



Education Legislation Amendment (Provider Integrity and Other Measures) Act 2017

No. 83, 2017

**An Act to amend the law relating to higher
education and education services for overseas
students, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
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**An Act to amend the law relating to higher
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[Assented to 16 August 2017]

The Parliament of Australia enacts:

No. 83, 2017

*Education Legislation Amendment (Provider Integrity and Other
Measures) Act 2017*

1

1 Short title

This Act is the *Education Legislation Amendment (Provider Integrity and Other Measures) Act 2017*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	17 August 2017

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments relating to education services for overseas students

Part 1—Amendments

Education Services for Overseas Students Act 2000

1 After paragraph 7A(2)(g)

Insert:

- (ga) the matters (if any) specified by the Minister in an instrument under subsection (2A); and

2 After subsection 7A(2)

Insert:

- (2A) The Minister may, by legislative instrument, make a determination specifying matters for the purposes of paragraph (2)(ga).

3 At the end of section 7A

Add:

- (5) If:
 - (a) the Minister determines that an entity is an ESOS agency for a provider or a registered provider under subsection 6C(2) or (3); and
 - (b) the entity is not a Commonwealth authority (within the meaning of section 85ZL of the *Crimes Act 1914*);the entity is taken to be a Commonwealth authority for the purposes of Part VIIC of the *Crimes Act 1914*.

4 After paragraph 17(1)(a)

Insert:

- (aa) has been convicted of an offence against any other law of the Commonwealth, or against a law of a State, punishable by:
 - (i) imprisonment for 2 years or longer; or
 - (ii) a fine of 120 penalty units or more;

at any time during the last 5 years; or

5 After paragraph 17(1)(b)

Insert:

- (ba) if the associate or agent is or has ever been approved (however described) to provide a program, service or activity on behalf of, or with funding from, the Commonwealth or a State—has ever had the associate’s or agent’s approval cancelled or suspended other than at the request of the associate or agent; or

6 After paragraph 17(1)(d)

Insert:

- (da) if the associate or agent is or has ever been approved (however described) to provide a program, service or activity on behalf of, or with funding from, the Commonwealth or a State—has ever had disciplinary, remedial or other compliance action taken in relation to the approval; or

7 Paragraph 17(1)(e)

Omit “paragraph (a), (b), (c) or (d)”, substitute “any of paragraphs (a) to (da)”.

8 At the end of section 17

Add:

- (3) If:
 - (a) the Minister determines that an entity is an ESOS agency for a provider or a registered provider under subsection 6C(2) or (3); and
 - (b) the entity is not a Commonwealth authority (within the meaning of section 85ZL of the *Crimes Act 1914*);the entity is taken to be a Commonwealth authority for the purposes of Part VIIC of the *Crimes Act 1914*.

9 After section 17

Insert:

17A Registered providers must notify their ESOS agency of certain other events

- (1) A registered provider must notify the ESOS agency for the provider of the occurrence of an event that would significantly affect the provider's ability to comply with this Act.
- (2) Notice under subsection (1) must be given within 10 business days after the event occurs.
- (3) A registered provider must notify the ESOS agency for the provider of:
 - (a) any prospective changes to the ownership of the registered provider as soon as practicable before the change takes effect; or
 - (b) any prospective or actual change in relation to a related person of the provider:
 - (i) if the change cannot be determined until it takes effect—within 10 business days of the change taking effect; or
 - (ii) otherwise—as soon as practicable before the change takes effect.
- (4) Notice under subsection (3) must be accompanied by information on the new owner or the related person of the provider to enable the making of a decision under section 7A as to whether:
 - (a) the ESOS agency is satisfied, or no longer satisfied, that the provider is fit and proper to be registered; or
 - (b) the ESOS agency believes on reasonable grounds that the provider is not fit and proper to be registered.
- (5) A notice under this section must be provided in the manner and form specified by the ESOS agency for the provider for the purposes of this subsection.

Note: If a registered provider breaches this section, the ESOS agency for the provider may take action under Division 1 of Part 6 against the provider.

10 Paragraphs 23(2)(b) and 23A(3)(b)

Omit “, and the late payment penalty for the charge,”.

11 Paragraph 53D(2)(b)

Omit “, along with the associated late payment penalty,”.

12 Section 175 (heading)

Repeal the heading, substitute:

175 Giving information to relevant bodies etc.

13 After paragraph 175(1)(g)

Insert:

(ga) the Overseas Students Ombudsman; or

14 After subsection 175(1)

Insert:

- (1A) The Secretary, or the ESOS agency for a provider or registered provider, may give information obtained or received for the purposes of this Act to an enforcement body (within the meaning of the *Privacy Act 1988*), if the Secretary or the ESOS agency is satisfied that giving the information is reasonably necessary for one or more enforcement related activities (within the meaning of that Act) conducted by, or on behalf of, the enforcement body.

