



AUSTRALIAN CAPITAL TERRITORY

# Education Services for Overseas Students (Registration and Regulation of Providers) Act 1994

No. 77 of 1994

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AUSTRALIAN CAPITAL TERRITORY

# **Education Services for Overseas Students (Registration and Regulation of Providers) Act 1994**

No. 77 of 1994

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## **An Act to regulate providers of courses to overseas students**

*[Notified in ACT Gazette S247: 23 November 1994]*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

### **PART I—PRELIMINARY**

#### **Short title**

**1.** This Act may be cited as the *Education Services for Overseas Students (Registration and Regulation of Providers) Act 1994*.

#### **Commencement**

**2. (1)** Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

**(2)** The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

**(3)** If a provision referred to in subsection (2), other than section 5, has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

### **Interpretation**

**3.** In this Act, unless the contrary intention appears—

“approved” means approved under this Act;

“banking day” means a day on which banks are open for business;

“Commonwealth Act” means the *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991* of the Commonwealth;

“course” means a course of education or training;

“course money” means money received by the provider, directly or indirectly, from an overseas student, or an intending overseas student, in relation to a course that the provider is providing, or offering to provide, to the student (other than an enrolment fee that is not more than \$250), and includes—

- (a) tuition fees;
- (b) any amount that the provider is to pay on behalf of the student to Medibank Private or another prescribed hospital benefits organisation; and
- (c) any other amount that the student has to pay to the provider in order to undertake the course;

“determined fee” means the fee determined by the Minister under section 41 for the purposes of the provision in which the expression occurs;

“inspector” means a public servant for the time being performing the functions of an inspector by virtue of section 35;

“intending overseas student” means a person who intends to become an overseas student;

“overseas student” means a person who holds a student visa;

“principal executive officer”, in relation to a provider that is not a natural person, means the person who has executive responsibility for the operation of the provider;

“private provider” means a provider approved under paragraph 8 (1) (a) or (b);

“provider” means an institution or other body or person that provides or proposes to provide courses to overseas students in the Territory;

“register” means the register kept under subsection 4 (1);

- “registrable particulars” means particulars prescribed by section 37;
- “student visa” means a student visa issued under regulations made under the *Migration Act 1958* of the Commonwealth;
- “trust account” means an account maintained by a private provider for the purpose of depositing money in accordance with subsection 16 (1);
- “trust money”, in relation to a private provider, means money that the provider is required by subsection 16 (1) to pay into a trust account (whether or not the provider actually pays the money into a trust account), other than money that the provider has become entitled to withdraw from a trust account.

### **Register**

**4. (1)** The Chief Executive shall keep for the purposes of this Act a register to be known as the ACT Register of Institutions Providing Education and Training for Overseas Students.

**(2)** The Chief Executive shall ensure that the register is available for public inspection at all reasonable times.

## **PART II—APPROVALS**

### **Offences**

- 5. (1)** A person shall not—
- (a) provide a course to an overseas student;
  - (b) make an offer to an intending overseas student to provide a course to that student;
  - (c) invite an intending overseas student to undertake, or to apply to undertake a course; or
  - (d) hold himself, herself or itself out as able or willing to provide a course to overseas students;

unless approved as a provider in respect of the course.

Penalty: \$5,000 or imprisonment for 6 months, or both.

**(2)** It is a defence to a prosecution for an offence against paragraph (1) (d), in relation to a course, if the defendant proves that—

- (a) the conduct that would, apart from this subsection, constitute the offence was only for either or both of the following purposes:

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- (i) carrying out a survey or other investigation to assess the demand for the course;
- (ii) negotiating with another provider in connection with designing or developing the course;
- (b) the defendant took reasonable steps to ensure that—
  - (i) any overseas student who was, or might become, interested in undertaking the course; and
  - (ii) any person who might assist in providing the course;was aware that the defendant was not an approved provider in respect of the course; and
- (c) the defendant did not invite payment of, or receive, any amount of money in respect of the course from an overseas student or intending overseas student.

**Non-government schools, government schools and public tertiary institutions**

- 6. (1)** This section applies to—
  - (a) non-government schools registered in accordance with Part III of the *Education Act 1937*, other than provisionally registered schools;
  - (b) government schools; and
  - (c) public tertiary institutions.
- (2)** A school or institution to which this section applies may apply for approval as a provider of a specified course or courses to overseas students.
- (3)** An application shall be—
  - (a) in a form approved by the Chief Executive; and
  - (b) signed by the principal executive officer of the school or institution.
- (4)** On receiving an application in accordance with subsection (2), the Chief Executive shall approve the school or institution applying as a provider of each specified course to overseas students and enter the registrable particulars in the register.
- (5)** Where—
  - (a) a school has been approved under this section;
  - (b) at the time it was approved the school was registered under Part III of the *Education Act 1937*; and

- (c) the school has ceased to be registered under that Act;

the approval of that school is, by virtue of this section, withdrawn, and the Chief Executive shall amend the register accordingly.

