



# **Education (Overseas Students) Act 2018**

**Current as at 1 March 2023**

© State of Queensland 2023



This work is licensed under a Creative Commons Attribution 4.0 International License.



Queensland

# Education (Overseas Students) Act 2018

## Contents

---

		Page
<b>Chapter 1</b>	<b>Preliminary</b>	
1	Short title . . . . .	7
2	Commencement . . . . .	7
3	Main purposes . . . . .	7
4	Act binds all persons . . . . .	8
5	Dictionary . . . . .	8
<b>Chapter 2</b>	<b>Approvals</b>	
<b>Part 1</b>	<b>Obtaining approvals</b>	
<b>Division 1</b>	<b>Obtaining school provider approvals</b>	
6	Who may apply . . . . .	8
7	Requirements for making application . . . . .	9
8	Deciding application . . . . .	9
9	Conditions . . . . .	10
10	Mandatory condition . . . . .	10
11	Duration . . . . .	10
12	Steps after, and taking effect of, decision . . . . .	10
13	Failure to decide application . . . . .	11
<b>Division 2</b>	<b>Obtaining student exchange approvals</b>	
14	Who may apply . . . . .	11
15	Requirements for making application . . . . .	12
16	Deciding application . . . . .	12
17	Conditions . . . . .	12
18	Mandatory condition . . . . .	13
19	Duration . . . . .	13
20	Steps after, and taking effect of, decision . . . . .	13
21	Failure to decide application . . . . .	14
<b>Part 2</b>	<b>Amendment</b>	

Contents

---

22	Amendment on application . . . . .	14
23	Amendment by chief executive . . . . .	15
24	Steps after, and taking effect of, decision . . . . .	15
25	Failure to decide application . . . . .	15
<b>Part 3</b>	<b>Renewal</b>	
26	Application for renewal . . . . .	16
27	Deciding application . . . . .	16
28	Steps after, and taking effect of, decision . . . . .	17
<b>Part 4</b>	<b>Inquiries about applications</b>	
29	Application of part . . . . .	17
30	Inquiry about application . . . . .	18
<b>Part 5</b>	<b>Compliance notices</b>	
31	When compliance notice may be given . . . . .	18
32	Requirements for compliance notice . . . . .	19
<b>Part 6</b>	<b>Sanctions for non-compliance</b>	
<b>Division 1</b>	<b>Conditions, suspension and cancellation</b>	
33	Grounds for taking action . . . . .	20
34	Show cause notice before taking action . . . . .	22
35	Decision in relation to taking action after show cause process . .	22
36	Immediate suspension without show cause notice . . . . .	22
37	Information notice and taking effect of action or immediate suspension 23	
<b>Division 2</b>	<b>Effect of suspension</b>	
38	Effect of suspension of school provider approval . . . . .	23
39	Effect of suspension of student exchange approval . . . . .	24
<b>Part 7</b>	<b>Surrender</b>	
40	Surrender of approval . . . . .	25
<b>Chapter 3</b>	<b>Investigation and enforcement</b>	
<b>Part 1</b>	<b>General provisions about authorised persons</b>	
<b>Division 1</b>	<b>Appointment</b>	
41	Authorised persons . . . . .	25
42	Functions of authorised persons . . . . .	26
43	Appointment and qualifications . . . . .	26
44	Appointment conditions and limit on powers . . . . .	26
45	When office ends . . . . .	26
46	Resignation . . . . .	27

<b>Division 2</b>	<b>Identity cards</b>	
47	Issue of identity card . . . . .	27
48	Production or display of identity card . . . . .	27
49	Return of identity card . . . . .	28
<b>Division 3</b>	<b>Miscellaneous provisions</b>	
50	References to exercise of powers . . . . .	28
51	Reference to document includes reference to reproductions from electronic document . . . . .	28
<b>Part 2</b>	<b>Entry of places by authorised persons</b>	
<b>Division 1</b>	<b>Power to enter</b>	
52	General power to enter places . . . . .	29
<b>Division 2</b>	<b>Entry by consent</b>	
53	Application of division . . . . .	30
54	Incidental entry to ask for access . . . . .	30
55	Matters authorised person must tell occupier . . . . .	30
56	Consent acknowledgement . . . . .	30
<b>Division 3</b>	<b>Entry under warrant</b>	
<b>Subdivision 1</b>	<b>Obtaining warrant</b>	
57	Application for warrant . . . . .	31
58	Issue of warrant . . . . .	32
59	Electronic application . . . . .	33
60	Additional procedure if electronic application . . . . .	33
61	Defect in relation to a warrant . . . . .	35
<b>Subdivision 2</b>	<b>Entry procedure</b>	
62	Entry procedure . . . . .	35
<b>Part 3</b>	<b>Other authorised persons' powers and related matters</b>	
<b>Division 1</b>	<b>General powers of authorised persons after entering places</b>	
63	Application of division . . . . .	36
64	General powers . . . . .	36
65	Power to require reasonable help . . . . .	38
66	Offence to contravene help requirement . . . . .	38
<b>Division 2</b>	<b>Seizure by authorised persons and forfeiture</b>	
<b>Subdivision 1</b>	<b>Power to seize</b>	
67	Seizing evidence at a place . . . . .	39
68	Seizure of property subject to security . . . . .	40
<b>Subdivision 2</b>	<b>Powers to support seizure</b>	

Contents

---

69	Power to secure seized thing . . . . .	40
70	Offence to interfere . . . . .	40
<b>Subdivision 3</b>	<b>Safeguards for seized things</b>	
71	Receipt and information notice for seized thing . . . . .	41
72	Access to seized thing . . . . .	42
73	Return of seized thing . . . . .	42
<b>Subdivision 4</b>	<b>Forfeiture</b>	
74	Forfeiture by chief executive decision . . . . .	43
75	Dealing with property forfeited to State . . . . .	44
<b>Part 4</b>	<b>Miscellaneous provisions relating to authorised persons</b>	
<b>Division 1</b>	<b>Damage</b>	
76	Duty to avoid inconvenience and minimise damage . . . . .	44
77	Notice of damage . . . . .	45
<b>Division 2</b>	<b>Compensation</b>	
78	Compensation . . . . .	46
<b>Division 3</b>	<b>Other offences relating to authorised persons</b>	
79	Giving authorised person false or misleading information . . . . .	47
80	Obstructing authorised person . . . . .	47
81	Impersonating authorised person . . . . .	48
<b>Chapter 4</b>	<b>Offences</b>	
82	Offence to provide or promote a course to overseas student without school provider approval . . . . .	48
83	Offence to provide or promote an international secondary student exchange program without student exchange approval . . . . .	50
<b>Chapter 5</b>	<b>Review</b>	
<b>Part 1</b>	<b>Internal review</b>	
84	Who may apply for review . . . . .	51
85	Application for review . . . . .	51
86	Review decision . . . . .	52
<b>Part 2</b>	<b>External review</b>	
87	Application of part . . . . .	53
88	External review by QCAT . . . . .	53
89	No power to stay immediate suspension . . . . .	53
<b>Chapter 6</b>	<b>General</b>	
<b>Part 1</b>	<b>School provider approvals—relationship with Commonwealth Act</b>	
90	Automatic cancellation of school provider approval if registration cancelled under Commonwealth Act . . . . .	54

---

91	Continuation of school provider approval if registration continues under Commonwealth Act . . . . .	54
92	Copy of notice of provider default given under Commonwealth Act to be given to chief executive . . . . .	55
<b>Part 2</b>	<b>Student exchange approvals—guidelines and register</b>	
93	Chief executive must make guidelines about operation of programs	55
94	Chief executive must establish register . . . . .	56
<b>Part 3</b>	<b>Confidentiality</b>	
95	Definitions for part . . . . .	57
96	Duty of confidentiality . . . . .	57
97	Use or disclosure for authorised purpose . . . . .	58
98	Disclosure to other jurisdictions . . . . .	59
99	Disclosure to Non-State Schools Accreditation Board . . . . .	59
100	Disclosure by Non-State Schools Accreditation Board . . . . .	59
<b>Part 4</b>	<b>Miscellaneous</b>	
101	Delegation . . . . .	60
102	Protection from liability . . . . .	60
103	Approved forms . . . . .	60
104	Regulation-making power . . . . .	60
<b>Chapter 7</b>	<b>Repeal and transitional provisions</b>	
<b>Part 1</b>	<b>Repeal</b>	
105	Repeal of Education (Overseas Students) Act 1996 . . . . .	61
<b>Part 2</b>	<b>Transitional provisions</b>	
106	Definition for part . . . . .	61
107	Applications . . . . .	61
108	Registrations . . . . .	62
109	Existing suspensions . . . . .	62
110	Proposed suspensions or cancellations . . . . .	63
111	Applications for review . . . . .	64
112	Surrenders . . . . .	64
<b>Schedule 1</b>	<b>Dictionary</b> . . . . .	65





---

# Education (Overseas Students) Act 2018

**An Act to provide for the approval of schools to provide courses to overseas students and the approval of schools and not-for-profit organisations to provide international secondary student exchange programs**

## Chapter 1 Preliminary

### 1 Short title

This Act may be cited as the *Education (Overseas Students) Act 2018*.