15 At the end of section 175

Add:

- (3) For the purposes of:

- (a) promoting compliance with this Act, the national code, the ELICOS Standards and the Foundation Program Standards;
or

- (b) promoting compliance with the conditions of a particular student visa or visas, or of student visas generally;

the Secretary, or the ESOS agency for a provider or registered provider, may give information relating to the exercise of functions by agents of providers to registered providers.

Publishing information about agents

- (4) For the purposes of:
-

- (a) promoting compliance with this Act, the national code, the ELICOS Standards and the Foundation Program Standards;
or
 - (b) promoting compliance with the conditions of a particular student visa or visas, or of student visas generally;
- the Secretary may cause to be published information relating to the exercise of functions by agents of providers.
- (5) Without limiting subsection (3) or (4), the information given or published under those subsections may relate to:
- (a) the number of applications for student visas made by or on behalf of students recruited or otherwise dealt with by an agent that have been granted, refused or withdrawn, or are invalid; or
 - (b) the number of student visas granted to students recruited or otherwise dealt with by an agent that have been cancelled or have ceased to be in effect; or
 - (c) the number of students accepted for enrolment in courses provided by registered providers by students recruited or otherwise dealt with by an agent; or
 - (d) the completion rates of accepted students recruited or otherwise dealt with by agents.

Part 2—Application provisions

16 Application of amendments

- (1) The amendments of section 7A of the *Education Services for Overseas Students Act 2000* made by this Schedule apply in relation to:
 - (a) applications for registration made after the commencement of this Schedule; and
 - (b) applications for registration made before the commencement of this Schedule but not yet decided before that commencement; and
 - (c) providers registered before or after the commencement of this Schedule.
- (2) The amendments of section 17 of the *Education Services for Overseas Students Act 2000* made by this Schedule apply in relation to providers registered before or after the commencement of this Schedule.
- (3) Section 17A of the *Education Services for Overseas Students Act 2000*, as inserted by this Schedule, applies in relation to providers registered before or after the commencement of this Schedule.
- (4) The amendments of sections 23, 23A and 53D of the *Education Services for Overseas Students Act 2000* made by this Schedule apply in relation to notices given after the commencement of this Schedule.
- (5) The amendments of section 175 of the *Education Services for Overseas Students Act 2000* made by this Schedule apply in relation to information given or published after the commencement of this Schedule, regardless of when the information was obtained or received.

Schedule 2—Amendments relating to the Tertiary Education Quality and Standards Agency

Part 1—Amendments

Tertiary Education Quality and Standards Agency Act 2011

1 Section 5

Insert:

fit and proper person has a meaning affected by section 7A.

2 Section 5 (paragraphs (a) to (c) of the definition of *qualified auditor*)

Repeal the paragraphs, substitute:

- (a) a registered company auditor (within the meaning of the *Corporations Act 2001*); or

3 Section 5 (definition of *vocational education and training course*)

Omit “or a course of a similar kind”.

4 At the end of Division 3 of Part 1

Add:

7A Fit and proper person

- (1) In determining whether a person is a fit and proper person for the purposes of this Act, regard may be had to the matters (if any) specified in an instrument under subsection (2).
- (2) TEQSA may, by legislative instrument, make a determination specifying matters for the purposes of subsection (1).
- (3) TEQSA must not make an instrument under subsection (2) unless the Minister has given written approval to the making of the instrument.

- (4) TEQSA must give the Minister such information as the Minister reasonably requires for the purposes of making a decision under subsection (3).

5 Section 15

Before “TEQSA”, insert “(1)”.

6 Subparagraph 15(a)(iv)

Omit “higher”.

7 At the end of paragraph 15(b)

Add:

; and (iii) the history of persons related to the entity.

8 At the end of section 15

Add:

- (2) For the purposes of subparagraph (1)(b)(iii), a person is *related* to a regulated entity if the person:
- (a) is able to control, or to materially influence, the entity’s activities or internal affairs; or
 - (b) is able to determine, or to materially influence, the entity’s financial or operating policies; or
 - (c) is financially interested in the entity’s success or failure or apparent success or failure; or
 - (d) is a holding company of the entity; or
 - (e) is a subsidiary of the entity; or
 - (f) is a subsidiary of a holding company of the entity.

9 Subsection 21(1)

Repeal the subsection, substitute:

Grant of application for registration

- (1) TEQSA may grant the application for registration if TEQSA is satisfied that:
- (a) the applicant meets the Threshold Standards; and

- (b) the applicant, and each person who makes or participates in making decisions that affect the whole, or a substantial part, of the applicant's affairs, is a fit and proper person.

10 After section 25

Insert:

25A Condition—fit and proper person

A registered higher education provider, and each person who makes or participates in making decisions that affect the whole, or a substantial part, of the provider's affairs, must be a fit and proper person.

