

Passed by both Houses



New South Wales

Education Amendment (School Providers for Overseas Students) Bill 2013

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2013*



New South Wales

Education Amendment (School Providers for Overseas Students) Bill 2013

Act No , 2013

An Act to amend the *Education Act 1990* in relation to approving providers to provide courses at schools to overseas students; and for related purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Education Amendment (School Providers for Overseas Students) Act 2013*.

2 Commencement

This Act commences, or is taken to have commenced, on 1 July 2013.

Schedule 1 Amendment of Education Act 1990 No 8

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

Department means the Department of Education and Communities.

[2] Sections 3 (1) (definition of “Director-General”), 22A (1), 26D (1), 26L (2) (f) and 28 (5) (e)

Omit “Department of Education and Training” wherever occurring.

Insert instead “Department”.

[3] Section 26C (1) (b) and (2) (c)

Omit “Department of Education and Training” wherever occurring.

Insert instead “Department of Education and Communities”.

[4] Part 7A

Insert after Part 7:

Part 7A Approval to provide courses to overseas students

Note. The approval by the Board of providers to provide courses at schools to overseas students forms the basis of the registration of those providers under the *Education Services for Overseas Students Act 2000* of the Commonwealth.

83A Interpretation

In this Part:

approval means an approval of a provider granted by the Board under this Part.

approved provider means a provider who is for the time being approved by the Board under this Part to provide courses to overseas students.

Commonwealth Act means the *Education Services for Overseas Students Act 2000* of the Commonwealth.

provider has the same meaning as it has in the Commonwealth Act.

83B Board responsible for approving providers

For the purposes of the Commonwealth Act, the Board is responsible for approving providers to provide courses at

government schools or non-government schools to overseas students who are enrolled at those schools.

Note. Accordingly, the Board is a designated authority for the purposes of the Commonwealth Act.

83C Approval to provide courses to overseas students

- (1) The Board may, on the application of a provider, approve the provider to provide courses at a government school or registered non-government school to overseas students enrolled at the school.
- (2) An approval may (according to the terms of the approval) apply to such courses generally, to specified classes of such courses or to a specified course or courses.
- (3) An application for approval must be in such form, and be accompanied by such fee, as the Board may determine.
- (4) The Board may require an applicant to furnish further information in relation to the application.
- (5) An approval has effect for such period as is specified in the approval, commencing on a date so specified.
- (6) Approval may be granted unconditionally or subject to such conditions (which may be imposed when the approval is granted or at any later time) as the Board determines.
- (7) Examples of the conditions that may be imposed include the following:
 - (a) conditions specifying the premises in or from which the courses to which the approval relates are to be conducted,
 - (b) conditions requiring the payment (including periodic payment while the approval remains in force) of fees to the Board in respect of the approval.
- (8) The Board must not refuse an application for approval except on the grounds that:
 - (a) the applicant has not furnished such further information in relation to the application as the Board requires, or
 - (b) the Board has reasonable grounds to believe that the applicant will not comply with the national code (within the meaning of the Commonwealth Act), or
 - (c) the Board is not satisfied that all relevant Commonwealth criteria are met.

- (9) In this section, *relevant Commonwealth criteria*, in relation to an application for approval, means the criteria that the Board (in its role as a designated authority within the meaning of the Commonwealth Act) is required to certify as having been met for the purposes of recommending that the applicant be registered as a provider under the Commonwealth Act.

83D Inspection of premises

The Board may arrange for the premises of an approved provider, or any school at which an approved provider provides courses for overseas students, to be inspected by a Board inspector for the purposes of this Part, including for the purposes of monitoring compliance with the conditions of the provider's approval.

83E Amendment, suspension or cancellation of approval

- (1) The Board may, on its own motion or on the application of any person or body, do any of the following in relation to an approval:
- (a) amend the approval so that it applies to different courses,
 - (b) revoke or amend any condition of the approval,
 - (c) impose additional conditions on the approval,
 - (d) suspend or cancel the approval.
- (2) The suspension of an approval may be lifted at any time by the Board. Before lifting the suspension, the Board may require the payment of a fee determined by the Board.
- (3) The Board may not suspend or cancel an approval except on one or more of the following grounds:
- (a) the approved provider concerned requests the suspension or cancellation,
 - (b) the approved provider is no longer providing courses for overseas students,
 - (c) the approved provider has ceased to exist,
 - (d) the approved provider has contravened the Commonwealth Act, the national code (within the meaning of that Act) or a regulation under that Act,
 - (e) the Board has reasonable grounds to believe that one or more of the relevant Commonwealth criteria are not met,
 - (f) the approved provider has contravened this Part or a condition of the provider's approval.
- (4) In this section, *relevant Commonwealth criteria*, in relation to an approval, means the criteria that the Board (in its role as a

designated authority within the meaning of the Commonwealth Act) would be required to certify as having been met if the Board were to recommend afresh that the provider concerned be registered as a provider under the Commonwealth Act.

