b) another person who pays the fees on behalf of an overseas student or intending overseas student.
- (2) For the purposes of paragraph (b) of the definition of **tuition fees** in section 7 of the Act, the class is prescribed if the fees are for:
 - (a) lectures, tutorials, tutoring sessions, training, excursions, fieldwork, laboratories, or practical experience, that:
 - (i) form part of a course that the provider is providing, or offering to provide, to the student (whether or not they are a mandatory part of the course); or
 - (ii) are intended to assist the student to progress in such a course; or
 - (b) matters ancillary to the activities mentioned in paragraph (a).

Example: Paragraph (b) covers supplying materials for use in laboratories or training.
- (3) For the purposes of paragraph (c) of the definition of **tuition fees** in section 7 of the Act, the class is prescribed if the fees are for:
 - (a) books or equipment sold to the student; or
 - (b) health insurance; or
 - (c) administration; or

Section 7

- (d) accommodation (other than accommodation that the student occupies for a short time while undertaking training, excursions, fieldwork or practical experience to which paragraph (2)(a) applies); or
- (e) assisting the student to apply for or hold a student visa.

Part 2—Registration of providers

8 Information to be entered on the Register

- (1) For the purposes of paragraph 14A(4)(i) of the Act, the following matters are prescribed in relation to a provider's registration to provide a course or courses at a location or locations:
 - (a) the address of the provider's principal place of business;
 - (b) if the provider is a body corporate that is not a public provider—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 phone number and email address;
 - (e) the provider's ABN or ACN (if any);
 - (f) the provider's trading name or names (if any);
 - (g) if the provider is not a public provider and is not an individual—the name, phone number and email address of the provider's principal executive officer;
 - (h) the maximum number of overseas students, approved by the ESOS agency for the provider, to whom the course or courses may be provided;
 - (i) for each of the courses—the matters mentioned in subsection (2).
- (2) For the purposes of paragraph (1)(i), the matters are the following:
 - (a) the level and field of study of the course (see subsection (3));
 - (b) the duration of the course, including any holiday breaks;
 - (c) the estimated total of the tuition fees payable for an overseas student for the course;
 - (d) the estimated total of the non-tuition fees payable for an overseas student for the course;
 - (e) whether the provider will only accept payment of tuition fees and non-tuition fees for the course in arrears;
 - (f) whether the course will be provided:
 - (i) by the provider; or
 - (ii) by another registered provider, in accordance with an arrangement that the other registered provider has or will have with the provider for that particular course; or
 - (iii) by a person who is not a registered provider, in accordance with an arrangement that the person has or will have with the provider for that particular course;
 - (g) for each location at which the provider is registered to provide the course:
 - (i) the address of the location; and
 - (ii) the phone number and email address for the location; and
 - (iii) if subparagraph (f)(i) applies—the name, phone number and email address of the individual who is responsible for the day-to-day operation of the provider at the location; and

Section 8

- (iv) if subparagraph (f)(ii) or (iii) applies—the name, phone number and email address of the individual who is responsible for the day-to-day operation of the other registered provider, or the other person, at the location; and
 - (v) the maximum number of overseas students, approved by the ESOS agency for the provider, to whom the course may be provided at the location;
 - (h) if subparagraph (f)(ii) or (iii) applies—the matters prescribed by paragraphs (1)(a) to (g) as if the other registered provider, or the other person, were the provider mentioned in those paragraphs.
- (3) For the purposes of paragraph (2)(a):
- (a) the level may be, but is not required to be, one of the following:
 - (i) a level of the Australian Qualifications Framework, as existing at the commencement of this section;
 - (ii) non-award;
 - (iii) foundation studies;
 - (iv) English language intensive courses for overseas students; and
 - (b) the field of study must be:
 - (i) a detailed field under the Australian Standard Classification of Education, published by the Australian Statistician in 2001, as existing on 1 October 2019; or
 - (ii) English language study.