11 Subsection 36(1)

Repeal the subsection, substitute:

Deciding whether to grant the application

- (1) Upon receiving a registered higher education provider's application for renewal of registration, TEQSA may renew the provider's registration if TEQSA is satisfied that:
- (a) the provider continues to meet the Threshold Standards; and
 - (b) the provider, and each person who makes or participates in making decisions that affect the whole, or a substantial part, of the provider's affairs, is a fit and proper person.

12 After paragraph 199(1)(a)

Insert:

- (ab) the Chief Executive Officer; or

Part 2—Application provisions

13 Application of amendments

- (1) The amendment of the definition of *qualified auditor* in section 5 of the *Tertiary Education Quality and Standards Agency Act 2011* made by this Schedule applies in relation to financial statements provided for annual financial reporting periods that commence on or after 1 July 2018.
- (2) The amendment of subsection 21(1) of the *Tertiary Education Quality and Standards Agency Act 2011* made by this Schedule applies in relation to:
 - (a) applications for registration made after the commencement of this Schedule; and
 - (b) applications for registration made before the commencement of this Schedule but not yet decided before that commencement.
- (3) Section 25A of the *Tertiary Education Quality and Standards Agency Act 2011*, as inserted by this Schedule, applies in relation to registered higher education providers whether registered before or after the commencement of this Schedule.
- (4) The amendment of subsection 36(1) of the *Tertiary Education Quality and Standards Agency Act 2011* made by this Schedule applies in relation to:
 - (a) applications for renewal made after the commencement of this Schedule; and
 - (b) applications for renewal made before the commencement of this Schedule but not yet decided before that commencement.

Schedule 3—Amendment of the Higher Education Support Act 2003

Part 1—Amendments

Higher Education Support Act 2003

1 Section 16-1

Before “A”, insert “(1)”.

2 At the end of section 16-1

Add:

- (2) Despite subsection (1), a body other than a body corporate may be approved under this Division as a ***higher education provider*** if the body is covered by an exemption under subsection (3).
- (3) The Minister may, in writing, exempt a body for the purposes of this section if the body is established by or under a law of the Commonwealth, a State or a Territory.
- (4) If the Minister exempts a body under subsection (3), references in this Act, other than in this section, to a body corporate are taken to include the body.
- (5) An exemption given under this section is not a legislative instrument.

3 After paragraph 16-25(1)(fa)

Insert:

- (fb) the Minister is satisfied that the body has sufficient experience in the provision of higher education; and

4 After subsection 16-25(2)

Insert:

- (2A) For the purposes of paragraph (1)(fb), the Minister may have regard to the following:

- (a) whether the body has been a *registered higher education provider for 3 or more years;
- (b) the history of the body, and each person who makes or participates in making decisions that affect the whole, or a substantial part, of the body's affairs, in delivering higher education;
- (c) the scope of courses and level of qualifications the body, and each person who makes or participates in making decisions that affect the whole, or a substantial part, of the body's affairs, has experience in providing.

5 After subsection 16-40(1)

Insert:

(1A) However, if:

- (a) the body corporate made an application (the *earlier application*) under subsection (1); and
 - (b) the Minister decided not to approve the earlier application;
- the body corporate cannot make another application under that subsection within 6 months after the day on which notice of the decision on the earlier application was given to the body corporate.

6 At the end of section 16-60

Add:

- (3) The conditions may include the following:
 - (a) that a specified limit on the total number of students entitled to *FEE-HELP assistance applies to the provider for a specified period;
 - (b) that a specified limit on the total amount of FEE-HELP assistance payable to the provider applies to the provider for a specified period;
 - (c) that FEE-HELP assistance is payable only in relation to specified units of study offered by the higher education provider;
 - (d) that FEE-HELP assistance is not payable in relation to specified units of study offered by the higher education provider;

(e) that units of study provided in a specified manner or by a specified mode of delivery by the higher education provider are units in relation to which FEE-HELP assistance is unavailable.

(4) Subsection (3) does not limit the conditions the Minister may impose on the approval.

7 After paragraph 19-10(2)(a)

Insert:

(ab) comply with any requirements prescribed by the Higher Education Provider Guidelines; and

8 After subsection 19-10(2)

Insert:

(2A) Without limiting subsection 33(3A) of the *Acts Interpretation Act 1901*, requirements made for the purposes of paragraph (2)(ab) of this section may make different provision in relation to different kinds of providers, circumstances or any other matter.

9 Section 19-12

Repeal the section, substitute:

19-12 Minister to have regard to financial information and matters prescribed in Higher Education Guidelines

In determining whether a higher education provider is financially viable, and likely to remain so, the Minister must have regard to:

- (a) any financial statement provided by the provider under section 19-10; and
- (b) the matters (if any) prescribed by the Higher Education Provider Guidelines.

10 After section 19-35

Insert:

19-36 Misrepresenting assistance under Chapter 3

A higher education provider must not represent, whether by publishing or otherwise, that assistance payable under Chapter 3:

- (a) is not a loan; or
- (b) does not have to be repaid.

