Western Australia

# Education Service Providers (Full Fee Overseas Students) Registration Act 1991

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# Education Service Providers (Full Fee Overseas Students) Registration Act 1991

## Contents


### Part 1 — Preliminary

1. Short title 2
2. Commencement 2
3. Terms used 2
4. Crown bound 3
5. *School Education Act 1999* not affected 3

### Part 2 — Registration

**Division 1 — General**

6. Who has to be registered 4

**Division 2 — Education service providers other than statutory education service providers**

7. Application of this Division 4
8. Application for registration 5
9. Natural persons, registration of 5
10. Firms, registration of 6
11. Bodies corporate, registration of 7
12. Certain education service providers exempted 8
13. Additional criteria for registration 8
14. Period of registration 9
15. Conditions of registration 9
16. Safeguarding students' funds 10
17. Certificates of registration, issue of 11
18. Amending registration certificates; changes of particulars to be notified to CEO etc. 12

**Division 3 — Statutory education service providers**

19. Application of Division 13
20. Statutory education service providers deemed to be registered; exceptions 13

## Part 3 — Audit

21. Application of Part 15
22. Auditors to be appointed by education service providers 15
23. Audit of education service provider's accounts, CEO may require 15
24. Auditor to conduct audit according to accepted auditing practice 16
25. Auditor to report material irregularity 16
26. Duty of care by auditor 16
27. Auditor to give further information if required by CEO 16
28. Penalty for breach of s. 24, 25 or 26 17
29. Defence to charge of offence under s. 24, 26 or 27 17
30. Exemptions from this Part 17

## Part 4 — Investigation and inquiry

31. Purposes of investigations and inquiries 18
32. Powers of the CEO and authorised persons to investigate 18
33. Incriminating information, questions, or documents 21
34. Failure to comply with requirement made under s. 32 22
35. Obstruction of CEO or authorised person 22
36. Reasons for decision by CEO to be given 22
37. Disciplinary action against education service providers 22
38. Appeals against CEO's decisions 24

## Part 5 — Miscellaneous

39. Advertisements promoting education services, restrictions as to 25
40. Official information, disclosure of restricted 26
41. Register of education service providers 27

42. Delegation powers of Minister and CEO 27
43. Advisory committee, appointment of 27
44. Application of *Financial Management Act 2006* and *Auditor General Act 2006* 28
45. Protection from liability 28
46. Liability of directors etc. and corporations 28
47. Consent required for prosecutions 29
48. Penalties 29
49. Regulations 29
50. Review of Act 30

**Notes**

Compilation table 31
Uncommenced provisions table 32
Other notes 32

**Defined terms**

Western Australia

# Education Service Providers (Full Fee Overseas Students) Registration Act 1991

**An Act to provide for the registration of education service providers enrolling full fee overseas students.**

# Part 1 — Preliminary

## 1. Short title

This Act may be cited as the *Education Service Providers (Full Fee Overseas Students) Registration Act 1991*.

## 2. Commencement

The provisions of this Act shall come into operation on such day as is, or days as are respectively, fixed by proclamation.

## 3. Terms used

(1) In this Act, unless the contrary intention appears —

***authorised person*** means a person authorised in writing by the chief executive officer;

***chief executive officer*** means the chief executive officer of the department;

***department*** means the department through which this Act is administered;

***education service*** means any instruction or training or both whether given as a course or not and includes such other means of providing education as may be prescribed;

***education service provider*** means a university, a college or a school and any other person or body of persons providing an education service;

***enrol*** means to enrol a student for the purposes of providing the student with an education service;

***full fee*** means the full average cost of providing a full fee overseas student with an education service including both recurrent and capital costs;

***full fee overseas student*** means a student who holds a student visa in force under the *Migration Act 1958* of the Commonwealth and in relation to whom a full fee is paid for an education service;

***registered*** means registered under this Act;

***statutory education service provider*** means an education service provider established under an Act or an education service provider who is a Minister of the Crown.

(2) In this Act "statutory education service provider" is a reference to —

(a) if the statutory education service provider is not a Minister of the Crown, the person or body conducting the education service provider;

(b) if the statutory education service provider is a Minister of the Crown, the person designated by that Minister under subsection (3).

(3) Where a Minister is a statutory education service provider the Minister shall by notice in writing published in the *Government Gazette* designate a person as the designated person for the purposes of subsection (2)(b).

*[Section 3 amended: No. 24 of 2000 s. 13(1).]*

## 4. Crown bound

(1) This Act binds the Crown in right of the State and any statutory education service provider.

