THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

EDUCATION SERVICES FOR OVERSEAS STUDENTS AMENDMENT (STREAMLINING REGULATION) BILL 2015

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Education and Training, the Honourable Christopher Pyne MP)
The purpose of the Bill is to amend the *Education Services for Overseas Students Act 2000* (ESOS Act) to introduce efficiency measures that will reduce the regulatory burden and cost on education institutions. These measures will significantly reduce red tape, while maintaining the quality and reputation of Australia’s world class student protections in international education. They also align with the Government’s priority – to support Australia’s education providers to build on their successes as world leaders in international education.

Throughout 2014-15 the Government consulted extensively with international education stakeholders about priority areas for reform of the ESOS Act and its associated legislative framework. On 1 October 2014, a discussion paper titled *Reform of the ESOS framework* was released for public consultation to canvass views from all interested stakeholders. Overwhelmingly stakeholders highlighted the need to cut red tape and costs to education institutions from unnecessary regulation which did not provide any benefits to students. Much of this was identified as arising from the duplication and inconsistency in quality assurance processes across the ESOS Act, the *Tertiary Education Quality and Standards Agency Act 2011* (TEQSA Act), and the *National Vocational Education and Training Regulator Act 2011* (NVETR Act). Stakeholders also sought to increase their operating flexibility in order to focus on their core business of providing education to students.

Following on from these early consultations the Government has continued to work collaboratively with stakeholders to develop reforms that reflect their views and create a more appropriate and efficient regulatory framework, while maintaining important student protections.

The Bill contains four key measures to reduce red tape for education providers, saving around an estimated $75.9 million. As well as benefits to providers, these measures will allow greater choice for students simply by focussing more appropriately and effectively on risk within the international education sector.

The first deregulatory measure removes the existing requirement on all providers to report all instances of student default (as defined in the ESOS Act) within a very short timeframe – five days. It will remove the requirement to report on the outcome of a student default, except where the provider has paid a refund to a student under the legislative instrument made by the Minister (primarily in cases of visa refusal). This ensures reporting student information is sufficiently robust but does not impose an unnecessary
administrative burden on education providers where matters can be resolved with far less red tape.

The second deregulatory measure removes the requirement for non-exempt providers to maintain an account in which all tuition fees paid prior to commencement of a course are held, referred to as a “designated account”. Removing this requirement will be of significant benefit to the education providers currently not exempt – that is, private providers not administered by a State authority or in receipt of recurrent Commonwealth funding for education and training. The requirement on providers to keep all tuition fees paid by students before a course commences in a designated account significantly reduces competition and prevents them from being able to use those funds to invest in providing a higher quality course. Further, the restriction imposes regulation equally on all private providers, regardless of whether the provider presents a high risk that warrants such a restriction on their cash flow. It therefore does not recognise or reward good practice among private providers.

The third deregulatory measure amends the current restriction on education providers receiving more than 50 per cent of tuition fees for a course (if the course is longer than 24 weeks duration) before the student commences the course. The change will give students (or the person responsible for paying on their behalf, such as their sponsor) the ability to choose to pay more, which is frequently the case with students in receipt of scholarships. The amendments make the requirements more administratively flexible and may be more favourable for students or their sponsors who are paying the tuition fees, in terms of exchange rates or managing their own cash flow. The intent of the amendment is to ensure the student, or person who incurs the expense of paying the student’s tuition fees, has more choice. However, the intent of the provision remains that there be no requirement for the student or the person paying the fees to pay more. The focus of the amendment is enabling student choice in how much they can pay to providers.

Within this amendment the exemption for shorter courses is maintained. The exemption from this requirement will now apply to courses of up to 25 weeks in length. This slightly amends the existing exemptions for courses of less than 24 weeks (a study period) to address stakeholder issues regarding some courses organised in five-week blocks. The amendments also remove the ancillary requirement that any further tuition fees must not be required until two weeks before the second study period, thus simplifying for providers and students the ongoing collection of payments. This change also aligns with the fourth deregulatory measure, which removes the concept of study periods from the ESOS Act.

The fourth deregulatory measure has two elements. The first is an amendment to remove the definition of a “study period”, which set in place an arbitrary and prescriptive maximum period of study within a course of 24 weeks. The second is a removal of the requirement for providers to enter into an agreement with each overseas student setting out the study periods for their enrolment and the tuition fees payable for each study period. The
requirement is already more effectively and appropriately set out, in conjunction with other information on a student’s rights and obligations, in the National Code of Practice for Providers of Education and Training to Overseas Students (national code), a legislative instrument made by the Minister under Part 4 of the ESOS Act.

Other changes proposed in the Bill are designed to streamline the current registration and monitoring of providers, by vesting powers directly in the Tertiary Education Quality and Standards Agency (TEQSA) and the Australian Skills Quality Authority (ASQA). Currently these agencies act as delegates of the Secretary or the Minister. The changes to the ESOS Act create a single role – the “ESOS agency” for a provider – which will be used to refer to the Secretary, TEQSA and ASQA as well as any other agency prescribed by legislative instrument as an “ESOS agency”. The important role of states and territories will be retained in relation to school providers, which will now be recognised in the ESOS Act as a “designated State authority”. Related amendments clarify that nothing in the ESOS Act creates or places a duty on a designated State authority.

The changes also reduce red tape for ESOS agencies themselves. As a consequence of these amendments, ESOS agencies will have the flexibility to apply their own risk-based frameworks in a more streamlined manner so that registration and assessment frameworks and those under ESOS operate more clearly, effectively and efficiently. This addresses a key recommendation of the Review of Higher Education Regulation by Professor Kwong Lee Dow AO and Professor Valerie Braithwaite, which indicated that overlap and duplication in requirements should be minimised wherever possible.

The amendments mean that providers will be able to apply to the ESOS agency to register or renew their registration, or add courses at locations to their existing registration. When assessing applications, the ESOS agency will need to be satisfied that the provider is complying, or will comply, with the ESOS Act, and have no reason to believe that the provider does not have the clearly demonstrated capacity to provide education of a satisfactory standard or has not been providing or will not provide education of a satisfactory standard.

Further amendments will clarify that, where a provider has applied to the ESOS agency to renew its registration, the provider’s registration will continue until the ESOS agency’s decision on the application takes effect.

Where a provider’s registration has expired and it has not sought to renew the registration, the provider’s registration will also continue in effect, but only for limited purposes. School providers will only be able to continue providing their existing courses to their existing students until the end of the year in which their registration expired. Other providers will only be able to continue providing their existing courses to students who were enrolled and had commenced their course at the date of expiry of the provider’s registration. In either case, the provider will not be able to recruit or enrol new students in the course after the expiry date of its registration.
The amendments will give the ESOS agency the discretion to determine the period of registration for a provider of up to seven years, removing the minimum period of registration and extending the maximum period to align with the TEQSA Act and the NVETR Act. Additional measures will provide the ESOS agency with the ability to extend a provider’s registration once during a particular period for the purpose of aligning the ESOS registration date with an applicable registration date as a higher education provider, a registered training organisation or an approved school provider. This will reduce the occurrence of duplicative registration processes across domestic and international frameworks.

The ESOS agency must use a risk management approach when making registration related decisions; however, amendments will enable the ESOS agency to consider any relevant material or request additional material as part of that process. The ESOS agency may consult the provider in determining the information that can be used.

To ensure consistency of enforcement action, amendments will clarify that enforcement action may be taken by an ESOS agency for a breach of either the English Language Courses for Overseas Students (ELICOS) Standards or the Foundation Program Standards. Similarly, the compliance monitoring provisions in the ESOS Act will be extended to apply to determining compliance with the ELICOS Standards and Foundation Program Standards.

Further alignment of the review processes under the TEQSA Act and NVETR Act to reduce red tape for education providers will be achieved through amendments to enable providers to apply for an internal review of certain decisions made by a delegate of the ESOS agency. A reviewable decision made by the ESOS agency itself will be subject to review by the Administrative Appeals Tribunal. This amendment is intended to reduce the cost and time associated with an immediate and direct appeal to the Administrative Appeals Tribunal.

As a consequence of the changes to reduce red tape by creating the role of the ESOS agency, other requirements have been amended to enable the ESOS agency to make a determination about whether a provider is fit and proper to be registered. Further, an ESOS agency will now have additional flexibility to deal with the ESOS registration of a provider whose designated authority approval has ceased; the cancellation of the provider’s ESOS registration will no longer be automatic.

A number of amendments to definitions have been updated to reflect the new measures in the Bill. Amendments include a revised definition of “provider” to ensure that there is scope for providers who are not subject to a regulatory framework, for example under the TEQSA Act and the NVETR Act, to be registered to provide courses to overseas students. In such cases the appropriate ESOS agency will be able to be specified by the Minister in a legislative instrument. In addition the term “authorised employee” in the ESOS Act will be replaced by “authorised officer” to align with the term used in the TEQSA Act and NVETR Act. The “authorised officer” will be defined to include
all appropriate office holders at TEQSA and ASQA, the Secretary’s department and other ESOS agencies.

To further reduce red tape by increasing consistency between the ESOS Act, the TEQSA Act and the NVETR Act, a number of powers and responsibilities will now be directly vested in the ESOS agency. To balance oversight, amendments include a power for the Minister to direct an ESOS agency in the performance of its functions under the ESOS Act. A direction may not be issued about or in relation to a particular provider or registered provider.

Consistent with the powers being vested directly in the ESOS agency rather than delegated by the Minister, amendments will enable the ESOS agency to publish information about action taken under Part 6 (enforcement) and Part 7 (monitoring and enforcement) of the ESOS Act. The Secretary may specify in a legislative instrument the way in which the information is published.

Additional provisions relate to the discharge of functions by the Tuition Protection Service (TPS) Director. In discharging those functions, the TPS Director is privy to certain information on the activity of education providers and plays an important role in ensuring providers meet their obligations to students. Limitations around the ability of the TPS Director to discharge that role necessitate amendments to allow the TPS Director to issue a production notice to obtain information or documents relevant to the performance of the Director’s functions. The TPS Director will be able to be assisted by TPS officers, who will have defined roles and responsibilities in that capacity. Further amendments allow the TPS Director to make a recommendation to an ESOS agency that the agency take enforcement action against a provider. The ESOS agency must consider the TPS Director’s recommendation. These provisions will strengthen information sharing powers between the TPS Director and relevant agencies where there are concerns regarding high-risk providers.

An additional amendment ensures the TPS Director is identified as an “official” of the department within the meaning of the Public Governance, Performance and Accountability Act 2013.

Under the ESOS Act currently, when a provider fails to pay its annual registration charge or entry to market charge on time its registration is automatically suspended. By contrast, when a provider fails to pay its TPS levy on time, the TPS Director can issue it with a reminder notice. It is only when the provider fails to pay the TPS levy in accordance with the reminder notice that its registration is suspended. To enhance fairness and consistency, the Bill will amend the ESOS Act to enable the Secretary to issue a reminder notice to a provider that hasn’t paid its annual registration charge or entry to market charge on time, and the provider’s registration will only be suspended if it doesn’t comply with the notice.

Supporting the greater alignment of quality assurance frameworks to guide future reform of the ESOS framework, a minor amendment clarifies the purpose and content of the national code as providing nationally consistent
standards and procedures for those who provide education services to overseas students. A further amendment removes the focus on refunds as the major component of agreements between providers and students, ensuring these can more broadly outline students’ rights and obligations.

Additional measures set out application, transitional and savings provisions for the purposes of the Bill.
FINANCIAL IMPACT STATEMENT

The implementation of the Bill will require system changes to the Provider Registration and International Student Management System (PRISMS), the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS), and the TPS IT system.

The cost of the system changes required by the Bill has been estimated at $0.4m. System modifications will be required to facilitate the changes to the requirements for providers to report on their tuition protection obligations, student enrolments and visa breaches by students. Further enhancements to the system will support a more streamlined registration process for school providers.

The financial impact on the Commonwealth is limited to the initial cost of the modifications to the system and in the long term is expected to be budget neutral as a result of the streamlining measures and significantly reduced data reporting requirements for providers.
REGULATION IMPACT STATEMENT

The Regulation Impact Statement for *Proposed changes to the Education Services for Overseas Students framework* is at Attachment A.
STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

EDUCATION SERVICES FOR OVERSEAS STUDENTS AMENDMENT (STREAMLINING REGULATION) BILL 2015

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

Overview of the Bill

The purpose of the Bill is to amend the Education Services for Overseas Students Act 2000 (ESOS Act) to introduce efficiency measures that will reduce the regulatory burden and cost on education institutions. These measures will significantly reduce red tape, while maintaining the quality and reputation of Australia’s world class student protections in international education. They also align with the Government’s priority – to support Australia’s education providers to build on their successes as world leaders in international education.

Throughout 2014-15 the Government consulted extensively with international education stakeholders about priority areas for reform of the ESOS Act and its associated legislative framework. On 1 October 2014, a discussion paper titled Reform of the ESOS framework was released for public consultation to canvass views from all interested stakeholders. Overwhelmingly stakeholders highlighted the need to cut red tape and costs to education institutions from unnecessary regulation which did not provide any benefits to students. Much of this was identified as arising from the duplication and inconsistency in quality assurance processes across the ESOS Act, the Tertiary Education Quality and Standards Agency Act 2011 (TEQSA Act), and the National Vocational Education and Training Regulator Act 2011 (NVETR Act). Stakeholders also sought to increase their operating flexibility in order to focus on their core business of providing education to students.

Following on from these early consultations the Government has continued to work collaboratively with stakeholders to develop reforms that reflect their views and create a more appropriate and efficient regulatory framework, while maintaining important student protections.

The Bill contains four key measures to reduce red tape for education providers, saving around $75.9 million. As well as benefits to providers, these measures will allow greater choice for students simply by focussing more appropriately and effectively on risk within the international education sector.
The first deregulatory measure removes the existing requirement on all providers to report all instances of student default (as defined in the ESOS Act) within a very short timeframe – five days. It will remove the requirement to report on the outcome of a student default, except where the provider has paid a refund to a student under the legislative instrument made by the Minister (primarily in cases of visa refusal). This ensures reporting student information is sufficiently robust but does not impose an unnecessary administrative burden on education providers where matters can be resolved with far less red tape.

The second deregulatory measure removes the requirement for non-exempt providers to maintain an account in which all tuition fees paid prior to commencement of a course are held, referred to as a “designated account”. Removing this requirement will be of significant benefit to the education providers currently not exempt – that is, private providers not administered by a State authority or in receipt of recurrent Commonwealth funding for education and training. The requirement on providers to keep all tuition fees paid by students before a course commences in a designated account significantly reduces competition and prevents them from being able to use those funds to invest in providing a higher quality course. Further, the restriction imposes regulation equally on all private providers, regardless of whether the provider presents a high risk that warrants such a restriction on their cash flow. It therefore does not recognise or reward good practice among private providers.

The third deregulatory measure amends the current restriction on education providers receiving more than 50 per cent of tuition fees for a course (if the course is longer than 24 weeks duration) before the student commences the course. The change will give students (or the person responsible for paying on their behalf, such as their sponsor) the ability to choose to pay more, which is frequently the case with students in receipt of scholarships. The amendments make the requirements more administratively flexible and may be more favourable for students or their sponsors who are paying the tuition fees, in terms of exchange rates or managing their own cash flow. The intent of the amendment is to ensure the student, or person who incurs the expense of paying the student’s tuition fees, has more choice. However, the intent of the provision remains that there be no requirement for the student or the person paying the fees to pay more. The focus of the amendment is enabling student choice in how much they can pay to providers.

Within this amendment the exemption for shorter courses is maintained. The exemption from this requirement will now apply to courses of up to 25 weeks in length. This slightly amends the existing exemptions for courses of less than 24 weeks (a study period) to address stakeholder issues regarding some courses organised in five-week blocks. The amendments also remove the ancillary requirement that any further tuition fees must not be required until two weeks before the second study period, thus simplifying for providers and students the ongoing collection of payments. This change also aligns with the
fourth deregulatory measure, which removes the concept of study periods from the ESOS Act.

The fourth deregulatory measure has two elements. The first is an amendment to remove the definition of a “study period”, which set in place an arbitrary and prescriptive maximum period of study within a course of 24 weeks. The second is a removal of the requirement for providers to enter into an agreement with each overseas student setting out the study periods for their enrolment and the tuition fees payable for each study period. The requirement is already more effectively and appropriately set out, in conjunction with other information on a student’s rights and obligations, in the National Code of Practice for Providers of Education and Training to Overseas Students (national code), a legislative instrument made by the Minister under Part 4 of the ESOS Act.