Part 3—Obligations on registered providers

Division 1—Giving information about accepted students

9 Students who become accepted

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

- (a) the student's residential address, phone number and email address;
- (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) if the student is less than 18 years old:
 - (i) the name, residential address, phone number and email address of a person other than the provider who has legal authority to act on the student's behalf; and
 - (ii) the relationship of the person to the student (for example, parent or guardian);
- (g) the unique identifier of the student's course;
- (h) the location of the course;
- (i) the agreed starting day of the course;
- (j) the day when the student is expected to complete the course;
- (k) the total of the tuition fees paid for the student for the course;
- (l) if the provider is not a public provider—the period to which the tuition fees paid as mentioned in paragraph (k) relate;
- (m) the total of the non-tuition fees paid for the student for the course;
- (n) the total of the tuition fees that are required to be paid for the student to undertake the course (including fees that have already been paid);
- (o) if the student was in Australia when the student became an accepted student—the number of the student's passport;
- (p) if the student holds an Australian visa—the number of the visa;
- (q) if:
 - (i) undertaking a particular test is a requirement specified under paragraph 500.213(3)(a) of Schedule 2 to the *Migration Regulations 1994* (requirements about English language proficiency for Subclass 500 visas); and
 - (ii) the student has undertaken that test (whether or not for the purposes of a Subclass 500 (Student) visa);the name of the test, the day the student undertook the test and the score the student received for the test;
- (r) if:
 - (i) the student holds, or has applied for, a Subclass 500 (Student) visa; and

Part 3 Obligations on registered providers

Division 1 Giving information about accepted students

Section 10

- (ii) when the student applied for the visa, the student was within a class of applicants specified under paragraph 500.213(3)(b) of Schedule 2 to the *Migration Regulations 1994* (classes of applicants to which subclause 500.213(1) does not apply);
that class.

10 Students who do not begin courses when expected

- (1) For the purposes of paragraph 19(1)(c) of the Act, for an accepted student who does not begin his or her course when expected, the student's residential address, phone number and email address are prescribed.
- (2) Subsection (1) of this section does not apply 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 the basis of compassionate or compelling circumstances; and
 - (c) the provider agrees to a later starting day for the student.

11 Other prescribed matters

- (1) This section applies in relation to an accepted student who is accepted for enrolment, or enrolled, in a course provided by a registered provider.
- (2) For the purposes of paragraph 19(1)(f) of the Act, the information mentioned in an item of the following table must be given within the applicable number of days (within the meaning of subsection 19(1A) of the Act) after the event specified in column 1 of the item occurs (subject to the condition, if any, mentioned in column 2 of the item being satisfied).

Other prescribed matters relating to accepted students

Item	Column 1 Event	Column 2 Condition	Column 3 Information
1	the student becomes an accepted student of the provider	an agent of the provider facilitated the acceptance for enrolment of the student in the course	(a) the agent's name; and (b) the address of the agent's principal place of business; and (c) if the agent is a body corporate—the address of the body corporate's registered office; and (d) the agent's postal address (if different from the address mentioned in paragraph (b) or (c)); and (e) the agent's phone number, email address and website address (if any); and (f) the agent's ABN or ACN (if any); and (g) the agent's trading name or names (if any); and (h) if the agent is a body corporate—the names of the body corporate's

Section 11

Other prescribed matters relating to accepted students			
Item	Column 1 Event	Column 2 Condition	Column 3 Information
			<p>directors; and</p> <p>(i) if the agent is a registered migration agent—the agent’s Migration Agents Registration Number; and</p> <p>(j) the following information about each of the agent’s employees (if any) who are involved in the agent facilitating the enrolment:</p> <p>(i) the employee’s name;</p> <p>(ii) the employee’s email address;</p> <p>(iii) if the employee is a registered migration agent—the employee’s Migration Agents Registration Number</p>
2	the student becomes accepted for enrolment in the course	immediately before the event mentioned in column 1 occurred, the student was an accepted student of the provider because of another course provided by the provider	<p>the following information in relation to the course mentioned in column 1:</p> <p>(a) the information mentioned in paragraphs 19(1)(a) and (b) of the Act;</p> <p>(b) the information mentioned in item 1 of this table (subject to the condition mentioned in column 2 of that item)</p>
3	the provider becomes aware that any of the details mentioned in paragraph 9(a) of this instrument in relation to the student have changed	none	the change to the details
4	the provider becomes aware that any of the details mentioned in paragraph 9(f) of this instrument in relation to the student have changed	the student is less than 18 years old	the change to the details
5	the course does not begin when expected	paragraph 19(1)(c) of the Act does not apply	the student’s residential address, phone number and email address
6	the student changes his or her course	none	<p>(a) the day the student changes his or her course (whether or not the change takes effect on that day); and</p> <p>(b) the student’s residential address, phone number and email address</p>
7	the course changes in duration	none	<p>(a) the day the change takes effect; and</p> <p>(b) the student’s residential address, phone number and email address</p>
8	the location at which the course is provided	none	<p>(a) the day the change takes effect; and</p> <p>(b) the student’s residential address,</p>