(2) Nothing in this Act renders the Crown in right of the State liable to be prosecuted for an offence.

## 5. *School Education Act 1999* not affected

Nothing in this Act affects the application of the *School Education Act 1999* to a school as defined in that Act.

*[Section 5 amended: No. 36 of 1999 s. 247.]*

# Part 2 — Registration

## Division 1 — General

### 6. Who has to be registered

(1) On and after the appointed day an education service provider shall not —

(a) enrol any full fee overseas student, or, offer to, or enter into any agreement to, enrol any full fee overseas student, in relation to an education service; or

(b) advertise an education service for full fee overseas students; or

(c) provide an education service for full fee overseas students,

unless —

(d) the education service provider is registered under this Act; and

(e) the particulars of the education service are contained on the register with respect to the education service provider.

Penalty: $20 000 or 3 years' imprisonment or both.

(2) In subsection (1) ***appointed day*** means such day as is fixed by the Minister by order published in the *Government Gazette* to be the appointed day for the purposes of that subsection.

*[Section 6 amended: No. 24 of 2000 s. 13(2).]*

## Division 2 — Education service providers other than statutory education service providers

### 7. Application of this Division

This Division applies to an education service provider that is not a statutory education service provider.

## 8. Application for registration

(1) An application for registration under this Act —

(a) shall be made in writing and in a manner and form approved by the chief executive officer; and

(b) shall contain such information as is required by the chief executive officer in respect of such an application; and

(c) shall be accompanied by the prescribed fee.

(2) In respect of any particular application under subsection (1) the applicant shall furnish the chief executive officer with such information as the chief executive officer determines.

(3) The information contained in an application or furnished in connection with an application under this section shall be verified by statutory declaration of the applicant or where the applicant is a firm or body corporate by the person who is to be in *bona fide* control of the business operated by the firm or body corporate.

## 9. Natural persons, registration of

Subject to this Act, a person, not being a body corporate, who applies to the chief executive officer to be registered and pays the prescribed fee shall be registered if the chief executive officer is satisfied that he or she —

(a) resides in Australia; and

(b) is of good character and repute and a fit and proper person to be registered; and

(c) has sufficient financial and other resources available to enable him or her to comply with the requirements of this Act; and

(d) understands fully the duties and obligations imposed by this Act on an education service provider.

## 10. Firms, registration of

Subject to this Act, 2 or more persons constituting a firm who apply to the chief executive officer to be registered and pay the prescribed fee shall be registered if the chief executive officer is satisfied that —

(a) if the partnership —

(i) consists of 2 partners, at least one of those persons resides in Australia;

(ii) consists of more than 2 partners, at least 2 of those persons reside in Australia;

(iii) is constituted by a partner that is a body corporate, the body corporate is incorporated in Australia;

and

(b) all of the natural persons, if any, by whom the firm is constituted and all the directors of, and all of the persons concerned in the management or control of, any body corporate by which the firm is constituted are persons of good character and repute and are persons fit to be concerned as directors of, or in the management and control of, an education service provider; and

(c) the persons by whom or by which the firm is constituted have sufficient financial and other resources available to them to enable them to comply with the provisions of this Act; and

(d) the natural persons if the firm is constituted only by natural persons, and all the persons concerned in the management or control of the bodies corporate, if the firm is constituted by bodies corporate, understand fully the duties and obligations imposed by this Act on an education service provider.

## 11. Bodies corporate, registration of

Subject to this Act, a body corporate which applies to the chief executive officer to be registered and pays the prescribed fee shall be registered if the chief executive officer is satisfied that —

(a) the body corporate is incorporated in Australia and if the body corporate is —

(i) a corporation registered under the *Corporations Act 2001* of the Commonwealth, that the requirements of section 201B(1) of that Act are complied with;

(ii) incorporated or deemed to be incorporated under the *Associations Incorporation Act 2015* or any other Act, that at least 2 of the members of the management committee reside in Australia;

and

(b) all of the directors of the body corporate, and all of the persons concerned in the management or conduct of the body corporate, are persons of good character and repute and are persons fit to be concerned as directors of, or in the management and control of an education service provider; and

(c) the body corporate has sufficient financial and other resources available to comply with the requirements of this Act; and

(d) the persons having the control and management of the body corporate understand fully the duties and obligations imposed by this Act on education service providers.

*[Section 11 amended: No. 10 of 2001 s. 61; No. 30 of 2015 s. 215.]*

## 12. Certain education service providers exempted

(1) Sections 9, 10 and 11 do not apply to or in relation to any education service provider or a class of education service provider exempted from those provisions by the regulations.