- (6) Where—

- (a) a school or institution applies for approval and is approved under subsection (4); and

- (b) a particular included in the application is no longer correct;

the principal executive officer of the school or institution shall advise the Chief Executive in writing of the change of particulars and the Chief Executive shall amend the register accordingly.

- (7) In this section—

“public tertiary institution” means a public tertiary institution, or part of such an institution, that is entitled to receive funds under a law of the Commonwealth or the Territory for recurrent expenditure for the provision of education or training.

#### **Applications for approval—private providers**

7. (1) An institution or other body or person may apply to the Chief Executive for approval as a provider of a specified course or courses to overseas students.

- (2) An application shall—

- (a) be in a form approved by the Chief Executive;

- (b) be signed by or on behalf of the applicant; and

- (c) be accompanied by—

- (i) the proposed application form to attend any course for which the applicant is applying to be an approved provider, and the attached prospectus;

- (ii) an example of any advertising material that the applicant proposes to use to encourage overseas students to attend a course for which the applicant is applying to be an approved provider; and

- (iii) the determined fee.

- (3) An application shall include the following particulars:

- (a) the applicant’s business address;

- (b) details of the applicant’s educational objectives;

- (c) if the applicant is a natural person—whether he or she is an Australian citizen or a permanent resident of Australia;
- (d) if the applicant is not a natural person—whether its principal executive officer is an Australian citizen or a permanent resident of Australia;
- (e) details of the applicant’s financial position;
- (f) details of each course in relation to which the applicant is applying to be an approved provider, including the number of places to be provided for overseas students and intending overseas students;
- (g) any prescribed particular.

**Grant of approval—private providers**

**8. (1)** On receiving an application in accordance with section 7, the Chief Executive shall, after consideration of the prescribed matters—

- (a) approve the applicant as a provider of each specified course to overseas students;
- (b) approve the applicant subject to such conditions as are reasonable and necessary for the protection of the interests of overseas students and intending overseas students; or
- (c) refuse to approve the applicant.

**(2)** The Chief Executive shall not approve an applicant under paragraph (1) (a) or (b) unless—

- (a) the applicant, or the principal executive officer of the applicant, is an Australian citizen or a permanent resident of Australia; and
- (b) in the opinion of the Chief Executive based on reasonable grounds—
  - (i) the applicant has sufficient financial and other resources available to enable it to comply with the provisions of this Act;
  - (ii) the applicant has made such arrangements as will allow it to comply with Divisions 1 and 2 of Part III; and
  - (iii) the applicant understands the duties and obligations imposed on an approved provider by this Act and the Commonwealth Act.

**(3)** Where the Chief Executive approves an applicant under paragraph (1) (a) or (b), he or she shall enter the registrable particulars in the register.

(4) Without limiting the generality of conditions the Chief Executive may impose on the approval of an applicant, the Chief Executive may impose a condition requiring the provider—

- (a) to hold a policy of indemnity insurance, or a guarantee, of a kind approved by the Minister; or
- (b) to participate in an indemnity scheme of a kind approved by the Minister.

(5) For the purposes of subsection (1), the prescribed matters in relation to an application are—

- (a) the suitability of each course specified in the application; and
- (b) the applicant's educational objectives.

**Variation of approval—private providers**

9. (1) A private provider may apply in writing to the Chief Executive for a variation of its approval.

(2) An application under subsection (1) shall—

- (a) specify the manner in which the applicant wishes the approval to be varied; and
- (b) be accompanied by—
  - (i) a statement supporting the proposed variation; and
  - (ii) the determined fee.

(3) On receipt of an application in accordance with subsection (1), the Chief Executive shall, after consideration of the prescribed matters—

- (a) approve the variation of the approval;
- (b) approve the variation subject to such conditions as are reasonable and necessary for the protection of the interests of overseas students and intending overseas students; or
- (c) refuse to approve the variation.

(4) Where the Chief Executive approves a variation of an approval under paragraph (3) (a) or (b), he or she shall amend the register accordingly.

(5) For the purposes of subsection (3), each of the following is a prescribed matter in relation to an application for a variation if it is relevant to the variation:

- (a) the suitability of any course specified in the application;
- (b) the applicant's educational objectives;
- (c) any arrangements made by the applicant to comply with Divisions 1 and 2 of Part III;

- (d) any condition to which the applicant's approval is subject.

### **PART III—PRIVATE PROVIDERS**

#### ***Division 1—Duties***

##### **Insurance**

- 10.** A private provider shall maintain a policy or policies of insurance—
- (a) against fire for the full value of any insurable interest in any property used for the purposes of providing a course to overseas students; and
  - (b) against public liability for an unlimited amount.