Part 3 Obligations on registered providers
Division 1 Giving information about accepted students

Section 12

Other prescribed matters relating to accepted students

Item	Column 1 Event	Column 2 Condition	Column 3 Information
	changes		phone number and email address
9	the student's studies are deferred or suspended	none	(a) the day the deferment or suspension starts; and (b) the expected duration of the deferment or suspension; and (c) the student's residential address, phone number and email address
10	the end date of a deferment or suspension of the student's studies is changed	none	the change to the end date
11	the provider gives particulars under subsection 19(2) of the Act of a breach by the student of a condition of a student visa	none	(a) the student's residential address in Australia; and (b) the student's residential address overseas; and (c) the student's phone number and email address
12	the student's studies are terminated (whether or not by the student) before the course is completed	none	(a) the day the student's studies are terminated (whether or not the termination takes effect on that day); and (b) the last day of the student's studies; and (c) the student's residential address, phone number and email address
13	a calendar month ends	during the month, the provider received for the student tuition fees for the course	(a) the amount of each payment made; and (b) the day the payment was made; and (c) the period to which the payment relates

12 Prescribed condition of student visa

For the purposes of subsections 19(2) and 20(1) of the Act, visa condition 8202, set out in Schedule 8 to the *Migration Regulations 1994*, is prescribed.

Note: Subsection 19(2) of the Act requires a registered provider to give particulars of any breach by an accepted student of a prescribed condition of a student visa.

Division 2—Record keeping

13 Details of which a registered provider must keep records

- (1) For the purposes of paragraph 21(2)(d) of the Act, the records of each accepted student who is enrolled with a registered provider or who has paid any tuition fees for a course provided by the provider must include the following details:
 - (a) the total of the tuition fees paid for the student for the course;
 - (b) for each amount of tuition fees paid for the student for the course:
 - (i) whether the amount was paid for the full course or part of the course; and
 - (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) the total of the non-tuition fees paid for the student for the course;
 - (d) the total of the tuition fees and non-tuition fees paid for the student for the course;
 - (e) any tuition fees or non-tuition fees for the student for the course that:
 - (i) have become payable; and
 - (ii) have not been paid;
 - (f) copies of written agreements to which the provider and student are parties;
 - (g) the amount that the student will be charged to access the student's records;
 - (h) if an agent of the provider facilitated, or is facilitating, the enrolment of the student—the following details:
 - (i) the agent's name;
 - (ii) the address of the agent's principal place of business;
 - (iii) if the agent is a body corporate—the address of the body corporate's registered office;
 - (iv) the agent's postal address (if different from the address mentioned in subparagraph (ii) or (iii));
 - (v) the agent's phone number, email address and website address (if any);
 - (vi) the agent's ABN or ACN (if any);
 - (vii) the agent's trading name or names (if any);
 - (viii) if the agent is a body corporate—the names of the body corporate's directors;
 - (ix) if the agent is a registered migration agent—the agent's Migration Agents Registration Number;
 - (x) the information mentioned in subsection (2) about each of the agent's employees (if any) who were or are involved in the agent facilitating the enrolment.
- (2) For the purposes of subparagraph (1)(h)(x), the information about the employee is the following:
 - (a) the employee's name;
 - (b) the employee's email address;

Part 3 Obligations on registered providers

Division 2 Record keeping

Section 14

- (c) if the employee is a registered migration agent—the employee’s Migration Agents Registration Number.

14 Fees for accessing records

The fee for an accepted student to access a record mentioned in section 13 must not exceed the cost incurred by the provider in providing access to that record.

Part 4—Infringement notices

15 Purpose of this Part

- (1) This Part is made for the purposes of section 106 of the Act.
- (2) This Part provides a procedure under which a registered provider who is alleged to have committed an offence to which section 106 of the Act applies 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.