(2) An education service provider exempted under subsection (1) shall apply to the chief executive officer for registration under section 8 and the provisions of sections 13, 14, 15, 16, 17(1) and (2)(a) to (c) and 18(1) and (2) apply to and in relation to an application by and the registration of an education service provider exempted under subsection (1).

## 13. Additional criteria for registration

(1) Subject to this Act, the chief executive officer shall not register an applicant unless the chief executive officer is satisfied —

(a) that the applicant has a proper method of financial reporting and financial monitoring in relation to any moneys received or to be received by the applicant from full fee overseas students; and

(b) that the educational facilities, including the premises (if any), that the applicant proposes to provide are satisfactory having regard to the education service to be provided; and

(c) that the educational standards of the applicant have been assessed through proper accreditation procedures by the appropriate accreditation body; and

(d) that the promotional activities of the applicant, including the activities of the agents or servants in this State or elsewhere of the applicant, are not and have not been false or misleading; and

(e) that proper contractual arrangements clearly specifying the fees and charges to be paid have been made between the applicant and full fee overseas students and that such arrangements include provisions for the refund of fees and charges in appropriate circumstances; and

(f) that the applicant provides adequate procedures for the resolution of disputes between the applicant and full fee overseas students; and

(g) that the applicant provides adequate counselling and pastoral care services; and

(h) that the applicant complies with such other matters as are prescribed.

(2) In considering an application under this Division the chief executive officer shall consider whether and to what extent the applicant will use government assistance for the provision of education services for full fee overseas students.

## 14. Period of registration

(1) Subject to this section, registration of an education service provider shall not exceed a period of 5 years.

(2) The chief executive officer may vary the period of registration granted to an education service provider under this section to provide for —

(a) a lesser period of registration of the education service provider, generally; or

(b) the registration of the education service provider in relation to a particular education service for a lesser period,

or both.

(3) Subject to this Act, registration of an education service provider under this Act may be renewed in the manner prescribed in the regulations and on payment of the prescribed fee.

*[Section 14 amended: No. 24 of 2000 s. 13(3).]*

## 15. Conditions of registration

(1) The chief executive officer may impose such conditions with respect to the registration of an education service provider as the chief executive officer thinks fit and without limiting the

generality of this section those conditions may relate to any one or more of the following —

(a) the holding of —

(i) a policy of indemnity insurance;

(ii) a guarantee,

approved by the Minister;

(b) participation by the education service provider in an indemnity scheme approved by the Minister.

(2) An education service provider shall comply with every condition imposed by the chief executive officer under subsection (1).

(3) An education service provider that contravenes or fails to comply with a condition imposed under this section commits an offence.

Penalty: $15 000 or imprisonment for 2 years or both.

## 16. Safeguarding students' funds

(1) This section applies to any education service provider specified in writing by the chief executive officer.

(2) For the purposes of ensuring that any fees, charges and other moneys (***students' funds***) are properly applied to the purposes for which they have been paid the chief executive officer may direct that any students' funds paid or payable by full fee overseas students in relation to any education service provided or to be provided by an education service provider to which this section applies shall be paid into an account or accounts approved by the chief executive officer (an ***approved account***), or, into a trust account nominated by the chief executive officer, (an ***approved trust account***), or both.

(3) Without affecting the generality of section 49(1) the Governor may make regulations with respect to —

(a) the operation of approved accounts and approved trust accounts;

(b) payments into and out of approved accounts and approved trust accounts;

(c) persons to whom interest derived from students' funds shall be paid.

(4) A person who contravenes or fails to comply with a regulation made under this section commits an offence.

Penalty: $15 000 or imprisonment for 2 years or both.

### 17. Certificates of registration, issue of

(1) Where the chief executive officer registers an education service provider under this Act the chief executive officer shall issue a certificate of registration in relation to such registration.

(2) The chief executive officer shall in a certificate of registration issued under subsection (1) specify the following particulars, namely —

(a) each premises (if any) at which an education service is to be provided by the education service provider; and

(b) the education service in relation to which registration is granted; and

(c) any condition applicable to such registration; and

(d) where the education service provider is —

(i) a natural person or are natural persons the name, address and description of every such person;

(ii) a firm, the names, addresses and descriptions of each natural person constituting the firm and if the firm is constituted by a corporation, the name, address and description of each natural

person who is concerned in the management and control of the corporation;

(iii) a corporation, the name, address and description, of each natural person who is concerned in the management and control of the corporation.