Other changes proposed in the Bill are designed to streamline the current registration and monitoring of providers, by vesting powers directly in the Tertiary Education Quality and Standards Agency (TEQSA) and the Australian Skills Quality Authority (ASQA). Currently these agencies act as delegates of the Secretary or the Minister. The changes to the ESOS Act create a single role – the “ESOS agency” for a provider – which will be used to refer to the Secretary, TEQSA and ASQA as well as any other agency prescribed by legislative instrument as an “ESOS agency”. The important role of states and territories will be retained in relation to school providers, which will now be recognised in the ESOS Act as a “designated State authority”. Related amendments clarify that nothing in the ESOS Act creates or places a duty on a designated State authority.

The changes also reduce red tape for ESOS agencies themselves. As a consequence of these amendments, ESOS agencies will have the flexibility to apply their own risk-based frameworks in a more streamlined manner so that registration and assessment frameworks and those under ESOS operate more clearly, effectively and efficiently. This addresses a key recommendation of the Review of Higher Education Regulation by Professor Kwong Lee Dow AO and Professor Valerie Braithwaite, which indicated that overlap and duplication in requirements should be minimised wherever possible.

The amendments mean that providers will be able to apply to the ESOS agency to register or renew their registration, or add courses at locations to their existing registration. When assessing applications, the ESOS agency will need to be satisfied that the provider is complying, or will comply, with the ESOS Act, and have no reason to believe that the provider does not have the clearly demonstrated capacity to provide education of a satisfactory standard or has not been providing or will not provide education of a satisfactory standard.

Further amendments will clarify that, where a provider has applied to the ESOS agency to renew its registration, the provider’s registration will continue until the ESOS agency’s decision on the application takes effect.
Where a provider’s registration has expired and it has not sought to renew the registration, the provider’s registration will also continue in effect, but only for limited purposes. School providers will only be able to continue providing their existing courses to their existing students until the end of the year in which their registration expired. Other providers will only be able to continue providing their existing courses to students who were enrolled and had commenced their course at the date of expiry of the provider’s registration. In either case, the provider will not be able to recruit or enrol new students in the course after the expiry date of its registration.

The amendments will give the ESOS agency the discretion to determine the period of registration for a provider of up to seven years, removing the minimum period of registration and extending the maximum period to align with the TEQSA Act and the NVETR Act. Additional measures will provide the ESOS agency with the ability to extend a provider’s registration once during a particular period for the purpose of aligning the ESOS registration date with an applicable registration date as a higher education provider, a registered training organisation or an approved school provider. This will reduce the occurrence of duplicative registration processes across domestic and international frameworks.

The ESOS agency must use a risk management approach when making registration related decisions; however, amendments will enable the ESOS agency to consider any relevant material or request additional material as part of that process. The ESOS agency may consult the provider in determining the information that can be used.

To ensure consistency of enforcement action, amendments will clarify that enforcement action may be taken by an ESOS agency for a breach of either the English Language Courses for Overseas Students (ELICOS) Standards or the Foundation Program Standards. Similarly, the compliance monitoring provisions in the ESOS Act will be extended to apply to determining compliance with the ELICOS Standards and Foundation Program Standards.

Further alignment of the review processes under the TEQSA Act and NVETR Act to reduce red tape for education providers will be achieved through amendments to enable providers to apply for an internal review of certain decisions made by a delegate of the ESOS agency. A reviewable decision made by the ESOS agency itself will be subject to review by the Administrative Appeals Tribunal. This amendment is intended to reduce the cost and time associated with an immediate and direct appeal to the Administrative Appeals Tribunal.

As a consequence of the changes to reduce red tape by creating the role of the ESOS agency, other requirements have been amended to enable the ESOS agency to make a determination about whether a provider is fit and proper to be registered. Further, an ESOS agency will now have additional flexibility to deal with the ESOS registration of a provider whose designated authority approval has ceased; the cancellation of the provider’s ESOS registration will no longer be automatic.
A number of amendments to definitions have been updated to reflect the new measures in the Bill. Amendments include a revised definition of “provider” to ensure that there is scope for providers who are not subject to a regulatory framework, for example under the TEQSA Act and the NVETR Act, to be registered to provide courses to overseas students. In such cases the appropriate ESOS agency will be able to be specified by the Minister in a legislative instrument. In addition the term “authorised employee” in the ESOS Act will be replaced by “authorised officer” to align with the term used in the TEQSA Act and NVETR Act. The “authorised officer” will be defined to include all appropriate office holders at TEQSA and ASQA, the Secretary’s department and other ESOS agencies.

To further reduce red tape by increasing consistency between the ESOS Act, the TEQSA Act and the NVETR Act, a number of powers and responsibilities will now be directly vested in the ESOS agency. To balance oversight, amendments include a power for the Minister to direct an ESOS agency in the performance of its functions under the ESOS Act. A direction may not be issued about or in relation to a particular provider or registered provider.

Consistent with the powers being vested directly in the ESOS agency rather than delegated by the Minister, amendments will enable the ESOS agency to publish information about action taken under Part 6 (enforcement) and Part 7 (monitoring and enforcement) of the ESOS Act. The Secretary may specify in a legislative instrument the way in which the information is published.

Additional provisions relate to the discharge of functions by the Tuition Protection Service (TPS) Director. In discharging those functions, the TPS Director is privy to certain information on the activity of education providers and plays an important role in ensuring providers meet their obligations to students. Limitations around the ability of the TPS Director to discharge that role necessitate amendments to allow the TPS Director to issue a production notice to obtain information or documents relevant to the performance of the Director’s functions. The TPS Director will be able to be assisted by TPS officers, who will have defined roles and responsibilities in that capacity. Further amendments allow the TPS Director to make a recommendation to an ESOS agency that the agency take enforcement action against a provider. The ESOS agency must consider the TPS Director’s recommendation. These provisions will strengthen information sharing powers between the TPS Director and relevant agencies where there are concerns regarding high-risk providers.

An additional amendment ensures the TPS Director is identified as an “official” of the department within the meaning of the Public Governance, Performance and Accountability Act 2013.

Under the ESOS Act currently, when a provider fails to pay its annual registration charge or entry to market charge on time its registration is automatically suspended. By contrast, when a provider fails to pay its TPS levy on time, the TPS Director can issue it with a reminder notice. It is only
when the provider fails to pay the TPS levy in accordance with the reminder notice that its registration is suspended. To enhance fairness and consistency, the Bill will amend the ESOS Act to enable the Secretary to issue a reminder notice to a provider that hasn’t paid its annual registration charge or entry to market charge on time, and the provider’s registration will only be suspended if it doesn’t comply with the notice.

Supporting the greater alignment of quality assurance frameworks to guide future reform of the ESOS framework, a minor amendment clarifies the purpose and content of the national code as providing nationally consistent standards and procedures for those who provide education services to overseas students. A further amendment removes the focus on refunds as the major component of agreements between providers and students, ensuring these can more broadly outline students’ rights and obligations.

Additional measures set out application, transitional and savings provisions for the purposes of the Bill.

**Human Rights Implications**

The Bill engages the following human rights:

- the right to education – Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR)
- the right to privacy – Article 17 on of the *International Covenant on Civil and Political Rights* (ICCPR)
- the rights of the child – Article 3 of the *Convention of the Rights of the Child* (CRC)

*Right to Education*

This Bill engages the right to education contained in Article 13 of the ICESCR. Article 13 of the ICESCR recognises the right of everyone to education.

The changes to the ESOS Act proposed in the Bill are designed to streamline the current arrangements for the registration, assessment and monitoring of providers of education to overseas students. As a consequence of the amendments in the Bill, ESOS agencies will have the flexibility to apply their own risk-based frameworks in a more streamlined manner so that registration, assessment and monitoring of providers of education to overseas students operates more clearly, effectively and efficiently.

The Bill provides ESOS agencies and the TPS Director with the necessary powers to undertake their functions and ensure standards of education to overseas students are maintained. Overall the Bill engages the rights of overseas students to quality education by enabling regulatory agencies to more effectively and efficiently assess and monitor the quality of education providers.
The Bill is compatible with the right to education.

The Right to Privacy

The Bill engages the right to privacy which is provided for in Article 17 of the ICCPR. In particular, Article 17 provides that ‘no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation’.

The Bill contains provisions which amend the requirements in the ESOS Act relating to the provider entering information about accepted students into the computer system established by the Secretary of the Department of Education and Training (known as PRISMS) when specified events occur.

To the extent that the measures in the Bill limit the right, as personal information about students will be entered into PRISMS, this is justifiable as the inclusion of the information in PRISMS facilitates the effective regulation of the sector.

The Bill is compatible with the right to privacy.

Rights of the Child

The Bill also engages the rights of the child which are provided for in Article 3 of the CRC. Article 3 of the CRC requires that in all actions concerning children ‘the best interests of the child shall be a primary consideration’.

The Bill contains measures which maintain the protections for students under the age of 18 by ensuring that where this more vulnerable cohort of students is enrolled in education and they do not begin, or they cease their course, the provider will be required to enter the information into PRISMS within 14 days of the event occurring. The reporting of this information ensures providers and relevant agencies, particularly the Department of Immigration and Border Protection, are aware of the status of the child’s enrolment. It also complements other requirements under the ESOS Act to ensure younger students who have their accommodation and welfare approved by their education provider have appropriate arrangements in place at all times. All other relevant information about students under the age of 18 will need to be entered into PRISMS within 31 days of the event occurring.

The Bill is compatible with the rights of the child.

Conclusion

This Bill is compatible with human rights because it promotes human rights.
NOTES ON CLAUSES

Clause 1 – Short title

Clause 1 provides for the Act to be cited as the Education Services for Overseas Students Amendment (Streamlining Regulation) Act 2015.

Clause 2 – Commencement

Subclause 2(1) inserts a three column table setting out commencement information for various provisions in the Bill. Each provision of the Bill specified in column 1 of the table commences (or is taken to have commenced) in accordance with column 2 of the table and any other statement in column 2 has effect according to its terms.

The effect of the table is that:

- sections 1 to 3 of the Act, Part 1 of Schedule 5, Part 1 of Schedule 6, and item 7 of Schedule 6, commence on the day after the Act receives the Royal Assent; and
- the remainder of the Act (i.e. Schedules 1 to 4, Part 2 of Schedule 5, and Parts 2 and 3 and items 8 to 13 of Schedule 6), commence on 1 July 2016.

Any information in column three of the table is not part of the Act.

A note explains that the commencement times in the table will not be amended should the provisions of this Act be amended by any future Act.

Clause 3 – Schedule(s)

Clause 3 provides that any legislation that is specified in a schedule is amended or repealed as set out in the applicable items in the schedule and that any other item in a schedule has effect according to its terms.
## List of abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>AAT</td>
<td>Administrative Appeals Tribunal</td>
</tr>
<tr>
<td>ASQA</td>
<td>Australian Skills Quality Authority (the National Vocational Education and Training Regulator)</td>
</tr>
<tr>
<td>DSA</td>
<td>designated State authority</td>
</tr>
<tr>
<td>CRICOS</td>
<td>Commonwealth Register of Institutions and Courses for Overseas Students</td>
</tr>
<tr>
<td>ELICOS</td>
<td>English Language Courses for Overseas Students</td>
</tr>
<tr>
<td>ESOS Act</td>
<td><em>Education Services for Overseas Students Act 2000</em></td>
</tr>
<tr>
<td>national code</td>
<td>National Code of Practice for Providers of Education and Training to Overseas Students</td>
</tr>
<tr>
<td>NVETR Act</td>
<td><em>National Vocational Education and Training Regulator Act 2011</em></td>
</tr>
<tr>
<td>PRISMS</td>
<td>Provider Registration and International Student Management System</td>
</tr>
<tr>
<td>TEQSA</td>
<td>Tertiary Education Quality and Standards Agency</td>
</tr>
<tr>
<td>TEQSA Act</td>
<td><em>Tertiary Education Quality and Standards Agency Act 2011</em></td>
</tr>
<tr>
<td>TPS</td>
<td>Tuition Protection Service</td>
</tr>
<tr>
<td>VET</td>
<td>vocational education and training</td>
</tr>
</tbody>
</table>
**Schedule 1  Streamlining registration**

**Summary**

The measures contained in Schedule 1 of the Bill are intended to improve consistency and flexibility across existing education quality assurance frameworks by reducing the administrative burden on education providers and quality assurance agencies. This will be achieved primarily through introducing the role of the “ESOS agency”. The ESOS agency will be responsible for decision making in respect of a provider’s registration and monitoring providers’ compliance with the ESOS Act.

The creation of the ESOS agency, removal of the concept of designated authority and other consequential amendments in Schedule 1 of the Bill remove duplication in the roles currently performed by TEQSA and ASQA, both as delegate of the Secretary, and designated authorities under the ESOS Act. For TEQSA and ASQA, the measures mean that the regulatory powers will be vested in those agencies directly, replacing the previous two-tiered system of “designated authority” and “delegate” under the ESOS Act.

The role of State and Territory agencies as a designated authority in respect of providers of school courses to overseas students will continue. However, they will now be recognised in the ESOS Act as designated State authorities.

The Secretary of the Department of Education and Training will hold powers as the ESOS agency for school providers.

The Minister and the Secretary will also retain powers necessary for the administration of the ESOS Act. These powers relate primarily to:

- the appointment of the TPS Director and TPS Advisory Board;
- the making of legislative instruments; and
- the establishment and maintenance of CRICOS (Register) and PRISMS.

TEQSA and ASQA will experience the most significant change from these measures with the removal of duplication in their roles under the ESOS Act. The measures will allow them greater flexibility in managing their functions under the ESOS Act and interacting with education providers and other Government agencies in the case of multi-sector providers.

Streamlining registration and regulatory processes will also provide ESOS agencies with greater flexibility to more efficiently and effectively perform their functions. In turn education providers should experience a reduction in the
administrative burden through a more streamlined application, assessment and oversight process.

Schedule 1 also amends the Act to clarify that, where relevant, registered providers must comply with the ELICOS Standards and the Foundation Program Standards. Amendments are made in Schedule 1 of the Bill so that enforcement, monitoring and searching provisions apply in relation to a provider’s compliance with the ELICOS Standards and the Foundation Program Standards. This strengthens the ability of ESOS agencies to ensure appropriate oversight and maintain quality in these two education sectors.

**Detailed explanation**

**Education Services for Overseas Students Act 2000**

**Item 1**

This item substitutes paragraph 4B(1)(b) to provide that a reference in a provision of the ESOS Act to the designated State authority includes a reference to the Territories Minister. Section 4B of the ESOS Act provides for the extension of the Act to Christmas Island and Cocos (Keeling) Islands.

**Item 2**

This item substitutes reference to “designated authority” in paragraph 4B(2)(a) with “designated State authority”.

**Item 3**

This item makes a consequential amendment to paragraph 4B(2)(b) to remove reference to an obsolete paragraph and substitute it with reference to new paragraph 6D(1)(a).

**Item 4**

This item substitutes reference to “designated authority” with “designated State authority” in subsection 4B(3).

**Item 5**

This item repeals the definition of “approved provider” from section 5 of the Act.

**Item 6**

This item inserts a new definition of “approved school provider”. The purpose of this amendment is to ensure that schools seeking registration under the Act have the approval of the designated State authority to provide courses to students or overseas students in that State. “Approved school provider” is
also used in the definition of “provider” in section 6E to enable a provider to apply for registration under new section 9.

**Item 7**

This item repeals the definition of “approved unit of study” from section 5 of the Act.

**Item 8**

This item repeals the definition of “authorised employee” from section 5 of the Act.

**Item 9**

This item inserts the new definition of “authorised officer” into section 5 of the Act.

**Item 10**

This item substitutes reference to sections 9DA or 9AE in section 5 with reference to section 10B.

**Item 11**

This item repeals the definition of “designated authority” from section 5 of the Act. The introduction of the ESOS agency removes the “designated authority” role for TEQSA and ASQA. However, this role is retained by the State authorities for school providers. The “designated State authority” for a provider or registered provider, to the extent the provider is a school provider, means the person under the law of the State for approving school providers to provide courses to students or overseas students in the relevant State.

**Item 12**

This item inserts the new definitions of “designated State authority”, “DSA assessment certificate”, “DSA recommendation certificate”, “ELICOS”, “ESOS agency” and “exempt provider” into section 5 of the Act.

**Item 13**

This item substitutes reference to “entry to market charges referred to in item 1 of the table” with reference to “first entry to market charges referred to”.

**Item 14**

This item repeals the definition of “higher education provider” from section 5 of the Act.
Item 15

This item inserts the phrase “meets the registration requirements has the meaning given by section 11” into section 5 of the Act.

Item 16

This item repeals paragraph (a) of the definition of “monitoring purposes” in section 5 of the Act to provide that a monitoring purpose would include whether a provider complied with the provisions of the ESOS Act and the national code and, where applicable, the ELICOS Standards or Foundation Program Standards. This amendment means that action can be taken under Part 7 of the ESOS Act for the purpose of determining whether a registered provider is operating in accordance with the ELICOS and Foundation Program Standards.