83F Requirements relating to approval decisions of Board

- (1) Before the Board makes any decision under this Part, the Board must:
 - (a) cause written notice of the proposed decision to be given to the provider concerned, and
 - (b) give the provider a reasonable opportunity to make representations to the Board in relation to the proposed decision.
- (2) Subsection (1) (b) does not apply if the Board is of the opinion that it is in the public interest for the decision to have effect immediately.
- (3) In making a decision under this Part, the Board must have regard to any representations made under this section in relation to the proposed decision.
- (4) Notice of any decision under this Part by the Board, together with the reasons for the decision, must be given to the provider to which the decision relates.
- (5) This section does not apply to a decision to require a provider to provide further information in relation to an application for approval or a decision to grant such an application unconditionally.

83G Offences relating to advertising of courses for overseas students

- (1) A person must not falsely advertise or otherwise falsely represent that a person is or has been approved by the Board to provide a course to overseas students.
- (2) A person must not advertise or otherwise represent that a person will or is, or is likely, to be approved by the Board to provide a course to overseas students.
Maximum penalty: 200 penalty units.

83H Information may be given to other bodies

- (1) The Board may disclose to any agency of the State or the Commonwealth or of any other State or Territory or, to the extent

authorised by the regulations, any other person any information the Board has about or arising from:

- (a) an application for approval under this Part, or
 - (b) the approval of providers to provide courses to overseas students, or
 - (c) any action taken by the Board in relation to an approved provider.
- (2) In disclosing any information in accordance with this section or under a provision of a corresponding law, the Board does not contravene any obligation, whether imposed by any other Act or law, not to disclose the information.
- (3) In this section, *corresponding law* means the law of the Commonwealth (including the Commonwealth Act), or of another State or Territory, relating to education or training.

[5] Section 102 Functions of the Board

Insert after section 102 (2) (b):

- (b1) to approve providers to provide courses to overseas students under Part 7A,

[6] Section 107 Applications for reviews of certain decisions

Insert after section 107 (1) (e1):

- (e2) a decision of the Board:
 - (i) to refuse to grant approval under Part 7A, or
 - (ii) to impose conditions on, amend, suspend or cancel such an approval,

[7] Section 108 Determination of application by the Tribunal

Insert after section 108 (2):

- (3) This section does not apply in relation to a decision of the Board under Part 7A.

Note. Accordingly, sections 63 and 65 of the *Administrative Decisions Tribunal Act 1997* apply.

[8] Section 109 Failure of Board to make a recommendation or decision

Insert after section 109 (1) (c):

- (d) an application to the Board for approval to provide courses to overseas students.

[9] Section 121 Entry to premises

Insert after section 121 (1):

- (1A) For the purposes of an inspection of premises under Part 7A, a Board inspector:
- (a) is at all reasonable times to have full and free access to the premises and any documents that are on the premises, and
 - (b) may remove, or make copies of, any such documents.

[10] Section 123 Evidence

Insert after section 123 (5):

- (6) In any proceedings under this Act, a certificate purporting to be authenticated by the Board, or to be signed by an officer prescribed by the regulations, stating any of the following matters is admissible in evidence and is prima facie evidence of the matters stated in the certificate:
- (a) that a person or body was or was not, on a day or during a period specified, an approved provider (within the meaning of Part 7A),
 - (b) that a person or body, as such a provider, was or was not approved to provide courses generally, a specified class of courses or a specified course.

[11] Section 131 Rules of Board

Omit “registration and accreditation set out in Parts 7 and 8” from section 131 (1A).

Insert instead “registration, approval and accreditation set out in Parts 7–8”.

[12] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 2 (1):

any other Act that amends this Act

[13] **Schedule 3, Part 12**

Insert after Part 11 of the Schedule:

**Part 12 Provisions consequent on enactment of
Education Amendment (School Providers
for Overseas Students) Act 2013**

25 Definition

In this Part:

repealed Regulation means the *Vocational Education and Training (Commonwealth Powers) (Transitional) Regulation 2011*.

26 Pending applications

Any application made under the repealed Regulation, but not finally determined, immediately before the repeal of that Regulation is taken to have been made under Part 7A of this Act.

27 Approvals in force under repealed Regulation

Any approval in force under the repealed Regulation immediately before the repeal of that Regulation is taken to have been granted under Part 7A of this Act.