## 18. Amending registration certificates; changes of particulars to be notified to CEO etc.

(1) Subject to this Act, the chief executive officer may on application in the form of the approved form by an education service provider and on payment of the prescribed fee amend a certificate of registration issued in relation to the education service provider by the deletion of or addition to the education service or education services provided or proposed to be provided by the education service provider.

(2) The chief executive officer shall not amend a certificate of registration by adding to the premises at which an education service may be provided or to the education services that may be provided under the authority of the certificate of registration issued in relation to the education service provider unless the chief executive officer is satisfied that the education service provider conforms with the provisions of section 13 in relation to the education facilities and the education service proposed to be provided by the education service provider.

(3) Not less than 30 days before any change occurs in the particulars furnished to the chief executive officer under section 10 or 11 or in the particulars specified in a certificate of registration under section 17(2)(d) notice thereof together with the prescribed fee shall be sent to the chief executive officer.

(4) Upon receipt of a notice referred to in subsection (3) the chief executive officer may approve of, or, if the chief executive officer is satisfied that there are reasons to do so, refuse to approve of, all or any of the changes referred to in the notice so submitted.

(5) If the chief executive officer approves of the changes submitted to the chief executive officer under subsection (3) the chief executive officer shall require the education service provider to forward to the department the certificate of registration issued in relation to the education service provider and shall cause such changes to be made on the certificate as the case requires.

(6) Where the chief executive officer refuses to approve of the changes submitted under subsection (3) the chief executive officer shall cause the education service provider and any other person affected to be notified in writing of the refusal.

*[Section 18 amended: No. 24 of 2000 s. 13(5).]*

## Division 3 — Statutory education service providers

### 19. Application of Division

This Division applies to any statutory education service provider.

### 20. Statutory education service providers deemed to be registered; exceptions

(1) Notwithstanding anything in this Part but subject to any order in force under subsection (2) a statutory education service provider is deemed to be registered under this Act.

(2) The chief executive officer may by order direct that subsection (1) does not apply to any statutory education service provider specified in the order and may amend or revoke any such order.

(3) The chief executive officer shall not make an order under subsection (2) without the approval of the Minister.

(4) Where the chief executive officer makes an order directing that subsection (1) does not apply to a statutory education service provider the statutory education service provider shall not be

regarded as a statutory education service provider for the purposes of this Act.

(5) A statutory education service provider that is deemed to be registered shall apply to the chief executive officer in a form approved by the chief executive officer for a certificate of registration and the provisions of sections 13, 14, 15, 17(1) and (2)(a) to (c) and 18(1) and (2) with such modifications as are necessary for that purpose apply to and in relation to an application by and registration of a statutory education service provider.

(6) An application under subsection (5) shall be accompanied by the prescribed fee.

(7) The chief executive officer may, with approval of the Minister, give directions to a statutory education provider with respect to any application made under this section and effect shall be given to any such direction.

# Part 3 — Audit

## 21. Application of Part

This Part does not apply to a statutory education service provider.

## 22. Auditors to be appointed by education service providers

(1) Subject to this Act, the auditor by whom the audit of, and reports on, an education service provider are to be made shall be appointed by the education service provider.

(2) An education service provider shall appoint its auditor at the time of applying for registration.

(3) A person is not qualified to act as an auditor for the purposes of this Act unless the person is a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth.

(4) Subject to this Act, an auditor's appointment is continuous unless the chief executive officer is informed in writing of a change in the appointment.

*[Section 22 amended: No. 10 of 2001 s. 62.]*

## 23. Audit of education service provider's accounts, CEO may require

(1) The chief executive officer may require an education service provider to cause such of the affairs of the education service provider that relate to full fee overseas students to be audited —

(a) not later than 4 months after the end of the financial year of the education service provider; and

(b) by an auditor duly qualified for the purposes of this Act.

(2) An education service provider shall comply with a requirement under subsection (1).

*[Section 23 inserted: No. 24 of 2000 s. 13(6).]*

### 24. Auditor to conduct audit according to accepted auditing practice

The auditor shall conduct the audit referred to in section 23 in accordance with accepted auditing practice and in accordance with the requirements of this Act and the regulations.

### 25. Auditor to report material irregularity

The auditor shall report to the chief executive officer if the auditor discovers any material irregularity in the affairs of the education service provider that relate to full fee overseas students.

### 26. Duty of care by auditor

An auditor shall exercise a proper standard of care in the auditing of the affairs of an education service provider under this Act.

### 27. Auditor to give further information if required by CEO

(1) The chief executive officer may require further information or a further audit and the cost of the further audit shall, subject to subsection (2) be paid by the chief executive officer.