### 2 Commencement

- (1) This Act, other than chapter 8, part 4, commences on a day to be fixed by proclamation.
- (2) Chapter 8, part 4 commences on 30 March 2018.

### 3 Main purposes

The main purposes of this Act are to provide for—

- (a) the approval of schools to provide courses to overseas students; and
- (b) the approval of schools and not-for-profit organisations to provide international secondary student exchange programs.

#### **4 Act binds all persons**

- (1) This Act binds all persons, including the State and as far as the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) Nothing in this Act makes the State, the Commonwealth or another State liable to be prosecuted for an offence.

#### **5 Dictionary**

The dictionary in schedule 1 defines particular words used in this Act.

## **Chapter 2 Approvals**

### **Part 1 Obtaining approvals**

#### **Division 1 Obtaining school provider approvals**

#### **6 Who may apply**

- (1) A school may apply to the chief executive for approval to provide a course or courses at a location or locations to overseas students (a *school provider approval*).
- (2) If the school is a State school, the application may be made on behalf of the school by a person authorised in writing by the chief executive.
- (3) If the school is a non-State school, the application must be made on behalf of the school by the school's governing body or a person authorised in writing by the school's governing body.

## 7 Requirements for making application

The application must be—

- (a) made in the approved form; and
- (b) accompanied by the fee prescribed by regulation.

## 8 Deciding application

- (1) The chief executive must decide to give or refuse to give the school provider approval, in whole or in part—
  - (a) within 6 months after the application is made; or
  - (b) if the chief executive and the applicant agree in writing to a longer period within which the chief executive must make the decision—within the longer period.
- (2) The chief executive may decide to give the school provider approval, in whole or in part, only if the chief executive is satisfied—
  - (a) the applicant is complying, or will comply, with—
    - (i) this Act; and
    - (ii) the Commonwealth Act; and
    - (iii) each provision of the national code that applies, or will apply, to the applicant; and
    - (iv) each provision of the ELICOS Standards, if any, that applies, or will apply, to the applicant; and
  - (b) if the applicant is not an exempt applicant—the applicant is fit and proper to provide a course or courses at a location or locations to overseas students.
- (3) In this section—

*exempt applicant* means a school entitled to receive funds under a law of the Commonwealth for recurrent expenditure for the provision of education or training.

## 9 Conditions

A school provider approval may be subject to the conditions the chief executive considers appropriate, including, for example, a condition that—

- (a) there be no net increase, or only a limited net increase, in the number of overseas students enrolled with the holder; or
- (b) the holder enrol only a limited number of new overseas students; or
- (c) the holder not accept any new students from a stated country; or
- (d) the holder not deal with a stated agent in relation to overseas students or intending overseas students; or
- (e) the holder not provide a stated course.

## 10 Mandatory condition

- (1) It is a condition of a school provider approval that the holder must comply with a request by the chief executive to give the chief executive information kept by the holder under a relevant law.
- (2) In this section—  
*information* includes a document.

## 11 Duration

A school provider approval is for the term, of not more than 7 years, stated in the approval.

## 12 Steps after, and taking effect of, decision

- (1) If the chief executive decides to give a school provider approval, the chief executive must give the applicant notice of the decision.

- (2) The approval takes effect when the holder is given the notice or, if the notice states a later day of effect, on the later day.
- (3) If the chief executive decides to refuse to give a school provider approval, or to impose a condition on the approval, the chief executive must give the applicant an information notice about the decision.
- (4) A decision to refuse to give a school provider approval takes effect when the applicant is given the information notice or, if the information notice states a later day of effect, on the later day.

### **13 Failure to decide application**

- (1) If the chief executive fails to decide an application for a school provider approval within the period applying under section 8(1), the failure is taken to be a decision by the chief executive to refuse to give the approval.
- (2) If the chief executive is taken to have refused to give an approval under subsection (1), the applicant is entitled to be given an information notice by the chief executive about the decision.

## **Division 2                    Obtaining student exchange approvals**

### **14 Who may apply**

- (1) A school or a not-for-profit organisation may apply to the chief executive for approval to provide an international secondary student exchange program (a *student exchange approval*).
- (2) If the school is a State school, the application may be made on behalf of the school by a person authorised in writing by the chief executive.

- (3) If the school is a non-State school, the application must be made on behalf of the school by the school's governing body or a person authorised in writing by the school's governing body.

## **15 Requirements for making application**

The application must be—

- (a) made in the approved form; and
- (b) accompanied by the fee prescribed by regulation.

## **16 Deciding application**

- (1) The chief executive must decide to give or refuse to give the student exchange approval—
  - (a) within 6 months after the application is made; or
  - (b) if the chief executive and the applicant agree in writing to a longer period within which the chief executive must make the decision—within the longer period.
- (2) The chief executive may decide to give the student exchange approval only if the chief executive is satisfied—
  - (a) the applicant is complying, or will comply, with—
    - (i) this Act; and
    - (ii) the guidelines, including, for example, the reciprocity obligation; and
  - (b) the applicant is fit and proper to provide an international secondary student exchange program.

## **17 Conditions**

A student exchange approval may be subject to the conditions the chief executive considers appropriate, including, for example, a condition that—

- (a) the holder complies with the guidelines, including, for example, the reciprocity obligation; or
- (b) the holder complies with a reciprocity management plan for the holder.

## **18 Mandatory condition**

- (1) It is a condition of a student exchange approval that the holder must comply with a request by the chief executive to give the chief executive information kept by the holder under a relevant law.
- (2) In this section—  
*information* includes a document.

## **19 Duration**

A student exchange approval is for the term, of not more than 6 years, stated in the approval.

## **20 Steps after, and taking effect of, decision**

- (1) If the chief executive decides to give a student exchange approval, the chief executive must give the applicant notice of the decision.
- (2) The approval takes effect when the holder is given the notice or, if the notice states a later day of effect, on the later day.
- (3) If the chief executive decides to refuse to give a student exchange approval, or to impose a condition on the approval, the chief executive must give the applicant an information notice about the decision.
- (4) A decision to refuse to give a student exchange approval takes effect when the applicant is given the information notice or, if the information notice states a later day of effect, on the later day.

## **21 Failure to decide application**

- (1) If the chief executive fails to decide an application for a student exchange approval within the period applying under section 16(1), the failure is taken to be a decision by the chief executive to refuse to give the approval.
- (2) If the chief executive is taken to have refused to give an approval under subsection (1), the applicant is entitled to be given an information notice by the chief executive about the decision.

## **Part 2 Amendment**

### **22 Amendment on application**

- (1) The holder of an approval may apply to the chief executive for an amendment of the approval.
- (2) The application must be—
  - (a) made in the approved form; and
  - (b) accompanied by the fee prescribed by regulation.
- (3) The chief executive must decide the application by—
  - (a) amending the approval in the way applied for; or
  - (b) with the applicant's written agreement, amending the approval in another way; or
  - (c) refusing to amend the approval.
- (4) Without limiting subsection (3), an amendment may impose a condition on, or vary or remove a condition of, the approval.
- (5) The chief executive must make a decision on the application—
  - (a) within 30 days after the application is made; or
  - (b) if the chief executive and the applicant agree in writing to a longer period within which the chief executive must make the decision—within the longer period.



## **23 Amendment by chief executive**

- (1) The chief executive may decide to amend an approval at any time without an application from the holder.
- (2) Without limiting subsection (1), an amendment may impose a condition on, or vary or remove a condition of, the approval.

## **24 Steps after, and taking effect of, decision**

- (1) If the chief executive decides to amend an approval under section 22, the chief executive must give the holder notice of the decision.
- (2) The amendment takes effect when the holder is given the notice or, if the notice states a later day of effect, on the later day.
- (3) If the chief executive decides to refuse to amend an approval under section 22, or to amend an approval under section 23, the chief executive must give the holder an information notice about the decision.
- (4) A decision to refuse to amend an approval under section 22 takes effect when the holder is given the information notice or, if the information notice states a later day of effect, on the later day.
- (5) A decision to amend an approval under section 23 takes effect 10 days after the holder is given the information notice or, if the information notice states a later day of effect, on the later day.

