



New South Wales

Education Amendment (School Providers for Overseas Students) Bill 2013

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Education Act 1990* to enable the Board of Studies (*the Board*) to continue approving and regulating providers who provide courses at schools to overseas students, following the repeal of the transitional arrangements under which the Board currently carries out these functions. The Board's approval of the providers concerned forms the basis for the Secretary of the Commonwealth Department of Education, Employment and Workplace Relations to register those providers under the *Education Services for Overseas Students Act 2000* of the Commonwealth.

The Board approved and regulated the providers concerned under the *Vocational Education and Training Act 2005* until the repeal of that Act in 2011. Following the repeal of that Act, the Board continued to approve and regulate the providers under transitional arrangements set out in the *Vocational Education and Training (Commonwealth Powers) (Transitional) Regulation 2011*. That Regulation is to be repealed at the end of 30 June 2013.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on 1 July 2013.

Schedule 1 Amendment of Education Act 1990 No 8

Schedule 1 [1]–[3] make amendments by way of statute law revision, relating to a change of Department name.

Schedule 1 [4] amends the *Education Act 1990* by inserting a new Part 7A into that Act to give effect to the object outlined in the Overview above. **Schedule 1 [5]** makes a consequential amendment.

Schedule 1 [6] enables a person to apply to the Administrative Decisions Tribunal (*the Tribunal*) for the review of certain decisions of the Board under the new Part 7A. The decisions concerned are decisions to refuse to grant approval under that Part or decisions to impose conditions on, amend, suspend or cancel such an approval. **Schedule 1 [7]** makes a consequential amendment.

Schedule 1 [8] enables a person to apply to the Tribunal for a review if the Board fails to determine the person's application for an approval under the new Part 7A within 5 months of lodging the application.

Schedule 1 [9] makes an amendment that is related to the power set out in the new Part 7A (proposed section 83D) to inspect the premises of approved providers and the schools at which the courses concerned are provided. In particular, the proposed amendment ensures that a Board inspector who is carrying out an inspection under proposed section 83D has (at all reasonable times) full and free access to the premises and any documents on the premises, and may remove or make copies of any such documents.

Schedule 1 [10] provides for the issue of evidentiary certificates by the Board.

Schedule 1 [11] enables the Board to make rules that provide guidance with respect to the requirements for approval set out in the new Part 7A.

Schedule 1 [12] enacts a savings and transitional regulation-making power.

Schedule 1 [13] enacts provisions of a savings and transitional nature as a consequence of the repeal of the *Vocational Education and Training (Commonwealth Powers) (Transitional) Regulation 2011* and the enactment of the proposed Act.

First print



New South Wales

Education Amendment (School Providers for Overseas Students) Bill 2013

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New South Wales

Education Amendment (School Providers for Overseas Students) Bill 2013

No. , 2013

A Bill for

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.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Education Amendment (School Providers for Overseas Students) Act 2013</i> .	3 4
2 Commencement	5
This Act commences, or is taken to have commenced, on 1 July 2013.	6

Schedule 1	Amendment of Education Act 1990 No 8	1
[1]	Section 3 Definitions	2
	Insert in alphabetical order in section 3 (1):	3
	<i>Department</i> means the Department of Education and Communities.	4 5
[2]	Sections 3 (1) (definition of “Director-General”), 22A (1), 26D (1), 26L (2) (f) and 28 (5) (e)	6 7
	Omit “Department of Education and Training” wherever occurring.	8
	Insert instead “Department”.	9
[3]	Section 26C (1) (b) and (2) (c)	10
	Omit “Department of Education and Training” wherever occurring.	11
	Insert instead “Department of Education and Communities”.	12
[4]	Part 7A	13
	Insert after Part 7:	14
	Part 7A Approval to provide courses to overseas students	15 16
	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 <i>Education Services for Overseas Students Act 2000</i> of the Commonwealth.	17 18 19
83A	Interpretation	20
	In this Part:	21
	<i>approval</i> means an approval of a provider granted by the Board under this Part.	22 23
	<i>approved provider</i> means a provider who is for the time being approved by the Board under this Part to provide courses to overseas students.	24 25 26
	<i>Commonwealth Act</i> means the <i>Education Services for Overseas Students Act 2000</i> of the Commonwealth.	27 28
	<i>provider</i> has the same meaning as it has in the Commonwealth Act.	29 30
83B	Board responsible for approving providers	31
	For the purposes of the Commonwealth Act, the Board is responsible for approving providers to provide courses at	32 33

government schools or non-government schools to overseas students who are enrolled at those schools.	1 2
Note. Accordingly, the Board is a designated authority for the purposes of the Commonwealth Act.	3 4
83C Approval to provide courses to overseas students	5
(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.	6 7 8 9
(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.	10 11 12
(3) An application for approval must be in such form, and be accompanied by such fee, as the Board may determine.	13 14
(4) The Board may require an applicant to furnish further information in relation to the application.	15 16
(5) An approval has effect for such period as is specified in the approval, commencing on a date so specified.	17 18
(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.	19 20 21
(7) Examples of the conditions that may be imposed include the following:	22 23
(a) conditions specifying the premises in or from which the courses to which the approval relates are to be conducted,	24 25
(b) conditions requiring the payment (including periodic payment while the approval remains in force) of fees to the Board in respect of the approval.	26 27 28
(8) The Board must not refuse an application for approval except on the grounds that:	29 30
(a) the applicant has not furnished such further information in relation to the application as the Board requires, or	31 32
(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	33 34 35
(c) the Board is not satisfied that all relevant Commonwealth criteria are met.	36 37