(2) If the audit lodged with the chief executive officer under section 25 does not comply with the requirements of this Act, or if the further audit required under subsection (1) results in action being taken under section 47, the chief executive officer may direct that all or part of the cost of the further audit required under subsection (1) shall be paid by the education service provider.

### 28. Penalty for breach of s. 24, 25 or 26

An auditor who fails to comply with section 24, 25 or 26 commits an offence.

Penalty: $1 000.

### 29. Defence to charge of offence under s. 24, 26 or 27

It is a defence in any proceedings for an offence against section 25, 26 or 27 if an auditor can prove that, in conducting an audit, the auditor exercised reasonable professional judgement and skill.

### 30. Exemptions from this Part

The regulations may make provision for or in relation to the exemption of a specified education service provider or a specified class of education service provider from all or any of the requirements of this Part.

# Part 4 — Investigation and inquiry

## 31. Purposes of investigations and inquiries

The chief executive officer may make any investigation or inquiry that in the opinion of the chief executive officer is necessary or expedient for the purpose of —

(a) determining any application or other matter before the chief executive officer;

(b) determining whether or not an education service provider is complying with this Act or any condition imposed under this Act;

(c) detecting offences against this Act.

## 32. Powers of the CEO and authorised persons to investigate

(1) Subject to this section, for the purposes of carrying out any investigation or inquiry in the course of carrying out the functions of the chief executive officer under this Act the chief executive officer or an authorised person may —

(a) require any person —

(i) to give the chief executive officer or an authorised person such information as the chief executive officer requires;

(ii) to answer any question put by the chief executive officer or an authorised person,

in relation to any matter the subject of such investigation or inquiry;

(b) require any person to produce any document relating to such investigation or inquiry;

(c) enter at all reasonable times and search any premises and inspect any document that he or she finds thereon;

(d) make a copy or abstract of any document produced to or inspected by, him or her in pursuance of this section or of any entry made therein and in the absence of proof to

the contrary any such copy certified as correct by the chief executive officer or an authorised person shall be received in all courts as evidence of, and of equal validity, as, the original.

(2) A requirement made under subsection (1)(a) —

(a) may be made orally or by notice in writing served on the person required to give information or answer a question, as the case may be;

(b) shall specify the time at or within which the information is to be given or the question is to be answered, as the case may be;

(c) may, by its terms, require that the information or answer required —

(i) be given orally or in writing;

(ii) be given at or sent or delivered to any place specified in the requirement;

(iii) in the case of written information or answers, be sent or delivered by any means specified in the requirement;

(iv) be given on oath or affirmation or by statutory declaration for which purpose the chief executive officer or an authorised person may administer an oath or affirmation and may witness a statutory declaration.

(3) A requirement made under subsection (1)(b) —

(a) shall be made by notice in writing served on the person required to produce a document;

(b) shall specify the time at or within which the document is to be produced;

(c) may, by its terms, require that the document be produced —

(i) at any place specified in the requirement;

(ii) by any means specified in the requirement.

(4) Where under subsection (1)(a) the chief executive officer or an authorised person orally requires a person to give any information or answer any question, the chief executive officer or the authorised person shall inform that person that he or she is required under this Act to give the information or answer the question, as the case may be.

(5) Where under subsection (1)(a) or (b) a person is required by notice in writing to give any information, answer any question, or produce any document, the notice shall state that he or she is required under this Act to give the information, answer the question, or produce the document, as the case may be.

(6) Before entering any premises pursuant to this section the chief executive officer or an authorised person —

(a) shall obtain a warrant to do so from a magistrate or justice which warrant the magistrate or justice is authorised to issue upon being satisfied that the entry is sought in good faith for the purpose of carrying out any investigation or inquiry under this Act; and

(b) shall display to the person, if any, affording him or her entry —

(i) in the case of the chief executive officer, a document signed by the Minister and certifying that he or she is the chief executive officer; and

(ii) in the case of an authorised person, a document signed by the chief executive officer and certifying that he or she is an authorised person.

(7) In the exercise of his or her powers and functions under this Act, the chief executive officer may inspect any books, papers or documents produced before the chief executive officer, and retain them for such reasonable period as he or she thinks fit, and make copies of any of them, or of any of their contents.

(8) A requirement under this section shall not be made on an education service provider unless the person on whom the requirement is made is a person who is nominated in relation to the education service provider under sections 9, 10 or 11, whichever applies, as a person who has the management or control of the education service provider.

(9) Where —

(a) a person on whom a requirement is served under subsection (8) refuses or fails to comply with the requirement; or

(b) a requirement under subsection (8) cannot be served because of the absence of a person having the management or control of the education service provider,

the chief executive officer may require any other person apparently having the management or control of the education service provider to comply with the requirement.