## **25 Failure to decide application**

- (1) If the chief executive fails to decide an application for amendment of an approval within the period applying under section 22(5), the failure is taken to be a decision by the chief executive to refuse to amend the approval.
- (2) If the chief executive is taken to have refused to amend an approval under subsection (1), the applicant is entitled to be

given an information notice by the chief executive about the decision.

## **Part 3                      Renewal**

### **26      Application for renewal**

- (1) The holder of an approval may apply to the chief executive for renewal of the approval.
- (2) The application must be—
  - (a) made in the approved form at least 3 months before the term of the approval ends; and
  - (b) accompanied by the fee prescribed by regulation.

### **27      Deciding application**

- (1) The chief executive must decide to renew, or refuse to renew, the approval—
  - (a) within 6 months after the application is made; or
  - (b) if the chief executive and the applicant agree in writing to a longer period within which the chief executive must make the decision—within the longer period.
- (2) The chief executive may decide to renew the approval only if the chief executive is satisfied—
  - (a) for a school provider approval—of the matters mentioned in section 8(2); or
  - (b) for a student exchange approval—of the matters mentioned in section 16(2).
- (3) The renewed approval's term can not be more than—
  - (a) for a school provider approval—7 years; or
  - (b) for a student exchange approval—6 years.

- (4) If the chief executive has not made a decision under subsection (1) before the day on which the holder's approval is due to expire, the holder's approval continues until the chief executive's decision takes effect.

## **28 Steps after, and taking effect of, decision**

- (1) If the chief executive decides to renew the approval, the chief executive must give the holder notice of the decision.
- (2) The renewal of the approval takes effect when the holder is given the notice or, if the notice states a later day of effect, on the later day.
- (3) If the chief executive decides to refuse to renew the approval, the chief executive must give the holder an information notice about the decision.
- (4) The refusal takes effect when the holder is given the information notice or, if the information notice states a later day of effect, on the later day.

# **Part 4 Inquiries about applications**

## **29 Application of part**

This part applies to each of the following applications—

- (a) an application under section 6 or 14 for the giving of an approval;
- (b) an application under section 22 for the amendment of an approval;
- (c) an application under section 26 for the renewal of an approval.

### **30 Inquiry about application**

- (1) Before deciding the application, the chief executive may, by notice given to the applicant, require the applicant to give the chief executive within the reasonable period of at least 14 days stated in the notice, further information or a document the chief executive reasonably requires to decide the application.
- (2) The applicant is taken to have withdrawn the application if, within the stated period, the applicant does not comply with the requirement.
- (3) The information or document under subsection (1) must, if the notice requires, be verified by statutory declaration.

## **Part 5 Compliance notices**

### **31 When compliance notice may be given**

- (1) This section applies if the chief executive believes—
  - (a) the holder of an approval is failing, or has failed, to comply with—
    - (i) for a school provider approval—
      - (A) a condition of the approval; or
      - (B) this Act; or
      - (C) the Commonwealth Act; or
      - (D) a provision of the national code applying to the holder; or
      - (E) a provision of the ELICOS Standards applying to the holder; or
    - (ii) for a student exchange approval—
      - (A) a condition of the approval; or
      - (B) this Act; or

- (C) the guidelines, including, for example, the reciprocity obligation; or
- (D) a reciprocity management plan for the holder; and
- (b) a matter relating to the failure is reasonably capable of being rectified; and
- (c) it is appropriate to give the holder an opportunity to rectify the matter.
- (2) The chief executive may give the holder a notice (a ***compliance notice***) requiring the holder to refrain from doing an act or to rectify the matter.

## 32 Requirements for compliance notice

- (1) The compliance notice must state—
  - (a) that the chief executive believes the holder is failing, or has failed, to comply with—
    - (i) for a school provider approval—
      - (A) a condition of the approval; or
      - (B) this Act; or
      - (C) the Commonwealth Act; or
      - (D) a provision of the national code applying to the holder; or
      - (E) a provision of the ELICOS Standards applying to the holder; or
    - (ii) for a student exchange approval—
      - (A) a condition of the approval; or
      - (B) this Act; or
      - (C) the guidelines, including, for example, the reciprocity obligation; or

- (D) a reciprocity management plan for the holder; and
  - (b) briefly, how it is believed the holder is failing, or has failed, to comply; and
  - (c) the matter relating to the failure that the chief executive believes is reasonably capable of being rectified; and
  - (d) the reasonable steps the holder must take to rectify the matter; and
  - (e) that the holder must take the steps within a stated reasonable period; and
  - (f) that failure to comply with the notice may lead to the chief executive taking action under part 6.
- (2) If a compliance notice requires the holder to refrain from doing an act, it also must state either—
- (a) a period for which the requirement applies; or
  - (b) that the requirement applies until further notice.

## **Part 6                      Sanctions for non-compliance**

### **Division 1                      Conditions, suspension and cancellation**

#### **33                      Grounds for taking action**

- (1) The chief executive may take 1 or more of the actions mentioned in subsection (2) in relation to an approval if—
- (a) the approval was obtained because of incorrect or misleading information; or
  - (b) the chief executive believes the holder has failed to comply with a condition of the approval; or

- (c) the chief executive believes the holder has failed to comply with—
    - (i) for a school provider approval—
      - (A) this Act; or
      - (B) the Commonwealth Act; or
      - (C) a provision of the national code applying to the holder; or
      - (D) a provision of the ELICOS Standards applying to the holder; or
    - (ii) for a student exchange approval—
      - (A) this Act; or
      - (B) the guidelines, including, for example, the reciprocity obligation; or
      - (C) a reciprocity management plan for the holder; or
  - (d) the chief executive believes the holder has failed to comply, without a reasonable excuse, with a compliance notice; or
  - (e) the holder is convicted of an offence against this Act or the Commonwealth Act; or
  - (f) the holder has been charged with an indictable offence or any other circumstance indicates that the holder may not be a fit and proper person to hold the approval.
- (2) The actions are—
- (a) to impose a condition on, or vary or remove a condition of, the approval; or
  - (b) to suspend the approval for a stated period of not more than 6 months; or
  - (c) to cancel the approval.

### **34 Show cause notice before taking action**

- (1) This section applies if the chief executive is considering taking action under section 33.
- (2) The chief executive must first give the holder a notice (a *show cause notice*) stating—
  - (a) that the chief executive intends to take the action; and
  - (b) the proposed action; and
  - (c) the reasons for the proposed action; and
  - (d) that the holder may, within 30 days after the notice is given, give the chief executive a written response to the proposed action.

### **35 Decision in relation to taking action after show cause process**

- (1) After considering any written response from the holder received under section 34(2)(d), the chief executive may decide to take, or not to take, the action.
- (2) If the chief executive decides not to take the action, the chief executive must give the holder notice of the decision.

### **36 Immediate suspension without show cause notice**

- (1) The chief executive may suspend an approval on a ground mentioned in section 33(1) without giving the holder a show cause notice if the chief executive is satisfied there is an immediate risk to the safety, health or wellbeing of overseas students or Queensland students.
- (2) The suspension may not be for a period of more than 6 months.



---

**37 Information notice and taking effect of action or immediate suspension**

- (1) The chief executive must give the holder an information notice about a decision under section 35 to take action or a decision under 36 to suspend an approval.
- (2) A decision under section 35 to take action takes effect at the end of 10 days after the date of the decision or, if the information notice states a later day of effect, on the later day.
- (3) A decision under section 36 to suspend an approval takes effect on the giving of the information notice.

**Division 2 Effect of suspension**

**38 Effect of suspension of school provider approval**

- (1) If a school provider approval is suspended under this part in relation to a course for a location, the holder must not—
  - (a) do anything for the purpose of recruiting or enrolling overseas students or intending overseas students for the course at the location; or
  - (b) solicit or accept any money from an overseas student or intending overseas student for the course at the location; or
  - (c) if an accepted student of the holder has not begun the course—permit the student to begin the course.
- (2) However, the chief executive may, by notice given to the holder, permit the holder, for the whole or a stated part of the period of the suspension, to solicit or accept money from an overseas student who has started the course.
- (3) The holder is still the holder of the school provider approval in relation to the course for the location for all other purposes.
- (4) In this section—

*accepted student*, of the holder, means a student, whether within or outside Australia—

- (a) who is accepted for enrolment, or enrolled, in a course provided by the holder; and
- (b) who is, or will be, required to hold a student visa to undertake or continue the course.