##### **Facilities**

**11.** A private provider shall provide adequate facilities and protection for the safety, health and welfare of the provider's overseas students.

##### **Student welfare**

**12. (1)** A private provider shall provide counselling and support services that are adequate having regard to the cultural and religious background of the overseas students attending the institution.

**(2)** For the purposes of subsection (1), a service is not adequate if it is not designed to assist with—

- (a) problems caused by cultural differences between Australia and an overseas student's home country;
- (b) personal and emotional problems;
- (c) advice on Australian and overseas recognition given to the qualification a student will receive on completion of the course; and
- (d) information reasonably required by overseas students to deal adequately with day-to-day life in the Territory.

##### **Grievance procedures**

**13.** A private provider shall establish and maintain adequate procedures by which an overseas student may formally complain and have attention given to his or her complaints by the private provider.

***Division 2—Prohibitions***

**Applications for enrolment**

**14. (1)** A private provider shall only supply to a person an application form to attend a course for which the provider is an approved provider if the form is attached to a prospectus.

**(2)** A private provider shall only provide a course to an overseas student if—

- (a) the student applies for enrolment on an application form referred to in subsection (1); and
- (b) the enrolment form is signed by the student.

**(3)** An application form shall contain the following information in simple, clear language:

- (a) the title or titles of any course in which the student may enrol using the form;
- (b) that the form, once signed by the student and on behalf of the private provider, will form a contract between the student and the private provider;
- (c) an itemised list of the costs of tuition fees;
- (d) an itemised list of any fees or charges additional to those referred to in paragraph (c) for which the student will be liable;
- (e) the nature of the qualification that the student will receive on completion of the course;
- (f) any conditions under which a refund or partial refund will be given.

**(4)** A prospectus shall contain—

- (a) a copy of the proposed contract between the intending overseas student and the private provider;
- (b) a description of the qualification awarded by the provider in relation to each course of study and the status of the qualification within relevant sectors of employment or public education;
- (c) a statement of all fees and costs payable to the private provider for the duration of the course;
- (d) an estimate of any costs related to the course that are additional to those referred to in paragraph (c) and are likely to be incurred during the course;
- (e) an indication of the cost of living in the Territory;

- (f) an indication of the type of accommodation available in the Territory;
- (g) details of the counselling and support services that will be provided to students attending the course;
- (h) the level of English language proficiency required to complete the course; and
- (i) details of any prerequisite to the course.

(5) A reference in paragraphs (2) (b) and (3) (b) to a form being signed by a student shall, where the student has not attained the age of 18 years, be read as a reference to the form being signed by his or her parent or guardian.

### **Advertising**

15. A private provider shall only publish, or cause to be published, by any means whatever any advertisement with respect to a course provided by the provider if the information contained in the advertisement is consistent with the information contained in a prospectus referred to in subsection 14 (4).

### *Division 3—Financial arrangements*

#### **Trust accounts—general**

16. (1) Where a private provider receives course money, the provider shall, within 3 banking days after the day on which the money is received, pay into a trust account maintained by the provider—

- (a) any course money that is not a tuition fee; and
- (b) the prescribed percentage of any course money that is a tuition fee.

(2) The title of a trust account established by a provider for the purposes of subsection (1) shall include—

- (a) the name of the provider or, if the provider carries on the business under a registered business name, the name under which the provider carries on business; and
- (b) the words “Trust Account”.

(3) A private provider shall, within 48 hours after opening a trust account, notify the Chief Executive of the name and address of the bank at which the trust account is maintained and the title of the account.

Penalty: \$500.

(4) A private provider shall not withdraw or pay money out of a trust account except—

- (a) for the purpose of refunding the money to the student by whom it was paid; or
- (b) as permitted by the regulations.

(5) A private provider shall not, without reasonable excuse, fail to comply with subsection (1) or (4).

Penalty (for a contravention of subsection (5)): \$5,000 or imprisonment for 6 months, or both.

#### **Trust accounts—use for private provider**

17. (1) Subject to this section, trust money standing to the credit of a trust account maintained by a private provider is not available for the payment of debts of the provider and is not liable to be attached or taken in execution for the purposes of satisfying a judgment against the provider.

(2) Notwithstanding subsection (1), where a private provider holds money on trust for an overseas student, that money is available to discharge any liability of the private provider to that student arising under Division 4.

#### **Trust accounts—banks**

18. (1) A bank at which a trust account is maintained is not under any obligation to control or supervise transactions in relation to the trust account or to see to the application by the private provider of money drawn out of the account.

(2) The bank at which a private provider maintains a trust account shall not, in respect of any liability of the provider to the bank, have or obtain any recourse or right, whether by way of settlement, counter-claim, charge or otherwise against money standing to the credit of the trust account.