*[Section 32 amended: No. 24 of 2005 s. 63.]*

## 33. Incriminating information, questions, or documents

Without prejudice to the provisions of section 11 of the *Evidence Act 1906*, where under section 32 a person is required to —

(a) give any information;

(b) answer any question;

(c) produce any document,

he or she shall not refuse to comply with that requirement on the ground that the information, answer, or document may tend to incriminate him or her or render him or her liable to any penalty, but the information or answer given, or document produced, by him or her shall not be admissible in evidence in any proceedings against him or her other than proceedings in respect of an offence against section 34(b).

### 34. Failure to comply with requirement made under s. 32

Where under section 32 a person is required by the chief executive officer or an authorised person to give any information, answer any question, or produce any document and that person, without proper reason (proof of which shall lie on him or her) —

(a) fails to give that information or answer that question at or within the time specified in the requirement; or

(b) gives any information or answer that is false in any particular; or

(c) fails to produce that document at or within the time specified in the requirement,

the person commits an offence.

Penalty: $1 000.

### 35. Obstruction of CEO or authorised person

A person shall not prevent or attempt to prevent the chief executive officer or an authorised person from entering premises or otherwise obstruct or impede the chief executive officer or an authorised person in the exercise of his or her powers under section 32.

Penalty: $1 000.

### 36. Reasons for decision by CEO to be given

The chief executive officer may, and, on request by any party to the proceedings, shall, give to the party reasons for any decision made by the chief executive officer under this Act.

### 37. Disciplinary action against education service providers

(1) If the chief executive officer is satisfied that a proper cause exists for disciplining an education service provider, the chief executive officer may —

(a) reprimand or caution the education service provider in writing; or

(b) initiate legal action in an appropriate court of law; or

(c) amend the registration of the education service provider by deleting any education service from the certificate of registration issued in relation to the education service provider; or

(d) suspend or cancel the registration of the education service provider.

(2) The provisions of subsection (1)(a), (b) or (d) do not apply to a statutory education service provider.

(3) Where the chief executive officer deletes an education service from the certificate of registration issued in relation to an education service provider the education service provider shall not enrol, or, offer to enrol, any full fee overseas student for the course of instruction or training or both.

(4) Where the chief executive officer suspends or cancels the registration of an education service provider the education service provider shall not enrol any full fee overseas student for such period as the registration of the education service provider is suspended or cancelled or until the fulfilment of any condition which may be imposed by the chief executive officer, or until further order of the chief executive officer.

(5) Subject to this Act, there shall be a proper cause for disciplinary action under this section if —

(a) the education service provider improperly obtained registration under this Act;

(b) the education service provider or any person acting with the authority of the education service provider, has, in the course of any dealings with a full fee overseas student, been guilty of an offence against any law;

(c) the education service provider is acting or has acted in breach of any condition imposed under this Act;

(d) the education service provider has failed or refused to provide an education service of the standard required

under the accreditation requirements that apply in relation to the education service in question;

(e) any other cause that in the opinion of the chief executive officer renders the education service provider unfit for registration under this Act.

(6) If the education service provider the subject of a decision under subsection (5) appeals to the Minister under section 38 the decision of the chief executive officer does not take effect until the appeal has been dealt with but the Minister may by order in writing direct that the decision shall take effect at such time as the Minister specifies in the order and may in the order specify such conditions as the Minister thinks fit.

### 38. Appeals against CEO's decisions

(1) An education service provider that is aggrieved by any decision of the chief executive officer under this Act may within 28 days of the decision appeal to the Minister, and the Minister may give such directions in relation to the matter as the Minister thinks proper.

(2) An appeal under subsection (1) may at the discretion of the Minister be made by written submission or by way of a hearing or both and in any such appeal the Minister shall not be confined to the record of the decision appealed against but may consider such further evidence as the Minister deems appropriate.

(3) On an appeal, the Minister may, according to the nature of the case —

(a) affirm, vary or quash the decision appealed against; and

(b) make any further order including an order as to costs as the Minister deems proper.

# Part 5 — Miscellaneous

## 39. Advertisements promoting education services, restrictions as to

(1) A person who publishes or causes to be published any statement which is intended to promote any education service and which states, either expressly or by implication that the Minister or any other Minister or a department of the Government has approved, or has refrained from disapproving, the statement or any material particular in the statement or any claim made in the statement or any education service described in any manner in the statement commits an offence unless the Minister has consented in writing to its publication.