### **39 Effect of suspension of student exchange approval**

- (1) If a student exchange approval is suspended under this part in relation to an international secondary student exchange program, the holder must not—
  - (a) do anything for the purpose of recruiting students or intending students for the program; or
  - (b) solicit or accept any money from a student or intending student for the program; or
  - (c) if an accepted student of the holder has not begun the program—permit the student to begin the program.
- (2) However, the chief executive may, by notice given to the holder, permit the holder, for the whole or a stated part of the period of the suspension, to solicit or accept money from a student who has started the program.
- (3) The holder is still the holder of the school exchange approval in relation to the program for all other purposes.
- (4) In this section—

*accepted student*, of the holder, means a student, whether within or outside Australia, who is accepted for a program provided by the holder.

## **Part 7                      Surrender**

### **40      Surrender of approval**

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

## **Chapter 3                  Investigation and enforcement**

### **Part 1                      General provisions about authorised persons**

#### **Division 1                Appointment**

### **41      Authorised persons**

This chapter includes provision for the appointment of authorised persons, and gives authorised persons particular powers.

## **42 Functions of authorised persons**

An authorised person has the following functions—

- (a) to investigate offences against this Act;
- (b) to investigate or monitor whether an occasion has arisen for the exercise of powers under this Act;
- (c) to facilitate the exercise of powers under this Act.

## **43 Appointment and qualifications**

The chief executive may, by instrument in writing, appoint an appropriately qualified person as an authorised person.

## **44 Appointment conditions and limit on powers**

- (1) An authorised person holds office on any conditions stated in—
  - (a) the authorised person’s instrument of appointment; or
  - (b) a signed notice given to the authorised person; or
  - (c) a regulation.
- (2) The instrument of appointment, a signed notice given to the authorised person or a regulation may limit the authorised person’s powers.
- (3) In this section—  
*signed notice* means a notice signed by the chief executive.

## **45 When office ends**

- (1) The office of a person as an authorised person ends if any of the following happens—
  - (a) the term of office stated in a condition of office ends;
  - (b) under another condition of office, the office ends;

- (c) the authorised person's resignation under section 46 takes effect.
- (2) Subsection (1) does not limit the ways the office of a person as an authorised person ends.
- (3) In this section—  
*condition of office* means a condition under which the authorised person holds office.

## 46 Resignation

An authorised person may resign by signed notice given to the chief executive.

## Division 2 Identity cards

### 47 Issue of identity card

- (1) The chief executive must issue an identity card to each authorised person.
- (2) The identity card must—
  - (a) contain a recent photo of the authorised person; and
  - (b) contain a copy of the authorised person's signature; and
  - (c) identify the person as an authorised person under this Act; and
  - (d) state an expiry date for the card.
- (3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

### 48 Production or display of identity card

- (1) In exercising a power in relation to a person in the person's presence, an authorised person must—

- (a) produce the authorised person's identity card for the person's inspection before exercising the power; or
  - (b) have the identity card displayed so it is clearly visible to the person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the authorised person must produce the identity card for the person's inspection at the first reasonable opportunity.

#### **49 Return of identity card**

If the office of a person as an authorised person ends, the person must return the person's identity card to the chief executive within 21 days after the office ends unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

### **Division 3 Miscellaneous provisions**

#### **50 References to exercise of powers**

If—

- (a) a provision of this chapter refers to the exercise of a power by an authorised person; and
  - (b) there is no reference to a specific power;
- the reference is to the exercise of all or any authorised persons' powers under this chapter, or a warrant, to the extent the powers are relevant.

#### **51 Reference to document includes reference to reproductions from electronic document**

A reference in this chapter to a document includes a reference to an image or writing—

- (a) produced from an electronic document; or

- (b) not yet produced, but reasonably capable of being produced, from an electronic document, with or without the aid of another article or device.

## **Part 2                      Entry of places by authorised persons**

### **Division 1                      Power to enter**

#### **52                      General power to enter places**

- (1) An authorised person may enter a place if—
  - (a) an occupier at the place consents under division 2 to the entry and section 55 has been complied with for the occupier; or
  - (b) the entry is authorised under a warrant and, if there is an occupier of the place, section 62 has been complied with for the occupier.
- (2) If the power to enter arose only because an occupier of the place consented to the entry, the power is subject to any conditions of the consent and ceases if the consent is withdrawn.
- (3) If the power to enter is under a warrant, the power is subject to the terms of the warrant.
- (4) The consent may provide for consent for re-entry and is subject to the conditions of consent.
- (5) If the power to re-enter is under a warrant, the re-entry is subject to the terms of the warrant.

## **Division 2                      Entry by consent**

### **53            Application of division**

This division applies if an authorised person intends to ask an occupier of a place to consent to the authorised person or another authorised person entering the place under section 52.

### **54            Incidental entry to ask for access**

For the purpose of asking the occupier for the consent, an authorised person may, without the occupier's consent or a warrant—

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the authorised person reasonably considers members of the public ordinarily are allowed to enter when they wish to contact an occupier of the place.

### **55            Matters authorised person must tell occupier**

Before asking for the consent, the authorised person must give a reasonable explanation to the occupier—

- (a) about the purpose of the entry, including the powers intended to be exercised; and
- (b) that the occupier is not required to consent; and
- (c) that the consent may be given subject to conditions and may be withdrawn at any time.

### **56            Consent acknowledgement**

- (1) If the consent is given, the authorised person may ask the occupier to sign an acknowledgement of the consent.
- (2) The acknowledgement must state—



- (a) the purpose of the entry, including the powers to be exercised; and
  - (b) the following has been explained to the occupier—
    - (i) the purpose of the entry, including the powers intended to be exercised;
    - (ii) that the occupier is not required to consent;
    - (iii) that the consent may be given subject to conditions and may be withdrawn at any time; and
  - (c) the occupier gives the authorised person or another authorised person consent to enter the place and exercise the powers; and
  - (d) the time and day the consent was given; and
  - (e) any conditions of the consent.
- (3) If the occupier signs the acknowledgement, the authorised person must immediately give a copy to the occupier.
- (4) If—
- (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
  - (b) a signed acknowledgement complying with subsection (2) for the entry is not produced in evidence;
- the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

## **Division 3            Entry under warrant**

### **Subdivision 1        Obtaining warrant**

#### **57        Application for warrant**

- (1) An authorised person may apply to a magistrate for a warrant for a place.

- (2) The authorised person must prepare a written application that states the grounds on which the warrant is sought.
- (3) The written application must be sworn.
- (4) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the written application to be given by statutory declaration.

## **58 Issue of warrant**

- (1) The magistrate may issue the warrant for the place only if the magistrate is satisfied there are reasonable grounds for suspecting there is at the place, or will be at the place within the next 7 days, a particular thing or activity that may provide evidence of—
  - (a) an offence against this Act; or
  - (b) a failure to comply as mentioned in section 31(1)(a).
- (2) The warrant must state—
  - (a) the place to which the warrant applies; and
  - (b) that a stated authorised person or any authorised person may with necessary and reasonable help and force—
    - (i) enter the place and any other place necessary for entry to the place; and
    - (ii) exercise the authorised person’s powers; and
  - (c) particulars of the offence, or the failure to comply, that the magistrate considers appropriate; and
  - (d) the name of the person suspected of having committed the offence, or having failed to comply, unless the name is unknown or the magistrate considers it inappropriate to state the name; and

- (e) the evidence that may be seized under the warrant; and
- (f) the hours of the day or night when the place may be entered; and
- (g) the magistrate's name; and
- (h) the day and time of the warrant's issue; and
- (i) the day, within 14 days after the warrant's issue, the warrant ends.

## 59 Electronic application

- (1) An application under section 57 may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the authorised person reasonably considers it necessary because of—
  - (a) urgent circumstances; or
  - (b) other special circumstances, including, for example, the authorised person's remote location.
- (2) The application—
  - (a) may not be made before the authorised person prepares the written application under section 57(2); but
  - (b) may be made before the written application is sworn.

## 60 Additional procedure if electronic application

- (1) For an application made under section 59, the magistrate may issue the warrant (the *original warrant*) only if the magistrate is satisfied—
  - (a) it was necessary to make the application under section 59; and
  - (b) the way the application was made under section 59 was appropriate.
- (2) After the magistrate issues the original warrant—

- (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the authorised person, including, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the authorised person; or
  - (b) otherwise—
    - (i) the magistrate must tell the authorised person the information mentioned in section 58(2); and
    - (ii) the authorised person must complete a form of warrant, including by writing on it the information mentioned in section 58(2) provided by the magistrate.
- (3) The copy of the warrant mentioned in subsection (2)(a), or the form of warrant completed under subsection (2)(b) (in either case the *duplicate warrant*), is a duplicate of, and as effectual as, the original warrant.
- (4) The authorised person must, at the first reasonable opportunity, send to the magistrate—
- (a) the written application complying with section 57(2) and (3); and
  - (b) if the authorised person completed a form of warrant under subsection (2)(b), the completed form of warrant.
- (5) The magistrate must keep the original warrant and, on receiving the documents under subsection (4)—
- (a) attach the documents to the original warrant; and
  - (b) give the original warrant and documents to the clerk of the court of the relevant magistrates court.
- (6) Despite subsection (3), if—
- (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and
  - (b) the original warrant is not produced in evidence;

---

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.