(3) Nothing in this section relieves a bank from any liability or obligation to which it is subject apart from this section.

#### **Trust money—receipts**

19. (1) A private provider shall give to a person from whom the provider receives trust money a receipt for the money specifying briefly the subject matter or purpose in respect of which the money was received.

(2) A provider shall issue a receipt under subsection (1) within 3 banking days after the day on which the provider receives the money.

### **Trust money—accounting records**

**20. (1)** A private provider shall keep accounting and any other records that disclose particulars of trust money received or paid by the provider, including particulars of each receipt issued under section 19.

**(2)** A private provider shall—

- (a) keep those records in relation to each student for each course offered by the provider;
- (b) keep those records—
  - (i) at the provider’s principal place of business in the Territory;  
or
  - (ii) with the approval of the Chief Executive, at another place in the Territory;
- (c) cause those records to be kept in such a manner that they can be conveniently and properly audited; and
- (d) preserve those records for a period of 7 years.

### **Ability to repay**

**21. (1)** A private provider shall make and maintain such arrangements as will ensure that the provider can at all times pay amounts that are payable under Division 4.

**(2)** A private provider shall make available to the Chief Executive details of its arrangements under subsection (1).

### **Returns and other information**

**22. (1)** A private provider shall, within 28 days after the conclusion of each reporting period, give to the Chief Executive in respect of each trust account maintained by the provider a return that—

- (a) is in the prescribed form;
- (b) is signed—
  - (i) if the provider is a natural person—by that person or by another person authorised by the first-mentioned person to sign the return; or
  - (ii) otherwise—by the principal executive officer of the provider or by a person authorised by the principal executive officer to sign the return;
- (c) contains the prescribed particulars in relation to transactions in respect of that account during that reporting period; and

- (d) is accompanied by a report by a registered company auditor stating whether, in the opinion of the auditor—
  - (i) the particulars in the return are correct; and
  - (ii) the provider has complied with the specified financial requirements.

**(2)** At any time during a reporting period a provider may notify the Chief Executive in writing of a new ending date for the provider's reporting periods.

**(3)** Where a provider has given notice in accordance with subsection (2)—

- (a) if the next occurrence after notification of the new ending date is more than 12 months after the start of the current period—
  - (i) the current period ends on the date it would have ended had no new ending date been notified;
  - (ii) the provider's next reporting period starts on the date after the end of the current period and ends on the new ending date; and
  - (iii) after the reporting period referred to in subparagraph (ii), the provider's reporting periods are periods of 12 months ending on the new ending date; or
- (b) in any other case—
  - (i) the current period is replaced by a reporting period starting at the start of the current period and ending on the new ending date; and
  - (ii) after the reporting period referred to in subparagraph (i), the provider's reporting periods are periods of 12 months ending on the new ending date.

**(4)** If the Chief Executive believes on reasonable grounds that a private provider may have—

- (a) failed to comply with the requirements of subsection (1);
- (b) failed to comply with the specified financial requirements; or
- (c) provided a return which contains misleading or deceptive information;

the Chief Executive may, by written notice given to a provider, require the provider to give the Chief Executive such further information as he or she specifies.

**(5)** In this section—

“current period”, in relation to a provider, means the reporting period during which the provider gives notice under subsection (2);

“reporting period”, in relation to a provider, means—

- (a) each period that applies to the provider by virtue of subsection (3); or
- (b) if there is no such period—a period of 12 months ending on 30 June;

“specified financial requirements”, in relation to a provider, means—

- (a) the provisions of this Act that—
  - (i) require the provider to pay money into a trust account;
  - (ii) regulate payments or withdrawals from a trust account; or
  - (iii) require the provider to make a payment under Division 4; and
- (b) any condition of a type referred to in subsection 8 (4) that has been imposed on the provider.

### **Exemptions from Division**

**23.** The regulations may exempt a specified provider or a specified class of providers from all or any of the requirements of this Division, either generally, or in relation to a particular period or periods.

### *Division 4—Refunds*

#### **Default by provider**

**24. (1)** Where an overseas student or intending overseas student who is enrolled in a course has not withdrawn from the course by the default date and—

- (a) the course does not start on the agreed starting date; or
- (b) the provider ceases to provide the course at any time after it starts but before it is completed;

the provider shall, within 14 days after the default date, pay the student the prescribed amount.

**(2)** For the purposes of subsection (1), the prescribed amount is an amount equal to the difference between—

- (a) money paid by the student and received by the private provider before the default date that the provider was required by subsection 16 (1) to pay into a trust account (whether or not the provider actually paid the money into a trust account); and
  - (b) any part of that money that the provider became entitled to withdraw from the account before the default date.
- (3) The prescribed amount is a debt due by the provider to the student.
- (4) This section does not affect any liability apart from this section of a provider to pay an amount to a student.
- (5) A private provider shall not intentionally or recklessly contravene subsection (1).

