



Education (Overseas Students) Act 1996

Current as at 1 July 2014

Reprint note

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Queensland

Education (Overseas Students) Act 1996

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Education (Overseas Students) Act 1996

An Act to provide for the registration of persons providing courses to overseas students and for registration of the courses, and for related purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *Education (Overseas Students) Act 1996*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

3 Dictionary

The dictionary in the schedule defines particular words used in this Act.

4 Object and guiding principles

- (1) This Act's object is to seek to ensure that education and training for overseas students is provided in an orderly and appropriate way.
- (2) Principles intended to guide the achievement of this Act's object include the following—
 - (a) courses delivered to overseas students should have appropriate Queensland accreditation and should have stated and demonstrable educational outcomes for the students;

- (b) providers of courses should have staffing and resources of adequate quality and quantity to achieve the stated outcomes for the overseas students who take the courses;
- (c) courses delivered to overseas students should be suitable, having regard to the qualifications, abilities and aspirations of the overseas students;
- (d) management policies and practices of course providers should be designed, and should operate, to protect—
 - (i) the educational interests of overseas students; and
 - (ii) the reputation of other providers of courses to overseas students, including persons in other States who provide overseas students with educational services; and
 - (iii) the financial interests of overseas students (including intending overseas students); and
 - (iv) the access of overseas students to timely and appropriate dispute resolution processes, having regard especially to their status as persons only temporarily in Australia;
- (e) information given to prospective overseas students about courses and about the conditions attaching to enrolment in the courses—
 - (i) should be appropriate to allow the prospective overseas students to make informed decisions about enrolling in the courses; and
 - (ii) should be given at appropriate stages of the application and enrolment process.

5 Achievement of object

- (1) This Act includes provisions for the following—
 - (a) registration of providers of courses for overseas students;

- (b) registration of the courses;
 - (c) attaching conditions to registration;
 - (d) administration of the registration regime.
- (2) Under part 2, the chief executive decides applications for registration and the conditions of the registration.
- (3) In deciding about registration, the chief executive must apply the registration criteria.
- (4) The registration criteria are prescribed under a regulation.
- (5) In general terms, this Act's object is to be achieved through the application of registration criteria that—
- (a) promote this Act's object; and
 - (b) are consistent with the principles intended to guide the achievement of this Act's object.

6 Act binds all persons

This Act binds all persons, including the State and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.

Part 2 Registration

Division 1 Applications

7 Registration and amendment and renewal of registration

- (1) A person prescribed under a regulation may apply—
- (a) for registration as a provider; or
 - (b) if the person is or is to become a registered provider—
for registration of a course; or

- (c) to change a registration mentioned in paragraph (a) or (b); or
 - (d) to renew a registration mentioned in paragraph (a) or (b).
- (2) The application must be—
 - (a) made in the way the chief executive approves; and
 - (b) accompanied by the fee prescribed under a regulation.
- (3) Without limiting subsection (1), if a person prescribed under a regulation makes an application, the person must give the chief executive all the cooperation, information and help reasonably necessary for the chief executive to investigate whether, and to be satisfied that, approval of the application is consistent with the registration criteria.
- (4) The chief executive must apply the registration criteria for deciding—
 - (a) whether to approve the application; and
 - (b) if the application is approved—the conditions to apply to the registration (including a changed or renewed registration).

8 Statutory conditions

- (1) It is a condition of a registered provider's registration that the registered provider complies with all reasonable requests by the chief executive to give the chief executive information or records (or a copy of the records) the registered provider is keeping, or has control of, that are relevant to deciding the ongoing financial viability of the registered provider.
- (1A) Also, it is a condition of a registered provider's registration that the registered provider allows the chief executive to enter, at any reasonable time, a place at which the registered provider delivers, or intends to deliver, a course to inspect the place under section 17A(2).
- (2) It is a condition of a course's registration that the holder of the registration complies with all reasonable requests by the chief

executive to give the chief executive information or records (or a copy of the records) the holder is keeping, or has control of, that are appropriate for deciding the suitability of the content or conduct of the registered course.