Civil penalty: 240 penalty units.

19-36A Offering certain inducements

- (1) A higher education provider must not offer or provide a benefit, or cause a benefit to be offered or provided, if the benefit would be reasonably likely to induce a person to make a *request for Commonwealth assistance in relation to enrolling in a unit of study with the provider.

Civil penalty: 120 penalty units.

- (2) Subsection (1) does not apply in relation to a benefit specified in the Higher Education Provider Guidelines.

19-36B Engaging in cold-calling

- (1) This section applies if a higher education provider cold-calls another person to market, advertise or promote a unit of study or a *course of study.
- (2) The higher education provider must not mention the possible availability of *FEE-HELP assistance for students undertaking the unit of study or *course of study.

Civil penalty: 60 penalty units.

- (3) For the purposes of this section, **cold-calling** includes making unsolicited contact with a person:
 - (a) in person; or
 - (b) by telephone, email or other form of electronic communication.
 - (4) The Higher Education Provider Guidelines may set out conduct that is taken to be **cold-calling** for the purposes of this section.
-

19-36C Use of third party contact lists

- (1) This section applies if a higher education provider:
 - (a) receives a person's contact details from another person; and
 - (b) contacts the student to market, advertise or promote a unit of study or a *course of study, or enrol the student in a unit of study or course of study.
- (2) The higher education provider must not mention the possible availability of *FEE-HELP assistance for students undertaking the unit of study or *course of study.

Civil penalty: 60 penalty units.

- (3) Subsection (2) does not apply in circumstances specified in the Higher Education Provider Guidelines.

19-36D Other marketing requirements

- (1) The Higher Education Provider Guidelines may set out requirements in relation to the marketing of courses in circumstances where assistance may be payable by the Commonwealth under Chapter 3.
- (2) A higher education provider contravenes this subsection if the provider:
 - (a) is subject to a requirement under subsection (1); and
 - (b) fails to comply with the requirement.

Civil penalty: 60 penalty units.

19-36E Requirements relating to requests for Commonwealth assistance

A higher education provider must not complete any part of a *request for Commonwealth assistance that a student is required to complete.

Civil penalty: 120 penalty units.

11 At the end of subsection 19-40(1)

Add:

Civil penalty: 60 penalty units.

12 After section 19-40

Insert:

19-42 Assessment of students as academically suited

- (1) Before enrolling a student in a unit of study, a higher education provider must assess the student as academically suited to undertake the unit concerned.

Civil penalty: 120 penalty units.

- (2) The assessment for the purposes of subsection (1) must be done in accordance with any requirements specified in the Higher Education Provider Guidelines.

13 At the end of subsection 19-45(5)

Add:

Civil penalty: 60 penalty units.

14 At the end of section 19-70

Add:

- (4) A higher education provider contravenes this subsection if the provider:
- (a) is subject to a requirement under this section; and
 - (b) does not comply with the requirement.

Civil penalty: 60 penalty units.

15 After section 19-70

Insert:

19-71 Co-operation with HESA and TEQSA investigators

- (1) A higher education provider must co-operate with *HESA investigators and *TEQSA investigators who are performing functions or exercising powers under this Act.

- (2) A higher education provider must not obstruct or hinder a *HESA investigator or a *TEQSA investigator who is performing functions or exercising powers under this Act.

Civil penalty: 60 penalty units.

19-72 Providers must keep records

- (1) A higher education provider must keep records of a kind, in the manner and for the period specified in the Higher Education Provider Guidelines.
- (2) A higher education provider contravenes this subsection if the provider:
- (a) is subject to a requirement under this section; and
 - (b) does not comply with the requirement.

Civil penalty: 60 penalty units.

19-73 Providers must publish information

- (1) A higher education provider must publish information of the kind, in the manner and within the period specified in the Higher Education Provider Guidelines.
- (2) A higher education provider contravenes this subsection if the provider:
- (a) is subject to a requirement under this section; and
 - (b) does not comply with the requirement.

Civil penalty: 60 penalty units.

16 At the end of sections 19-75 and 19-77

Add:

Civil penalty: 60 penalty units.

17 At the end of subsection 19-78(1)

Add:

Civil penalty: 60 penalty units.

18 After subsection 19-80(3)

Insert:

(3A) A higher education provider contravenes this subsection if the provider:

- (a) is being audited under this section; and
- (b) does not co-operate with the auditing body in the course of its audit.

Civil penalty: 60 penalty units.

19 Subsection 19-82(4)

Repeal the subsection, substitute:

Higher Education provider to comply with compliance notice

(4) A higher education provider must comply with a compliance notice given to the provider under this section.

Civil penalty: 60 penalty units.

20 At the end of subsection 19-95(2)

Add:

Civil penalty: 60 penalty units.

21 At the end of subsection 19-95(3)

Add:

Civil penalty: 60 penalty units.

22 Subsection 104-1(1)

After “and sections”, insert “104-1A,”.