(7) This section does not limit section 57.

(8) In this section—

*relevant magistrates court*, in relation to a magistrate, means the court that the magistrate constitutes under the *Magistrates Act 1991*.

## 61 Defect in relation to a warrant

(1) A warrant is not invalidated by a defect in—

- (a) the warrant; or
- (b) compliance with this subdivision;

unless the defect affects the substance of the warrant in a material particular.

(2) In this section—

*warrant* includes a duplicate warrant mentioned in section 60(3).

## Subdivision 2 Entry procedure

### 62 Entry procedure

(1) This section applies if an authorised person is intending to enter a place under a warrant issued under this division.

(2) Before entering the place, the authorised person must do or make a reasonable attempt to do the following things—

- (a) identify himself or herself to a person who is an occupier of the place and is present by producing the authorised person's identity card or another document evidencing the authorised person's appointment;

- (b) give the person a copy of the warrant;
  - (c) tell the person the authorised person is permitted by the warrant to enter the place;
  - (d) give the person an opportunity to allow the authorised person immediate entry to the place without using force.
- (3) However, the authorised person need not comply with subsection (2) if the authorised person believes on reasonable grounds that entry to the place without compliance is required to ensure the execution of the warrant is not frustrated.
- (4) In this section—  
*warrant* includes a duplicate warrant mentioned in section 60(3).

## **Part 3                      Other authorised persons’ powers and related matters**

### **Division 1                General powers of authorised persons after entering places**

#### **63            Application of division**

- (1) The powers under this division may be exercised if an inspector enters a place under section 52(1) with consent or under a warrant.
- (2) However, the powers under this division are subject to any conditions of the consent or terms of the warrant.

#### **64            General powers**

- (1) The authorised person may do any of the following (each a *general power*)—
  - (a) search any part of the place;

- (b) inspect, examine or film any part of the place or anything at the place;
  - (c) take an extract from, or copy, a document at the place, or take the document to another place to copy;
  - (d) produce an image or writing at the place from an electronic document or, to the extent it is not practicable, take a thing containing an electronic document to another place to produce an image or writing;
  - (e) take to, into or onto the place and use any person, equipment and materials the authorised person reasonably requires for exercising the authorised person's powers under this chapter;
  - (f) remain at the place for the time necessary to achieve the purpose of the entry.
- (2) The authorised person may take a necessary step to allow the exercise of a general power.
- (3) If the authorised person takes a document from the place to copy it, the authorised person must copy the document and return it to the place as soon as practicable.
- (4) If the authorised person takes from the place an article or device reasonably capable of producing a document from an electronic document to produce the document, the authorised person must produce the document and return the article or device to the place as soon as practicable.
- (5) In this section—
- film* includes photograph, videotape and record an image in another way.
- inspect*, a thing, includes open the thing and examine its contents.

## **65 Power to require reasonable help**

- (1) The authorised person may make a requirement (a *help requirement*) of an occupier of the place or a person at the place to give the authorised person reasonable help to exercise a general power, including, for example, to produce a document or to give information.
- (2) When making the help requirement, the authorised person must give the person an offence warning for the requirement.
- (3) In this section—  
*offence warning*, for a requirement, means a warning that, without a reasonable excuse, it is an offence for the person of whom the requirement is made not to comply with it.

## **66 Offence to contravene help requirement**

- (1) A person of whom a help requirement has been made must comply with the requirement unless the person has a reasonable excuse.  
Maximum penalty—50 penalty units.
- (2) It is a reasonable excuse for an individual not to comply with a help requirement if complying might tend to incriminate the individual or expose the individual to a penalty.
- (3) However, subsection (2) does not apply if a document or information the subject of the help requirement is required to be held or kept under a relevant law.
- (4) If an individual gives a document or information mentioned in subsection (3), the document or information is not admissible against the individual in any proceeding to the extent it tends to incriminate the individual, or expose the individual to a penalty, in the proceeding.
- (5) Subsection (4) does not apply to—
  - (a) a proceeding about the false or misleading nature of the information or anything in the document or in which the



- false or misleading nature of the information or document is relevant evidence; or
- (b) a proceeding for an offence against this Act or the Commonwealth Act.

## **Division 2                    Seizure by authorised persons and forfeiture**

### **Subdivision 1            Power to seize**

#### **67            Seizing evidence at a place**

- (1) If an authorised person enters a place with the occupier's consent, the authorised person may seize a thing at the place only if—
- (a) the authorised person reasonably believes the thing is evidence of an offence against this Act or a failure to comply as mentioned in section 31(1)(a); and
- (b) seizure of the thing is consistent with the purpose of entry as explained to the occupier when asking for the occupier's consent.
- (2) If an authorised person enters a place under a warrant, the authorised person may seize the evidence for which the warrant was issued.
- (3) The authorised person may also seize anything else at the place if the authorised person reasonably believes—
- (a) the thing is evidence of an offence against this Act or a failure to comply as mentioned in section 31(1)(a); and
- (b) the seizure is necessary to prevent the thing being hidden, lost or destroyed.

## **68 Seizure of property subject to security**

- (1) An authorised person may seize a thing, and exercise powers relating to the thing, despite a lien or other security over the thing claimed by another person.
- (2) However, the seizure does not affect the other person's claim to the lien or other security against a person other than the authorised person or a person acting under the direction or authority of the authorised person.

## **Subdivision 2 Powers to support seizure**

### **69 Power to secure seized thing**

- (1) Having seized a thing under this division, an authorised person may—
  - (a) leave it at the place where it was seized (the *place of seizure*) and take reasonable action to restrict access to it; or
  - (b) move it from the place of seizure.
- (2) For subsection (1)(a), the authorised person may, for example, seal the thing, or the entrance to the place of seizure, and mark the thing or place to show access to the thing or place is restricted.

### **70 Offence to interfere**

- (1) If access to a seized thing is restricted under section 69, a person must not tamper with the thing or with anything used to restrict access to the thing without—
  - (a) an authorised person's approval; or
  - (b) a reasonable excuse.

Maximum penalty—50 penalty units.

(2) If access to a place is restricted under section 69, a person must not enter the place in contravention of the restriction or tamper with anything used to restrict access to the place without—

- (a) an authorised person's approval; or
- (b) a reasonable excuse.

Maximum penalty—50 penalty units.

### **Subdivision 3      Safeguards for seized things**

#### **71      Receipt and information notice for seized thing**

(1) This section applies if an authorised person seizes anything under this division unless—

- (a) the authorised person reasonably believes there is no-one apparently in possession of the thing or it has been abandoned; or
- (b) because of the condition, nature and value of the thing it would be unreasonable to require the authorised person to comply with this section.

(2) The authorised person must, as soon as practicable after seizing the thing, give an owner or person in control of the thing before it was seized—

- (a) a receipt for the thing that generally describes the thing and its condition; and
- (b) an information notice about the decision to seize it.

(3) However, if an owner or person from whom the thing is seized is not present when it is seized, the receipt and information notice may be given by leaving them in a conspicuous position and in a reasonably secure way at the place at which the thing is seized.

(4) The receipt and information notice may—

- (a) be given in the same document; and

- (b) relate to more than 1 seized thing.
- (5) The authorised person may delay giving the receipt and information notice if the authorised person reasonably suspects giving them may frustrate or otherwise hinder an investigation by the authorised person under this chapter.
- (6) However, the delay may be only for so long as the authorised person continues to have the reasonable suspicion and remains in the vicinity of the place at which the thing was seized to keep it under observation.

## **72 Access to seized thing**

- (1) Until a seized thing is forfeited or returned, the authorised person who seized the thing must allow an owner of the thing—
  - (a) to inspect it at any reasonable time and from time to time; and
  - (b) if it is a document—to copy it.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.
- (3) The inspection or copying must be allowed free of charge.

