



# Education Services for Overseas Students Regulations 2019

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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

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## 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Note: This table relates only to the provisions of this instrument as originally made.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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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### 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*).

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**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

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- (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

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- (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

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- (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).

<b>Other prescribed matters relating to accepted students</b>			
<b>Item</b>	<b>Column 1 Event</b>	<b>Column 2 Condition</b>	<b>Column 3 Information</b>
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

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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>

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**Other prescribed matters relating to accepted students**

<b>Item</b>	<b>Column 1 Event</b>	<b>Column 2 Condition</b>	<b>Column 3 Information</b>
	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;

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- (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;

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- (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.

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- (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:

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- (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

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### **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.



## **EXPLANATORY STATEMENT**

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

### *Education Services for Overseas Students Regulations 2019*

#### **Authority**

Section 177 of the *Education Services for Overseas Students Act 2000* (the Act) provides that the Governor-General may make regulations prescribing matters that are required or permitted by the Act to be prescribed, or are necessary or convenient to be prescribed, for carrying out or giving effect to the Act.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Subsection 50(2) of the *Legislation Act 2003* provides that a legislative instrument made in the year 2001 sunsets on 1 October 2019. **This instrument is made to repeal and replace the *Education Services for Overseas Students Regulations 2001* ('the old regulations') which sunsets on 1 October 2019.**

A reference in the *Education Services for Overseas Students Regulations 2019* (the Regulations) to an Act, the *National Code of Practice for Providers of Education and Training for Overseas Students 2018* (the National Code), the *Migration Regulations 1994* or any other disallowable legislative instrument is a reference to it as in force from time to time.

#### **Legislative background**

The Act came into force on 21 December 2000 and is the principal legislation for the delivery of education and training services to overseas students in Australia on a student visa.

The Act's objectives include to provide tuition assurance and refunds for overseas students for which they have paid, to protect and enhance Australia's reputation for quality education and training services, and to complement Australia's migration laws by ensuring education providers collect and report information relevant to the administration of the law relating to student visas.

The old regulations support implementation of the objects of the Act by establishing obligations on registered providers to keep and give student information, and establishing requirements for issuing penalties and infringement notices. The old regulations sunset on 1 October 2019.

#### **Purpose and operation**

The Regulations are made in substantively the same form as the old regulations. A small number of additional provisions have been inserted into the Regulations to give effect to the implementation of the revised National Code and the commencement of the *Education Legislation Amendment (Provider Integrity and Other Measures) Act 2017*.

These additions to the Regulations include prescribing certain information that must be reported for the registration of providers and additional information that registered providers must provide about accepted students, including details of education agents who facilitated or are facilitating the student's enrolment with a provider.

Requiring information about education agents to be entered in the Provider Registration and International Student Management System (PRISMS) supports providers to comply with Standard 4 (Education Agents) of the National Code and assist Education Services for Overseas Students (ESOS) agencies (as defined in section 6C of the Act) in determining whether providers are complying with their obligations under Standard 4 of the National Code, which deals with providers' engagement of education agents. Information collected about education agents may be published pursuant to subsection 175(4) of the Act.

Part 4 ('Infringement Notices') of the Regulations substantially replicates Part 6 of the old regulations. Part 4 provides a procedure whereby the ESOS agency for a registered provider may serve a provider with an infringement notice requiring the payment of a penalty as an alternative to prosecution for an offence to which section 106 of the Act applies.

A number of minor amendments have also been made to update the language of the Regulations in accordance with current administrative practice, and to improve clarity of intent.

### **Regulation Impact Statement (RIS)**

The Office of Best Practice Regulation (OBPR) has agreed a RIS is not required for the Regulations (OBPR reference number 24022).

### **Commencement**

The Regulations commence on 1 October 2019.

### **Consultation**

As part of the process of remaking the Regulations, the following key stakeholders were consulted:

- the Australian Government Department of Home Affairs to ensure the Regulations complement Australia's migration laws relating to student visas;
- the Australian Skills Quality Authority (ASQA) as the National Vocational Education and Training (VET) Regulator and ESOS agency for registered VET providers for the purposes of the Act, to ensure the Regulations support ASQA to fulfil its role as an ESOS agency;
- the Tertiary Education Quality Standards Agency (TEQSA) as the ESOS agency for registered higher education providers for the purposes of the Act, to ensure the Regulations support TEQSA to fulfil its role as an ESOS agency;
- the Tuition Protection Service (TPS) Director appointed under the Act responsible for assisting students to find suitable alternative courses, and providing refunds, in the case of defaults, to ensure the Regulations support the TPS Director to fulfil his or her role;
- the Australian Government Attorney-General's Department, to ensure the Regulations conform with requirements regarding administrative law, criminal law, human rights and information law; and
- the Australian Bureau of Statistics, to ensure the Australian Standard Classification of Education 2001 was appropriately referenced.