Item 17

This item inserts the new definitions “non-referring State”, “NVETR Act” and “NVR registered training organisation” into section 5 in the Act.

Item 18

This item substitutes the current definition of “provider” with the definition currently in section 6E of the Act.

Item 19

This item inserts a definition of “registered higher education provider” in section 5 of the Act with the definition currently available in the TEQSA Act. This amendment ensures consistency with the TEQSA Act.

Item 20

This item substitutes the definition of “registered provider” in section 5 of the Act with a new definition.

Item 21

This item inserts the new definitions “registered training organisation”, “registered VET provider”, “related person” and “relevant individual” into section 5 of the Act.
Item 22
This item repeals the definition of “risk assessment” from section 5 in the Act.

Item 23
This item inserts a new definition of “school provider” into section 5 in the Act.

Item 24
This item repeals the definition of “second or third entry to market charge” from section 5 of the Act.

Item 25
This item inserts the new definitions of “second entry to market charge” and “third entry to market charge” into section 5 of the Act.

Item 26
This item substitutes the current definition of “TPS Levy” in section 5 of the Act.

Item 27
This item substitutes the current heading in section 5A with “When registered higher education providers are taken to have the principal purpose of providing education”.

Item 28
This item substitutes reference to “subparagraphs 9AB(1)(f)(ii), and paragraphs 9AH(c) and 83(1C)(a), a registered education provider” with “paragraphs 11(d) and 83(1C(a), a registered higher education provider” in section 5A of the Act.

Item 29
This item inserts new sections 6A to 6E into Division 1 or Part 1 to the Act. These new provisions set out the meanings of the following terms:

- “authorised officer”;
- “DSA assessment certificate”;
- “DSA recommendation certificate”;
- “ESOS agency”;
- “exempt provider” and
- “provider”.
Section 6A – Meaning of “authorised officer”

New section 6A substitutes the concept of “authorised employee” with the concept of “authorised officer” to provide consistency with the TEQSA Act and the NVETR Act.

Subsection 6A(1) contains a table which prescribes who is an “authorised officer” for the following ESOS agencies: TEQSA, the National VET Regulator, the Secretary, or other entities not otherwise covered by an item in the table.

Subsection 6A(2) provides that where the ESOS agency for a registered provider is the Secretary, the agency may appoint a person as an “authorised officer” of the agency if certain criteria are met.

Subsection 6A(3) provides that, if the ESOS agency for a registered provider is an entity which is not otherwise covered by an item in the table in new subsection 6A(1), the agency may, in writing, appoint a person as an “authorised officer” of the agency if certain criteria are met.

Section 6B – Meaning of “DSA assessment certificate” and “DSA recommendation certificate”

New section 6B outlines the meanings of “DSA assessment certificate” and “DSA recommendation certificate”.

New section 6B(1) provides that a “DSA assessment certificate” is a certificate given by a designated State authority for an approved school provider which meets the criteria set out in paragraphs 6B(1)(a) to (g). A note at the end of this subsection clarifies that the designated State authority must have regard to the matters in subsection 7A(2) in deciding whether it is satisfied that the provider is fit and proper to be registered.

New subsection 6B(2) provides that a “DSA recommendation certificate” is a certificate given by a designated State authority for an approved school provider that meets certain criteria set out in paragraphs 6B(2)(a) to (c). Subsection 6B(3) sets out the requirements for the “DSA assessment certificate” and the “DSA recommendation certificate” which must be in a form approved, in writing, by the ESOS agency for the approved school provider to which the certificate applies.

Section 6C – Meaning of “ESOS agency”

New section 6C sets out the meaning of the “ESOS agency”.

New subsection 6C(1) contains a table which provides that the “ESOS agency” for a provider or registered provider is as follows:

- if the provider/registered provider is a registered higher education provider – TEQSA;
• if the provider/registered provider is a registered VET provider – the National VET Regulator;
• if the provider/registered provider is an approved school authority – the Secretary;
• if the provider/registered provider is an ELICOS or Foundation Program provider – the entity determined under subsection 6C(2) (that is, by the Minister by legislative instrument); or
• if the provider/registered provider is not otherwise covered by the table – the entity determined under subsection 6C(2) (that is, by the Minister by legislative instrument).

New subsection 6C(2) provides that where a provider or registered provider is not covered by one of the ESOS agencies listed in the table at section 6C, the Minister has the power to make a legislative instrument determining an entity as the ESOS agency. Similarly, where a provider is an ELICOS or Foundation Program provider, the Minister may, by legislative instrument, determine an entity as the ESOS agency for these providers.

New subsection 6C(3) provides that, if a provider or registered provider is covered by more than one item in the table in subsection 6C(1), the Minister may, by legislative instrument, determine that one or more entities are the ESOS agencies for the provider, and specify the circumstances in which each of those entities is the ESOS agency for the provider. For example, if a provider is registered to provide higher education and school courses, the Minister can determine, by legislative instrument, which is the ESOS agency or agencies will be for that provider.

New subsection 6C(4) provides that if:

• under subparagraph 83(2A)(d)(i), a provider ceases to be a registered higher education provider in relation to a course;
• under subparagraph 83(2B)(d)(i), a provider ceases to be a registered VET provider in relation to a course; or
• under paragraph 83(2C)(c), a provider ceases to be an approved school provider in relation to a course;

the ESOS agency for the provider continues to be the same ESOS agency even though the registration of the higher education provider or VET provider has ceased or the school provider ceases to be an approved school provider. This amendment is a key measure which underpins the streamlining of registration processes under the ESOS Act. It is designed to remove the heavy reliance on delegations under the Act and reduce the duplication in work performed by ASQA and TEQSA.

New section 6D – meaning of “exempt provider”

New section 6D sets out the meaning of “exempt provider”. Subsection 6D(1) provides that an “exempt provider” is any of the following providers or registered providers:
• providers administered by State education authorities;
• providers entitled by Commonwealth law to receive recurrent expenditure funding for providing education or training (unless the provider is otherwise prescribed by regulations for the purposes of subparagraph 6D(1)(b)(ii)); or
• providers specified in the regulations.

Subsection 6D(2) clarifies that a private corporate body established in connection with a provider which is covered by paragraphs 6D(1)(a) or (b) is not itself, as a result of that connection alone, a provider covered by that paragraph.

New section 6E—Meaning of “provider”

New section 6E sets out the new definition of “provider”. New subsection 6E(1) specifies that a “provider” is any of the following:

• a registered higher education provider;
• a registered VET provider;
• an approved school provider;
• an ELICOS or Foundation Program provider; or
• another person or entity that provides or seeks to provide courses to overseas students – as specified by the Minister by legislative instrument.

New subsection 6E(2) provides that the Minister may, by a legislative instrument, specify that a person or entity is not a provider (and therefore not able to be registered on CRICOS to provide courses to overseas students).

Item 30

This item substitutes section 7A of the Act and inserts a new section 7AA.

New section 7A prescribes the matters an ESOS agency or a designated State authority must have regard to when determining whether a provider is fit and proper to be registered.

New subsection 7A(1) provides that section 7A applies if it is necessary for the purposes of a provision of the ESOS Act for:

• the ESOS agency for a provider or registered provider to decide whether the agency is satisfied, or no longer satisfied, that the provider is fit and proper to be registered, or where the agency has reasonable grounds to believe that the provider is not fit and proper to be registered (subsection 7A(1)(a)); or
• the designated State authority for a provider or registered provider that is an approved school provider to decide whether the authority is satisfied that the provider is fit and proper to be registered (subsection 7A(1)(b)).
New subsection 7A(2) sets out that, in deciding the matter, the ESOS agency or designated State authority must have regard to certain matters specified in paragraphs 7A(2)(a) to (h).

New subsection 7A(3) provides that a “related person” of a provider or registered provider is an associate of the provider who has been, currently is, or will in the future be, involved in the business of the provision of courses by the provider, or is otherwise a high managerial agent of the provider.

New subsection 7A(4) clarifies that nothing set out in subsection 7A(2) affects the operation of Part VIIC of the *Crimes Act 1914*, which deals with spent convictions.

New section 7AA provides that nothing in the ESOS Act imposes a duty on a designated State authority.

**Item 31**

This item amends the third dot point in section 7B to add reference to the ELICOS Standards and the Foundation Program Standards as part of the regulatory framework imposing obligations on registered providers.

This amendment is intended to clarify that obligations imposed on providers under the ESOS Act include obligations imposed by the ELICOS and Foundation Program Standards.

**Item 32**

This item substitutes the heading to Part 2 of the Act with “Part 2 – Registration of Providers”.

**Item 33**

This item substitutes references to paragraphs relating to Divisions 3 and 4 in section 8A of the Act.

**Item 34**

This item substitutes the heading to Division 3 with “Division 3 – Registration of approved providers”.

**Item 35**

This item substitutes subdivision A of Division 3 of Part 2 with new subdivisions A to E. New subdivisions A to E set out the processes that a provider must follow to apply to be registered, renew their registration, or to make changes to their registration.
Subdivision A – Application for registration

Section 9 – Provider may apply to be registered

New section 9 provides that a provider may apply to the ESOS agency for the provider to be registered to provide a course or courses to overseas students. A note explains that new section 11A contains additional rules about applications.

Section 10 – ESOS agency for provider may register provider

New section 10 provides that the ESOS agency for a provider may register the provider to provide a course or courses at a location or locations if the provider meets the registration requirements, and that the ESOS agency must use a risk management approach when considering registering the provider. For example, when using a risk management approach the ESOS agency for the provider may take into account factors such as the size and complexity of the provider’s business, financial viability and the provider’s previous compliance history.

Section 10A – Notice of registration

New section 10A provides for the notification of providers of a registration decision.

New subsection 10A(1) provides that an ESOS agency for a provider must give a written notice of registration to the provider as soon as practicable after making its decision to register the provider.

New subsection 10A(2) sets out the information that must be included in the notice.

New subsection 10(3) provides that in the case of an approved school provider, the ESOS agency for the provider must, in determining the period for registration, have regard to the registration period recommended in the DSA assessment made by the designated authority for the provider.

Subdivision B – Conditions of registration

New section 10B sets out the rules relating to an ESOS agency imposing, varying or removing a condition on a provider’s registration.

Subsection 10B(1) provides that the ESOS agency for a provider or registered provider may at any time impose, vary or remove a condition of the provider’s registration.

Subsection 10B(2) provides that the ESOS agency for the provider or registered provider must use a risk management approach when deciding to impose, vary or remove a condition.
Subsection 10B(3) provides that a condition may be imposed generally on:

- a provider’s registration, or
- the courses that a provider is registered to provide, and/or
- the location or locations at which a provider is registered to provide a course.

Subsection 10B(4) provides that where an ESOS agency imposes, varies or removes a condition of the provider’s registration after the registration has commenced the agency must include in the notice of the decision given under section 169AC a statement about when the imposition, variation or removal takes effect.

A note at the end of this provision explains that section 169AC requires the ESOS agency to give notice of certain decisions.

Section 10C – Conditions imposed by designated State authorities on the approval of school providers after registration

New section 10C deals with conditions that may be imposed by designated State authorities on the approval of school providers after registration.

New subsection 10C(1) provides that the ESOS agency for a provider may impose a condition on the provider’s registration under new section 10B if the registered provider is an approved school provider and, during the period of registration, the designated State authority for the provider imposes a condition on its approval of the provider relating to the provision of a course.

New subsection 10C(2) provides that in deciding to impose a condition under section 10B, the ESOS agency for the registered provider must consider any advice from the designated State authority for the provider.

New subsection 10C(3) provides that this section does not limit section 10B.

Subdivision C – Renewal of registration

Section 10D – Registered provider may apply to renew registration

New section 10D provides that a registered provider may apply to renew registration.

New subsection 10D(1) enables a registered provider to apply to renew its registration to provide a course or courses at a location or locations to overseas students.

New subsection 10D(2) provides that the application must be made to the ESOS agency for the registered provider, and be made within the timeframe set out in new subsection 10D(3).
New subsection 10D(3) provides that the period within which applications under section 10D must be made may be determined in a legislative instrument made by the ESOS agency for a registered provider.

**Section 10E – ESOS agency for registered provider may renew registration**

New section 10E enables the ESOS agency for a registered provider to renew registration.

Subsection 10E(1) provides that where an application is made by a registered provider under new section 10D, the ESOS agency for the provider may renew the provider’s registration to provide a course or courses at a location or locations in circumstances where the provider meets the registration requirements.

Subsection 10D(2) provides that when considering whether to renew the registration, the ESOS agency for the provider must use a risk management approach.

**Section 10F – Registration continues until decision on renewal takes effect**

New section 10F provides that, if a registered provider has applied to renew its registration, the registered provider’s registration will continue until a decision is made.

New subsection 10F(1) provides that, where a registered provider makes an application under section 10D and a decision has not been made by the ESOS agency for the provider before the end of the day on which the provider’s registration is due to expire, the provider’s registration continues until the agency makes a decision regarding the application.

New subsection 10F(2) clarifies that new subsection 10F(1) does not apply if the registered provider’s registration is cancelled under the ESOS Act.

**Section 10G – Notice of renewal of registration**

New section 10G sets out the requirements regarding the notice of renewal of registration.

New subsection 10G(1) provides that an ESOS agency must give a provider written notice of the renewal of registration as soon as practicable after making the decision.

New subsection 10G(2) prescribes the information the notice must set out.

New subsection 10G(3) provides that in the case of an approved school provider, the ESOS agency for the provider must, in determining the period for registration, have regard to the registration period recommended in the DSA assessment made by the designated authority for the provider.
Subdivision D – Changes to registration etc.

Section 10H – Registered provider may apply to add one or more courses at one or more locations to registration

New section 10H allows for the addition of courses at different locations to a registered provider’s registration.

New subsection 10H(1) provides that a registered provider may apply to add one or more courses at one or more locations to the registered provider’s registration.

New subsection 10H(2) provides that the application must be made to the ESOS agency for the registered provider, and where the provider is an approved school provider, must be accompanied by a DSA recommendation certificate given by the designated State authority for the provider.

Section 10J – ESOS agency for registered provider may add one or more courses at one or more locations to registration

New section 10J enables the ESOS agency for a registered provider to add one or more courses, at one or more locations, to the provider’s registration.

New subsection 10J(1) provides that, if a registered provider makes an application under new section 10H to add a course or courses at a location or locations to its registration, the ESOS agency for the provider may add those courses for those locations if the provider meets the registration requirements.

New subsection 10J(2) provides that in considering whether or not to add a course at a location to a provider’s registration, the ESOS agency must use a risk management approach.

New subsection 10J(3) provides that the addition of one or more courses at one or more locations does not affect the provider’s period of registration.

Section 10K – Notice of addition of one or more courses at one or more locations to registration

New section 10K requires that a provider be notified of their ESOS agency’s decision under section 10J.

New subsection 10K(1) requires the ESOS agency for a registered provider to give the provider a written notice of its decision on a section 10H application as soon as practicable after making the decision.

New subsection 10K(2) specifies the information which must be included in the notice.
Section 10L – Extension of a registered provider’s period of registration

New section 10L provides for the extension of a registered provider’s period of registration in order to align it with other registration periods.

New subsection 10L(1) enables an ESOS agency for a registered provider to extend the provider’s registration period for the purpose of aligning the period with the provider’s period of registration under the TEQSA Act.

New subsection 10L(2) enables an ESOS agency to, for a registered provider that is also a VET provider, extend the provider’s registration period for the purpose of aligning the period with the provider’s period of registration under the NVETR Act.

New subsection 10L(3) enables an ESOS agency for a registered provider that is an approved school provider, to extend the provider’s registration period for the purpose of aligning the period with the provider’s period of approval as an approved school provider.

New subsection 10L(4) provides that the ESOS agency may not extend a registration in such circumstances more than once.

New subsection 10L(5) provides that, when considering an extension, the ESOS agency must use a risk management approach.

Section 10M – Continuation of registration if provider has not finished providing courses before expiry of registration

New section 10M enables a registered provider, in specified circumstances, to continue to provide a course at a location until the provider completes providing the course at the location.

New subsection 10M(1) provides that new section 10M applies only where a registered provider’s registration of a course is due to expire before the provider has finished providing the course, and the provider has not applied to have the registration of that course renewed.

New subsection 10M(2) provides that, where the requirements of subsection 1 are satisfied, the registered provider’s registration for the course will continue:

- in the case of a school provider – until the end of the calendar year; or
- in all other cases – until the provider has completed delivery of the course at the location, provided that the provider commenced the course before the day on which the provider’s registration expired.

New subsection 10M(3) provides that despite the fact that a provider’s registration to provide the course at the location continues under subsection 10M(2), a provider must not do anything to recruit or enrol any additional overseas students (or intending overseas students) for the course at the
location after the day on which the provider’s registration would have ended but for the operation of subsection 10M(2).