23 After paragraph 104-1(1)(a)

Insert:

- (ab) the student is a *genuine student; and
- (ac) the student has been assessed by the higher education provider as academically suited to undertake the unit concerned; and

24 After subsection 104-1(1)

Insert:

- (1A) In determining whether a student is a *genuine student, regard may be had to the matters (if any) specified in the Higher Education Provider Guidelines.
- (1B) The assessment for the purposes of paragraph (1)(ac) must be done in accordance with any requirements specified in the Higher Education Provider Guidelines made for the purposes of section 19-42.

25 At the end of section 104-1

Add:

- (3) A student is not entitled to *FEE-HELP assistance for a unit of study provided, or to be provided, by a higher education provider if:
 - (a) a limit on the total number of students entitled to FEE-HELP assistance, or on the total amount of FEE-HELP assistance payable to the provider, applies to the provider; and
 - (b) provision of FEE-HELP assistance to the student would exceed that limit.
- (4) A student is not entitled to *FEE-HELP assistance for a unit of study with a higher education provider if the higher education provider completes any part of the *request for Commonwealth assistance in relation to the unit that the student is required to complete.

26 After section 104-1

Insert:

104-1A Failure by a student to complete previous units with provider

- (1) A student is not entitled to *FEE-HELP assistance for a unit of study provided, or to be provided, by a higher education provider if:

- (a) in a case where the unit of study is part of a course leading to the award of a bachelor degree or higher qualification:
 - (i) the student has already undertaken 8 or more other units of study at that provider as part of that course of study; and
 - (ii) the student did not successfully complete at least 50% of those other units; or
 - (b) in any other case:
 - (i) the student has already undertaken 4 or more other units of study at that provider as part of a course of study; and
 - (ii) the student did not successfully complete at least 50% of those other units.
- (2) This section does not apply if:
- (a) the student applies in writing to the provider for an exemption from subsection (1); and
 - (b) the higher education provider is satisfied that special circumstances apply to the student (see section 104-30).

27 Subsection 104-10(4)

Repeal the subsection.

28 Subsection 104-30(1)

Omit “the purposes of paragraph”, substitute “the purposes of paragraphs 104-1A(2)(b) and”.

29 At the end of Subdivision 104-B of Division 104

Add:

104-43 Re-crediting a person’s FEE-HELP balance if not a genuine student

- (1) A higher education provider must, on the *Secretary’s behalf, re-credit a person’s *FEE-HELP balance with an amount equal to the amounts of *FEE-HELP assistance that the person received for a unit of study if:
 - (a) the person has been enrolled in the unit with the provider; and

- (b) the Secretary is satisfied that the person is not a *genuine student.

Note: A FEE-HELP debt relating to a unit of study will be remitted if the FEE-HELP balance in relation to the unit is re-credited: see subsection 137-10(4).

- (2) The *Secretary may re-credit the person's *FEE-HELP balance under subsection (1) if the provider is unable to do so.

104-44 Re-crediting a person's FEE-HELP balance if provider completes request for assistance etc.

- (1) A higher education provider must, on the *Secretary's behalf, re-credit a person's *FEE-HELP balance with an amount equal to the amounts of *FEE-HELP assistance that the person received for a unit of study if the higher education provider completes any part of the *request for Commonwealth assistance in relation to the unit that the student is required to complete.

Note: A FEE-HELP debt relating to a unit of study will be remitted if the FEE-HELP balance in relation to the unit is re-credited under this section: see subsection 137-10(4).

- (2) A higher education provider must, on the *Secretary's behalf, re-credit a person's *FEE-HELP balance with an amount equal to the amounts of *FEE-HELP assistance that the person received for a unit of study if the Secretary is satisfied that the student was not entitled to receive FEE-HELP assistance for the unit of study with the higher education provider.
- (3) A higher education provider must, on the *Secretary's behalf, re-credit a person's *FEE-HELP balance with an amount equal to the amounts of *FEE-HELP assistance that the person received for a unit of study if the student has not has been assessed by the higher education provider as academically suited to undertake the unit concerned.
- (4) The *Secretary may re-credit the person's *FEE-HELP balance under this section if the provider is unable to do so.

30 Subsection 110-5(1)

Omit “subsection 104-25(1), 104-27(1) or section 104-42”, substitute “subsection 104-25(1) or 104-27(1) or section 104-42, 104-43 or 104-44”.

31 Subsection 137-10(4)

Omit “or 104-42”, substitute “, 104-42, 104-43 or 104-44”.

32 Section 159-1

Omit:

- reconsideration and administrative review of certain decisions (see Part 5-7).

substitute:

- reconsideration and administrative review of certain decisions (see Part 5-7);
- the application of the Regulatory Powers Act, including in relation to monitoring and investigation powers, civil penalties, infringement notices, enforceable undertakings and injunctions (see Part 5-8).