Penalty: \$5,000 or imprisonment for 6 months, or both.

(6) In this section—

“agreed starting date”, in relation to a course, means the date on which the course was scheduled to start, or a later date agreed in writing between the provider and the student;

“default date”, in relation to a course, means—

- (a) where paragraph (1) (a) applies—the agreed starting date of the course; or
- (b) where paragraph (1) (b) applies—the date on which the provider ceased to provide the course.

### **Visa refused**

25. (1) Where—

- (a) an intending overseas student is enrolled in a course;
- (b) the student has paid course money to a private provider to attend the course; and
- (c) the student is unable to attend the course by reason of being refused a student visa;

the provider shall refund all the course money paid to the provider by the student to the student within 6 weeks of being notified in writing that the student has been refused a student visa.

(2) A private provider shall not intentionally or recklessly contravene subsection (1).

Penalty: \$5,000 or imprisonment for 6 months, or both.

(3) An amount required to be paid under this section is a debt due by the provider to the student.

### **Default by student**

26. (1) Nothing in this section applies to an intending overseas student in the circumstances to which section 25 applies.

(2) If—

- (a) an overseas student or an intending overseas student who is enrolled in a course—
  - (i) does not start the course on the agreed starting date; or
  - (ii) withdraws from the course before, on or after the agreed starting date; and
- (b) the student and the private provider of the course have a written agreement that covers the refund consequences of the relevant situation referred to in paragraph (a);

the provider shall pay to the student any amount required to be paid under the agreement.

(3) If—

- (a) an overseas student or an intending overseas student who is enrolled in a course—
  - (i) does not start a course on the agreed starting date; or
  - (ii) withdraws from the course before, on or after the agreed starting date; and
- (b) there is no written agreement between the student and the private provider of the course that covers the refund consequences of the relevant situation referred to in paragraph (a);

the provider shall pay to the student the prescribed amount.

(4) For the purposes of subsection (3), the prescribed amount is an amount equal to the difference between—

- (a) money paid by the student and received by the private provider before the default date that the provider was required by subsection 16 (1) to pay into a trust account (whether or not the provider actually paid the money into a trust account); and
- (b) any part of that money that the provider became entitled to withdraw from the account before the default date.

(5) The private provider shall pay an amount required to be paid under this section within 6 weeks after receiving a written request from the student.

(6) An amount required to be paid under this section is a debt due by the provider to the student.

(7) A private provider shall not intentionally or recklessly contravene subsections (2) and (3).

Penalty: \$5,000 or imprisonment for 6 months, or both.

(8) In this section—

“agreed starting date”, in relation to a course, means the date on which the course was scheduled to start, or a later date agreed in writing between the provider and the student;

“default date”, in relation to a course, means—

- (a) where subparagraph (3) (a) (i) applies—the agreed starting date of the course; or
- (b) where subparagraph (3) (a) (ii) applies—the date on which the student withdrew from the course.

### ***Division 5—Reviews***

#### **Review of approval**

27. (1) The Chief Executive—

- (a) shall, at intervals not exceeding 5 years; and
- (b) may, at any time the Chief Executive believes on reasonable grounds that a private provider has contravened this Act;

review the private provider’s approval.

(2) After conducting a review of the approval of a private provider under subsection (1), the Chief Executive shall—

- (a) confirm the approval unconditionally;
- (b) confirm the approval subject to such conditions as are reasonable and necessary for the protection of the interests of overseas students and intending overseas students; or
- (c) give the provider written notice that the Chief Executive believes that the approval should be withdrawn—
  - (i) specifying the grounds for the withdrawal; and
  - (ii) inviting the provider to show cause within a specified period why the approval should not be withdrawn.

**(3)** When making a decision under subsection (2) in relation to a private provider, the Chief Executive shall have regard to—

- (a) the extent to which the provider has complied with this Act; and
- (b) the likelihood of the provider's continued compliance with this Act.

**(4)** After the expiration of the period specified in a notice under subparagraph (2) (c) (ii), and taking into consideration any representation made by the private provider and such of the prescribed matters as he or she thinks fit, the Chief Executive shall—

- (a) if satisfied on reasonable grounds that the private provider should not continue to be approved—
  - (i) suspend the approval for a specified period after which the approval is withdrawn; or
  - (ii) withdraw the provider's approval effective from the date on which the provider receives notice of the withdrawal under section 38;
- (b) if satisfied that a variation is reasonable and necessary for the protection of the interests of overseas students and intending overseas students—vary the provider's approval; or
- (c) confirm the approval.