**Item 36**

This item substitutes the heading to Subdivision B of Division 3 of Part 2 with “Subdivision E – Other registration provisions”.

New subdivision E outlines the requirements a provider must meet in order to be registered or for their registration to be renewed under the Act.

**Item 37**

This item substitutes sections 9AH and 9B with new sections 11, 11A, 11B and 11C.

**Section 11 – When a provider or registered provider meets the registration requirements**

New section 11 sets out when a provider or registered provider meets the registration requirements.

New paragraphs 11(a) to 11(h) specify when a provider or registered provider meets the registration requirements.

New paragraph 11(i) provides that a provider must meet any further requirements prescribed by the regulations.

Note 1 at the end of new section 11 draws reference to section 5A (when a registered higher education provider has the principal purpose of providing education).

Note 2 draws reference to section 6 of the *Education Services for Overseas Students (Registration Charges) Act 1997* (when a provider is liable to pay the entry to market charge).

**Section 11A – Rules relating to applications for registration etc.**

New section 11A sets out the rules relating to applications for registration.

New subsection 11A(1) provides that new section 11A applies in relation to applications by providers to the ESOS agency for registration under section 9, applications for renewal of registration under sections 10D, and to applications to add one or more courses at one or more locations to registration under section 10H.

New subsection 11A(2) provides that the application must be made in the form approved by the ESOS agency in writing and must be supported by any information or documents the agency requires.
New subsection 11A(3) enables a provider to withdraw their application by giving a written notice to the provider’s ESOS agency.

New subsection 11A(4) provides that, when considering an application, the ESOS agency can take into account any information in its possession that is also relevant to the application (for example, the provider may have recently provided information for registration as a higher education provider under the TEQSA Act, and this information may be taken into account by TEQSA without requiring the provider to resubmit the information TEQSA).

New subsection 11A(5) provides that new subsection 11A(4) does not limit the things an ESOS agency may do when deciding on an application for registration.

Section 11B – ESOS agency may request further information or documents

New section 11B enables the ESOS agency to request further information or documents with respect to a provider’s application for registration.

New subsection 11B(1) provides that this section applies in relation to an application by a provider for registration, renewal of registration, or to add one or more courses at one or more locations to the provider’s registration.

New subsection 11B(2) provides that if an ESOS agency considers that it needs further information or documents to decide the application the agency may request that information or documents from:

- the provider;
- the designated State authority for an approved school provider; or
- another ESOS agency.

Subsection 11B(3) provides that the request must be in writing, specify the period within which the further information or documents must be provided, and outline the effect of subsection 11B(4).

New subsection 11B(4) enables the ESOS agency to decline to consider or continue to consider an application until further information or documents are provided.

Section 11C – Copies of decision notices to be given by the ESOS agency

New section 11C prescribes the persons or entities to which an ESOS agency must provide copies of notices given by the agency to a provider or registered provider.

Subsection 11C(1) provides that if the ESOS agency for a provider or registered provider gives the provider a notice of registration, a notice of renewal of registration, or a notice of addition of one or more courses at one or more locations to registration, the agency must provide a copy to:
- the designated State authority – if the provider that is an approved school provider; and
- the Secretary – if the ESOS agency for the provider is not the Secretary.

New subsection 11C(2) provides that, where the ESOS agency for a provider that is an approved school provider refuses to register the provider under section 10, a copy of the notice of that decision given to the provider under section 169AC must also be given to the designated State authority for the provider.

New subsection 11C(3) requires the ESOS agency for a registered provider to give copies of section 169AC notices of decision (see item 5 of Schedule 2) to the designated State authority for an approved school provider and to the Secretary, if the ESOS agency for the provider is not the Secretary. This applies where the ESOS agency for a registered provider:

- imposes, varies or removes a condition on a provider’s registration under section 10B after registration has commenced;
- refuses to renew registration under section 10E;
- refuses to add one or more courses at one or more locations to a provider’s registration under section 10J; or
- extends a provider’s registration under section 10L.

A note at the end of subsection 11C(3) clarifies that an ESOS agency is required to give certain notices under section 169AC.

**Item 38**

This item substitutes note 1 at subsection 12(1). New note 1 clarifies that a provider will be liable to pay three entry to market charges under section 5 of the *Education Services for Overseas Students (Registration Charges) Act 1997*. It also clarifies that a provider must pay the first entry to market charge before the provider can be registered.

**Item 39**

This item substitutes reference to “Secretary registers the provider under section 9AB” in paragraph 12(2)(a) with “provider is registered”. The purpose of this amendment is to provide that the Secretary must give notice in respect of the first entry to market charge “before the provider is registered”.

**Item 40**

This item inserts the phrase “entry to market charge” in paragraph 12(2)(b).
Item 41

This item substitutes the phrase “Secretary registers the provider under section 9AB” in subsection 13(1) of the Act with “provider is registered”.

Item 42

This item substitutes section 14. New section 14 relates to notifying designated State authorities, prior to the registration of a provider, if the ESOS agency for the provider suspects the provider is not complying with the registration requirements.

New subsection 14(1) provides that section 14 applies where an approved school provider applies for registration under section 9 and the ESOS agency for the provider has information from a source, other than the designated State authority for the provider, which suggests any of the following:

- the provider is not complying with the Act or national code;
- if the ELICOS Standards or Foundation Program Standards apply in relation to the provider – the provider is not or will not comply with them;
- the provider does not have the principal purpose of providing education; or
- the provider has not or will not provide education of a satisfactory standard to overseas students.

New subsection 14(2) provides that, before deciding the application for registration, the ESOS agency must give that information to the designated State authority and give the authority at least seven days to respond in writing.

Item 43

This item repeals paragraph 14A(4)(f). Paragraph 14A(4)(f) requires the Secretary to show the date on which a provider is registered. Paragraph 14A(4)(g) requires that the Secretary must cause the period of the provider’s registration to be entered onto the Register, therefore paragraph 14A(4)(f) is superfluous.

Item 44

This item substitutes paragraph 14A(4)(h). New paragraph 14A(4)(h) would require the Secretary to ensure that the Register contains details of any conditions imposed on a provider’s registration and when any such conditions are to take effect.

This amendment is intended to ensure that sufficient information is available to enable students to make informed decisions when selecting a suitable provider to enrol with.
Item 45

This item repeals subsection 14A(6) of the Act. This amendment is intended to clarify that a provider’s registration commences at the date set out in the notice of registration rather than when the Secretary has entered the name of the provider on the Register.

Item 46

This item substitutes the note to section 15. The new note clarifies that the ESOS agency for a provider may take action under Division 1 of Part 6 against the provider where the provider breaches the section/subsection concerned.

Item 47

This item substitutes the note to section 16. The new note clarifies that the ESOS agency for a provider may take action under Division 1 of Part 6 against the provider where the provider breaches the section/subsection concerned.

Item 48

This item substitutes the heading to section 17 with “Registered providers must notify their ESOS agency of offences etc. by associates and high managerial agents”.

Item 49

This item substitutes reference to “Secretary” in subsection 17(1) with “ESOS agency for the provider”.

Item 50

This item substitutes the note to subsection 17(1). The new note clarifies that the ESOS agency for a provider may take action under Division 1 of Part 6 against the provider where the provider breaches the section/subsection concerned.

Item 51

This item substitutes the note to subsection 18A(1). The new note clarifies that the ESOS agency for a provider may take action under Division 1 of Part 6 against the provider where the provider breaches the section/subsection concerned.

Item 52

This item omits reference to “the Secretary” in subsections 19(1) and (2).
Item 53

This item substitutes subsection 19(3). New subsection 19(3) provides that a registered provider must give the information required by section 19 by entering the information in the computer system established by the Secretary under section 10.

Item 54

This item omits reference to “the Secretary” in subsection 19(4).

Item 55

This item substitutes note 1 to subsections 20(1). New note 1 clarifies that the ESOS agency for a provider may take action under Division 1 of Part 6 against the provider where the provider breaches the section/subsection concerned.

Item 56

This item amends paragraph 21(2B)(a) to substitute reference to “an approved unit” with “a unit”.

Item 57

This item substitutes the note to subsection 21(3). The new note clarifies that the ESOS agency for a provider may take action under Division 1 of Part 6 against the provider where the provider breaches the section/subsection concerned.

Item 58

This item repeals subsection 21(7), which provides the definition of “approved unit of study”.

Item 59

This item substitutes the note to subsection 21A(1). The new note clarifies that the ESOS agency for a provider may take action under Division 1 of Part 6 against the provider where the provider breaches the section/subsection concerned.

Item 60

This item substitutes the note to subsection 24(2). The new note clarifies that the ESOS agency for a provider may take action under Division 1 of Part 6 against the provider where the provider breaches the section/subsection concerned.
Item 61

This item substitutes note 1 to subsection 26(3). New note 1 clarifies that the ESOS agency for a provider may take action under Division 1 of Part 6 against the provider where the provider breaches the section/subsection concerned.

Item 62

This item removes reference to designated authorities undertaking investigations of breaches of the code in section 33A.

Item 63

This item substitutes reference to “section 9AB” in the note to section 40 with “section 11”.

Item 64

This item repeals section 43.

Items 65 and 66

These items substitute reference to “Minister” in subsections 46A(4) and (5) with “ESOS agency for the provider” and “ESOS agency for the registered provider” respectively.

Item 67

This item substitutes paragraph 46A(5)(b) with new paragraphs 46A(5)(b) and (c).

New paragraph 46A(5)(b) provides that, in deciding whether to give notice, the ESOS agency for a registered provider must have regard to any advice provided by another ESOS agency.

New paragraph 46A(5)(c) provides that where the provider is an approved school provider, the ESOS agency for the provider, in considering whether to give notice of provider default, must have regard to any advice of the designated State authority for the provider.

Item 68

This item substitutes the note to subsection 46B(1). The new note clarifies that if a registered provider breaches section 46B, the ESOS agency for the provider may take action against the provider under Division 1 of Part 6.
Item 69

This item substitutes the heading appearing before subsection 46B(2) with “Notifying the ESOS agency and TPS Director”.

Items 70, 73 and 75

These items substitute references to “Secretary” in subsections 46B(2), 46F(2), 47H(2) with “ESOS agency for the provider”.

Item 71

This item repeals section 46C, which provides that designated authorities are to notify the Secretary and TPS Director of provider default.

Item 72

This item substitutes the note to subsection 46F(1). The new note clarifies that if a registered provider breaches section 46F, the ESOS agency for the provider may take action against the provider under Division 1 of Part 6.

Item 74

This item substitutes the note to paragraph 47H(1). The new note clarifies that if a registered provider breaches section 47H, the ESOS agency for the provider may take action against the provider under Division 1 of Part 6.

Item 76

This item substitutes the note to subsection 53B(1). The new note clarifies that, in respect of unregistered providers, there is no particular due date, but those providers cannot be registered until they have paid their first TPS levy.

Item 77

This item substitutes the heading to section 53C with “Notifying the ESOS agency of payment of first TPS levy”.

Item 78

This item substitutes subsection 53C(1). New subsection 53C(1) provides that, where a provider who is not yet registered pays its first TPS levy, the TPS Director must notify the ESOS agency for the provider of the payment.

A note at the end of new subsection 53C(1) clarifies that the ESOS agency needs to know when the first TPS levy has been paid so that the provider can be registered.
Item 79

This item 79 repeals subsection 53C(3) as this subsection repeats the requirement in section 53D.

Item 80

This substitutes reference to “Secretary if the registered” in subsection 53D(3) with “ESOS agency for the registered provider if the”.

Item 81

This item clarifies that enforcement action may be taken by an ESOS agency for a breach of either the ELICOS Standards or the Foundation Program Standards.

Item 82

This item substitutes reference to “Minister” in the paragraph relating to Division 1 in section 83A with “ESOS agency for a registered provider”.

Item 83

This item substitutes section 83A to provide that the ESOS agency for a registered provider may accept written undertakings.

Item 84

This item substitutes the heading to section 83 with “ESOS agency may impose sanctions for non-compliance etc.”.

Item 85

This item substitutes subsection 83(1). New subsection 83(1) provides that the ESOS agency for a registered provider may take one or more of the actions outlined in subsection 83(3) against the provider if it has reasonable grounds to believe that the provider, associate or high managerial agent of the provider is breaching or has already breached the ESOS Act, the national code, ELICOS standards or Foundation Program Standards (if applicable) or a condition of the provider’s registration.

A note at the end of new subsection 83(1) clarifies that section 93 sets out the procedures for taking action.

Items 86

This item substitutes reference to “The Minister” in section 83(1A) with “The ESOS agency for a registered provider”.
Item 87
This item substitutes reference to “a registered provider if the Minister” in subsections 83(1A) with “the provider if the agency”.

Item 88
This item substitutes reference to “The Minister” in section 83(1B) with “The ESOS agency for a registered provider”.

Item 89
This item substitutes reference to “a registered provider (other than a provider covered by subsection 9B(1)) if the Minister” in subsection 83(1B) with “the provider (other than an exempt provider) if the agency”.

Item 90
This item substitutes note 2 to subsection 83(1B). New note 2 provides that the ESOS agency must have regard to the matters referred to in subsection 7A(2) when making a decision about whether it believes on reasonable grounds that a provider is not fit and proper to be registered.

Item 91
This item substitutes reference to “The Minister” in section 83(1C) with “The ESOS agency for a registered provider”.

Item 92
This item substitutes reference to “a registered provider if the Minister” in subsections 83(1C) with “the provider if the agency”.

Item 93
This item substitutes paragraph 83(1C)(b). New paragraph 83(1C)(b) enables the ESOS agency for a registered provider to take certain action against a registered provider if the agency has reasonable grounds to believe that the provider has not been providing education of a satisfactory standard to overseas students.

Item 94
This item inserts the word “registered” in front of “higher education provider” in note 2 to subsection 83(1C).

Item 95
This item substitutes the reference to “The Minister” in subsection 83(2) with “The ESOS agency for a registered provider”.

41
Item 96

This item substitutes the reference to “a registered provider for a course if the Minister” in subsection 83(2) with “the registered provider for a course if the agency”.

Item 97

Item 97 inserts new subsections 83(2A), (2B) and (2C) after subsection 83(2) of the ESOS Act.

As a result of these amendments, where:

- a registered higher education provider is registered to provide a course and the provider ceases to be a registered higher education provider in relation to the course or the course ceases to be an accredited course;
- a registered VET provider is registered to provide a course and the provider ceases to be a registered VET provider in relation to the course or the course ceases to be an accredited course; or
- an approved school provider is registered to provide a course in a State and the provider ceases to be an approved school provider in relation to the course,

the ESOS agency may cancel, suspend or impose a condition on the provider’s registration generally or in respect of any one or more specified courses for any one or more specified locations.

Item 98

This item substitutes the heading to subsection 83(3) with “Actions the ESOS agency may take”.

Item 99

This item substitutes the reference to “The Minister” in subsection 83(4) with “The ESOS agency for a registered provider”.

Item 100

This item substitutes the reference to “a registered” in subsection 83(4) with “the”.

Item 101

This item substitutes the reference to “the Minister” in subsection 83(4) with “the agency.”
Item 102

This item substitutes section 84. New section 84 provides that an ESOS agency may take action under section 83 even in circumstances where other action has already been taken under that section in relation to the same matter.

Item 103

This item substitutes the heading to section 85 with “ESOS agency may take action for breaches occurring before provider was registered”.

Item 104

This item substitutes reference to “Minster may take action against a registered provider” in section 85 with “ESOS agency for a registered provider may take action against the provider”.

Item 105

This item substitutes reference to “Minister” in subsections 86(1) and (2) with “ESOS agency for a registered provider”.

Item 106

This item inserts new section 87 at the end of Subdivision A of Division 1 of Part 6 in the Act.

New section 87 sets out what happens in the event that an ESOS agency for an approved school provider has information suggesting that the school may have breached the ESOS Act, national code, ELICOS Standards or Foundation Program Standards.

Subsection 87(1) provides that the section will apply where there are suspected breaches of the ESOS Act, national code, ELICOS Standards, or Foundation Program Standards (if applicable) by a registered provider that is an approved school provider, and the ESOS agency for the provider has information (the source of which is not the designated State authority for the provider) about the suspected breach.

Subsection 87(2) provides that, before any action under the Act may be taken by the ESOS agency regarding the possible breach, the ESOS agency is required to notify the designated State authority of the possible breach and may request the authority to investigate the matter or take other appropriate action.

Subsection 87(3) provides that, notwithstanding subsection 87(2), the ESOS agency may take action under the ESOS Act in relation to the possible breach in circumstances where the ESOS agency is of the opinion that the possible breach requires urgent action.
Item 107

This item substitutes section 89 and repeals section 89A. New section 89 deals with automatic suspension if a registered provider is no longer fit and proper to be registered. The provisions are similar to the current arrangements (in section 89A of the ESOS Act) but are rephrased to take into account the introduction of the ESOS agency and designated State authority.