## **73 Return of seized thing**

- (1) This section applies if a seized thing is not forfeited under subdivision 4.
- (2) As soon as the chief executive stops being satisfied there are reasonable grounds for retaining the thing, the chief executive must return it to its owner.
- (3) If the thing is not returned to its owner within 3 months after it was seized, the owner may apply to the chief executive for its return.
- (4) Within 30 days after receiving the application, the chief executive must—

- (a) if the chief executive is satisfied there are reasonable grounds for retaining the thing and decides to retain it—give the owner an information notice about the decision; or
  - (b) otherwise—return the thing to the owner.
- (5) For this section, there are reasonable grounds for retaining a seized thing if—
- (a) the thing is being, or is likely to be, examined; or
  - (b) the thing is needed, or may be needed, for the purposes of—
    - (i) a proceeding for an offence against this Act that is likely to be started or that has been started but not completed; or
    - (ii) an appeal from a decision in a proceeding for an offence against this Act; or
  - (c) it is not lawful for the owner to possess the thing.
- (6) Subsection (5) does not limit the grounds that may be reasonable grounds for retaining the seized thing.
- (7) Nothing in this section affects a lien or other security over the seized thing.

## **Subdivision 4      Forfeiture**

### **74      Forfeiture by chief executive decision**

- (1) The chief executive may decide a seized thing is forfeited to the State if an authorised person—
  - (a) after making reasonable inquiries, can not find an owner; or
  - (b) after making reasonable efforts, can not return it to an owner.
- (2) However, the authorised person is not required to—

- (a) make inquiries if it would be unreasonable to make inquiries to find an owner; or
- (b) make efforts if it would be unreasonable to make efforts to return the thing to an owner.

*Example for paragraph (b)—*

the owner of the thing has migrated to another country

- (3) Regard must be had to the thing's condition, nature and value in deciding—
  - (a) whether it is reasonable to make inquiries or efforts; and
  - (b) if inquiries or efforts are made—what inquiries or efforts, including the period over which they are made, are reasonable.

## **75 Dealing with property forfeited to State**

- (1) A thing becomes the property of the State if the thing is forfeited to the State under section 74(1).
- (2) The chief executive may deal with the thing as the chief executive considers appropriate, including, for example, by destroying it or giving it away.

# **Part 4 Miscellaneous provisions relating to authorised persons**

## **Division 1 Damage**

### **76 Duty to avoid inconvenience and minimise damage**

In exercising a power, an authorised person must take all reasonable steps to cause as little inconvenience, and do as little damage, as possible.

*Note—*

See also section 78.

## 77 Notice of damage

- (1) This section applies if—
  - (a) an authorised person damages something when exercising, or purporting to exercise, a power; or
  - (b) a person (the *assistant*) acting under the direction or authority of an authorised person damages something.
- (2) However, this section does not apply to damage the authorised person reasonably considers is trivial or if the authorised person reasonably believes—
  - (a) there is no-one apparently in possession of the thing; or
  - (b) the thing has been abandoned.
- (3) The authorised person must give notice of the damage to a person who appears to the authorised person to be an owner, or person in control, of the thing.
- (4) However, if for any reason it is not practicable to comply with subsection (3), the authorised person must—
  - (a) leave the notice at the place where the damage happened; and
  - (b) ensure it is left in a conspicuous position and in a reasonably secure way.
- (5) The authorised person may delay complying with subsection (3) or (4) if the authorised person reasonably suspects complying with the subsection may frustrate or otherwise hinder the performance of the authorised person's functions.
- (6) The delay may be only for so long as the authorised person continues to have the reasonable suspicion and remains in the vicinity of the place.
- (7) If the authorised person believes the damage was caused by a latent defect in the thing or other circumstances beyond the control of the authorised person or the assistant, the authorised person may state the belief in the notice.

- (8) The notice must state—
  - (a) particulars of the damage; and
  - (b) that the person who suffered the damage may claim compensation under section 78.

## **Division 2                      Compensation**

### **78                      Compensation**

- (1) A person may claim compensation from the State if the person incurs loss because of the exercise, or purported exercise, of a power by or for an authorised person including a loss arising from compliance with a requirement made of the person under part 3, division 1.
- (2) The compensation may be claimed and ordered in a proceeding—
  - (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
  - (b) for an alleged offence against this Act the investigation of which gave rise to the claim for compensation.
- (3) A court may order the payment of compensation only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (4) In considering whether it is just to order compensation, the court must have regard to—
  - (a) any relevant offence committed by the claimant; and
  - (b) whether the loss arose from a lawful seizure or lawful forfeiture.
- (5) A regulation may prescribe other matters that may, or must, be taken into account by the court when considering whether it is just to order compensation.
- (6) Section 76 does not provide for a statutory right of compensation other than as provided by this section.



- (7) In this section—  
*loss* includes costs and damage.

## **Division 3                      Other offences relating to authorised persons**

### **79            Giving authorised person false or misleading information**

- (1) A person must not, in relation to the administration of this Act, give an authorised person information the person knows is false or misleading in a material particular.

Maximum penalty—20 penalty units.

- (2) Subsection (1) applies to information given in relation to the administration of this Act whether or not the information was given in response to a specific power under this Act.
- (3) Subsection (1) does not apply to a person if the person, when giving information in a document—
- (a) tells the authorised person, to the best of the person’s ability, how the document is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

### **80            Obstructing authorised person**

- (1) A person must not obstruct an authorised person exercising a power, or someone helping an authorised person exercising a power, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) If a person has obstructed an authorised person, or someone helping an authorised person, and the authorised person decides to proceed with the exercise of the power, the authorised person must warn the person that—

- (a) it is an offence to cause an obstruction unless the person has a reasonable excuse; and
  - (b) the authorised person considers the person's conduct an obstruction.
- (3) In this section—
- obstruct* includes assault, hinder, resist, attempt to obstruct and threaten to obstruct.

### **81 Impersonating authorised person**

A person must not impersonate an authorised person.

Maximum penalty—100 penalty units.

## **Chapter 4 Offences**

### **82 Offence to provide or promote a course to overseas student without school provider approval**

- (1) A person must not engage in conduct mentioned in subsection (2) involving the provision of a course at a location to an overseas student unless—
- (a) the person is the holder of a school provider approval to provide the course at the location to an overseas student; or
  - (b) the person engages in the conduct under an arrangement with the holder of a school provider approval to provide the course at the location to an overseas student.

Maximum penalty—200 penalty units.

- (2) For subsection (1), the conduct is—
- (a) providing a course at a location to an overseas student; or

- (b) making an offer to an overseas student or intending overseas student to undertake, or to apply to undertake, a course at a location; or
  - (c) inviting an overseas student or intending overseas student to undertake, or to apply to undertake, a course at a location; or
  - (d) holding out as able or willing to provide a course at a location to an overseas student.
- (3) A person does not commit an offence against subsection (1) if—
- (a) the person's conduct was only for either or both of the following purposes—
    - (i) carrying out surveys or other investigations to assess the demand for the course;
    - (ii) negotiating with another entity in connection with designing or developing the course; and
  - (b) the person took reasonable steps to ensure overseas students and intending overseas students who were, or might become, interested in undertaking the course, and any entity who might also provide the course, were aware—
    - (i) the person was not the holder of a school provider approval to provide the course at the location to an overseas student; and
    - (ii) the person was not engaging in the conduct under an arrangement with the holder of a school provider approval to provide the course at the location to an overseas student; and
  - (c) the person neither invited nor accepted any amount for the course from overseas students or intending overseas students, or from students' agents.

**83 Offence to provide or promote an international secondary student exchange program without student exchange approval**

- (1) A person must not engage in conduct mentioned in subsection (2) involving the provision of an international secondary student exchange program unless the person is the holder of a student exchange approval to provide the program.

Maximum penalty—200 penalty units.

- (2) For subsection (1), the conduct is—
- (a) providing an international secondary student exchange program; or
  - (b) making an offer to a student or intending student to undertake, or to apply to undertake, an international secondary student exchange program; or
  - (c) inviting a student or intending student to undertake, or to apply to undertake, an international secondary student exchange program; or
  - (d) holding out as able or willing to provide an international secondary student exchange program.
- (3) A person does not commit an offence against subsection (1) if—
- (a) the person's conduct was only for either or both of the following purposes—
    - (i) carrying out surveys or other investigations to assess the demand for the international secondary student exchange program;
    - (ii) negotiating with another entity in connection with designing or developing the international secondary student exchange program; and
  - (b) the person took reasonable steps to ensure students and intending students who were, or might become, interested in undertaking the international secondary student exchange program, and any entity who might also provide the program, were aware the person was

not the holder of a student exchange approval to provide the program; and

- (c) the person neither invited nor accepted any amount for the international secondary student exchange program from students or intending students, or from students' agents.