(2) In subsection (1) —

***published*** includes —

(a) inserted in any newspaper or other publication published in Western Australia or elsewhere; or

(b) publicly exhibited —

(i) in, on, over or under any building, vehicle, or place (whether a public place or private place, and whether on land or water); or

(ii) in the air, in view of persons being or passing in or on any public place;

or

(c) contained in any document gratuitously sent or delivered to any person or thrown or left upon premises in the occupation of any person; or

(d) made verbally to any person; or

(e) publicly announced by means of transmission of light or sound,

and publishes has a corresponding meaning.

## 40. Official information, disclosure of restricted

(1) This section applies to a person who is or has been —

(a) the Minister; or

(b) chief executive officer; or

(c) an authorised person; or

(d) an officer of the department assisting the Minister or the chief executive officer.

(2) Subject to subsection (3), a person to whom this section applies shall not, directly or indirectly, make a record of, or divulge or communicate to any person, any information concerning the affairs of any other person acquired by the person to whom this section applies by reason of his office or employment under or for the purposes of this Act.

Penalty: $2 000.

(3) Nothing in subsection (2) prohibits the recording, divulging or communicating of any information referred to in that subsection —

(a) in the performance of a function under or in connection with this Act or the *Fair Trading Act 2010*; or

(b) for the purposes of any proceedings under an Act referred to in paragraph (a); or

(c) in the course of an exchange of information with persons or bodies performing functions under or in connection with a law of the Commonwealth or of another State or of a Territory corresponding to this Act; or

(d) for the purposes of —

(i) answering a question asked in a House of Parliament; or

(ii) complying with a written law, or an order or resolution of a House of Parliament, that requires information to be furnished to a House of Parliament.

*[Section 40 amended: No. 58 of 2010 s. 195.]*

### 41. Register of education service providers

(1) The chief executive officer shall cause a register to be kept of education service providers registered under this Act.

(2) The register shall contain such particulars as are prescribed.

### 42. Delegation powers of Minister and CEO

(1) The Minister or the chief executive officer, may, either generally or as otherwise provided by instrument of delegation, by writing signed by the Minister or the chief executive officer, as the case requires, delegate to any person any of the powers of the Minister or the chief executive officer, as the case may be, under this Act, other than this power of delegation.

(2) Notwithstanding (1) above the Minister may not delegate the power to hear appeals under section 38.

### 43. Advisory committee, appointment of

(1) The Minister shall appoint a committee consisting of 9 members — 4 nominated by organisations represented by education service providers; 4 of whom shall be appointed by the chief executive officer; and an independent chairman appointed by the Minister who shall not be an employee of the Ministry or an education service provider.

(2) The Minister may refer any matter relating to the administration of this Act to the committee appointed under subsection (1).

*[Section 43 amended: No. 24 of 2000 s. 13(7).]*

### 44. Application of *Financial Management Act 2006* and *Auditor General Act 2006*

The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of departments apply to and in respect of the department for the time being responsible for the administration of this Act and its operations under this Act.

*[Section 44 amended: No. 77 of 2006 Sch. 1 cl. 50.]*

### 45. Protection from liability

(1) No action shall lie against the State, the Minister, the chief executive officer, an authorised person or any other person acting under this Act or purportedly under this Act in relation to any approval, consent, certificate or registration given or effected under this Act.

(2) Without affecting anything in subsection (1) no liability shall attach to the State, the Minister, the chief executive officer, an authorised person or any other person for any act or omission in good faith and in exercise or purported exercise of any function under this Act.

### 46. Liability of directors etc. and corporations

(1) Where a body corporate is convicted of an offence against this Act every director and every person concerned in the management of the body corporate is guilty of a like offence if the act which constituted the offence took place with his or her authority, permission or consent.

(2) Where an offence is committed against this Act by a person who is the agent or servant of an education service provider the education service provider is guilty of a like offence unless the education service provider can prove that the offence was committed without its knowledge and that it exercised all due diligence to prevent the commission of the offence.

### 47. Consent required for prosecutions

No proceedings for an offence against this Act shall be commenced without the approval of the Minister.

### 48. Penalties

(1) A person who contravenes a provision of this Act commits an offence.

(2) A person who commits an offence against this Act is except where otherwise specified liable —

(a) where the offence is a first offence, to a penalty not exceeding $5 000 and to a penalty of $1 000 for each day that the offence continues;

(b) where the offence is a second or subsequent offence, to a penalty not exceeding $10 000 or imprisonment for 2 years or both.

### 49. Regulations

(1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed for giving effect to the purposes of this Act.