The above stakeholders have indicated their support for the Regulations.

## **Statement of Compatibility with Human Rights**

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*  
*Education Services for Overseas Students Regulations 2019*

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Overview of the Legislative Instrument**

The purpose of the *Education Services for Overseas Students Regulations 2019* (the Regulations) is to support the administration of the *Education Services for Overseas Students Act 2000* (the Act) by establishing prescribed information for the registration of providers, obligations on registered providers to keep and give student information and education agent information, and requirements for issuing penalties and infringement notices.

### **Human rights implications**

The Regulations engages the following human rights:

- the right to education – Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), and Article 28 of the *Convention on the Rights of the Child* (UNCRC); and
- the right to work – Article 6 of the ICESCR.

#### *Right to Education*

The Regulations engage the right to education, contained in Article 13 of the ICESCR, insofar as it relates to the provision of education and training services to overseas students in Australia on a student visa. Article 13(1) of the ICESCR recognises each person's right to education, and that education is important to "*the full development of the human personality*", and enables "*all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups*". The protections afforded by the Act and the Regulations to overseas students, demonstrate Australia's commitment to upholding the right to education for overseas students in Australia.

Similarly, Article 28(1) of the UNCRC is relevant to children who are overseas students studying in primary and secondary schools in Australia, and recognises the "*right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity*". The Act and Regulations, in conjunction with state and territory laws on school registration, child protection and welfare ensure that there is a regulatory framework to protect overseas students in primary and secondary school.

The objectives of the Act include providing tuition assurance and refunds for overseas students for which they have paid, as well as protecting and enhancing Australia's reputation for quality education and training services. This framework supports and complements Australia's migration laws by ensuring education providers collect and report information relevant to the administration of the law relating to student visas, thereby protecting the quality of the education and training in Australia. The Regulations also support enforcement of the infringement provisions under the Act,

which provide additional protections for students by penalising providers who fail to comply with the record-keeping and student refund provisions of the Act. A strong international education system, which includes appropriate protections for overseas students, allows Australia to promote the right to education, especially to overseas students.

To the extent that the right to education is engaged, the measures contained in the Regulations are compatible with the right to education.

### *Right to Work*

The Commonwealth's commitment to the delivery of quality education and training services to overseas students provides a solid foundation and opportunity for people to engage with and pursue quality work objectives after completing their studies. The promotion of the right to education inherently leads into the promotion of the right to work, as education is one of the pathways to employment.

The Regulations engage the right to work, contained in Article 6 of the ICESCR. Article 6(1) of the ICESCR discusses "*the right to work, which includes the right of everyone to the opportunity to gain [their] ... living by work which [they] freely [choose] or [accept]*". A high quality international education system provides a foundation on which overseas students may then pursue broader employment opportunities.

Similarly, the vocational education and training (VET) sector promotes the objects of Article 6(2) of the ICESCR, which include access to "*technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment...*". Australia's VET sector (including VET courses) partners with the industry and employment sectors to ensure training and education delivered is relevant and assists in people, including overseas students, accessing and gaining skilled employment.

The pathway from the right to education to the right to work is supported by the international education system provided for by the Act and Regulations.

To the extent that the right to work is engaged, the measures contained in the Regulations are compatible with the right to work.

### **Conclusion**

The Regulations are compatible with human rights because they advance the protection of human rights.

**Dan Tehan**  
**Minister for Education**

## **Detailed explanation of the *Education Services for Overseas Students Regulations 2019***

### **Part 1 – Preliminary**

#### Section 1 – Name of Regulations

Section 1 provides that the title of the Regulations is the *Education Services for Overseas Students Regulations 2019* (Regulations).

#### Section 2 – Commencement

Section 2 provides that the Regulations commence on 1 October 2019.

#### Section 3 – Authority

Section 3 provides that the Regulations are made under the *Education Services for Overseas Students Act 2000* (the Act), as provided for in section 177 of the Act.