16 Infringement notices

- (1) If there are reasonable grounds for believing that a registered provider has committed an offence to which section 106 of the Act applies, the ESOS agency for the provider may serve an infringement notice, or cause an infringement notice to be served, on the provider in accordance with section 17 of this instrument.
- (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
 - (ii) if a further period is allowed by the ESOS agency under section 18—before the end of that further period; or
 - (iii) if payment by instalments is permitted under section 19—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 ESOS agency, 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 ESOS agency must consider the matters mentioned in subsection 20(5);
 - (i) a statement of the matters, mentioned in subsection 20(5), that the ESOS agency must consider;

Section 17

- (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 ESOS agency considers necessary.
- (4) The notice must be served on the provider not more than 12 months after the alleged commission of the offence.

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 subsection 106(2) of the Act.

17 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.

18 Extension of time to pay

- (1) On written application by a provider on whom an infringement notice has been served, the ESOS agency for the provider 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 day 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 provider could not deal with the notice within that period.
 - (3) The ESOS agency must:
 - (a) grant or refuse a further period; 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) 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.

19 Payment by instalments

- (1) If:
 - (a) an infringement notice has been served on a provider; and
 - (b) the ESOS agency for the provider is satisfied that in all the circumstances it is proper to do so;

the ESOS agency may make an arrangement with the provider (whether or not the period of 28 days after the day of service of the notice has ended) for the payment of the amount of the infringement notice penalty by instalments.
- (2) The ESOS agency 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) 7 days after receiving notice of the refusal; and
 - (ii) the 28 day period.

20 If infringement notice disputed

- (1) If:
 - (a) an infringement notice has been served on a provider; and
 - (b) the ESOS agency for the provider is satisfied that in all the circumstances it is proper to do so;

the ESOS agency may withdraw the notice (whether or not the ESOS agency has received a notice under paragraph 16(2)(h)).
- (2) If, before the end of 28 days after receiving an infringement notice, a provider gives the ESOS agency for the provider notice under paragraph 16(2)(h), the ESOS agency must decide whether to withdraw the infringement notice.
- (3) The ESOS agency must:

Section 21

- (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 ESOS agency 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 ESOS agency must consider:
- (a) the facts or matters (if any) of which the provider notifies the ESOS agency in response to the infringement notice as mentioned in paragraph 16(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 to which section 106 of the Act applies; 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 ESOS agency considers relevant to the decision.

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.

21 Payment of penalty if infringement notice not withdrawn

If:

- (a) an infringement notice has been served on a provider; and
- (b) the ESOS agency for the provider refuses to withdraw the infringement notice;

the provider must pay the infringement notice penalty before the end of 28 days after receiving notice of the refusal.

22 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) Subsection (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.

23 Admissions under paragraph 16(2)(h)

Evidence of an admission made by a provider in a notice under paragraph 16(2)(h) is inadmissible in proceedings against the provider for the alleged offence.

24 Matter not to be taken into account in determining sentence

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

25 Evidence for hearing

- (1) At the hearing of a prosecution for an offence mentioned in an infringement notice, the following certificates are prima facie evidence of the facts stated in the certificate:
 - (a) a certificate signed by an authorised officer of the ESOS agency for the alleged offender 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 an authorised officer of the ESOS agency for the alleged offender and stating that the notice was withdrawn on a day specified in the certificate;
 - (c) a certificate signed by an authorised officer of the ESOS agency for the alleged offender and stating that:
 - (i) a further period was refused, under section 18, 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 an authorised officer of the ESOS agency for the alleged offender and stating that:
 - (i) for the purposes of section 18, 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 an authorised officer of the ESOS agency for the alleged offender is taken to have been signed by that authorised officer unless the contrary is proved.

Section 26

26 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.

27 Infringement notice not compulsory etc.

Nothing in this Part is to be taken:

- (a) to require that a provider suspected of having committed an offence to which section 106 of the Act applies 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.

Part 5—Application and transitional provisions

Division 1—Provisions for this instrument as originally made

28 Definitions

In this Division:

old regulations means the *Education Services for Overseas Students Regulations 2001*, as in force immediately before the commencement of this section.

29 Things done under the old regulations

- (1) If:
 - (a) a thing was done for a particular purpose under the old regulations; and
 - (b) the thing could be done for that purpose under this instrument;the thing has effect for the purposes of this instrument as if it had been done for that purpose under this instrument.
- (2) Without limiting subsection (1), a reference in that subsection to a thing being done includes a reference to a notice, application or other instrument being given or made.

Schedule 1—Repeals

Education Services for Overseas Students Regulations 2001

1 The whole of the instrument

Repeal the instrument.