(2) Without limiting the generality of subsection (1), the regulations may —

(a) prescribe the documents that are required to be given or kept for the purposes of this Act; and

(b) provide for the registration and renewal of registration under this Act; and

(c) prescribe the information and returns to be given or made for the purposes of this Act; and

(d) control, regulate and prohibit advertising by education service providers; and

(e) prescribe penalties not exceeding $1 000 for any offence against the regulations.

## 50. Review of Act

(1) The Minister shall cause a person, other than an officer of the department to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiration of 3 years from its commencement, and in the course of that review that person shall consider and have regard to —

(a) the effectiveness of the operations of this Act; and

(b) the need for the continuation of the functions of the chief executive officer under this Act; and

(c) such other matters as appear to the Minister to be relevant to the operation and effectiveness of this Act.

(2) The Minister shall cause a report to be prepared based on the review conducted under subsection (1) and shall, as soon as is practicable after the preparation thereof, cause the report to be laid before each House of Parliament.

# Notes

This is a compilation of the *Education Service Providers (Full Fee Overseas Students) Registration Act 1991* and includes amendments made by other written laws. For provisions that have come into operation, and for information about any reprints, see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

## Compilation table

| Short title | Number and year | Assent | Commencement |
|---|---|---|---|
| *Education Service Providers (Full Fee Overseas Students) Registration Act 1991* | 58 of 1991 | 30 Dec 1991 | s. 1 and 2: 30 Dec 1991; Act other than s. 1 and 2: 16 Oct 1992 (see s. 2 and *Gazette* 16 Oct 1992 p. 5114) |
| *School Education Act 1999* s. 247 | 36 of 1999 | 2 Nov 1999 | 1 Jan 2001 (see s. 2 and *Gazette* 29 Dec 2000 p. 7904) |
| *Statutes (Repeals and Minor Amendments) Act 2000* s. 13 [1] | 24 of 2000 | 4 Jul 2000 | 4 Jul 2000 (see s. 2) |
| *Corporations (Consequential Amendments) Act 2001* Pt. 21 | 10 of 2001 | 28 Jun 2001 | 15 Jul 2001 (see s. 2 and *Gazette* 29 Jun 2001 p. 3257 and Cwlth *Gazette* 13 Jul 2001 No. S285) |
| **Reprint 1: The *Education Service Providers (Full Fee Overseas Students) Registration Act 1991* as at 9 May 2003** (includes amendments listed above) | | | |
| *Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Act 2005* s. 63 | 24 of 2005 | 2 Dec 2005 | 1 Jan 2006 (see s. 2 and *Gazette* 23 Dec 2005 p. 6244) |
| *Financial Legislation Amendment and Repeal Act 2006* Sch. 1 cl. 50 | 77 of 2006 | 21 Dec 2006 | 1 Feb 2007 (see s. 2(1) and *Gazette* 19 Jan 2007 p. 137) |
| *Acts Amendment (Fair Trading) Act 2010* s. 195 | 58 of 2010 | 8 Dec 2010 | 1 Jan 2011 (see s. 2(c) and *Gazette* 24 Dec 2010 p. 6805) |
| **Reprint 2: The *Education Service Providers (Full Fee Overseas Students) Registration Act 1991* as at 4 Nov 2011** (includes amendments listed above) | | | |
| *Associations Incorporation Act 2015* s. 215 | 30 of 2015 | 2 Nov 2015 | 1 Jul 2016 (see s. 2(b) and *Gazette* 24 Jun 2016 p. 2291-2) |

## Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA legislation website.

| Short title | Number and year | Assent | Commencement |
|---|---|---|---|
| *Evidence Act 2025* s. 492(2) | 15 of 2025 | 25 Sep 2025 | 18 Sep 2027 (see s. 2(e) and SL 2026/190 cl. 2) |

## Other notes

[1] The *Statutes (Repeals and Minor Amendments) Act 2000* s. 13(4) is a transitional provision of no further effect.

# Defined terms

*[This is a list of terms defined and the provisions where they are defined. The list is not part of the law.]*

| Defined term | Provision(s) |
|---|---|
| appointed day | 6(2) |
| approved account | 16(2) |
| approved trust account | 16(2) |
| authorised person | 3(1) |
| chief executive officer | 3(1) |
| department | 3(1) |
| education service | 3(1) |
| education service provider | 3(1) |
| enrol | 3(1) |
| full fee | 3(1) |
| full fee overseas student | 3(1) |
| published | 39(2) |
| registered | 3(1) |
| statutory education service provider | 3(1) |
| students' funds | 16(2) |

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