(9)	In this section, <i>relevant Commonwealth criteria</i> , 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.	1 2 3 4 5 6
83D	Inspection of premises	7
	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.	8 9 10 11 12
83E	Amendment, suspension or cancellation of approval	13
(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:	14 15
(a)	amend the approval so that it applies to different courses,	16
(b)	revoke or amend any condition of the approval,	17
(c)	impose additional conditions on the approval,	18
(d)	suspend or cancel the approval.	19
(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.	20 21 22
(3)	The Board may not suspend or cancel an approval except on one or more of the following grounds:	23 24
(a)	the approved provider concerned requests the suspension or cancellation,	25 26
(b)	the approved provider is no longer providing courses for overseas students,	27 28
(c)	the approved provider has ceased to exist,	29
(d)	the approved provider has contravened the Commonwealth Act, the national code (within the meaning of that Act) or a regulation under that Act,	30 31 32
(e)	the Board has reasonable grounds to believe that one or more of the relevant Commonwealth criteria are not met,	33 34
(f)	the approved provider has contravened this Part or a condition of the provider's approval.	35 36
(4)	In this section, <i>relevant Commonwealth criteria</i> , in relation to an approval, means the criteria that the Board (in its role as a	37 38

	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.	1 2 3 4
83F	Requirements relating to approval decisions of Board	5
(1)	Before the Board makes any decision under this Part, the Board must:	6 7
(a)	cause written notice of the proposed decision to be given to the provider concerned, and	8 9
(b)	give the provider a reasonable opportunity to make representations to the Board in relation to the proposed decision.	10 11 12
(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.	13 14 15
(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.	16 17 18
(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.	19 20 21
(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.	22 23 24 25
83G	Offences relating to advertising of courses for overseas students	26
(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.	27 28 29
(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.	30 31 32 33
83H	Information may be given to other bodies	34
(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	35 36

authorised by the regulations, any other person any information the Board has about or arising from:	1
(a) an application for approval under this Part, or	2
(b) the approval of providers to provide courses to overseas students, or	3
(c) any action taken by the Board in relation to an approved provider.	4
(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.	5
(3) In this section, <i>corresponding law</i> means the law of the Commonwealth (including the Commonwealth Act), or of another State or Territory, relating to education or training.	6
[5] Section 102 Functions of the Board	7
Insert after section 102 (2) (b):	8
(b1) to approve providers to provide courses to overseas students under Part 7A,	9
[6] Section 107 Applications for reviews of certain decisions	10
Insert after section 107 (1) (e1):	11
(e2) a decision of the Board:	12
(i) to refuse to grant approval under Part 7A, or	13
(ii) to impose conditions on, amend, suspend or cancel such an approval,	14
[7] Section 108 Determination of application by the Tribunal	15
Insert after section 108 (2):	16
(3) This section does not apply in relation to a decision of the Board under Part 7A.	17
Note. Accordingly, sections 63 and 65 of the <i>Administrative Decisions Tribunal Act 1997</i> apply.	18
[8] Section 109 Failure of Board to make a recommendation or decision	19
Insert after section 109 (1) (c):	20
(d) an application to the Board for approval to provide courses to overseas students.	21

[9] Section 121 Entry to premises	1
Insert after section 121 (1):	2
(1A) For the purposes of an inspection of premises under Part 7A, a Board inspector:	3
(a) is at all reasonable times to have full and free access to the premises and any documents that are on the premises, and	4
(b) may remove, or make copies of, any such documents.	5
[10] Section 123 Evidence	6
Insert after section 123 (5):	7
(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:	8
(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),	9
(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.	10
[11] Section 131 Rules of Board	11
Omit “registration and accreditation set out in Parts 7 and 8” from section 131 (1A).	12
Insert instead “registration, approval and accreditation set out in Parts 7–8”.	13
[12] Schedule 3 Savings, transitional and other provisions	14
Insert at the end of clause 2 (1):	15
any other Act that amends this Act	16

[13] Schedule 3, Part 12	1
Insert after Part 11 of the Schedule:	2
Part 12 Provisions consequent on enactment of Education Amendment (School Providers for Overseas Students) Act 2013	3 4 5
25 Definition	6
In this Part:	7
<i>repealed Regulation</i> means the <i>Vocational Education and Training (Commonwealth Powers) (Transitional) Regulation 2011</i> .	8 9 10
26 Pending applications	11
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.	12 13 14
27 Approvals in force under repealed Regulation	15
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.	16 17 18