New subsection 89(1) provides that, where the ESOS agency for the registered provider (not including an exempt provider) is not satisfied that the provider is fit and proper to be registered, the provider’s registration will be suspended in respect of all courses at all locations.

A note at the end of subsection 89(1) clarifies that section 95 sets out the effect of the suspension.

Subsection 89(2) provides that the registration of a registered provider (other than an exempt provider) will be suspended for all courses in all locations where the designated State authority for the provider informs the ESOS agency that it is no longer satisfied that the provider is fit and proper to be registered.

A note at the end of subsection 89(2) clarifies that section 95 sets out the effect of the suspension.

New subsection 89(3) sets out the requirements for notification of suspension. It provides that, where the registration of a provider has been suspended as a result of subsection 89(1) or (2), the ESOS agency for the provider must notify the provider in writing of the suspension. Additionally, where the ESOS agency considers it appropriate, it may inform another ESOS agency for a provider of the suspension.

New subsection 89(4) provides that the agency may give a provider a notice setting out the effect of subsection 89(5) which deals with removal of suspension if any of the following applies:

- in the case of a subsection 89(1) suspension – the ESOS agency for the provider considers the provider is fit and proper to be registered again; or
- in the case of a subsection 89(2) suspension – the designated State authority for the provider informs the ESOS agency for the provider it is satisfied the provider is fit and proper to be registered again.

New subsection 89(5) provides that, where the ESOS agency for a provider gives notice concerning the removal of the suspension of the provider’s registration pursuant to subsection 89(4), the suspension of the provider’s registration under subsection 89(1) and (2) is removed by force of subsection 89(5) upon payment of the associated reinstatement fee.
Two notes accompany subsection 89(5). Note 1 provides that the ESOS agency and designated State authority must have regard to the matters referred to in subsection 7A(2) when making a decision about whether they are satisfied that the provider is fit and proper to be registered. Note 2 refers to section 171 for the amount of the reinstatement fee.

**Item 108**

This item repeals section 91 of the ESOS Act.

**Item 109**

This item substitutes section 93, which sets out the procedures that an ESOS agency must follow before action can be taken against providers.

New subsection 93(1) provides that section 93 applies if:

- the ESOS agency for a provider or registered provider is considering imposing a condition on the provider’s registration pursuant to section 10B and, if the provider is an approved school provider, the condition is not one recommended in a DSA assessment certificate or a DSA recommendation certificate;
- the ESOS agency for a registered provider is considering action under Subdivision A of Division 1 of Part 6; or
- the ESOS agency for a provider is considering not giving the provider notice under subsection 89(4).

New subsection 93(2) provides that, before the ESOS agency for a provider or registered provider decides to take any of the actions contemplated in subsection 93(1), the agency must give the provider written notice stating that the agency is considering taking that action, and requesting the provider to give the agency written submissions about the matter within a period specified in subsection 93(3).

New subsection 93(3) sets out the relevant time periods for providing written submissions. These time periods are as follows:

- where an ESOS agency for a provider or registered provider is considering imposing a condition on the provider’s registration pursuant to section 10B – 72 hours;
- where the ESOS agency for a registered provider is considering taking action under Subdivision A of Division 1 of Part 6 – 24 hours if the matter requires urgent action, or otherwise 72 hours; or
- where the ESOS agency for a provider is contemplating not giving the provider a notice under subsection 89(4) – 7 days.

New subsection 93(4) provides that if, after considering any submissions it has received within these timeframes, the ESOS agency considers it should proceed with the action contemplated under subsection 89(1), it may proceed...
to make a decision and must give the provider a written notice of that decision.

**Item 110**

This item substitutes the heading at section 94 of the Act so that it reads “ESOS agency may remove condition of registration or suspension of registration”.

**Item 111**

This item substitutes reference to “Minister” in subsection 94(1) with “ESOS agency for the provider”.

**Item 112**

This item substitutes reference to “Minister has given a provider” in section 94(2) with “ESOS agency for the provider has given the provider”. This amendment enables the ESOS agency for the provider to remove a condition of registration or the suspension of a provider’s registration.

**Item 113**

This item substitutes reference to “Minister” in subsection 94(3) with “ESOS agency for the provider”.

**Item 114**

This item substitutes reference to “Minister has given a provider” in section 94(4) with “ESOS agency for the provider has given the provider”.

**Item 115**

This item substitutes reference to “Minister may give to a provider whose registration is suspended” in subsection 95(3) with “ESOS agency for a provider whose registration is suspended may give the provider”.

**Item 116**

This item substitutes reference to “Minister to give to a provider whose registration is suspended” in subsection 106(1) with “ESOS agency for a provider whose registration is suspended to give the provider”.

**Item 117**

This item inserts reference to “by the Secretary” after the word “established” in subsection 109(1) to make it clear that the Secretary establishes the computer system for the purpose of receiving or storing information about accepted students and former accepted students given under section 19. As noted above at item 54, the current system is known as PRISMS.
Item 118
This item omits reference to “to the Secretary” from subsection 109(1).

Item 119
This item substitutes subsection 110A(1) which deals with the acceptance of enforceable undertakings.

New subsection 110A(1) provides that an ESOS agency for a registered provider may accept a written undertaking given by the provider that either:

- the provider will take or refrain from taking specified action so that the provider complies with a provision of the ESOS Act or the national code or, where applicable, the ELICOS Standards or the Foundation Program Standards, or a condition of the provider’s registration; or
- the provider will take specified action so that, in the future, it does not or is unlikely to contravene a provision of the Act, the national code, the ELICOS Standards or the Foundation Program Standards (if applicable), or a condition of the provider’s registration.

Item 120
This item substitutes reference to “Secretary” in subsections 110A(2), (3) and (4) with “ESOS agency for the provider”.

Item 121
This item substitutes reference to “Secretary” in subsections 110BA(1)(a) with “ESOS agency for a registered provider”.

Item 122
This item substitutes reference to “a registered provider” in paragraph 110B(1)(a) with “the provider”.

Item 123
This item substitutes reference to “Secretary” in subsections 110B(1)(c) with “ESOS agency”.

Item 124
This item substitutes the paragraph in section 111A which provides that registered providers’ compliance with the ESOS Act and the national code is monitored under Part 7, with a new paragraph that clarifies that Part 7 provides for the monitoring of registered providers’ compliance with the ESOS Act, the national code, the ELICOS Standards and the Foundation Program Standards.
Item 125

This item substitutes reference to “Secretary” with a reference to “ESOS agency for a registered provider”.

Item 126

This item replaces the paragraphs relating to Divisions 3 and 4 of Part 7 in section 111A with new paragraphs which provide that:

- an authorised officer of an ESOS agency for a registered provider may apply for a Division 3 monitoring warrant to allow the officer to enter and search a registered provider’s premises and, if the officer finds evidential material there, the officer may secure it pending a search warrant being obtained; or
- the authorised officer may apply for a Division 4 search warrant allowing the officer to enter and search the registered provider’s premises and to seize things under a search warrant.

Item 127

This item substitutes reference to “Secretary reasonably believes that an individual specified in subsection (4)” in subsection 113(1) with “ESOS agency for a registered provider reasonably believes that a relevant individual of the provider”.

Item 128

This item substitutes reference to “Secretary may give the” in subsection 113(2) with “ESOS agency may give the relevant”.

Item 129

This item substitutes reference to “employee” in paragraphs 113(2)(a), (b) and (c) with “officer of the agency”.

Item 130

This item substitutes reference to “Secretary may also give the” in the note to subsection 113(2) with “ESOS agency may also give the relevant”.

Item 131

This item repeals subsection 113(4).

Item 132

This item amends subsection 115(1), which deals with serving production notices. New subsection 115(1) provides that the ESOS agency for a
registered provider, rather than the Secretary, must give a production notice under section 113 to a relevant individual.

**Item 133**

This item substitutes reference to “Secretary” in subparagraph 115(1)(b)(i) with “ESOS agency”.

**Item 134**

This item substitutes reference to “Secretary” in paragraph 115(1)(c) with “ESOS agency”.

**Item 135**

This item substitutes reference to “Secretary” in subsection 115(2) with “ESOS agency”.

**Item 136**

This item substitutes reference to “Secretary reasonably believes that an individual specified in subsection (3)” in subsection 116(1) with “ESOS agency for a registered provider reasonably believes that a relevant individual of the provider”.

**Item 137**

This item substitutes reference to “Secretary may give the” in subsection 116(2) with “ESOS agency may give the relevant”.

**Item 138**

This item substitutes reference to “employee” in subsection 116(2) with “officer of the agency”.

**Item 139**

This item substitutes reference to “Secretary may also give the” in subsection 116(2) with “ESOS agency may also give the relevant”.

**Item 140**

This item repeals subsection 116(3).

**Item 141**

This item inserts reference to “given to a relevant individual of a registered provider” after “attendance notice” in subsection 117(1). This amendment is intended to clarify that an attendance notice is to be given to a relevant individual of a registered provider.
Item 142
This item substitutes reference to “individual” in subsection 117(2) with “relevant individual of a registered provider”.

Item 143
This item substitute reference to “employee” in subsection 122(1) with “officer of the ESOS agency for a registered provider”.

Item 144
This item inserts reference to “given by the agency” after “notice” in subsection 122(1). This amendment is intended to clarify that the reference to a production or attendance notice is one that is given by the agency.

Item 145
This item substitutes reference to “An authorised employee” in subsection 124(1) with “An authorised officer of the ESOS agency for a registered provider”.

Item 146
This item substitutes reference to “employee’s” in paragraph 124(1) with “officer’s”.

Item 147
This item substitutes reference to “employee” in paragraphs 124(1)(a) and (c) with “officer”.

Item 148
This item substitutes subsection 124(2). New subsection 124(2) provides that this new subsection covers a person if the person is an employee of the same ESOS agency as the authorised officer.

Item 149
This item substitutes the heading to section 125 with “Retaining of documents by authorised officer etc.”

Item 150
This item substitutes reference to “An authorised employee” in subsection 125(1) with “An authorised officer of the ESOS agency for a registered provider”.

Item 151
This item substitutes reference to “employee” in the note to subsection 125(1) with “officer”.

Item 152
This item substitutes reference to “employee under” in the note to subsection 125(1) with “officer under”.

Item 153
This item substitutes reference to “employee” in the note to subsection 125(2) with “officer”.

Item 154
This item substitutes reference to “employee” in the note to subsection 125(2) with “officer”.

Item 155
This item substitutes subsection 125(3). New subsection 125(3) provides that the subsection covers a person if they are an employee of the same ESOS agency as the authorised officer.

Item 156
This item substitutes reference to “An employee retaining” in subsection 126(1) with “A person who retains”.

Item 157
This item substitutes reference to “employee” in subsection 126(3) with reference to a “person retaining the document”.

Item 158
This item substitutes the heading to section 128 with “Authorised officer etc. may apply to retain document for a further period.”

Item 159
This item substitutes subsection 128(1), which deals with applications to retain documents for a further period.

New subsection 128(1) provides that an authorised officer of the ESOS agency for a registered provider or another permitted person who is given a document under Division 2 of Part 7 and is retaining the document pursuant to
section 125, may apply to a magistrate or tribunal member for an order that the officer or permitted person may retain the document for a further period.

Item 160

This item substitutes reference to “employee” in subsection 128(2)(a) with “officer”.

Item 161

This item substitutes the heading to section 160 with “Persons affected by notice to be notified if practicable”.

Item 162

This item substitutes all references to “employee” in subsection 128(3) with “officer or permitted person”.

Item 163

This item substitutes all references to “employee” in section 129 with “person”.

Item 164

This item substitutes the heading to section 130 with “Authorised officer may enter premises for a monitoring purpose”.

Item 165

This item substitutes reference to “employee” in subsection 130(1) with “officer of the ESOS agency for a registered provider”.

Item 166

This item substitutes reference to “a registered provider” in subparagraph 130(1)(a)(i) with “the provider”.

Item 167

This item substitutes reference to “An authorised employee” in subsection 130(2) with “The authorised officer”.

Item 168

This item substitutes references to “employee” in paragraph 130(2)(A) with “officer”.
Item 169
This item substitutes the heading to section 131 so that it reads “Monitoring powers of authorised officers”.

Item 170
This item substitutes reference to “an authorised employee” in subsection 131(1) with “an authorised officer of the ESOS agency for a registered provider”.

Item 171
This item substitutes references to “employee” in paragraph 131(1)(g) with “officer”.

Item 172
This item substitutes references to “employee” in subparagraphs 131(1)(h)(i), (ii) and (iii) with “officer”.

Item 173
This item substitutes reference to “an authorised employee” in subsection 131(5) with “the authorised officer”.

Item 174
This item substitutes the heading to section 132 with “Authorised officer on premises with consent may ask questions”.

Item 175
This item substitutes reference to “An authorised employee” in subsection 132 with “An authorised officer of the ESOS agency for a registered provider”.

Item 176
This item substitutes reference to “employee any document requested by the employee” in subparagraph 132(a)(ii) with “officer any document requested by the officer”.

Item 177
This item substitutes the heading to section 133 with “Authorised officer on premises under warrant may ask questions”.

53
Item 178
This item substitutes reference to “An authorised employee” in section 133 with “The authorised officer of the ESOS agency for a registered provider”.

Item 179
This item substitutes reference to “employee any document requested by the employee” in subparagraph 133(a)(ii) with “officer any document requested by the officer”.

Item 180
This item substitutes reference to “employee” in subsection 134(1) with “authorised officer”.

Item 181
This item substitutes reference to “employee” in section 135 with “authorised officer”.

Item 182
This item substitutes reference to “authorised employee” in subsection 136(1) with “authorised officer of the ESOS agency for a registered provider”.

Item 183
This item substitutes reference to “employee may” in subsection 136(1) with “authorised officer”.

Item 184
This item substitutes the heading to section 137 with “Authorised officer may apply for a monitoring warrant”.

Item 185
This item substitutes reference to “authorised employee” in subsection 137(1) with “authorised officer of the ESOS agency for a registered provider”.

Item 186
This item substitutes reference to “employee” in subsection 137(2) with “authorised officer”.

Item 187
This item substitutes reference to “employees” in section 138 with “officers of the ESOS agency for the registered provider”.
Item 188
This item substitutes reference to “employee” in subsection 139(1) with “officer of the ESOS agency for the registered provider”.

Item 189
This item substitutes reference to “employee” in subsection 139(3) with “authorised officer”.

Item 190
This item substitutes reference to “employees” in paragraph 140(1)(a) with “officers of the ESOS agency for the registered provider”.

Item 191
This item substitutes reference to “employees” in subsection 140(2) with “officers”.

Item 192
This item substitutes the heading to section 141 with “Authorised officer may enter premises to look for evidential material”.

Item 193
This item substitutes reference to “employee” in subsection 141(1) with “officer of the ESOS agency for the registered provider”.

Item 194
This item substitutes all references to “employee” in subsection 141(2) with “officer”.

Item 195
This item substitutes reference to “an authorised employee” in subsection 141(3) with “the authorised officer”.

Item 196
This item substitutes reference to “employee” in paragraph 141(3)(a) with “officer”.

Item 197
This item substitutes the heading to section 142 with “Search powers of authorised officers”.

55
Item 198
This item substitutes reference to “employee” in subsection 142(1) with “officer of the ESOS agency for the registered provider”.

Item 199
This item substitutes reference to “employee” in paragraph 142(1)(f) with “officer”.

Item 200
This item substitutes reference to “An authorised employee” in subsection 142(5) with “The authorised officer”.

Item 201
This item substitutes reference to “An authorised employee” in subsection 142(6) with “The authorised officer”.

Item 202
This item substitutes reference to “employee” in subsection 142(6) with “officer”.

Item 203
This item substitutes reference to “an authorised employee” in subsection 142(6) with “the authorised officer”.

Item 204
This item substitutes the heading to section 143 with “Authorised officer may apply for a search warrant”.

Item 205
This item substitutes reference to “employee” in subsection 143(1) with “officer of the ESOS agency for a registered provider”.

Item 206
This item substitutes reference to “employee” in subsection 143(2) with “authorised officer”.

Item 207
This item substitutes reference to “employee” in subsection 145(1) with “officer of the ESOS agency for a registered provider”.

56
Item 208

This item substitutes reference to “employee” in subsection 145(3) with “authorised officer”.

Item 209

This item substitutes reference to “employee” in paragraph 146(1)(a) with “officer of the ESOS agency for a registered provider”.

Item 210

This item substitutes reference to “employee” in subsection 146(2) with “officer”.

Item 211

This item substitutes reference to “employee” in sections 147 and 148 with “officer of the ESOS agency for a registered provider”.