9 Registration certificates

- (1) This section applies if the chief executive approves an application for registration, or for a change or renewal of a registration.
- (2) The chief executive must, for approval of—
 - (a) a registration—give the applicant a registration certificate; or
 - (b) a change or renewal of a registration—give the applicant a new registration certificate.
- (3) A registration certificate may be in the form the chief executive considers appropriate.
- (4) However, a registration certificate must include—
 - (a) for registration of a person as a provider, the following—
 - (i) the registered provider's name;
 - (ii) the registered provider's central or head office or campus;
 - (iii) the day the application was approved;
 - (iv) the conditions (other than the statutory conditions) of the registration as a provider, including the period of the registration; and
 - (b) for registration of a course, the following—
 - (i) the name of the registered course;
 - (ii) the registered provider for the registered course;
 - (iii) the day the application was approved;
 - (iv) the conditions (other than the statutory conditions) of the registration of the course, including—

- (A) if practicable, the places where the registered course may be delivered; and
 - (B) the period of the registration.
- (5) A period of registration mentioned in subsection (4)(a)(iv) or (b)(iv)(B) must not be longer than 5 years.

Division 2 Suspension or cancellation of registration

10 Grounds for suspension or cancellation

Each of the following is a ground for the suspension or cancellation of a registration—

- (a) the registration was obtained because of incorrect or misleading information;
- (b) the holder of the registration contravenes a condition of the registration;
- (c) the holder of the registration is found guilty of an offence against this Act;
- (d) the holder of the registration does not pay fees or other amounts payable to the chief executive under this Act.

11 Procedure for suspension or cancellation

- (1) If the chief executive believes a ground exists to suspend or cancel a registration (the *proposed action*), the chief executive must give the holder of the registration written notice—
- (a) stating the proposed action; and
 - (b) stating the ground for the proposed action; and
 - (c) outlining the facts and circumstances forming the basis for the chief executive's belief; and
 - (d) if the proposed action is suspension of the registration—
 - (i) stating the proposed suspension period; and

- (ii) explaining the effect of suspension under this part; and
 - (e) inviting the holder to show, within a stated reasonable time of at least 28 days, why the proposed action should not be taken.
- (2) If, after considering all representations made within the stated time, the chief executive still considers a ground to take the proposed action exists, the chief executive may—
 - (a) if the proposed action was to suspend the registration for a stated period—suspend the registration for no longer than the proposed suspension period; or
 - (b) if the proposed action was to cancel the registration—either cancel the registration or suspend it for a period.
- (3) The chief executive must inform the holder of the decision by written notice.
- (4) The notice must be given within 10 days after the chief executive makes the decision.
- (5) If the chief executive decides to suspend or cancel the registration, the notice must comply with the QCAT Act, section 157(2).
- (6) The decision takes effect on the later of—
 - (a) the day when the notice is given to the holder; and
 - (b) the day of effect stated in the notice.
- (7) However, if the ground for the suspension or cancellation of the registration is that the holder of the registration has been found guilty of an offence against this Act—
 - (a) the suspension or cancellation does not take effect until—
 - (i) all periods for available appeal against the finding have ended; and
 - (ii) all appeals about the finding are finally decided; and

- (b) the suspension or cancellation has no effect if the finding is quashed on appeal.

Division 3 Immediate suspension

12 Immediate suspension pending formal suspension or cancellation procedure

- (1) This section applies if—
 - (a) the chief executive intends to take action (the *proposed action*) to cancel a registration, or suspend a registration other than under this section, on the ground that—
 - (i) the registration was obtained because of incorrect or misleading information; or
 - (ii) the holder of the registration has contravened a condition of the registration; and
 - (b) the chief executive believes it is necessary to immediately suspend the registration to protect the interests of overseas students, intending overseas students or persons who might become overseas students, until the formal suspension or cancellation procedure is completed.
- (2) The chief executive may immediately suspend the registration by written notice given to the holder of the registration.
- (3) The suspension takes effect immediately the notice is given to the holder.
- (4) If, within 14 days after the chief executive suspends the registration, the chief executive takes the proposed action, the immediate suspension of the registration lasts until the first to happen of the following—
 - (a) the chief executive cancels the immediate suspension;
 - (b) a decision to suspend or cancel the registration other than under this section takes effect;

- (c) a decision is made not to suspend or cancel the registration otherwise than under this section.
- (5) However, if the proposed action is not taken within the time mentioned in subsection (4), the immediate suspension lapses at the end of the time unless the chief executive has already cancelled it.