#### Section 4 – Schedules

Section 4 provides that each instrument that is specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the instrument has effect according to its terms. Schedule 1 to the Regulations repeals the *Education Services for Overseas Students Regulations 2001*.

#### Section 5 – Definitions

Section 5 provides definitions for terms used in the Regulations that are not already provided for under the Act.

#### Section 6 – Meaning of *student visa*

Section 6 provides a definition for the meaning of *student visa* for the purposes of section 5 of the Act. This definition refers to the definition of student visa set out in regulation 1.03 of the *Migration Regulations 1994*.

#### Section 7 – Meaning of *tuition fees*

Section 7 provides a definition of *tuition fees* for the purposes of section 7 of the Act. Subsection 7(2) prescribes the classes and types of fees that are *tuition fees* for the purposes of paragraph 7(b) of the Act. Subsection 7(3) prescribes the classes and types of fees that are not *tuition fees* for the purposes of paragraph 7(c) of the Act. The *tuition fees* prescribed in section 7 of the Regulations are not exhaustive and other classes and types of fees may fall within the definition of *tuition fees* specified in paragraph 7(a) of the Act.

### **Part 2 – Registration of providers**

#### Section 8 – Information to be entered on the Register

Section 8 prescribes certain types of information to be entered on the Register, for the purposes of paragraph 14A(4)(i) of the Act. The Register is called the Commonwealth Register of Institutions

and Courses for Overseas Students (CRICOS). The information relates to a provider's registration to provide a course or courses at a location or locations and includes information about:

- the provider's business information;
- the maximum number of overseas students to whom a course may be provided;
- details about each course (including about duration, tuition and non-tuition fees payable and how the course will be provided);
- location details for each course (including information about the individual responsible for the day-to-day operation of the provider at the location); and
- levels and fields of study of courses provided.

For the purposes of paragraph 8(2)(a), subsection 8(3) provides the levels of study and requirements for fields of study for a course. Subparagraph 8(3)(a)(i) refers to the Australian Qualifications Framework (AQF). The AQF is incorporated by reference as existing at the commencement of this section. The AQF is the national policy for regulated qualifications in Australian education and training. It incorporates the qualifications from each education and training sector into a single comprehensive national qualifications framework. The AQF is publicly available on the AQF website at [www.aqf.edu.au](http://www.aqf.edu.au). Subparagraph 8(3)(b)(i) refers to the Australian Standard Classification of Education (ASCED). The ASCED, published by the Australian Statistician in 2001, is incorporated by reference as existing on 1 October 2019. The ASCED is a statistical classification for use in the collection and analysis of data on educational activity and attainment. The ASCED is publicly available on the Australian Bureau of Statistics website at [www.abs.gov.au](http://www.abs.gov.au).

### **Part 3 – Obligations on registered providers**

#### ***Division 1 – Giving information about accepted students***

##### **Section 9 – Students who become accepted**

Section 9 provides that a registered provider must give certain types of information about each person who becomes an accepted student of that provider for the purposes of paragraph 19(1)(a) of the Act. The registered provider is required to enter this information in the Provider Registration and International Student Management System (PRISMS).

This includes:

- information about the student;
- details about the course;
- agreed starting day and expected completion date of the course;
- tuition and non-tuition fees paid for the student to the provider for the course;
- total amount of tuition fees the student is required to pay to undertake the course; and
- student visa information.

Paragraph 9(q) requires the provider to enter information about a student's completion of an English language proficiency test under the *Migration Regulations 1994*. If undertaking a particular English language proficiency test is a requirement specified under paragraph 500.213(3)(a) of Schedule 2 to the *Migration Regulations 1994*, and the student has undertaken that test (whether or not for the purposes of a Subclass 500 (Student) visa), the provider must record the name of the test, the date the student undertook the test and score the student received.

Paragraph 9(r) provides that if the student holds, or has applied for, a Subclass 500 (Student) visa and the student was within a class of applicants specified under paragraph 500.213(3)(b) of Schedule 2 to the *Migration Regulations 1994*, which refers to the classes of applicants who are exempt from subclause 500.213(1) and is not required to undertake that particular test, the provider is required to provide details of the class of exemption which applies to that student.

#### Section 10 – Students who do not begin courses when expected

Section 10 provides that the registered provider must give certain types of information about an accepted student for the purposes of paragraph 19(1)(c) of the Act. **If the student does not begin his or her course when expected, the provider must give the student's current residential address, phone number and email address.**

Under subsection 10(2) of the Regulations, the provider is not required to give the prescribed information under subsection 10(1) if, before the student's expected starting day:

- the student asks the provider for a later starting day; and
- the request is made on the basis of compassionate or compelling circumstances; and
- the provider agrees to a later starting day for the student.