33 After subsection 164-10(1)

Insert:

(1AA) The *Secretary may vary or revoke a determination made under subsection (1).

34 After section 169-15

Insert:

169-17 Requirements relating to withdrawal from units of study

- (1) The Higher Education Provider Guidelines may prescribe requirements to be complied with by higher education providers in relation to student withdrawal from units of study.

- (2) Without limiting subsection (1), the Higher Education Provider Guidelines may:
- (a) require that fees (however described) must not be charged by higher education providers for withdrawal, either generally or in specified circumstances; or
 - (b) specify requirements to be met in relation to re-enrolment after withdrawal; or
 - (c) specify requirements in relation to processes and procedures for dealing with student withdrawal from units of study.
- (3) A higher education provider contravenes this subsection if:
- (a) the provider is subject to a requirement under this section; and
 - (b) the provider fails to comply with the requirement.

Civil penalty: 120 penalty units.

35 At the end of subsections 169-25(3) and (4)

Add:

Civil penalty: 60 penalty units.

36 After subsection 174-5(1)

Insert:

- (1A) A higher education provider contravenes this subsection if:
- (a) the provider is subject to a requirement under subsection (1); and
 - (b) the provider fails to comply with the requirement.

Civil penalty: 60 penalty units.

37 At the end of Chapter 5

Add:

Part 5-8—Regulatory powers

215-1 What this Part is about

Certain persons have monitoring and investigation powers under the Regulatory Powers Act to ensure this Act is being complied with.

This Part also provides for the application of the Regulatory Powers Act in relation to civil penalties, infringement notices, enforceable undertakings and injunctions.

215-5 Monitoring powers

- (1) The provisions of this Act (other than Schedule 1A) are subject to monitoring under Part 2 of the *Regulatory Powers Act.

Note 1: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether this Act has been complied with. It includes powers of entry and inspection.

Note 2: Schedule 1A of this Act contains separate monitoring and investigation powers in relation to matters dealt with in that Schedule: see Subdivision 5A-C of that Schedule.

- (2) Information given in compliance or purported compliance with a provision mentioned in subsection (1) is subject to monitoring under Part 2 of the *Regulatory Powers Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the information is correct. It includes powers of entry and inspection.

- (3) For the purposes of Part 2 of the *Regulatory Powers Act as it applies in relation to the provisions mentioned in subsection (1):

- (a) each *HESA investigator and *TEQSA investigator is an authorised applicant; and
- (b) each HESA investigator and TEQSA investigator is an authorised person; and
- (c) a *judicial officer is an issuing officer; and
- (d) for an authorised person who is a HESA investigator, the *Secretary is the relevant chief executive; and

- (e) for an authorised person who is a TEQSA investigator, the Chief Executive Officer of *TEQSA is the relevant chief executive; and
 - (f) each *applicable court is a relevant court.
- (4) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 2 of the Regulatory Powers Act in relation to this Act (other than Schedule 1A).

215-10 Investigation powers

- (1) A provision is subject to investigation under Part 3 of the *Regulatory Powers Act if it is:
- (a) a *civil penalty provision of this Act (other than Schedule 1A); or
 - (b) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act (other than Schedule 1A).

Note 1: Part 3 of the Regulatory Powers Act creates a framework for investigating whether a provision has been contravened. It includes powers of entry, search and seizure.

Note 2: Schedule 1A of this Act contains separate monitoring and investigation powers in relation to matters dealt with in that Schedule: see Subdivision 5A-C of that Schedule.

- (2) For the purposes of Part 3 of the *Regulatory Powers Act as it applies in relation to the provisions mentioned in subsection (1):
- (a) each *HESA investigator and *TEQSA investigator is an authorised applicant; and
 - (b) each HESA investigator and TEQSA investigator is an authorised person; and
 - (c) a *judicial officer is an issuing officer; and
 - (d) for an authorised person who is a HESA investigator, the *Secretary is the relevant chief executive; and
 - (e) for an authorised person who is a TEQSA investigator, the Chief Executive Officer of *TEQSA is the relevant chief executive; and
 - (f) each *applicable court is a relevant court.

- (3) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 3 of the *Regulatory Powers Act in relation to this Act (other than Schedule 1A).

215-15 Civil penalty provisions

- (1) Each *civil penalty provision of this Act (other than Schedule 1A) is enforceable under Part 4 of the *Regulatory Powers Act.

Note 1: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Note 2: Schedule 1A of this Act contains separate monitoring and investigation powers in relation to matters dealt with in that Schedule: see Subdivision 5A-A of that Schedule.

- (2) For the purposes of Part 4 of the *Regulatory Powers Act as it applies in relation to the provisions mentioned in subsection (1):
- (a) each of the following is an authorised applicant:
- (i) the *Secretary;
- (ii) an SES employee, or an acting SES employee, in the Department; and
- (b) each *applicable court is a relevant court.