**(5)** Where the Chief Executive suspends an approval under subparagraph (4) (a) (i), but before the approval is withdrawn, the provider may apply to have the suspension revoked on the ground that, by reason of a specified change in the circumstances that has occurred since the approval was suspended, the provider should continue to be approved.

**(6)** On receiving an application under subsection (5), the Chief Executive may, if he or she is satisfied that the applicant should continue to be approved, revoke the suspension and confirm the applicant's approval.

**(7)** For the purposes of subsection (4), the following matters are prescribed:

- (a) the suitability of each course provided by the provider;
- (b) the provider's educational objectives;
- (c) any condition to which the provider's approval is subject;
- (d) the extent to which the provider has complied with this Act;
- (e) the likelihood of continued compliance with this Act.

**(8)** Where the Chief Executive—

- (a) confirms a provider's approval subject to conditions under paragraph (2) (b);
- (b) suspends a provider's approval for a specified period under subparagraph (4) (a) (i);
- (c) withdraws a provider's approval under subparagraph (4) (a) (ii);
- (d) varies a provider's approval under paragraph (4) (b); or
- (e) revokes a suspension under subsection (6);

the Chief Executive shall amend the register accordingly.

#### **Notice of suspension or withdrawal of approval**

**28. (1)** Where a provider's approval has been—

- (a) suspended under subparagraph 27 (4) (a) (i) pending withdrawal; or
- (b) withdrawn under subparagraph 27 (4) (a) (ii);

the provider shall not, without reasonable excuse, fail to notify any relevant student of the suspension and impending withdrawal or the withdrawal.

Penalty: \$1,000.

**(2)** In subsection (1)—

“relevant student”, in relation to a provider, means—

- (a) an overseas student or intending overseas student who has applied or been enrolled to undertake a course provided or to be provided by the provider; or
- (b) an overseas student who is undertaking a course so provided.

#### **Obtaining information for review—providers, officers and employees**

**29. (1)** For the purposes of the review of a private provider under subsection 27 (1), the Chief Executive may—

- (a) by notice in writing given to the provider, require the provider, within 14 days after the day on which the notice is given and at a place specified in the notice—
  - (i) to furnish in writing such information as is necessary and reasonable to allow the Chief Executive to conduct the review and is specified in the notice; or
  - (ii) to produce such documents or other records as are necessary and reasonable to allow the Chief Executive to conduct the review and as are specified in the notice; or

- (b) where the Chief Executive believes on reasonable grounds that an officer or employee of the provider is capable of providing information or producing documents or records that are necessary and reasonable to allow the Chief Executive to conduct the review—by notice in writing given to the officer or employee, require him or her within 14 days after the day on which the notice is given and at a place specified in the notice—
- (i) to furnish in writing such information as is necessary and reasonable to allow the Chief Executive to conduct the review and as is specified in the notice; or
  - (ii) to produce such documents or other records as are necessary and reasonable to allow the Chief Executive to conduct the review and as are specified in the notice.
- (2) Where documents or other records are produced to the Chief Executive in accordance with subsection (1), the Chief Executive—
- (a) may take possession of and make copies of, or take extracts from, the documents or other records; and
  - (b) shall not retain possession of the documents or other records for more than 90 days unless—
    - (i) it is necessary and reasonable to do so in order to complete the review to which the documents or records relate; or
    - (ii) a prosecution for an offence against this Act has been instituted within that period.
- (3) A person served with a notice under paragraph (1) (a) or (b) shall not, without reasonable excuse, fail to comply with the notice.
- Penalty: \$1,000.
- (4) A person shall not, in purported compliance with a notice under paragraph (1) (a) or (b), intentionally or recklessly—
- (a) make a statement that is false or misleading in a material particular; or
  - (b) give the Chief Executive a document or record containing information that is false or misleading in a material particular without—
    - (i) indicating to the Chief Executive that the document or record is false or misleading and the respect in which it is false or misleading; and

- (ii) providing correct information to the Chief Executive if the person has, or can reasonably obtain, the correct information.

Penalty: \$5,000 or imprisonment for 6 months, or both.

(5) A person is not excused from providing any information or from producing a document or other record when requested to do so under subsection (1) on the ground that providing the information or producing the document or record might tend to incriminate the person, but the information or the production of the document is not admissible in evidence against the person in any criminal proceedings, other than proceedings for an offence against this Act.

### **Obtaining information for review—agencies**

**30. (1)** Where the Chief Executive believes on reasonable grounds that an agency is capable of providing information or producing documents or records that are necessary and reasonable to allow him or her to conduct a review under subsection 27 (1), he or she may, by notice in writing given to the agency, request the agency—

- (a) to furnish in writing such information as is necessary and reasonable to allow the Chief Executive to conduct the review and as is specified in the notice; or
- (b) to produce such documents or other records as are necessary and reasonable to allow the Chief Executive to conduct the review and as are specified in the notice.