13 Immediate suspension after charging with offence

- (1) This section applies if—
 - (a) the holder of a registration is charged with an offence against this Act (the *offence*); and
 - (b) the chief executive believes it is necessary immediately to suspend the registration to protect the interests of overseas students, intending overseas students or persons who might become overseas students or intending overseas students, while the charge is dealt with.
- (2) The chief executive may immediately suspend the registration by written notice given to the holder of the registration.
- (3) The suspension takes effect immediately the notice is given to the holder.
- (4) The immediate suspension of the registration lasts until the first to happen of the following—
 - (a) the chief executive cancels the immediate suspension;
 - (b) proceedings (including appeals) about the offence are finished and result in the holder being found not guilty of the offence;
 - (c) proceedings (including appeals) about the offence end and result in the holder's being found guilty of the offence, and 14 days elapse without the chief executive taking action to suspend or cancel the registration otherwise than under this section because of the finding;

- (d) proceedings against the holder of the registration for the offence end otherwise than because of the holder being found guilty, or not guilty, of the offence.

Division 4 Form of suspensions

14 Suspensions

- (1) A suspension under division 2 can only be a limited suspension.
- (2) A suspension under division 3 can be either a limited suspension or a suspension that is not limited.

15 Suspension of registration as a provider

- (1) If the registration of a person as a provider is suspended, the person is taken not to be a registered provider.
- (2) However, if the suspension is only a limited suspension, the suspension does not make it unlawful for the person to provide a course to an overseas student if, before the suspension started, the person entered into an agreement to provide the course to the student.

16 Suspension of registration of a course

- (1) If a person's registration of a course is suspended, the course is taken not to be a registered course.
- (2) However, if the suspension is only a limited suspension, the suspension does not make it unlawful for the person to provide the course to an overseas student if, before the suspension started, the person entered into an agreement to provide the course to the student.

Division 5 Major offences

17 **Acting without or contrary to registration**

- (1) A person must not provide a course to an overseas student, or arrange or promote a course, if—
- (a) the person—
 - (i) is not a registered provider; or
 - (ii) is a registered provider, but is in breach of a condition of the person's registration as a provider; or
 - (b) the course—
 - (i) is not a registered course; or
 - (ii) is a registered course, but the person is in breach of a condition of the registration of the course.

Maximum penalty—200 penalty units.

- (2) For subsection (1)—
- (a) a person (the *arranger*) arranges a course if the arranger, in Australia or elsewhere, enters into an agreement to provide the course to a person as an overseas student; and
 - (b) a person (the *promoter*) promotes a course if the promoter, in Australia or elsewhere—
 - (i) makes an offer to provide the course to a person as an overseas student; or
 - (ii) invites a person to undertake the course as an overseas student; or
 - (iii) invites or accepts an amount for the course from or for an overseas student or intending overseas student; or
 - (iv) if the promoter is not a registered provider—holds the promoter out as able or willing to provide the course to a person as an overseas student, but does

not take reasonable steps to ensure that a person who is, or might become, interested in taking the course is aware the promoter is not a registered provider; or

- (v) if the course is not a registered course—holds the promoter out as able or willing to provide the course to a person as an overseas student, but does not take reasonable steps to ensure that a person who is, or might become, interested in taking the course is aware the course is not a registered course.
- (3) Despite section 6, subsection (1) does not apply to the State or a public service officer, or the Commonwealth or an officer of the Commonwealth, in promoting the activities of the State (including a State educational institution, TAFE institute, TAFE Queensland under the *TAFE Queensland Act 2013* or agricultural college), the Commonwealth or a registered provider.

Editor's note—

Section 6 provides that 'This Act binds all persons, including the State and, so far as the legislative power of the Parliament permits, the Commonwealth...'

Division 6 Inspection of places

17A Inspection of particular places

- (1) This section applies to a place at which a registered provider delivers, or intends to deliver, a course.
- (2) The chief executive may inspect the place at any reasonable time to ensure—
 - (a) it is suitable for delivering the course; and
 - (b) the staffing and resources at the place are adequate for delivering the course.

- (3) If the chief executive inspects the place, the registered provider must pay to the chief executive the fee prescribed under a regulation for the inspection.

Part 3 Review of decisions

18 Definition for pt 3

In this part—

decision means—

- (a) a direction, order or action of the chief executive, including the suspension (whether immediate or not) or cancellation of a registration; or
- (b) a failure (including a refusal) of the chief executive to give a direction, make an order or do an action.

19 Review by QCAT

A person whose interests are affected by a decision under this Act may apply, as provided under the QCAT Act, to QCAT for a review of the decision.

Part 4 Miscellaneous

Division 1 Matters supporting registration

26 Register to be kept

- (1) The chief executive must keep a register of registered providers and registered courses.