- (4) In this section—

*intending student* means a person, whether within or outside Australia, who intends to become, or has taken any step towards becoming, a student.

*student* means an overseas student or Queensland student.

## Chapter 5      Review

### Part 1              Internal review

#### 84      Who may apply for review

- (1) This section applies to a person who is given, or is entitled to be given, an information notice about a decision (the *original decision*).
- (2) If the person is dissatisfied with the decision, the person may apply to the chief executive for a review (an *internal review*) of the decision.

#### 85      Application for review

- (1) The application must be made—
  - (a) if the person is given an information notice about the decision—within 30 days after the person is given the information notice; or

- (b) otherwise—within 30 days after the person otherwise becomes aware of the decision.
- (2) The chief executive may extend the time for making the application if, within the 30 day period applying under subsection (1), the person asks the chief executive to extend the time.
- (3) The application must be in the approved form and supported by enough information to enable the chief executive to decide the application.

## **86 Review decision**

- (1) Unless the chief executive made the original decision personally, the chief executive must ensure the application is not dealt with by—
  - (a) the person who made the original decision; or
  - (b) a person in a less senior office in the department than the person who made the original decision.
- (2) Within 90 days after the making of the application, the chief executive must review the original decision and make a decision (the *review decision*)—
  - (a) confirming the original decision; or
  - (b) amending the original decision; or
  - (c) substituting another decision for the original decision.
- (3) The chief executive must make the review decision on the material that led to the original decision and any other material the chief executive considers relevant.
- (4) The chief executive must, as soon as practicable after making the review decision, give the applicant notice of the review decision.
- (5) If the review decision is not the decision sought by the applicant, the notice must comply with the QCAT Act, section 157(2).

## **Part 2 External review**

### **87 Application of part**

This part applies if the chief executive makes a review decision and the applicant is dissatisfied with the review decision.

### **88 External review by QCAT**

The applicant may apply, as provided under the QCAT Act, to QCAT for a review of the review decision.

### **89 No power to stay immediate suspension**

- (1) This section applies if—
  - (a) the chief executive makes a review decision in relation to a decision under section 36 to immediately suspend an approval; and
  - (b) the person applies to QCAT for a review of the review decision.
- (2) QCAT may not—
  - (a) stay the operation of the review decision; or
  - (b) grant an injunction in the proceeding for the review.





- (2) If the holder's school provider approval for the course at the location is, under this Act, due to expire, the holder's school provider approval continues until the day the provider's registration for the course continues under the Commonwealth Act, section 10M(2).

**92 Copy of notice of provider default given under Commonwealth Act to be given to chief executive**

- (1) This section applies if—
- (a) the holder of a school provider approval is, under the Commonwealth Act, a registered provider registered to provide a course at a location; and
  - (b) as a registered provider, the holder is required to give notices under the Commonwealth Act, section 46B relating to the provider defaulting in relation to 1 or more overseas students or intending overseas students and a course at a location.
- (2) The holder must give the chief executive a copy of the notices within 3 business days after the default happens.

Maximum penalty—50 penalty units.

**Part 2 Student exchange approvals—guidelines and register**

**93 Chief executive must make guidelines about operation of programs**

- (1) The chief executive must make guidelines about the operation of international secondary student exchange programs, including, for example, about the following—
- (a) the eligibility of organisations to operate the programs;

- (b) the way in which the financial viability, organisational structure, and not-for-profit status, of organisations seeking to operate the programs is to be assessed;
  - (c) the appropriate aims of the programs;
  - (d) the obligation (the *reciprocity obligation*) of organisations operating the programs to ensure the number of months Queensland students attend an overseas secondary school under the program is at least equal to the number of months overseas students attend a Queensland secondary school under the program;
  - (e) the way in which support and protection is to be provided to overseas students, Queensland students and host families participating in the programs;
  - (f) the way in which staff of organisations operating the programs are to be screened and trained, including, for example, the way in which the organisations are to comply with the *Working with Children (Risk Management and Screening) Act 2000*;
  - (g) the way in which organisations operating the programs are to ensure overseas students participating in the programs have appropriate health insurance.
- (2) Guidelines made under this section may be amended or replaced by later guidelines made under this section.
  - (3) The chief executive must keep a copy of guidelines made under this section on the department's website.

## **94 Chief executive must establish register**

- (1) The chief executive must establish and keep up-to-date a register of holders of student exchange approvals.
- (2) The register must contain the following information for each holder of a student exchange approval—
  - (a) the name of the holder;
  - (b) if the holder is a not-for-profit organisation—

- (i) the legal status of the organisation; and
  - (ii) the Australian company number or Australian registered body number for the holder under the Corporations Law; and
  - (iii) the name and title of its chief executive officer;
  - (c) the address and telephone number of the central or head office of the holder.
- (3) The register may contain other information the chief executive considers appropriate.
- (4) The register must be published on the department's website.

## Part 3 Confidentiality

### 95 Definitions for part

In this part—

*confidential information* means information about a person's affairs but does not include—

- (a) statistical or other information that could not reasonably be expected to result in the identification of the person to whom it relates; or
- (b) information that is publicly available.

*disclose* includes give access to.

*information* includes a document.

### 96 Duty of confidentiality

- (1) This section applies to a person who—
- (a) is, or has been, any of the following persons performing functions under or relating to the administration of this Act—
    - (i) the chief executive;

- (ii) a public service employee in the department;
    - (iii) an authorised person; and
  - (b) in that capacity, acquired confidential information about another person or has access to, or custody of, confidential information about another person.
- (2) The person must not use or disclose the confidential information to anyone else, other than under this part.
- Maximum penalty—50 penalty units.

## **97 Use or disclosure for authorised purpose**

The person may use or disclose the confidential information as follows—

- (a) to the extent the use or disclosure is required or permitted under this Act or necessary to perform the person's functions under this Act;
- (b) if the person to whom the information relates is an adult—with the person's consent;
- (c) if the person to whom the information relates is a child—with the consent of a parent of the child;
- (d) if the person to whom the information relates is a school or not-for-profit organisation—with the consent of the school or not-for-profit organisation;
- (e) for a purpose directly related to a child's protection or wellbeing;
- (f) in compliance with lawful process requiring production of documents or giving of evidence before a court or tribunal;
- (g) if otherwise required or permitted under another law.

## 98 Disclosure to other jurisdictions

(1) The chief executive may disclose the confidential information to an entity responsible for the administration or enforcement of a corresponding law if the chief executive is satisfied the disclosure would assist in the performance of the entity's functions relating to the corresponding law.

(2) In this section—

*corresponding law* means a law of another State or the Commonwealth relating to—

- (a) the approval of schools or other entities to provide courses to overseas students; or
- (b) the approval of schools or other entities to provide programs without tuition fees, of not more than 12 months, that enable under reciprocal arrangements—
  - (i) an overseas student to attend a secondary school in a State on a full-time basis; and
  - (ii) a student of a State to attend an overseas secondary school on a full-time basis.

## 99 Disclosure to Non-State Schools Accreditation Board

(1) The chief executive may disclose the confidential information to the Non-State Schools Accreditation Board if the chief executive is satisfied the disclosure would assist in the performance of the board's functions under the *Education (Accreditation of Non-State Schools) Act 2017*, section 100.

(2) If the chief executive discloses confidential information under subsection (1), the information is protected information under the *Education (Accreditation of Non-State Schools) Act 2017*, section 176.

## 100 Disclosure by Non-State Schools Accreditation Board

The Non-State Schools Accreditation Board may disclose to the chief executive information that is protected information

under the *Education (Accreditation of Non-State Schools) Act 2017*, section 176 if the board is satisfied the disclosure would assist in the performance of the chief executive's functions under this Act.

## **Part 4**                      **Miscellaneous**

### **101**      **Delegation**

The chief executive may delegate the chief executive's functions or powers under this Act to an appropriately qualified public service employee.

### **102**      **Protection from liability**

The *Public Sector Act 2022*, section 269 applies to an authorised person who is not a prescribed person under section 267 of that Act as if the person were a prescribed person under that section.

### **103**      **Approved forms**

The chief executive may approve forms for use under this Act.

### **104**      **Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may—
  - (a) prescribe fees payable under this Act; and
  - (b) provide for a maximum penalty of 20 penalty units for a contravention of a regulation.

---

## Chapter 7      Repeal and transitional provisions

### Part 1              Repeal

#### 105      Repeal of Education (Overseas Students) Act 1996

The Education (Overseas Students) Act 1996, No. 71 is repealed.

### Part 2              Transitional provisions

#### 106      Definition for part

In this part—

*repealed Act* means the repealed *Education (Overseas Students) Act 1996*.