#### Section 11 – Other prescribed matters

Section 11 applies in relation to an accepted student who is accepted for enrolment, or enrolled, in a course provided by a registered provider. The section is made for the purposes of paragraph 19(1)(f) of the Act, and set outs a table at subsection 11(2) which prescribes the types of information to be given about an accepted student. The information must be given within the applicable number of days after the occurrence of the event set out in the table. Subsection 19(1A) of the Act defines 'applicable numbers of days'. Generally, a provider must provide the information prescribed under paragraph 19(1)(f) of the Act **within 31 days of the event occurring.**

Column 1 of the table sets out the events that cause a registered provider to be required to give certain information.

Column 2 of the table sets out any conditions that apply for a particular event to cause a registered provider to be required to give the information.

Column 3 sets out the types of information to be given by a registered provider upon the event occurring.

Information collected under this section may be used by the Department of Home Affairs if relevant enforcement action against the student is required. The information specified in Column 3 may also be used by the Department of Education and Training when recording information about a student's enrolment and for broader policy development.

#### Section 12 – Prescribed condition of student visa

Section 12 specifies that visa condition 8202, set out in Schedule 8 to the *Migration Regulations 1994*, is prescribed for the purposes of subsections 19(2) and 20(1) of the Act.

### ***Division 2 – Record keeping***

#### Section 13 – Details of which a registered provider must keep records



A registered provider must keep records about accepted students.

Section 13 prescribes the information a registered provider must record for each accepted student for the purposes of paragraph 21(2)(d) of the Act. This includes:

- the total amounts of tuition and non-tuition fees paid for the student to the provider for the particular course, including the total of any tuition and non-tuition fees that have become payable and have not been paid;
- copies of any written agreements entered into between the provider and student;
- amounts a student will be charged to access the student's records; and
- if an agent (also known as an education agent) of the provider facilitated, or is facilitating an accepted student's enrolment, details about that agent. This includes information about individual employees of the agent who were or are involved in the facilitation of the enrolment (including name, email address and Migration Agents Registration Number if applicable).

#### Section 14 – Fees for accessing records

Section 14 sets out that the fee a provider may charge for a student to access a record set out in section 13 of the Regulations must not exceed the actual cost incurred by the provider in providing access to that record. This provision is made under the necessary and convenient power for carrying out or giving effect to the Act under paragraph 177(b) of the Act.

### **Part 4 – Infringement notices**

#### Section 15 – Purpose of this Part

Part 4 of the Regulations relate to infringement notices, and is made for the purposes of section 106 of the Act. Part 4 provides for a procedure for dealing with offences specified at subsection 106(1A) of the Act through infringement notices. An ESOS agency for a registered provider may serve the provider an infringement notice requiring payment of a penalty as an alternative to prosecution for the offence.

#### Section 16 – Infringement notices

Section 16 provides that an ESOS agency for a provider may serve an infringement notice (or cause one to be served) on the provider if the ESOS agency has reasonable grounds to believe that the registered provider has committed an offence covered by section 106 of the Act.

The infringement notice must include the information specified at subsection 16(2). This includes:

- name and address of the provider;
- details of the alleged offence and the relevant provision of the Act;
- the maximum penalty a court could impose for the offence;
- the amount payable as the infringement notice penalty;
- 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 within a particular period;
- details of how and where the provider may pay the infringement notice penalty;
- a statement that if before the end of 28 days after service of the notice, the provider notifies the ESOS agency of any facts or matters that the provider believes ought to be

taken into account in relation to the alleged offence, the time for payment will be extended and the ESOS agency must consider matters mentioned in subsection 20(5);

- matters the ESOS agency must consider under subsection 20(5);
- statement that if the infringement notice penalty is paid in time, the provider's liability for the offence is discharged and further proceedings cannot be taken against the provider for the offence and the provider is not taken to have been convicted of the offence;
- that the provider may be prosecuted for the alleged offence if the provider does not meet certain timeframes; and
- the name of the person who serves the notice.

Subsection 16(3) explains that the infringement notice may also contain any other information that the ESOS agency considers necessary.

Subsection 16(4) specifies the infringement notice must be served on the provider not more than 12 months after the alleged commission of the offence.

