

Queensland



Subordinate Legislation 1998 No. 322

Education (Overseas Students) Act 1996

**EDUCATION (OVERSEAS STUDENTS)
REGULATION 1998**

TABLE OF PROVISIONS

Section		Page
PART 1—PRELIMINARY		
1	Short title	3
2	Commencement	3
PART 2—APPLICANTS AND REGISTRATION CRITERIA		
<i>Division 1—Definitions, persons who may make applications and registration criteria to be applied to applications</i>		
3	Definitions for pt 2	3
4	Persons who may make applications—Act, s 7(1)	4
5	Registration criteria for deciding applications	5
<i>Division 2—Registration criteria for providers</i>		
6	Policy about entry requirements for registered courses	6
7	Policy about refunding fees	6
8	Policy about dispute resolution process	7
9	Policy about arrangements for unaccompanied children	8
10	Policy about students previously enrolled in relevant courses	9
11	Policy about code of ethics	10
12	Policy for protecting the financial interests of students	11
<i>Division 3—Registration criteria for courses</i>		
13	Registration criteria for applications for registration of courses	12

**PART 3—REGISTER OF REGISTERED PROVIDERS AND
REGISTERED COURSES**

14	Information to be kept in register—Act, s 26	13
15	Information about each registered provider	13
16	Information about each registered course	13

PART 4—FEES AND REPEAL

17	Fee for application for registration as provider or renewal	14
18	Fee for application for registration of course or renewal	14
19	Fee for application to change registration of provider or course	15
20	Repeal of Education (Overseas Students) Regulation 1997	15

PART 1—PRELIMINARY

Short title

1. This regulation may be cited as the *Education (Overseas Students) Regulation 1998*.

Commencement

2. This regulation commences on 8 December 1998.

PART 2—APPLICANTS AND REGISTRATION CRITERIA

Division 1—Definitions, persons who may make applications and registration criteria to be applied to applications

Definitions for pt 2

3. In this part—

“**approved training organisation**” see *Vocational Education, Training and Employment Act 1991*, section 4.

“**foreign university**” means a university within the meaning of the *Higher Education (General Provisions) Act 1993*, section 3, definition “university”, paragraph (b), operating in Queensland with the Minister’s approval under section 6¹ of that Act.

¹ The *Higher Education (General Provisions) Act 1993*, section 3, definition “university”, paragraph (b) provides, to the extent relevant, as follows—

‘ “**university**” means a higher education institution—

(b) that is—

(i) established in a foreign country; and

(ii) recognised as a university by the authority in the foreign country that, in the Minister’s opinion, is the competent authority for the purpose;’.

“institute of TAFE” means an institution that—

- (a) is a State college or consists of more than 1 State college; and
- (b) offers technical and further education within the meaning of the *Vocational Education, Training and Employment Act 1991*, section 4.

“non-State school” see *Education (General Provisions) Act 1989*, section 2.

“non-university provider” see *Higher Education (General Provisions) Act 1993*, section 3.

“registration” includes a change of registration and a renewal of registration.

“State college” see *Vocational Education, Training and Employment Act 1991*, section 4.

“State educational institution” see *Education (General Provisions) Act 1989*, section 2.

“written policy” means a policy written in English and in a way that makes it easily understood by a reader whose first language is not English.

Persons who may make applications—Act, s 7(1)

4.(1) Any of the following persons may make an application for registration as a provider if the person intends to provide, arrange or promote a course conducted by the person to an overseas student—

- (a) the person holding the office of the principal of a State educational institution;
- (b) the person holding the office of the director of an institute of TAFE;
- (c) the person holding the office of the chairperson of a board for an agricultural college;
- (d) a university established by an Act, or the university company

within the meaning of the *Bond University Act 1987*.²

(2) Also, the following entities may make an application for registration as a provider if the entity is a person and intends to provide, arrange or promote a course conducted by the person to an overseas student—

- (a) a non-State school;
- (b) a non-university provider;
- (c) a foreign university;
- (d) a State college;
- (e) an approved training organisation;
- (f) an institution issued with an accreditation certificate by the National ELICOS Accreditation Scheme Limited ACN 003 980 667.

(3) If an entity mentioned in subsection (2) is not a person, the person who intends to provide, arrange or promote a course conducted at, or by means of, the entity to an overseas student may make the application for registration as a provider in relation to the entity.

Registration criteria for deciding applications

5.(1) Under section 7(4) of the Act, the chief executive must apply the registration criteria for deciding—

- (a) whether to approve an application; and
- (b) if the application is approved—the conditions to apply to the registration.

(2) Division 2 states the registration criteria the chief executive must apply for deciding an application for registration as a provider.

(3) Division 3 states the registration criteria the chief executive must apply for deciding an application for registration of a course conducted by the applicant.

² Central Queensland University, Griffith University, James Cook University, Queensland University of Technology, University of Queensland and University of Southern Queensland have been established by Acts.

Division 2—Registration criteria for providers**Policy about entry requirements for registered courses**

6.(1) An applicant for registration as a provider must have a written policy about entry requirements, that is expressed as applying to the applicant as a registered provider.