Item 212

This item substitutes reference to “if the authorised employee” in subsection 149(1) with “if an authorised employee of the ESOS agency for the registered provider”.

Item 213

This item substitutes reference to “employee” in subparagraphs 149(1)(a)(i) and (ii) with “officer”.

Item 214

This item substitutes reference to “employee” in subsection 149(2) with “officer”.

Item 215

This item substitutes the heading to subsection 149(3) with “Authorised officer must give notice”.

Item 216

This item substitutes reference to “employee” in subsection 149(3) with “officer”.

57
Item 217
This item substitutes reference to “employee” in subsection 150(1) with “officer of the ESOS agency for a registered provider”.

Item 218
This item substitutes reference to “employee” in subsection 150(2) with “officer”.

Item 219
This item substitutes reference to “employee on premises under section 130 or 141 if the employee” in subsection 151(1) with “officer of the ESOS agency for a registered provider is on premises under section 130 or 141 if the authorised officer”.

Item 220
This item substitutes all references to “employee” in subsection 151(2) with “officer”.

Item 221
This item substitutes reference to “employee” in subsection 151(2) with “officer of the ESOS agency for a registered provider”.

Item 222
This item substitutes all references to “employee” in subsections 152(2) and (3) with “officer”.

Item 223
This item substitutes the heading to section 153 with “Authorised officer may apply for a thing to be retained for a further period”.

Item 224
This item substitutes reference to “employee” in subsection 153(1) with “officer of the ESOS agency for a registered provider”.

Item 225
This item substitutes all references to “employee” in subsections 153(2) and (3) with “officer”.
Item 226
This item substitutes the heading to subsection 153(3) with “Authorised officer must try to notify those affected”.

Item 227
This item substitutes all references to “employee” in subsections 153(3) and (3) with “officer”.

Item 228
This item substitutes reference to “authorised employee” in subsection 154(1) with “authorised officer of the ESOS agency for a registered provider”.

Item 229
This item substitutes references to “the employee” in subsection 154(1) with “the officer”.

Item 230
This item substitutes references to “employee” in subsection 154(1) with “authorised officer”.

Item 231
This item substitutes the heading to section 155 with “Occupier to provide authorised officer with all facilities and assistance”.

Item 232
This item substitutes reference to “an authorised employee” in subsection 155(1) with “an authorised officer of the ESOS agency for a registered provider”.

Item 233
This item substitutes reference to “that employee” in subsection 155(1) with “that officer”.

Item 234
This item substitutes the heading to Subdivision B of Division 5 of Part 7 with “Obligations on authorised officers etc.”

Item 235
This item substitutes reference to “employee” in subsection 156(1) with “officer of the ESOS agency for a registered provider”.
Item 236
This item substitutes all references to “employee” in subsection 156(2) with “officer”.

Item 237
This item substitutes reference to “obtaining” in subsection 157(1) with “an authorised officer of the ESOS agency for a registered provider obtains”.

This amendment is intended to clarify that it is the authorised officer of the ESOS agency for a registered provider who needs to obtain the consent of a person for the purposes of paragraphs 130(2)(a) or 141(3)(a) (the authorised officer must also inform the person that he or she may refuse consent).

Item 238
This item substitutes reference to “employee” in subsection 157(1) with “officer”.

Item 239
This item substitutes reference to “an authorised employee” in subsection 157(2) with “the authorised officer”.

Item 240
This item substitutes reference to “employee” in subsection 158(1) with “officer of the ESOS agency for a registered provider”.

Item 241
This item substitutes reference to “if a monitoring warrant or a search warrant is being executed” in subsection 159(1) with “if an authorised officer of the ESOS agency for a registered provider is executing a monitoring warrant or a search warrant”.

Item 242
This item substitutes reference to “employee” in subsections 159(1) and (2) with “officer”.

Item 243
This item substitutes subsection 162(1). New subsection 162(1) provides that the ESOS agency for a registered provider must give each authorised officer of the agency an identity card.
Item 244

This item substitutes reference to “Secretary” in paragraph 162(2)(a) with “ESOS agency for a registered provider”.

Item 245

This item substitutes reference to “employee” in paragraph 162(2)(b) with “authorised officer of the agency”.

Item 246

This item substitutes reference to “employee” in paragraph 162(3)(b) with “officer of the ESOS agency for a registered provider”.

Item 247

This item substitutes reference to “Secretary” in paragraph 162(3)(c) with “agency”.

Item 248

This item substitutes the heading to subsection 162(6) with “Authorised officer must always carry identity card”.

Item 249

This item substitutes reference to “employee” in subsection 162(6) with “officer of the ESOS agency for a registered provider”.

Item 250

This item substitutes the heading to section 163 with “Authorised officer must produce identity card on request”.

Item 251

This item substitutes reference to “An authorised employee” in section 163 with “An authorised officer of the ESOS agency for a registered provider”.

Item 252

This item substitutes reference to “employee” in paragraphs 163(a) and (b) with “officer”.

Item 253

This item substitutes the heading to section 164 with “Authorised officer may apply for warrants by telephone etc.”.
Item 254

This item substitutes reference to “An authorised employee” in subsection 164(1) with “An authorised officer of the ESOS agency for a registered provider”.

Item 255

This item substitutes reference to “employee” in subsection 164(1) with “the authorised officer”.

Item 256

This item substitutes reference to “employee” in subsection 164(3) with “officer”.

Item 257

This item substitutes reference to “employee” in subsection 164(4) with “authorised officer”.

Item 258

This item substitutes reference to “employees” in paragraph 165(2)(a) with “officers of the ESOS agency for a registered provider”.

Item 259

This item substitutes reference to “the authorised employee” in paragraph 166(2)(a) with “an authorised officer of the ESOS agency for a registered provider”.

Item 260

This item substitutes the heading to subsection 166(3) with “Obligations on authorised officers”.

Item 261

This item substitutes all references to “employee” in subsection 166(3) with “officer”.

Item 262

This item substitutes the heading to subsection 167(1) with “Obligations on authorised officers”.
Item 263

This item substitutes reference to “An authorised employee” in subsection 167(1) with “An officer of the ESOS agency for a registered provider”.

Item 264

This item substitutes reference to “employee” in subsection 167(1)(a) with “officer”

Item 265

This item substitutes reference to “Minister, Immigration Minister or Secretary” in subsection 170A(1) with “ESOS agency for a provider or immigration Minister”.

Item 266

This item amends subsection 170A(2) to provide that that the ESOS agency for a provider may publish the following information (in accordance with the way the Secretary specifies under subsection 170A(4)):

- action taken against the provider; and
- results of that action (this could include, for example, recommendations given to the provider and actions the provider has taken in response to the recommendations).

Item 267

This item substitutes reference to “taken; and” in paragraph 170A(2)(a) with “taken;”

Item 268

This item substitutes reference to “a provider” in subparagraph 170A(2)(b)(i) with “the provider”.

Item 269

This item substitutes reference to “if the Secretary” in subsection 170A(3) with “if the ESOS agency for the provider”.

Item 270

This item substitutes reference to “Secretary must” in subsection 170A(3) with “agency must”.

63
Item 271

This item substitutes subsection 170A(4). New subsection 170A(4) provides that the Secretary may, by legislative instrument, specify the way in which the ESOS agency for a registered provider publishes the information referred to in subsection 170A(2).

This amendment is intended to ensure consistency in the way ESOS agencies publish information about certain matters.

Item 272

This item substitutes subsections 170(1) to (4) relating to delegations under the ESOS Act.

New subsection 170(1) provides for delegations by the Minister. In particular, it provides that the Minister may, in writing, delegate any or all of his or her functions and powers under the ESOS Act to the Secretary, or a departmental SES employee or acting SES employee.

A note at the end of the subsection clarifies that “SES employee” and “acting SES employee” are defined in section 2B of the Acts Interpretation Act 1901.

New subsection 170(2) provides that the delegate must comply with any directions of the Minister when exercising functions or powers under subsection 170(1).

New subsection 170(3) provides that the Secretary may delegate any or all of his or her functions and powers under the ESOS Act (including those as the ESOS agency for a provider or registered provider) to a departmental SES employee or acting SES employee, or to an APS employee in the department who holds or performs the duties of an Executive Level 1 or 2 position or equivalent. Delegations by the Secretary may also be made to TEQSA or to the National VET Regulator.

A note at the end of the subsection clarifies that “SES employee” and “acting SES employee” are defined in section 2B of the Acts Interpretation Act 1901.

New subsection 170(4) provides that the delegate must comply with any directions of the Secretary when exercising functions or powers under subsection 170(3).

New subsection 170(4A) provides for delegations by ESOS agencies. An ESOS agency for a provider or registered provider (not including the Secretary) may delegate in writing any or all of the agency’s functions or powers under the ESOS Act to the following persons:

- if the agency is TEQSA – a person or authority mentioned in subsection 199(1) of the TEQSA Act;
• if the agency is the National VET Regulator – a person or authority mentioned in subsection 224(1) of the NVETR Act; or
• otherwise – a person who is an employee or constituent member of the agency, if the agency is satisfied that the person has suitable qualifications and experience.

New subsection 170(4B) provides that the delegate must comply with any directions of the ESOS agency when exercising functions or powers under subsection 170(4A).

Item 273

This item inserts new section 171A in Part 8 of the Act. New section 171A provides for subdelegation by TEQSA or National VET Regulator.

New subsection 171A(1) provides that, where the Secretary delegates a function or power under subsection 170(3) to TEQSA, TEQSA may in writing subdelegate the function or power to a member of TEQSA who is an SES employee (or acting SES employee), or a person who holds or performs the duties of an Executive Level 1 or 2 position or an equivalent position. A note at the end of the subsection explains that “SES employee” and “acting SES employee” are defined in section 2B of the Acts Interpretation Act 1901.

New subsection 171A(2) similarly provides that where the Secretary delegates a function or power under subsection 170(3) to the National VET Regulator, the National VET Regulator may in writing subdelegate the function or power to a member of the Regulator’s staff (within the meaning of the NVETR Act) who is an SES employee, or acting SES employee or holds or performs the duties of an Executive Level 1 or 2 position or an equivalent. A note at the end of the subsection explains that “SES employee” and “acting SES employee” are defined in section 2B of the Acts Interpretation Act 1901.

Item 274

This item substitutes references to subsections 89(3) and 89A(3) in subsection 171A(1) with a reference to subsection 89(5).

This is a consequential amendment to item 107 of Schedule 1, which repeals sections 89 and 89A and substitutes a new section 89.

Item 275

This item substitutes paragraph (1)(b) and inserts new paragraph (1)(ba) in section 172.

New paragraph 172(1)(b) refers to “second entry to market charge”. New paragraph 172(1)(ba) refers to “third entry to market charge”.

65
This amendment is intended to require a registered provider to pay a penalty for late payment of a “second entry to market charge” or “third entry to market charge” respectively.

**Item 276**

This item substitutes the note to subsection 172(1). The new note clarifies that if a registered provider breaches section 172, the ESOS agency for the provider may take action against the provider under Division 1 of Part 6.

**Item 277**

This item substitutes paragraph (1)(aa) and inserts new paragraph (ab) in section 173. New paragraph 173(1)(aa) refers to “second entry to market charge”. New paragraph 173(1)(ab) refers to “third entry to market charge”.

This amendment is intended to clarify that a “second entry to market charge” and a “third entry to market charge” are recoverable as debts due to the Commonwealth. Item 25 of Schedule 1 amends section 5 to insert new definitions for “second entry to market charge” and “third entry to market charge”.

**Item 278**

This item substitutes reference to “and the national code” in paragraph 175(1)(a) with “the national code, the ELICOS Standards and the Foundation Program Standards”.

This amendment is intended to clarify that a provider’s compliance obligations under the Act may extend to compliance with the ELICOS Standards and the Foundation Program Standards.

**Item 279**

This item inserts the phrase “or the ESOS agency for a provider or registered provider” after reference to “Secretary” in subsection 175(1).

This amendment is intended to enable the ESOS agency for a provider or registered provider to disclose information for the purpose of “promoting compliance with this Act, the national code, the ELICOS Standards and the Foundation Program Standards”.

**Item 280**

This item inserts paragraphs (ea) and (eb) in subsection 175(1).

New paragraph 175(1)(ea) refers to the ESOS agency for a provider or registered provider. New paragraph 175(1)(eb) refers to the Secretary.
This amendment is intended to authorise the disclosure of information to the ESOS agency for a provider or to the Secretary.

**Item 281**

This item substitutes reference to “the national code” in paragraph 175(2)(a) with “the national code, the ELICOS Standards and the Foundation Program Standards”.

This amendment is intended to authorise disclosure of information for the purpose of promoting compliance with the ELICOS Standards and the Foundation Program Standards.

**Item 282**

This item amends subsection 175(2) so that the information can be disclosed by either the Secretary or the ESOS agency for a provider or registered provider.

**Education Services for Overseas Students (TPS Levies) Act 2012**

**Item 283**

This item omits reference to section 9AB from subsection 5(3) of the Levies Act.

Currently, subsection 5(3) of the Levies Act provides that a provider who is not yet registered, but is seeking to be registered under section 9AB of the ESOS Act in a year, is liable to pay a TPS levy for that year. Item 35 of Schedule 1 repeals Subdivision A of Division 3 of Part 2 which deals with registration of approved providers, including section 9AB.

**National Vocational Education and Training Regulator Act 2011**

**Item 284**

This item inserts reference to “or the Education Services for Overseas Students Act 2000” after reference to “this Act” in subparagraph 204(c)(i) in the NVETR Act.

This amendment is intended to prevent disclosure of VET information other than in connection with the duties of the “entrusted person” (as defined under the NVETR Act). It is also intended to enable ASQA to use information obtained under the NVETR Act for the purposes of assessing a provider’s compliance with the ESOS Act.
Item 285

This item inserts reference to “or the Education Services for Overseas Students Act 2000” after reference to “this Act” in paragraph 188(2)(a) in the TEQSA Act.

This amendment is intended to enable TEQSA to use information obtained under the TEQSA Act for the purposes of assessing a provider’s compliance with the ESOS Act. It is also intended to prevent disclosure of higher education information other than in connection with the duties of the “entrusted person” (as defined under the TEQSA Act).
Schedule 2  Review of decisions

Summary

Currently, section 176 of the ESOS Act provides for merits review of certain decisions made by the Secretary, TPS Director and their delegates, by the AAT.

Schedule 2 to the Bill will provide for an internal review process for decisions made by delegates of ESOS agencies. Utilising an internal review process can result in considerable savings in time and resources for education providers. An internal appeal will facilitate fair and timely resolution of matters that the affected provider may otherwise not have been willing to appeal because of the cost involved in taking matters to the AAT.

A provider affected by a reviewable decision made by a delegate of an ESOS agency will be able to choose whether to have the decision reviewed internally by the agency, or reviewed by the AAT. If the decision is internally reviewed, and the affected provider is still concerned with the internal review decision, the provider can seek to have that internal review decision reviewed by the AAT. In essence, internal review of a decision by a delegate of an ESOS agency is an optional first review step for an affected provider, and the provider will always be able to have the decision externally reviewed by the AAT.

Decisions made by an ESOS agency itself, i.e. ASQA, TEQSA or the Secretary personally, are not subject to internal review (although such decisions can be reviewed by the AAT).

An internal review can be initiated in relation to a decision to refuse to register a provider or renew a registered provider’s registration, or a decision to take certain enforcement action against a registered provider. New section 169AB includes a table setting out the reviewable decisions and the providers able to seek review of those decisions.

Rules for the internal review, including the form of the application for review, the timeframes for lodgment and completion of the review, and other conditions for the conduct of the review are set out in the new provisions inserted by the Bill. The internal reviewer is empowered to affirm, vary or set aside the reviewable decision, and to make another decision.

The new provisions also provide that applications can be made to the AAT for review of reviewable decisions (i.e. the decisions set out in the table in
section 169AB), internal review decisions, and determinations by the TPS Director of amounts of TPS levy payable by providers.

The internal review process has been requested by ASQA and TEQSA, in order to provide similar appeal processes for providers under the ESOS Act to those available in the TEQSA Act and the NVETR Act.

**Detailed explanation**

*Education Services for Overseas Students Act 2000*

**Item 1**

This item inserts the following definitions into section 5 as follows:

- the “affected provider” for a reviewable decision has the meaning given by new section 169AB (i.e. the provider listed in Column 2 of the table in the new section) (see item 5 of this Schedule);
- an “internal reviewer” means the ESOS agency itself, or a delegate of the ESOS agency referred to in paragraph 169AE(1)(b) (see item 5 of this Schedule); and
- a “reviewable decision” has the meaning given by new section 169AB (i.e. the decision listed in Column 1 of the table in the new section) (see item 5 of this Schedule).