#### Section 17 – Service of infringement notices

Section 17 sets out the requirements for how an infringement notice may be validly served on an individual person or a body corporate.

#### Section 18 – Extension of time to pay

Section 18 sets out the process by which a provider may apply to the ESOS agency for a further period of time within which to pay the infringement notice penalty. The ESOS agency must be satisfied that any such extension is reasonable taking into account all of the relevant circumstances.

This section also provides for the relevant processes and consequences that follow should an extension of time to pay be granted or refused.

#### Section 19 – Payment by instalments

Section 19 provides that an ESOS agency may, if it is satisfied that it is proper in the circumstances to do so, make arrangements for a provider who has been served with an infringement notice to pay the amount set in the infringement notice by instalments.

This section also provides for the relevant processes that follow should a payment by instalments arrangement be granted or refused.

#### Section 20 – If infringement notice disputed

Section 20 provides that an ESOS agency for a provider may withdraw an infringement notice served on a provider, if it is satisfied that it is proper in the circumstances to do so.

Subsections 20(2) to 20(5) set out what an ESOS agency must consider when a provider disputes an infringement notice, and the relevant processes and consequences that follow should an ESOS agency decide to withdraw, or refuse to withdraw, an infringement notice.

#### Section 21 – Payment of penalty if infringement notice not withdrawn

Section 21 provides that if an infringement notice has been served on a provider and the ESOS agency who served the notice decides to refuse to withdraw the infringement notice, then the provider must pay the infringement notice penalty before the end of 28 days after receiving the ESOS agency's notice of its refusal to withdraw the infringement notice.

#### Section 22 – Effect of payment of infringement notice penalty

Section 22 provides that if a provider pays the infringement notice penalty in accordance with Part 4 of the Regulations, then the provider's liability in respect of the offence set out in the infringement notice is discharged, no further action can be taken against the provider for the offence, and the provider is not convicted of the offence. Subsection 22(2) provides that subsection 22(1) also applies to a provider who has arranged to pay the infringement notice penalty in instalments once the provider makes payments in accordance with that arrangement.

#### Section 23 – Admissions under paragraph 16(2)(h)

Section 23 provides that an admission made by a provider in any notice given to an ESOS agency under paragraph 16(2)(h) of the Regulations, is inadmissible in proceedings against the provider for the alleged offence.

#### Section 24 – Matter not to be taken into account in determining sentence

Section 24 provides that if a provider is served with an infringement notice, elects not to pay the infringement notice penalty, and is prosecuted for and convicted of the alleged offence mentioned in the infringement notice, then the court must not take into account the provider's decision not to pay the infringement notice penalty in determining any penalty.

#### Section 25 – Evidence for hearing

At the hearing of a prosecution for an offence mentioned in an infringement notice, the certificates described at subsection 25(1) are *prima facie* evidence of the facts stated in the certificate.

Subsection 25(2) provides that a certificate that purports to have been signed by an authorised officer of the ESOS agency for the alleged offender is considered authentic unless proven otherwise.

#### Section 26 – Payment of penalty by cheque

Section 26 provides that if all or part of the infringement notice penalty is paid to the Commonwealth by cheque, then the payment is not taken to have been made until and unless the cheque is honoured on relevant presentation.

#### Section 27 – Infringement notice not compulsory, etc

The purpose of section 27 is to clarify that nothing in Part 4 of the Regulations is to be taken as:

- requiring an ESOS agency to serve an infringement notice on a provider suspected of having committed an offence to which section 106 of the Act applies;
- affecting the liability of a provider to be prosecuted for an alleged offence if:
  - the provider is not served with an infringement notice for the offence; or
  - the provider is served with an infringement notice, but the notice is then withdrawn; or

- limiting the penalty a court may impose on a provider convicted of an offence.

## **Part 5 – Application and transitional provisions**

### ***Division 1 – Provisions for this instrument as originally made***

#### **Section 28 – Definitions**

Section 28 defines “old regulations” as being the *Education Services for Overseas Students Regulations 2001*.

#### **Section 29 – Things done under the old regulations**

Section 29 clarifies that anything done for the purposes of the old regulations continues to have effect for the purposes of these Regulations, as if the thing had been done for the purposes of the Regulations. The reference to a thing being done under subsection 29(2) includes a reference to a notice, application or other instrument being given or made.

## **Schedule 1 – Repeals**

**Item 1** repeals the *Education Services for Overseas Students Regulations 2001* on commencement of the Regulations.