215-20 Infringement notices

- (1) A *civil penalty provision of this Act (other than Schedule 1A) is subject to an infringement notice under Part 5 of the *Regulatory Powers Act.

Note 1: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

Note 2: Schedule 1A of this Act contains separate monitoring and investigation powers in relation to matters dealt with in that Schedule: see Subdivision 5A-B of that Schedule.

- (2) For the purposes of Part 5 of the *Regulatory Powers Act as it applies in relation to the provisions mentioned in subsection (1):
- (a) each of the following is an infringement officer:

- (i) a member of the staff of TEQSA (within the meaning of the *TEQSA Act) who is an SES employee or an acting SES employee;
 - (ii) a member of the staff of TEQSA (within the meaning of the *TEQSA Act) who is an APS employee who holds or performs the duties of an Executive Level 2 position or an equivalent position;
 - (iii) an SES employee, or an acting SES employee, in the Department; and
- (b) the relevant chief executive is:
- (i) for an infringement notice given by an infringement officer covered by subparagraph (a)(i) or (ii)—the Chief Executive Officer of *TEQSA; or
 - (ii) for an infringement notice given by an infringement officer covered by subparagraph (a)(iii)—the *Secretary.

215-25 Enforceable undertakings

- (1) The provisions of this Act (other than Schedule 1A) are enforceable under Part 6 of the *Regulatory Powers Act.

Note: Part 6 of the Regulatory Powers Act creates a framework for accepting and enforcing undertakings relating to compliance with provisions.

- (2) For the purposes of Part 6 of the *Regulatory Powers Act as it applies in relation to the provisions mentioned in subsection (1):
- (a) the *Secretary is an authorised person; and
 - (b) each *applicable court is a relevant court.

215-30 Injunctions

- (1) The provisions of this Act (other than Schedule 1A) are enforceable under Part 7 of the *Regulatory Powers Act.

Note: Part 7 of the Regulatory Powers Act creates a framework for using injunctions to enforce provisions.

- (2) For the purposes of Part 7 of the *Regulatory Powers Act as it applies in relation to the provisions mentioned in subsection (1):
- (a) the *Secretary is an authorised person; and
 - (b) each *applicable court is a relevant court.

215-35 Appointment of investigators

- (1) The *Secretary may, in writing, appoint a person as a **HESA investigator**.
- (2) The Chief Executive Officer of *TEQSA may, in writing, appoint a member of the staff of TEQSA (within the meaning of the *TEQSA Act) as a **TEQSA investigator**.
- (3) A person must not be appointed as a *HESA investigator, or a *TEQSA investigator, unless the appointer is satisfied that the person has the knowledge or experience necessary to properly exercise the powers of such an investigator.
- (4) A *HESA investigator, and a *TEQSA investigator, must, in exercising powers as such, comply with any directions of the appointer.
- (5) If a direction is given under subsection (4) in writing, the direction is not a legislative instrument.

215-40 Delegation of regulatory powers

- (1) The *Secretary may, in writing, delegate his or her powers and functions under the *Regulatory Powers Act as it applies in relation to this Act (other than Schedule 1A), to an SES employee, or an acting SES employee, in the Department.
- (2) The Chief Executive Officer of *TEQSA may, in writing, delegate his or her powers and functions under the *Regulatory Powers Act as it applies in relation to this Act, to a member of the staff of TEQSA (within the meaning of the *TEQSA Act) who is:
 - (a) an SES employee or an acting SES employee; or
 - (b) an APS employee who holds or performs the duties of an Executive Level 2 position or an equivalent position.
- (3) A person exercising powers or performing functions under a delegation under subsection (1) or (2) must comply with any directions of the delegator.

215-45 Contravening offence and civil penalty provisions

- (1) This section applies if a provision of this Act provides that a person contravening another provision of this Act (the *conduct provision*) commits an offence or is liable to a civil penalty.
- (2) For the purposes of this Act, and the *Regulatory Powers Act to the extent that it relates to this Act, a reference to a contravention of an offence provision or a *civil penalty provision includes a reference to a contravention of the conduct provision.

215-50 Certain references to higher education provider include references to agent

A reference in a *civil penalty provision in this Act to a higher education provider includes a reference to a person acting on behalf of the provider.

215-55 Other enforcement action

To avoid doubt, taking action under this Part does not limit the taking of action under any other provision of this Act.

38 Before section 238-1

Insert:

238-1A Giving false or misleading information

- (1) A person contravenes this subsection if:
 - (a) a person gives information or a document under, or for the purposes of, this Act; and
 - (b) the information or document:
 - (i) is false or misleading; or
 - (ii) omits any matter or thing without which the information or document is misleading.

Civil penalty: 60 penalty units.

- (2) Subsection (1) does not apply if the information or document is not false or misleading in a material particular.

39 Subsection 238-10(1) (table item 6)

After “Part 2-1”, insert “; section 104-1; section 169-17”.