**Item 2**

Section 14B of the ESOS Act requires the Secretary to ensure that CRICOS is kept up-to-date, including making alterations when a provider has applied to the AAT for the review of a decision to suspend or cancel, or to impose a condition on a provider’s registration (paragraph 14B(2)(d)).

This item omits reference to the AAT from paragraph 14B(2)(d). This is a consequential amendment to the amendments to the Act made by item 5 of this Schedule, which will (amongst other things) enable internal review of decisions to suspend, cancel or impose conditions on a provider’s approval. Therefore, the reference to review only by the AAT in paragraph 14B(2)(d) is incorrect.

**Items 3 and 4**

Section 53A of the ESOS Act provides that the TPS Director must make written determinations each year of the amount of TPS levy to be paid by each provider required to pay a contribution. Section 53B requires the TPS Director to give written notices to those providers required to pay a TPS levy.

Note 2 to subsection 53B(1) explains that providers may seek AAT review of the amount of the TPS levy. **Item 3** repeals note 2 and is also a consequential amendment to item 5 of this Schedule, which inserts a new Part 7A into the
ESOS Act dealing with the review of decisions. New section 169AG provides for review by the AAT, including in respect of determinations made by the TPS Director of an amount of TPS levy payable by a provider or registered provider under subsection 53A(1).

**Item 4** amends section 53B to add new subsections 53B(3) and (4). New subsection 53B(3) provides that the TPS Director’s written notices to providers must also include the reasons for the Director’s section 53A determinations and a statement that providers may make an application under section 169AG for review of determinations by the AAT. New subsection 53B(4) provides that the failure to give such written notices does not affect the validity of the Director’s determinations.

**Item 5**

This item inserts a new Part 7A into the ESOS Act dealing with the review of decisions made under the Act. Part 7A consists of new sections 169AA, 169AB, 169AC, 169AD, 169AE, 169AF and 169AG.

New section 169AA explains that new Part 7A relates to the administrative review of decisions made under the ESOS Act and operates as follows:

- an affected provider for a reviewable decision can apply for an internal review of a decision made by delegate of the ESOS agency for that provider;
- the internal reviewer’s decision is subject to review by the AAT; and
- a determination made by the TPS Director under subsection 53A(1) of an amount of TPS levy a provider or registered provider is liable to pay is subject to review by the AAT.

New section 169AB contains a table, column 1 of which sets out those decisions under the ESOS Act that are “reviewable decisions” and column 2 of which specifies who is the “affected provider” for each of those reviewable decisions.

New section 169AC requires an ESOS agency, as soon as practicable after making a reviewable decision, to give an affected provider a written notice setting out the terms of the decision, reasons for the decision and review rights. However, failure to give such a notice does not affect the validity of the reviewable decision.

New section 169AD provides that, when a reviewable decision is made by a delegate of the ESOS agency for an affected provider, the affected provider may apply to the agency for the decision to be reviewed. An application for review must be in the form approved in writing by the ESOS agency, accompanied by any information and documents the agency requires and made within 30 days after the affected provider is notified of the decision (or within a longer period as allowed by the agency).
New section 169AE provides for an internal review of reviewable decisions and operates as follows:

- if an affected provider applies under new section 169AD to an ESOS agency for review of a reviewable decision, the agency must review the decision itself or arrange for the decision to be reviewed by a delegate of the agency who was not involved in making the original decision and who holds a position that is at least the same level as the original decision-maker;
- the internal reviewer may affirm, vary or set aside the reviewable decision;
- if the internal reviewer sets the decision aside, he or she may make another decision as he or she considers appropriate;
- the decision (called the "internal review decision") is taken to have been made under the provision of the ESOS Act under which the reviewable decision was made (other than for the purposes of new section 169AB); and
- as soon as practicable after making an internal review decision, the internal reviewer must give the applicant a written notice setting out the terms of the decision, reasons for the decision and the applicant’s right to seek AAT review of the internal review decision (but the failure to give such a notice does not affect the validity of the internal review decision).

New section 169AF provides that the internal reviewer must make the internal review decision within 90 days after the application is made for review; and if the internal reviewer does not do so, the reviewer is taken to have affirmed the original decision at the end of that 90-day period.

New section 169AG provides that application may be made to the AAT for a review of decisions as follows:

- an affected provider for a reviewable decision (i.e. a decision set out in the table in new section 169AB) can apply for review of the decision;
- an affected provider for a reviewable decision can apply for review of an internal review decision; and
- a provider or registered provider required to pay an amount of TPS levy determined by the TPS Director under subsection 53A(1) can apply for review of that determination.

Items 6 and 7

Section 169A of the Act explains that Part 8 contains several miscellaneous provisions, including section 176 relating to review of decisions. As a consequence of the repeal of section 176 by item 7, item 6 amends section 169A to omit reference to Part 8 containing provisions relating to the review of decisions.
Item 7 repeals section 176 of the ESOS Act, which deals with the review of decisions. This is now to be dealt with under new Part 7A, thus rendering section 176 redundant.
Schedule 3  Ministerial directions

Summary

Currently, TEQSA and ASQA perform functions and exercise powers under the ESOS Act as delegates of the Secretary. However, Schedule 1 to this Bill will amend the Act to vest powers directly in TEQSA and ASQA as ESOS agencies. The new provisions reduce the duplication in the roles performed by the Secretary, TEQSA and ASQA but also alter the distribution of powers in the ESOS Act. To ensure appropriate oversight and responsibility is maintained to account for those changed arrangements, the Minister will be able to give a direction to an ESOS agency in relation to its functions under the Act.

Accordingly, Schedule 3 to the Bill will amend the ESOS Act to include a power for the Minister to make a legislative instrument issuing a direction to an ESOS agency about the performance of its functions under the ESOS Act. The Minister must not give a direction about or in relation to a particular provider or registered provider and any direction made is subject to disallowance.

The amendment will align the ESOS Act with the TEQSA Act and the NVETR Act, which both empower the Minister to issue directions to TEQSA and ASQA in relation to their functions under the respective Acts. Consequential amendments will be made to those two Acts to support the proposed amendments to the ESOS Act.

Detailed explanation

*Education Services for Overseas Students Act 2000*

**Item 1**

This item inserts a new section 170C into the ESOS Act to enable the Minister, by legislative instrument, to give directions to the ESOS agency about the performance of the agency’s functions under the Act.

Such directions:

- are disallowable by Parliament;
- are not subject to sunsetting;
- must not relate to a particular provider or registered provider; and
- must be complied with by the ESOS agency concerned.
One of the principal objects of the ESOS Act is “to complement Australia’s immigration laws by ensuring providers collect and report information relevant to the administration of the law relating to student visas” (paragraph 4A(c)). Accordingly, in some circumstances it may be appropriate for the Minister to consult with the Immigration Minister about a particular direction to an ESOS agency, and the amendments expressly recognise this consultation, without mandating it.

**National Vocational Education and Training Regulator Act 2011**

**Item 2**

Section 159 of the NVETR Act provides that, subject to section 160 of that Act (which enables the Minister to give certain directions to ASQA), ASQA is not subject to directions from anyone in relation to the performance of its functions and the exercise of its powers.

This item amends section 159 to make it clear that the constraint on directions is also subject to any directions the Minister may give ASQA (in its role as an ESOS agency) under section 170C of the ESOS Act.

**Tertiary Education Quality Standards Agency Act 2011**

**Item 3**

Section 135 of the TEQSA Act provides that, subject to section 136 of that Act (which enables the Minister to give certain directions to TEQSA), TEQSA is not subject to directions from anyone in relation to the performance of its functions and the exercise of its powers.

This item amends section 135 to make it clear that the constraint on directions is also subject to any directions the Minister may give TEQSA (in its role as an ESOS agency) under section 170C of the ESOS Act.
Schedule 4  **TPS Director**

**Summary**

The proposed amendments to the ESOS Act in Schedule 4 to the Bill are intended to improve the ability of the TPS Director to effectively manage the tuition protection framework and support the work of ESOS agencies by making recommendations in relation to enforcement action.

In discharging his or her functions, the TPS Director is privy to certain information about the activity of education providers and plays a vital role in ensuring providers meet their obligations to students. It is therefore important that information and evidence held by the TPS Director is considered when an ESOS agency is making decisions and assessing a provider’s compliance with the requirements under the ESOS Act.

Currently, information in the TPS Director’s possession can be shared with regulatory authorities. New measures will expand the functions of the TPS Director to enable him or her to make a recommendation to an ESOS agency that the agency take enforcement action against a provider. The ESOS agency must consider the TPS Director’s recommendation when deciding whether to take particular enforcement action against a registered provider under the ESOS Act.

A further measure to streamline administrative processes under the ESOS Act will allow the TPS Director to issue a production notice to an education provider in the TPS Director’s own right. Currently the TPS Director is only able to access information from providers if a delegate of the Secretary issues a production notice to a provider. The new measures will enable the TPS Director to issue a production notice where the Director reasonably believes that a relevant individual of a registered provider has, or has access to, information or documents that are relevant to the performance of the Director’s functions. It will be an offence if there is a failure to comply with a production notice.

The amendments allow the TPS Director to be assisted by a “TPS officer” in the performance of the Director’s functions.

In addition, to remove any uncertainty regarding whether the TPS Director is an “official” of the Department within the meaning of the *Public Governance, Performance and Accountability Act 2013*, amendments to the Act in Schedule 4 provide that the TPS Director is an “official”.
Detailed explanation

Education Services for Overseas Students Act 2000

Item 1

This item amends the definition of “production notice” in section 5 of the ESOS Act so that it also includes a notice given by the TPS Director under new section 113A (see item 8 of this Schedule).

Item 2

This item inserts a definition of “TPS officer” in section 5 to mean either an APS employee of the department who assists the TPS Director to perform his or her functions, or a consultant that the TPS Director engages under section 54L of the ESOS Act.

Item 3

Section 54B of the ESOS Act sets out the TPS Director’s functions. This item amends section 54B to give the TPS Director a new function of recommending that the ESOS agency for a registered provider take one or more actions against the provider under subsection 83(1A) of the Act (e.g. to impose conditions on, suspend, or cancel a provider’s approval).

The Director’s new function links to the amendment to section 83 of the Act made by item 5 of this Schedule.

Item 4

This item adds a new section 54N at the end of Division 3 of Part 5A of the Act. New section 54N provides that, for the purposes of the finance law (as per the Public Governance, Performance and Accountability Act 2013) (PGPA Act), the TPS Director is an official of the Department. (Under section 8 of the PGPA Act, “finance law” means the PGPA Act, rules made under section 101 of the PGPA Act and instruments made under the PGPA Act or an Appropriation Act.)

The purpose of this amendment is to put beyond doubt the TPS Director’s ability to utilise and commit Commonwealth resources as a delegate of the Secretary of the Department under the finance law, in accordance with the requirements of the finance law, Secretary’s instructions, and other applicable policies and procedures.

Item 5

This item inserts a new subsection 83(1AA) into section 83. New subsection 83(1AA) provides that, when deciding whether to take action against a registered provider under subsection 83(1A), the ESOS agency for the
provider must consider any recommendation about the provider made by the TPS Director under paragraph 54B(fa) (see item 3 of this Schedule).

**Item 6**

Section 111A of the ESOS Act is a guide to Part 7 of the Act which deals with monitoring and searching providers. This item expands the second dot point of this guide to reflect the new power of the TPS Director to issue production notices in his or her own right (see item 8 of this Schedule).

**Item 7**

This item repeals and substitutes the heading to section 113 so that it reads “113 ESOS agency for a registered provider may give a production notice”.

**Item 8**

This item inserts a new section 113A into the ESOS Act that empowers the TPS Director to issue a notice to specified persons to produce certain information to the Director. Currently, if the Director needs information about a provider’s compliance with Part 5 of the Act to properly perform his or her statutory functions, the Director needs to ask a delegate of the Secretary to issue a production notice on the Director’s behalf. Given the TPS Director’s statutory functions and role, it is appropriate that the Director is able to require the production of information directly.

New section 113A applies if the TPS Director has a reasonable belief that a relevant individual of a registered provider has, or has access to, information or documents that are relevant to the performance of the TPS Director’s Part 5 functions. If so, the TPS Director may give that person a written production notice requiring him or her to give the information or documents to a TPS officer (as defined – see item 2), show the documents to a TPS officer, or make and give copies of the documents to the TPS officer. If the information or documents are in any particular form, the production notice may require the information or documents to be given in that form.

**Items 9 to 25**

The balance of items in Schedule 4 to the Bill simply amend Division 2 of Part 7 of the ESOS Act to deal with the TPS Director’s power to give a production notice under new section 113A. The amendments are consequential, and where the TPS Director or a TPS officer has an obligation or power, it reflects an existing obligation or power of an ESOS agency or authorised officer under Division 2 of Part 7 of the Act.

Section 114 of the Act specifies what a production notice must contain. **Items 9 and 10** amend subsection 114(1) to take account of the fact that a production notice can be issued under section 113 or 113A by an ESOS agency or the TPS Director, respectively.
Section 115 relates to how production notices are served. **Items 11 and 12** amend section 115 to include reference to production notices issued under section 113A by the TPS Director. A production notice issued by the TPS Director under section 113A must be served in the same way as a production notice issued by an ESOS agency under section 113.

**Item 14** inserts a new section 122A, which provides for an offence, carrying a maximum penalty of 12 months imprisonment, for a person who gives a TPS officer a document in compliance (or purported compliance) with a section 113A production notice given to the person, and that document is false or misleading in a material particular. The new section 122A corresponds with the existing section 122, which makes it an offence for a person who gives an authorised officer (c.f. TPS officer) a false or misleading document.

**Item 16** adds a new subsection 124(3) to authorise the TPS Director or a TPS officer to inspect, copy and retain documents produced under a production notice, consistent with the authority of an ESOS agency and its authorised officers under the existing section 124.

**Item 17** inserts a new section 125A, which provides that, if a TPS officer is given a document under Division 2 of Part 7, the officer may retain it for the purposes of the ESOS Act, or for the purposes of an investigation to see if an offence has been committed, or to enable evidence of the commission of an offence to be secured for prosecution purposes. Such documents must not, however, be retained for longer than 60 days after the officer was given the document.

This is a corresponding provision to section 125, which entitles authorised employees, or an employee or constituent member of that person’s agency, who has the authorised employee’s permission, to retain documents.

**Item 18** inserts a new subsection 126(1A), reflecting the existing subsection 126(1), as a consequence of the insertion of the new section 125A.

**Item 25** inserts a new section 128A, which entitles a TPS officer given a document under Division 2 of Part 7 to apply to a magistrate or tribunal member to retain the document for a longer period than the 60 days permitted under new section 125A. The new section corresponds with the existing section 128.

**Items 13, 15, and 19 to 24** make minor amendments to existing provisions of Division 2 of Part 7 of the ESOS Act that are consequent on the amendments made by item 8 etc.
Schedule 5  Other amendments

Summary

Schedule 5 to the Bill contains measures designed to increase flexibility for students and education providers with requirements associated with the TPS. These measures will provide significant deregulatory savings for education providers as well as more choice for students.

Currently, section 27 of the ESOS Act precludes registered providers receiving more than 50 per cent of the tuition fees for a course that is longer than 24 weeks before the student has begun the course. Amendments to the section will enable providers to receive more than 50 per cent of the tuition fees for a course if either the student (or the person paying the tuition fees on their behalf, such as a sponsor) chooses to pay more than that, or the course is no more than 25 weeks long. The ancillary requirement that any further tuition fees must not be required by the provider until two weeks before the second study period for the course will also be removed. These measures will increase flexibility for students in terms of when they pay, and for providers in managing their administrative and financial processes.

The existing requirement on every provider to make an agreement in writing, with each overseas student, setting out the study periods for each enrolment and the tuition fees payable for each study period (section 22) duplicates similar requirements in the national code. The concept of a study period will be removed from the ESOS Act, given it imposes an arbitrary and limiting requirement that study periods be a maximum of 24 weeks in length. The requirement to ensure transparency for students regarding their fees for a course and the periods to which those fees relate will be retained in the national code. However, there will not be a need for education providers to limit periods of study to the requirements under the Act.

As part of the TPS arrangements introduced in 2012, non-exempt (private) providers are required to maintain an account in which all tuition fees paid by students prior to the course commencing must be kept until the student starts the course. Removing this requirement will be of significant deregulatory benefit to non-exempt providers, creating a more level playing field between public and private providers and encouraging competition and innovation in the sector.

A further measure in the Bill will remove unnecessarily stringent data reporting obligations in situations where a student defaults. Section 47C of the ESOS Act currently requires all registered providers to notify each instance of a student default within five days, as well as to notify the Secretary and TPS...
Director of the outcomes in respect of each default. Amendments will remove
the requirement on all providers to report instances of student default under
the current provisions; and will also remove the requirement to report on the
outcomes of the student default except where the provider has paid a refund
to the student under a legislative instrument made by the Minister (primarily
covering cases of visa refusal).