- (2) The register must contain the information prescribed under a regulation.

27 Return of cancelled registration certificate

- (1) If the chief executive cancels or suspends a registration for which the chief executive has given a registration certificate, the chief executive may, by written notice, require the holder of the registration to return the registration certificate to the chief executive within a stated reasonable time of at least 14 days.
- (2) The holder must comply with the notice, unless the holder has a reasonable excuse not to comply with it.
Maximum penalty—40 penalty units.
- (3) If a registration certificate returned to the chief executive under subsection (1) includes information about a registration that has not been the subject of the suspension or cancellation, the chief executive must—
 - (a) return to the holder the certificate suitably amended; or
 - (b) give the holder a suitable new registration certificate.

28 Surrender of registration

- (1) The holder of a registration may surrender the registration by giving the chief executive written notice of the surrender.
- (2) The surrender of the registration takes effect—
 - (a) 14 days after notice is given to the chief executive; or
 - (b) if the chief executive agrees in writing with the holder to a day earlier than 14 days after the notice is given—on the earlier day; or
 - (c) if a later day is stated in the notice—on the later day.

29 Changing a registration

A person (other than the chief executive) must not change a registration certificate.

Maximum penalty—20 penalty units.

Division 2 Monitoring compliance with Act

30 General power to seek information

(1) This section applies if the chief executive believes, on reasonable grounds, that a person (the *provider*) is providing a course to an overseas student, and that—

- (a) the person is not a registered provider; or
- (b) the course is not a registered course.

(2) The chief executive may, by written notice, require the provider to give the chief executive information or records (or a copy of the records) the provider is keeping, or has control of, relating to—

- (a) the student's identity; or
- (b) the content or conduct of the course.

(3) The provider must comply with a requirement made under subsection (2), unless the provider has a reasonable excuse.

Maximum penalty—100 penalty units.

(4) It is a reasonable excuse for the provider not to give information or reasonable records if giving the information or records might tend to incriminate the provider.

31 Release of information and making of recommendations

The chief executive may make available to a corresponding chief executive (however called) of another State or of the Commonwealth information about a registered provider or a registered course.

Division 3 Amounts in trust accounts

32 Amounts in trust accounts unavailable for debts

- (1) A trust account amount—
- (a) is not available for the payment of the account trustee's debts to a creditor of the trustee; and
 - (b) must not be attached or taken in execution in a proceeding taken by a creditor of the trustee.
- (2) In this section—

account trustee means, for a trust account amount, the trustee of the trust account into which the amount was paid.

creditor, for subsection (1), does not include an overseas student if the trust account amount represents an amount paid by or for the overseas student.

trust account means an account for which a registered provider is the trustee, and that is—

- (a) a notified trust account established under the Commonwealth Act; or
- (b) a trust account operated under a regulation made under this Act.

trust account amount means an amount that, under the Commonwealth Act or a regulation made under this Act, is paid into a trust account.

Division 4 Delegations

33 Delegation

- (1) The chief executive may delegate the chief executive's powers under this Act to—
- (a) an appropriately qualified person; or

(b) a body whose members are appropriately qualified, including a committee established by the chief executive under division 5.

(2) In this section—

appropriately qualified means having qualifications, experience or standing appropriate to exercise the power.

Example of standing—

a person's classification level in the public service

Division 5 Committees

33A Chief executive may establish committees

- (1) As the chief executive considers appropriate, the chief executive may establish committees to advise the chief executive or for another purpose.
- (2) For each committee, the chief executive must state its functions and terms of reference.
- (3) A committee must report to the chief executive as the chief executive requires.

33B Committee members

- (1) The chief executive may appoint persons to be members of each committee as the chief executive considers appropriate.
- (2) However, the chief executive must appoint appropriately qualified persons to be the members of a committee.
- (3) In this section—

appropriately qualified includes having the qualifications or experience appropriate to the functions and terms of reference of the committee.

33C Committee chairperson

The chief executive must appoint a member of a committee to be the chairperson of the committee.