(2) Where an agency receives a request under subsection (1), it may furnish the information or produce the documents or other records requested.

(3) In subsection (1)—

“agency” means an agency within the meaning of the *Privacy Act 1988* of the Commonwealth.

### **Entry of buildings and powers of inspection**

**31. (1)** For the purposes of a review under subsection 27 (1), an inspector may enter any premises, other than residential premises, at any reasonable time, with such assistance and by such force as is necessary and reasonable, and may exercise any power under subsection (2).

(2) Where an inspector enters premises in accordance with subsection (1), he or she may do 1 or more of the following:

- (a) require the occupier of the premises to give the inspector his or her name and residential address;
- (b) inspect the premises or any thing on the premises, including any book, document or record, that the inspector believes on reasonable grounds to be connected with a contravention of this Act;
- (c) take an extract from, or make a copy of, any book, document or record inspected;
- (d) take such photographs as the inspector believes on reasonable grounds to be necessary for the purposes of this Act;
- (e) seize any thing that the inspector believes on reasonable grounds to be connected with a contravention of this Act;
- (f) require the occupier to give the inspector such assistance as is reasonable to enable the inspector to exercise his or her powers under this section.

(3) An inspector who enters premises in accordance with subsection (1), is not authorised to remain on the premises if, on request by the occupier or person apparently in charge of the premises, the inspector does not produce his or her identity card.

(4) Where an inspector seizes a thing under paragraph (2) (e), he or she shall give a receipt for that thing to its owner or the person who had possession, custody or control of it immediately before it was seized.

(5) A person shall not, without reasonable excuse, contravene a requirement made of him or her under this section.

Penalty (for a contravention of subsection (5)): \$5,000 or imprisonment for 6 months, or both.

### **Effect of suspension**

**32.** While the approval of a private provider is suspended—

- (a) the provider shall not do any act or thing for the purpose of recruiting or enrolling intending overseas students in respect of courses provided or to be provided by the provider in the Territory;
- (b) the provider shall not solicit or accept any money from an overseas student or an intending overseas student in respect of a course provided or to be provided by the provider in the Territory; and
- (c) if an overseas student or an intending overseas student has applied or been enrolled to undertake a course provided or to be provided

by the provider in the Territory—the provider shall not permit the student to commence the course.

Penalty: \$5,000 or imprisonment for 6 months, or both.

## **PART IV—RELATIONSHIP TO COMMONWEALTH ACT**

### **Advising Commonwealth**

**33. (1)** The Chief Executive shall, as soon as practicable after approving a provider, provide to the Secretary such particulars relating to the provider as are required to be entered in the Commonwealth Register of Institutions and Courses for Overseas Students by the Secretary.

**(2)** Where the Chief Executive amends the register under subsection 6 (5) or (6), 9 (4) or 27 (8), he or she shall notify the Secretary of the amendment.

**(3)** In this section—

“Secretary” means the Secretary to the Department of State of the Commonwealth responsible for administering the Commonwealth Act.

### **Suspension or cancellation by Commonwealth**

**34. (1)** Where a provider is registered under the Commonwealth Act in respect of the Territory and that registration is suspended or cancelled by the Commonwealth—

- (a) the approval of the provider under this Act shall be taken to be suspended; or
- (b) the approval of the provider shall be taken to be withdrawn;

as the case requires.

**(2)** Subsection (1) does not apply to a suspension or cancellation of registration under the Commonwealth Act if it occurred as a consequence of the suspension or withdrawal of an approval under this Act.

**(3)** Where—

- (a) the registration of a provider has been suspended or cancelled under the Commonwealth Act;
- (b) as a result of that suspension or cancellation, the approval of the provider has been suspended or withdrawn under subsection (1); and

- (c) as the result of an appeal against the decision under the Commonwealth Act to suspend or cancel the registration, the suspension or cancellation under that Act is no longer effective;

then, by force of this section, the suspension of the provider's approval is revoked or the provider is approved (as the case requires).

(4) The Chief Executive shall amend the register to reflect the operation of subsections (1) and (3).

## **PART V—MISCELLANEOUS**

### **Inspectors**

**35. (1)** There shall be 1 or more inspectors for the purposes of this Act.

(2) An inspector shall perform such functions for the purposes of this Act as the Chief Executive directs.

(3) The Chief Executive may create and maintain 1 or more offices in the Government Service the duties of which include performing the functions of an inspector.

(4) An inspector shall be any public servant for the time being performing the duties of a Government Service office referred to in subsection (3).

### **Inspectors—identity cards**

**36. (1)** The Chief Executive shall issue to an inspector an identity card that specifies the inspector's name and office, and on which appears a recent photograph of the inspector.