To ensure appropriate provider reporting on students, the time frame for
providers to give the Secretary other information about their students’
circumstances (as set out in section 19 of the ESOS Act) will be extended
from 14 days to 31 days (except where a student who is less than 18 years
old has failed to start their study or has had their study terminated).

**Detailed explanation**

**Part 1 – Amendments commencing on the day after Royal Assent**

*Education Services for Overseas Students Act 2000*

**Items 1, 4 and 5**

Subsection 19(1) of the ESOS Act currently requires a registered provider to
give the Secretary certain information about accepted students within 14 days
after the occurrence of specified events. The effect of the amendments to
section 19 made by **items 4 and 5** is to extend the period in which the
information needs to be given to the Secretary from 14 days to 31 days in
most circumstances (the circumstances set out in paragraph 19(1)(a), (b), (e)
and (f)). However, information about whether a student under the age of 18
years old has failed to begin their course or has terminated their studies must
still be given to the Secretary within 14 days of that event.

**Item 1** inserts a definition of “applicable number of days” in section 5, referring
to new subsection 19(1A).

**Item 5** inserts new subsection 19(1A) which defines the “applicable number of
days” for the purposes of subsection 19(1), as amended by **item 4**.

**Items 2 and 6**

Section 22 of the ESOS Act currently:

- requires a registered provider to enter into a written agreement with each
  of its students setting out the length of each study period for the course
  being undertaken by the student, and the tuition fees for each study
  period for that course; and
- limits study periods to a maximum length of 24 weeks.

**Item 6** repeals section 22 of the Act, as it is inflexible and redundant. Similar
requirements as are set out in section 22 exist in the national code made
under Part 4 of the Act. Under the national code, a provider must enter into a
written agreement with each student. The written agreement must provide, among other things, an itemised list of course money payable by the student to the provider. In addition, the national code contains a definition of study period that differs from the requirements for study periods in section 22. The requirement under section 22 of the ESOS Act is that a study period be less than 24 weeks, a period of time that does not necessarily align with the periods of study offered by the various types of education provider that offer education services to overseas students. The result has been an unnecessary and duplicative requirement that imposes a significant cost and administrative burden on education providers.

The requirement under the national code relating to the disclosure of fees and the periods to which those relate will be maintained to ensure appropriate transparency and protection for students.

As a consequence of the repeal of section 22 by item 6, item 2 repeals the definition of “study period” in section 5 of the ESOS Act.

**Items 3, 7 and 8**

Currently, section 27 of the ESOS Act imposes limits on the amount of tuition fees a registered provider can receive from or on behalf of an overseas student before the student begins his or her course. Unless the course is only one study period long (i.e. a maximum of 24 weeks), a provider is unable to accept more than 50 per cent of total tuition fees for the course prior to the student commencing the course. In addition, a provider cannot request further instalments of tuition fees from a student earlier than two weeks before their next study period commences.

These limits on education providers receiving a student’s tuition fees has meant that students have been unable to pay more than half of their course’s tuition fees upfront, and pay subsequent instalments of tuition fees early, even if they wanted to. The amendments to section 27 made by item 8 will enable a student, or the person paying the tuition fees on their behalf, to pay more than 50 per cent of the tuition fees before the student commences the course, and remove the limit on when providers can request students pay instalments of tuition fees. This increases flexibility for students while ensuring they are not required to pay all tuition fees up front if they do not wish to do so.

In addition, a provider will be able to accept more than 50 per cent of the tuition fees for a course if the duration of the course is 25 weeks or less.

**Items 3 and 7** amend section 15A and repeal the heading to subsection 27(1) as a consequence of the amendments made by item 8.
Items 9, 13, 15 and 18

Item 9 repeals the following sections:

- section 28 (obligation for registered providers to maintain account);
- section 29 (obligations in relation to account money);
- section 30 (regulations about tuition fees for courses before a student has started a course and about accounts relating to tuition fees under Division 2 of Part 3);
- section 31 (exemption from requirements in sections 28 and 29 and in regulations under section 30); and
- section 32 (offences for contraventions of sections 28 or 29).

The current requirement for non-exempt providers to hold all tuition fees paid before a student commences in a designated account imposes a significant regulatory cost on private education providers, regardless of their level of risk. Removing the requirement for a designated account will ensure fairer competition between private and public providers of international education, and enable them to invest the fees collected in improvements that will enhance the quality and delivery of the course. It will also allow those providers greater flexibility in managing their administration of the course. While the designated account requirement was introduced to reduce risk to the TPS, its removal is countered by only minimal changes to the 50 per cent limit on the collection of tuition fees before a student commences a course. Where providers are considered high risk, an ESOS agency can still impose requirements to limit that financial risk as a condition of registration on the registered provider at any time during its registration.

Items 13, 15 and 18 repeal notes in sections 46D, 47D and 50C that refer to provisions repealed by item 9.

Items 10, 11 and 12

Section 38 of the Act sets out what the national code must or may contain including, under paragraph 38(g), standards and procedures required of registered providers in making agreements relating to refunds under Division 2 of Part 5.

Item 12 amends paragraph 38(g) to omit reference to “relating to refunds under Division 2 of Part 5” and replacing it with reference to “with overseas students or intending overseas students”. The change clearly authorises the national code to provide for standards and procedures required of registered providers in relation to making agreements with their students; the national code is not limited to dealing with the narrow question of refunds of tuition fees.

Items 10 and 11 amend sections 33A (Guide to Part 4) and 34 (Purpose of the national code) respectively to reflect the change in scope and wording of section 38 made by item 12.
Items 14, 16 and 17

Currently, section 47C of the ESOS Act requires a registered provider to notify the Secretary and TPS Director of every instance of student default (as defined in section 47A) within five business days of the default occurring.

Under sections 47D and 47E of the Act a provider has four weeks after a student default to meet its refund obligations to the student. Generally speaking, section 47D applies in cases where the provider has a written agreement with the student that deals with student default; section 47E applies in other cases.

Under section 47H, a provider also has an obligation to give the Secretary and TPS Director details of its compliance with section 47D or 47E, as the case may be.

The notification requirements in sections 47C and 47H are burdensome and duplicative. The requirement in section 47C to report each instance of student default within five business days is too short to establish that there has been a genuine student default. A combination of reporting to the Secretary under section 19 of the Act, the requirements of the national code relating to the content of agreements between providers and students, and the offences in sections 47F and 47G render both section 47C and reporting of compliance with section 47D under section 47H unnecessary.

The written agreement between a provider and student under the national code must include information in relation to refunds of course money in cases of student and provider default, as well as information that a student may take action under Australia’s consumer protection laws. The written agreement provisions in the national code therefore protect students.

However, in situations where a student’s visa is refused or where a provider has not entered into a written agreement in accordance with the requirements of the ESOS Act, these refunds must be paid consistent with the legislative instrument made by the Minister under section 47E. To ensure providers comply with the requirements of the legislative instrument, providers will continue to be required to report that they have met their obligations to students under section 47H to the ESOS agency and the TPS Director.

Accordingly, item 14 repeals section 47C. The removal of requirement for student default reporting will significantly reduce the regulatory and cost burden on all providers.

Item 16 repeals and substitutes subsection 47H(1). Under new subsection 47H(1), a registered provider will no longer be required to provide its ESOS agency and the TPS Director with details of its compliance with its refund obligations under section 47D (i.e. refund in accordance with its agreement with a student). However, it must still give a notice that accords with the requirements of section 47H if an overseas student, or an intending overseas student, defaults in relation to a course the provider provides at a
location and there is a requirement under section 47E for the provider to give a refund.

**Item 17** deletes the redundant reference to section 47D from paragraph 47H(3)(a), as a consequence of the amendment made by item 16.

**Part 2 – Amendments commencing on 1 July 2016**

*Education Services for Overseas Students Act 2000*

**Items 19 to 24**

These items address the discrepancy between the arrangements for the payment of the TPS levy and those for the annual registration charge and the entry to market charges.

Currently the TPS Director must issue a reminder notice to a registered provider who has not paid an amount of the TPS levy by the end of the due day (section 53D of the Act). There is no similar reminder notice mechanism for payment of the annual registration charge or the entry to market charges.

Under the current section 90 of the Act, the consequence of any late payment of these charges by a registered provider is in an automatic suspension of the provider’s registration.

The amendments to the Act made by items 19 to 24 will empower the Secretary to issue a reminder notice to a provider who has not paid an annual registration charge or entry to market charge on time. A provider’s registration will only be suspended under section 90 of the Act if it then fails to comply with such a notice.

For consistency, the amendments made by items 19 to 24 commence on 1 July 2016, the same time as the majority of other amendments contained in the Bill, including amendments to other enforcement provisions in Schedule 1 to the Bill.

**Item 22** inserts new subsections 23(2) and (3). New subsection 23(2) provides that if a registered provider does not comply with subsection 23(1) (i.e. does not pay its annual registration charge on time), the Secretary must give the provider a written notice:

- specifying the amount of annual registration charge payable;
- stating that the provider must pay the charge and late payment penalty within seven days after the notice is given to the provider; and
- setting out the effect of section 90.

A note to new subsection 23(2) explains that, under section 90, a provider’s registration is automatically suspended if it fails to comply with the notice.
New subsection 23(3) requires the Secretary to notify the ESOS agency for the provider if the provider fails to comply with a notice (unless the Secretary is the ESOS agency for the provider).

**Item 23** repeals and substitutes section 23A (second and third entry to market charges).

New subsections 23A(1) and (2) provide that registered providers required to pay a second or third entry to market charge must pay the charge by the end of the day referred to in subsections 6(5) and (7) of the *Education Services for Overseas Students (Registration Charges) Act 1997* respectively. Note that the references to section 6 of the *Education Services for Overseas Students (Registration Charges) Act 1997* reflect amendments to that section in the *Education Services for Overseas Students (Registration Charges) Amendment (Streamlining Regulation) Bill 2015*.

New subsection 23A(3) provides that if a registered provider does not comply with the subsection 23A(1) or (2) requirements, the Secretary must give the provider a written notice:

- specifying the amount payable;
- stating that the provider must pay the charge and late payment penalty within seven days after the notice is given to the provider; and
- setting out the effect of section 90.

A note to new subsection 23A(3) explains that, under section 90, a provider’s registration is automatically suspended if it fails to comply with the notice.

New subsection 23A(4) requires the Secretary to notify the ESOS agency for the provider if the provider fails to comply with a notice (unless the Secretary is the ESOS agency for the provider).

**Item 24** repeals and replaces paragraphs 90(1)(b) and (c) of the Act with a new paragraph (1)(b), the effect of which is that a provider’s registration is automatically suspended if it fails to comply with a notice issued to it under section 23 or 23A (as opposed to merely fails to pay the applicable charge on time).

**Items 19, 20 and 21** make minor amendments to section 23 and its notes consequential on the amendment made by item 22.
Schedule 6

Application, transitional and savings provisions

Summary

Schedule 6 sets out application, transitional and savings provisions for the purposes of the Bill.

Detailed explanation

Item 1

This item inserts the following definitions for the purposes of this Schedule:

- “commencement” means the commencement of item 2 of this Schedule (i.e. 1 July 2016); and
- “ESOS Act” means the Education Services for Overseas Students Act 2000.

Item 2

Item 2 provides for the continuation of certain existing registrations in force under the ESOS Act immediately before commencement.

Subitems 2(1) to (3) provide that a registered provider’s existing registration continues in effect, and may be dealt with, after commencement, as if the provider were registered under the ESOS Act as amended by the Bill. The purpose of the provisions is to maintain the status quo for existing registrations, but ensure they are subject to the new and amended provisions of the Act. If the provider’s registration was subject to conditions prior to commencement, it remains subject to those same conditions (which are treated as conditions imposed under new section 10B), and the conditions continue and can be varied or removed in accordance with the Act as amended by the Bill.

Subitem 2(4) deals with the situation that a provider’s registration is in force immediately before commencement, because it has been extended beyond its normal period by operation of subsection 9AC(5) of the ESOS Act. In these circumstances, the provider may apply to renew their registration within 60 days of commencement under new section 10D of the ESOS Act. Note that if a provider makes an application to renew its registration under new section 10D, new section 10F will also operate to extend the existing registration until the renewal decision is made.
If a provider subject to subsection 9AC(5) immediately before commencement does not apply to renew their registration within 60 days of commencement, their registration will cease.

Subitems 2(5) to (7) deal with the situation where a provider’s registration is in force immediately before commencement, because it has been extended beyond its normal period by operation of subsection 9AC(6) of the ESOS Act (the so-called “teach out” provision). The purpose of these provisions is to permit such providers to continue providing their courses to their existing students for a period, consistent with the operation of the new “teach out” provision, section 10M.

If the provider is not a school provider, the provider’s registration for a course continues in force until it finishes providing the course to students who are enrolled in the course, and who had started the course before commencement.

If the provider is a school provider, the provider’s registration for a course continues in force until the end of 31 December 2016.

However, in either case, the provider is not able to recruit or enrol students for the course after commencement.

**Item 3**

Item 3 provides that, where a provider’s registration is suspended under section 89A of the ESOS Act immediately before commencement, and the provider hasn’t been given a notice removing the suspension upon payment of a reinstatement fee at that time, the registration remains suspended.

Since section 89A of the Act is repealed on commencement (see item 107 of Schedule 1), the suspension is then dealt with under the Act as amended by the Bill as if it were a suspension under the new section 89.

**Item 4**

Item 4 provides that, where a provider’s registration is suspended under section 89A of the ESOS Act immediately before commencement, and the provider has been given a notice removing the suspension upon payment of a reinstatement fee at that time, the registration remains suspended and the suspension and notice continue to be dealt with under the Act as in force before commencement. That is, in accordance with subsection 89A(3), the suspension is removed if the provider pays the requisite reinstatement fee.

**Item 5**

Item 5 saves the operation of “show cause” notices issued under section 93 of the Act. A notice given under subsection 93(1) of the ESOS Act which has not lapsed as of commencement continues to have effect as if:
the notice had been given by the ESOS agency for the registered provider under new section 93 of the ESOS Act; 

- if the notice related to a decision to impose a condition on the provider’s registration under subsection 9AD(2) or 9AE(1) of the ESOS Act, the notice related to a decision to impose a condition on the provider’s registration under new section 10B of the Act; or 

- if the notice related to a decision not to give the registered provider a notice under subsection 89A(2) of the ESOS Act, the notice related to a decision not to give the registered provider a notice under new subsection 89(4) of the Act.

Item 6

Item 6 preserves the right in section 176 of the ESOS Act to apply to the AAT for a review of a decision mentioned in that section that was made before commencement, providing an application has not been made and the time period for making an application has not ended. In these circumstances, section 176, as in force immediately before commencement, continues to apply in relation to the decision.

Item 7

This item clarifies that the amendments made to section 19 of the ESOS Act by items 4 and 5 of Schedule 5 to the Bill apply to events occurring before or after the day those items commence (i.e. the day after Royal Assent).

Item 8

This item clarified that the amendments made to section 19 of the ESOS Act by items 52 and 53 of Schedule 1 to the Bill apply to events occurring before or after commencement (i.e. 1 July 2016).

Item 9

This item clarifies that new subsections 23(2) and (3) of the ESOS Act, as inserted by item 22 of Schedule 5 to the Bill, apply in relation to a registered provider who does not comply with subsection 23(1) of the Act after commencement.

Item 10

This item provides that new subsection 83(1) of the ESOS Act, as inserted by item 85 of Schedule 1 to the Bill, will apply in relation to the following breaches:

- a breach of the ESOS Act, the national code or a condition of a registered provider’s registration that occurs before or after commencement; and

- a breach of the ELICOS Standards or Foundation Program Standards that occurs after commencement.
**Item 11**

This item provides that new section 87 of the ESOS Act, as inserted by item 106 of Schedule 1 to the Bill, applies in relation to the following breaches:

- a possible breach of the national code, ELICOS Standards or Foundation Program Standards that occurs before or after commencement; and
- a possible breach of the ESOS Act that occurs after commencement.

**Item 12**

This item clarifies that amendments of section 170A of the ESOS Act made by items 265 to 271 of Schedule 1 to this Act will apply in relation to action taken under Division 2 of Part 6 of that Act if the action is taken after commencement.

**Item 13**

Subitem 13(1) provides that the Minister may, by legislative instrument, make rules prescribing matters of a transitional nature relating to the amendments or repeals made by the Bill.

Subitems 13(2) and (3) provide that the Bill does not limit the rules that can be made by the Minister, except that the rules may not do any of the following:

- create an offence or civil penalty provision;
- provide powers of arrest or detention, or powers relating to entry, search or seizure;
- impose a tax;
- set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in the Bill; and
- directly amend the text of the Bill.
Attachment A  Regulation Impact Statement