40 Subclause 1(1) of Schedule 1 (definition of *civil penalty provision*)

Repeal the definition, substitute:

***civil penalty provision*:**

- (a) other than in Schedule 1A—has the same meaning as in the Regulatory Powers Act; and
- (b) in Schedule 1A—means each of the following clauses or subclauses of that Schedule:
 - (i) subclauses 39DB(1) and (2);
 - (ii) subclauses 39DC(1) and (2);
 - (iii) clause 39DE;
 - (iv) subclause 39DF(1);
 - (v) subclause 39DG(1);
 - (vi) subclauses 39DH(1) and (2);
 - (vii) subclauses 39DI(1) and (2);
 - (viii) clauses 39DJ, 39DK and 39DL.

41 Subclause 1(1) of Schedule 1

Insert:

HESA investigator means a person appointed under subsection 215-35(1).

42 Subclause 1(1) of Schedule 1 (paragraphs (a) to (c) of the definition of *qualified auditor*)

Repeal the paragraphs, substitute:

- (a) a registered company auditor (within the meaning of the *Corporations Act 2001*); or

43 Subclause 1(1) of Schedule 1

Insert:

TEQSA investigator means a person appointed under subsection 215-35(2).

Part 2—Application provisions

44 Application of amendments

- (1) The amendments of section 16-25 of the *Higher Education Support Act 2003* made by this Schedule apply in relation to:
 - (a) applications for approval made after the commencement of this Schedule; and
 - (b) applications for approval made before the commencement of this Schedule but not yet decided before that commencement.
 - (2) The amendments of sections 19-10 and 19-12 of the *Higher Education Support Act 2003* made by this Schedule apply in relation to higher education providers approved under section 16-25, whether approved before or after the commencement of this Schedule.
 - (3) Sections 19-36 to 19-36E of the *Higher Education Support Act 2003*, as inserted by this Schedule, apply on and after 1 January 2018 in relation to higher education providers approved under section 16-25, whether approved before or after the commencement of this Schedule.
 - (4) The amendments of sections 19-40, 19-45 and 19-70 of the *Higher Education Support Act 2003* made by this Schedule apply in relation to higher education providers approved under section 16-25, whether approved before or after the commencement of this Schedule.
 - (5) Section 19-42 of the *Higher Education Support Act 2003*, as inserted by this Schedule, applies in relation to higher education providers approved under section 16-25, whether approved before or after the commencement of this Schedule.
 - (6) Sections 19-71 to 19-73 of the *Higher Education Support Act 2003*, as inserted by this Schedule, apply in relation to higher education providers approved under section 16-25, whether approved before or after the commencement of this Schedule.
 - (7) The amendments of sections 19-75, 19-77, 19-78, 19-80, 19-82 and 19-95 of the *Higher Education Support Act 2003* made by this Schedule apply in relation to higher education providers approved under section 16-25, whether approved before or after the commencement of this Schedule.
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- (8) The amendments of section 104-1 of the *Higher Education Support Act 2003* made by this Schedule apply in relation to a unit of study if:
- (a) the unit of study is undertaken as part of a course of study; and
 - (b) the student enrolled in the course of study on or after 1 January 2018; and
 - (c) the unit of study has a census date that occurs on or after 1 January 2018; and
 - (d) the unit is provided by a higher education provider approved under section 16-25, whether approved before or after the commencement of this Schedule.
- (9) Section 104-1A of the *Higher Education Support Act 2003*, as inserted by this Schedule, applies in relation to a unit of study if:
- (a) the unit of study is undertaken as part of a course of study; and
 - (b) the student enrolled in the course of study on or after 1 January 2018; and
 - (c) the unit of study has a census date that occurs on or after 1 January 2018; and
 - (d) the unit is provided by a higher education provider approved under section 16-25, whether approved before or after the commencement of this Schedule.
- (10) Sections 104-43 and 104-44 of the *Higher Education Support Act 2003*, as inserted by this Schedule, apply in relation to higher education providers approved under section 16-25, whether approved before or after the commencement of this Schedule.
- (11) Section 169-17 of the *Higher Education Support Act 2003*, as inserted by this Schedule, applies in relation to students enrolled in units of study:
- (a) with census dates that occur on or after the commencement of this Schedule (whether the units of study are part of a course commenced before or after that commencement); and
 - (b) that are provided by higher education providers approved under section 16-25, whether approved before or after the commencement of this Schedule.
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- (12) The amendments of sections 169-25 and 174-5 of the *Higher Education Support Act 2003* made by this Schedule apply in relation to higher education providers approved under section 16-25, whether approved before or after the commencement of this Schedule.
- (13) The amendment of the definition of **qualified auditor** in subclause 1(1) of Schedule 1 of the *Higher Education Support Act 2003* made by this Schedule applies in relation to financial statements provided for annual financial reporting periods that commence on or after 1 July 2018.
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[*Minister's second reading speech made in—
House of Representatives on 1 June 2017
Senate on 9 August 2017*]

(105/17)