33D Disclosure of interest

- (1) This section applies to a member of a committee (the *interested member*) if—
 - (a) the interested member has a direct or indirect financial interest in an issue being considered, or about to be considered, by the committee; and
 - (b) the interest could conflict with the proper performance of the person's duties about the consideration of the issue.
- (2) As soon as practicable after the relevant facts come to the interested member's knowledge, the member must disclose the nature of the interest to a meeting of the committee.
- (3) Unless the committee otherwise directs, the interested member must not—
 - (a) be present when the committee considers the issue; or
 - (b) take part in a decision of the committee about the issue.
- (4) The interested member must not be present when the committee is considering whether to give a direction under subsection (3).
- (5) If there is another member who must, under subsection (2), also disclose an interest in the issue, the other person must not—
 - (a) be present when the committee is considering whether to give a direction under subsection (3); or
 - (b) take part in making the decision about giving the direction.
- (6) Despite section 33I, the members present at a committee meeting for considering or deciding an issue, or for considering or deciding whether to give a direction under

subsection (3), are a quorum of the committee for considering or deciding the issue or giving the direction if—

- (a) an interested member or interested members are not present because of this section; and
 - (b) there would be a quorum if the interested member or members were present.
- (7) A disclosure under subsection (2) must be recorded in the committee's minutes.

33E Fees and expenses

- (1) A member of a committee, including the committee's chairperson, is not entitled to receive a fee or allowance for attending committee meetings or for conducting business for the committee.
- (2) However, the chief executive may approve payment for reasonable expenses incurred in attending a committee meeting.
- (3) An approval under subsection (2) may apply generally or for a particular case.

33F Conduct of business

Subject to this division, a committee may conduct its business in the way it considers appropriate.

33G Times and places of meetings

- (1) A committee may meet at the times and places the committee decides.
- (2) Without limiting subsection (1), a committee may hold a meeting, or allow a member to take part in a meeting, by telephone, video link or other form of communication allowing reasonably contemporaneous and continuous communication between the members taking part in the meeting.

[s 33H]

- (3) A member who takes part in a meeting by use of communication mentioned in subsection (2) is taken to be present at the meeting.

33H Presiding at meetings

- (1) The chairperson of a committee must preside at all meetings of the committee if the chairperson is present.
- (2) If the chairperson is not present at a meeting, a committee member chosen by the members present at the meeting must preside.

33I Quorum

A quorum for a committee is the number equal to two-thirds of the number of its members or, if two-thirds is not a whole number, the next highest whole number.

33J Voting

- (1) A committee must perform its functions or, if powers are delegated to the committee, exercise the powers by a majority vote of the members present at a properly constituted meeting.
- (2) The person presiding at a meeting has a deliberative vote and, if the votes on a question are equal, also has a casting vote.
- (3) A member who abstains from voting is taken to have voted for the negative.

33K No attendance by proxy

A member of a committee may not attend a committee meeting by proxy.

Division 6 Regulations

34 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may—
 - (a) impose fees; or
 - (b) create offences and prescribe penalties of not more than 20 penalty units for each offence.
- (3) A regulation may require registered providers to put in place, or participate in, arrangements directed at ensuring that overseas students are financially protected from default of registered providers, including arrangements for registered providers—
 - (a) to hold policies of indemnity insurance or guarantees; and
 - (b) to participate in indemnity schemes; and
 - (c) to operate trust accounts.
- (4) Subsection (3) and section 7(4) do not limit by implication the conditions the chief executive may decide for a registration.

Schedule Dictionary

section 3

agricultural college means the Queensland Agricultural Training Colleges under the *Queensland Agricultural Training Colleges Act 2005*.

Commonwealth Act means the *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991* (Cwlth).

course means any type of full-time, or substantially full-time, education, instruction or training provided or mainly provided in Queensland.

Example 1—

If a student undertakes studies for a qualification from a Queensland educational institution by attending at the institution for all or a substantial part of the studies, the studies could be a course under this Act.

Example 2—

If a student undertakes studies for a qualification from a Queensland educational institution by doing research work in another State under supervision from the institution, the studies could be a course under this Act.

Example 3—

If a student living in another country undertakes studies for a qualification from a Queensland educational institution by correspondence forwarded to the student in that country, the studies could not be a course under this Act, even if the student attends the institution personally for a compulsory or optional vacation school.

intending overseas student means a person who intends to become an overseas student.

overseas student means a person who holds a student visa issued under the *Migration Act 1958* (Cwlth).

registered course means a course registered under this Act.

registered provider means a person who is registered under this Act as a provider.

registration certificate means—

- (a) a certificate of the registration of a person as a provider;
or
- (b) a certificate of the registration of a course.

registration criteria means the registration criteria prescribed under a regulation.

statutory conditions means the conditions mentioned in section 8.

TAFE institute see the *Vocational Education, Training and Employment Act 2000*, section 191.