(2) On ceasing to occupy, or act in, an office of inspector, a person shall not, without reasonable excuse, fail to return his or her identity card to the Chief Executive.

Penalty: \$100.

(3) In this section—

“office” means an office referred to in subsection 35 (3).

### **Registrable particulars**

**37.** The following particulars with respect to an approved provider are registrable:

- (a) the provider's name;
- (b) the provider's business address;

- (c) if the provider is not a natural person—the name of its principal executive officer;
- (d) the particulars of each course the provider has been approved to provide, including—
  - (i) the number of places available for overseas students and intending overseas students;
  - (ii) the duration of the course in weeks;
  - (iii) the tuition fee charged by the provider for the course;
  - (iv) the nature of the qualification awarded on completion of the course; and
  - (v) any prerequisites to the course;
- (e) a statement of the provider’s educational objectives;
- (f) any conditions to which the approval of the provider is subject;
- (g) any prescribed particular.

**Notice of decision**

**38.** Where the Chief Executive makes a decision—

- (a) under paragraph 8 (1) (b) approving an applicant as a provider of specified courses to overseas students subject to conditions;
- (b) under paragraph 8 (1) (c) refusing to approve an applicant as a provider of specified courses to overseas students;
- (c) under paragraph 9 (3) (b) approving a variation of an approval subject to conditions;
- (d) under paragraph 9 (3) (c) refusing to approve a variation of an approval;
- (e) under paragraph 27 (2) (b) confirming the approval of a private provider subject to conditions;
- (f) under subparagraph 27 (4) (a) (i) suspending the approval of a private provider;
- (g) under subparagraph 27 (4) (a) (ii) withdrawing the approval of a private provider;
- (h) under paragraph 27 (4) (b) varying the approval of a private provider; or
- (i) under paragraph 27 (6) refusing to revoke the suspension of the applicant’s approval;

the Chief Executive shall give notice in writing of the decision to the applicant or private provider, as the case requires.

### **Contents of notice**

**39.** A notice under section 38 shall be in accordance with the requirements of the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.

### **Review by Administrative Appeals Tribunal**

**40.** Application may be made to the Administrative Appeals Tribunal for a review of a decision referred to in section 38.

### **Power of Minister to determine fees**

**41.** The Minister may, by notice in writing, determine fees for the purposes of this Act.

### **Corporations—penalties**

**42.** Where a body corporate is convicted of an offence, the penalty that the court may impose is a fine not exceeding 5 times the maximum amount that, but for this section, the court could impose as a pecuniary penalty for the offence.

### **Evidentiary certificates etc.**

**43. (1)** In proceedings for an offence against this Act, a certificate signed by the Chief Executive stating that, at a specified time and on a specified date, or during a specified period, a provider was not approved with respect to a specified course is evidence of the matter stated.

**(2)** For the purposes of subsection (1), a certificate that purports to be signed by the Chief Executive shall, unless the contrary is proved, be taken to have been so signed.

**(3)** An extract from, or copy of, any entry contained in the register certified by the Chief Executive shall, in all courts and on all occasions, be received as evidence and deemed sufficient proof of all particulars contained in that entry.

### **Conduct of directors, servants and agents**

**44. (1)** Where, for the purposes of this Act, it is necessary to establish the state of mind of a body corporate or a natural person in relation to particular conduct, it is sufficient to show—

- (a) that a director, servant or agent of the body, or a servant or agent of the person, had that state of mind; and

- (b) that the conduct was engaged in by that director, servant or agent within the scope of his or her actual or apparent authority.

(2) A reference in subsection (1) to the state of mind of a body or person includes a reference to—

- (a) the knowledge, intention, opinion, belief or purpose of the body or person; and
- (b) the body's or person's reasons for the intention, opinion, belief or purpose.

(3) Any conduct engaged in on behalf of a body corporate or a natural person by a director, servant or agent of the body, or a servant or agent of the person, within the scope of his or her actual or apparent authority is to be taken, for the purposes of this Act, to have been engaged in also by the body or person unless the body or person establishes that reasonable precautions were taken and due diligence was exercised to avoid the conduct.

(4) Where—

- (a) a natural person is convicted of an offence against this Act; and
- (b) the person would not have been convicted of the offence if subsections (1) and (3) had not been enacted;

the person is not liable to be punished by imprisonment for that offence.

(5) A reference in this section to a director of a body corporate is to be read as including a reference to a member of a body corporate incorporated for a public purpose by a law of the Territory, the Commonwealth, a State or another Territory.

(6) A reference in this section to engaging in conduct is to be read as including a reference to failing or refusing to engage in conduct.

### **Regulations**

45. The Executive may make regulations for the purposes of this Act.

*[Presentation speech made in Assembly on 13 October 1994]*