#### 107      Applications

- (1) This section applies if, immediately before the commencement, a person had made any of the following applications under the repealed Act and the application had not been finally dealt with—
  - (a) an application under the repealed Act, section 7(1)(a) for registration as a provider;
  - (b) an application under the repealed Act, section 7(1)(c) to change a registration as a provider;
  - (c) an application under the repealed Act, section 7(1)(d) to renew a registration as a provider.
- (2) The person is taken to have made—

- (a) for an application mentioned in subsection (1)(a)—an application under section 6 for a school provider approval; or
  - (b) for an application mentioned in subsection (1)(b)—an application under section 22 to amend a school provider approval; or
  - (c) for an application mentioned in subsection (1)(c)—an application under section 26 to renew a school provider approval.
- (3) This Act applies in relation to the application mentioned in subsection (2).

## **108 Registrations**

- (1) This section applies if, immediately before the commencement, a person was a registered provider under the repealed Act.
- (2) The person is taken to be the holder of a school provider approval under this Act.
- (3) The school provider approval is taken to be on the same conditions, and for the same term, that applied, immediately before the commencement, to the registration under the repealed Act.
- (4) However, the statutory conditions mentioned in the repealed Act, section 8 do not apply to the school provider approval.

## **109 Existing suspensions**

- (1) This section applies if—
  - (a) the chief executive suspended a person’s registration under the repealed Act, section 11(2), 12 or 13; and
  - (b) immediately before the commencement, the suspension was still in effect.



- (2) The person's school provider approval is taken to be suspended under section 35.
- (3) The suspension is taken to be on the same conditions, and for the same term, that applied, immediately before the commencement, to the suspension of the registration under the repealed Act.
- (4) The written notice given under the repealed Act, section 11(3), 12(2) or 13(2) is taken to be an information notice given under this Act.

## **110 Proposed suspensions or cancellations**

- (1) This section applies if—
  - (a) the chief executive gave a person a notice under the repealed Act, section 11(1) stating that the chief executive believed a ground existed to suspend or cancel the person's registration; and
  - (b) immediately before the commencement, the chief executive had not made a decision under the repealed Act, section 11(2) about the proposed suspension or cancellation.
- (2) The chief executive must make a decision about the proposed suspension or cancellation under the repealed Act.
- (3) If the chief executive decides under the repealed Act to suspend the person's registration—
  - (a) the person's school provider approval is taken to be suspended under section 35; and
  - (b) the suspension mentioned in paragraph (a) is taken to be on the same conditions, and for the same term, that would have applied to the suspension of the registration under the repealed Act.
- (4) If the chief executive decides under the repealed Act to cancel the person's registration, the person's school provider approval is taken to be cancelled under section 35.

- (5) The written notice given under the repealed Act, section 11(3) is taken to be an information notice given under this Act.

### **111 Applications for review**

- (1) This section applies if—
- (a) a person applied to QCAT for a review of a decision under the repealed Act, part 3; and
  - (b) immediately before the commencement, the application had not been finally dealt with.
- (2) QCAT must decide the application under the repealed Act.

### **112 Surrenders**

- (1) This section applies if—
- (a) a person gave the chief executive a notice of surrender under the repealed Act, section 28; and
  - (b) immediately before the commencement, the surrender had not taken effect.
- (2) The person is taken to have surrendered the person's school provider approval under section 40.

---

# Schedule 1      Dictionary

## section 5

**approval** means—

- (a) a school provider approval; or
- (b) a student exchange approval.

**approved form** means a form approved under section 103.

**authorised person** means a person who holds office under chapter 3, part 1 as an authorised person.

**Commonwealth Act** means the *Education Services for Overseas Students Act 2000* (Cwlth).

**compliance notice** see section 31(2).

**confidential information**, for chapter 6, part 3, see section 95.

**course** means a course of education or training.

**disclose**, for chapter 6, part 3, see section 95.

**electronic document** means a document of a type under the *Acts Interpretation Act 1954*, schedule 1, definition *document*, paragraph (c).

**ELICOS Standards** means the standards in force under the Commonwealth Act, section 176B.

**examine** includes analyse, test, account, measure, weigh, grade, gauge and identify.

**general power** see section 64(1).

**guidelines** means guidelines made under section 93.

**help requirement** see section 65(1).

**holder** means the holder of an approval.

**identity card**, for a provision about authorised persons, means an identity card issued under section 47.

**information**, for chapter 6, part 3, see section 95.

**information notice**, for a decision, means a notice stating each of the following matters—

- (a) the decision;
- (b) the reasons for the decision;
- (c) that the person to whom the information notice is given may apply under chapter 5, part 1 for an internal review of the decision within 30 days after the person receives the notice.

**intending overseas student** means a person, whether within or outside Australia, who intends to become, or has taken any step towards becoming, an overseas student.

**internal review** see section 84(2).

**international secondary student exchange program** means a program without tuition fees, of not more than 12 months, that enables under reciprocal arrangements—

- (a) an overseas student to attend a Queensland secondary school on a full-time basis; and
- (b) a Queensland student to attend an overseas secondary school on a full-time basis.

**national code** means the code in force under the Commonwealth Act, part 4 that provides for nationally consistent standards and procedures for entities involved in delivering educational services.

**non-State school** means an accredited school under the *Education (Accreditation of Non-State Schools) Act 2017*.

**Non-State Schools Accreditation Board** means the Non-State Schools Accreditation Board under the *Education (Accreditation of Non-State Schools) Act 2017*.

**not-for-profit organisation** means an organisation established or maintained under an Act of the Commonwealth or a State that is operated on a not-for-profit basis and that—

- (a) has its central or head office in Queensland; or
- (b) has its central or head office in another State and provides a program without tuition fees, of not more

than 12 months, that enables under reciprocal arrangements—

- (i) an overseas student to attend a secondary school in the State on a full-time basis; and
- (ii) a student of the State to attend an overseas secondary school on a full-time basis.

**notice** means written notice.

**occupier**, of a place, includes the following—

- (a) if there is more than 1 person who apparently occupies the place—any 1 of the persons;
- (b) any person at the place who is apparently acting with the authority of a person who apparently occupies the place;
- (c) if no-one apparently occupies the place—any person who is an owner of the place.

**of**, a place, includes at or on the place.

**original decision** see section 84(1).

**overseas student** means—

- (a) for a provision or matter relating to a school provider approval—an overseas student within the meaning of the Commonwealth Act, section 5; or
- (b) for a provision or matter relating to a student exchange approval—a person who holds a student visa as a secondary exchange student.

**owner**, of a thing that has been seized under chapter 3, part 3, division 2, includes a person who would be entitled to possession of the thing had it not been seized.

**person in control**, of a thing, includes anyone who reasonably appears to be, claims to be, or acts as if he or she is, the person in possession or control of the thing.

**place** includes the following—

- (a) premises;
- (b) vacant land;

- (c) a place in Queensland waters;
- (d) a place held under more than 1 title or by more than 1 owner;
- (e) the land or water where a building or structure, or a group of buildings or structures, is situated.

***premises*** includes the following—

- (a) a building or other structure;
- (b) a part of a building or other structure;
- (c) a caravan or vehicle;
- (d) a cave or tent;
- (e) premises held under more than 1 title or by more than 1 owner.

***reasonably believes*** means believes on grounds that are reasonable in the circumstances.

***reasonably suspects*** means suspects on grounds that are reasonable in the circumstances.

***reciprocity management plan***, for a holder of a student exchange approval, means a plan approved by the chief executive that states the way in which the holder is to comply with the reciprocity obligation.

***reciprocity obligation*** see section 93(1)(d).

***relevant law*** means—

- (a) for a provision or matter relating to a school provider approval—
  - (i) this Act; or
  - (ii) the Commonwealth Act; or
  - (iii) a provision of the national code applying to the holder; or
  - (iv) a provision of the ELICOS Standards applying to the holder; or
- (b) for a provision or matter relating to a student exchange approval—

- (i) this Act; or
- (ii) the guidelines, including, for example, the reciprocity obligation.

**review decision** see section 86(2).

**school** means a State School or a non-State school.

**school provider approval** see section 6(1).

**secondary exchange student** means a secondary exchange student within the meaning of the *Migration Regulations 1994* (Cwlth).

**show cause notice** see section 34(2).

**State school** see the *Education (General Provisions) Act 2006*, schedule 4.

**student exchange approval** see section 14(1).

**student visa** means a student visa within the meaning of the *Migration Regulations 1994* (Cwlth).

**vehicle**—

- (a) means a vehicle under the *Transport Operations (Road Use Management) Act 1995*; and
- (b) includes a vessel under that Act.