(2) The policy about entry requirements must state—

- (a) the way in which the registered provider must inform an overseas student or intending overseas student about the entry requirements for each registered course offered by the registered provider; and
- (b) the processes for applying the requirements to each overseas student or intending overseas student.

(3) In this section—

“entry requirements”, for a registered course, means written requirements for entry to the course, including applicable academic and English language skills reasonably necessary for the course.

Policy about refunding fees

7.(1) An applicant for registration as a provider must have a written policy about refunding fees, that is expressed as applying to the applicant as a registered provider.

(2) The policy about refunding fees must protect the financial interests of overseas students and intending overseas students, including—

- (a) by stating all the circumstances under which a refund of all or part of the fees must be paid by the registered provider and the way in which the amount of the refund is to be calculated; and
- (b) by providing for a refund to be paid by the registered provider directly to the person who enters into the contract with the registered provider about the student, unless the person gives a written direction to the registered provider to pay the refund to someone else; and
- (c) by providing for a refund to be fully paid by the registered

provider in the same currency in which the fees were paid, unless payment in that currency is impracticable; and

- (d) by providing for the total amount of each refund to be paid no later than 2 months after it is due.

(3) Also, the policy must provide that the registered provider must give a copy of the policy to each intending overseas student at a reasonable time before a contract about the student is entered into or an amount is paid for a registered course, whichever happens first.

(4) A policy providing for someone other than the registered provider to pay a refund, including, for example, the registered provider's agent in another country, does not comply with subsection (2)(b).

Policy about dispute resolution process

8.(1) An applicant for registration as a provider must have a written policy, that is expressed as applying to the applicant as a registered provider, about resolving disputes between the registered provider and overseas students enrolled in registered courses conducted by the registered provider.

(2) The policy about resolving disputes must allow overseas students to participate in a timely and appropriate dispute resolution process, that has regard to their status as persons outside of Australia or only temporarily in Australia.

(3) The policy must state, in a prominent way, that—

- (a) an overseas student may contact the chief executive if the student is concerned about the conduct of the registered provider; and
- (b) the chief executive may, under part 2, division 2 of the Act, suspend or cancel the registration of a provider or course; and
- (c) the dispute resolution process described in the policy does not prevent an overseas student from exercising the student's rights to other legal remedies.

(4) Also, the policy must provide that the registered provider must give a copy of the policy to each overseas student—

- (a) before a contract about the student is entered into or an amount is paid for a registered course, whichever happens first; and

- (b) within 7 days after the student starts attending a registered course conducted by the registered provider in which the student is enrolled.

(5) To the extent a policy relates to the financial interests of overseas students, a reference in this section to an overseas student includes an intending overseas student.

Policy about arrangements for unaccompanied children

9.(1) If an applicant for registration as a provider intends to offer courses to unaccompanied children, and to make arrangements for unaccompanied children to be accommodated with an approved family, the applicant must have a written policy about making the arrangements that is expressed as applying to the applicant as a registered provider.

(2) The policy about making arrangements must provide for the approval of a family that is to provide accommodation services to an unaccompanied child, including, for example—

- (a) guidelines for selecting the family, in particular, guidelines for ensuring the family is able to provide the child with a stable environment for the duration of the registered course conducted by the registered provider in which the child is enrolled; and
- (b) criteria about the accommodation services to be provided; and
- (c) an orientation program for the members of an approved family if the family has not previously accommodated an overseas student of the registered provider.

(3) Also, the policy must include a copy of the form of contract for arrangements about providing accommodation services, if the registered provider intends to use the form for arrangements made by the registered provider.

(4) In this section—

“accommodation services” includes accommodation, meals and other services.

“approved family” means a family approved by the registered provider for providing accommodation services to an unaccompanied child.

“supervised arrangement”, for an overseas student under 18 years, means an arrangement under which an adult normally resident in the State (other than an overseas student) is appointed in writing by a parent of the student to act on the student’s behalf in matters about the student while the student is in the State.

“unaccompanied child” means an overseas student under 18 years, other than—

- (a) a student who lives with at least 1 parent while enrolled in a registered course conducted by the registered provider; or
- (b) a student who is covered by a supervised arrangement while enrolled in a registered course conducted by the registered provider; or
- (c) a student who, while enrolled in a registered course conducted by the registered provider—
 - (i) lives at a boarding school, residential college or student hostel, operated by or in association with the registered provider; or
 - (ii) is accommodated at a place operated by or in association with the registered provider under an arrangement for providing accommodation services and, under the arrangement, the student’s residence at the place and attendance at the course is supervised.

Policy about students previously enrolled in relevant courses

10.(1) An applicant for registration as a provider must have a written policy, that is expressed as applying to the applicant as a registered provider, about the following students—

- (a) overseas students who apply to be enrolled in a registered course conducted by the registered provider and have previously completed a relevant course;
- (b) overseas students who apply to be enrolled in a registered course conducted by the registered provider and who have been enrolled in a relevant course (other than with the registered provider) but have not completed the course.

(2) The policy must provide that, in relation to an overseas student who has been enrolled in a relevant course, the registered provider must not admit the student to a registered course conducted by the registered provider unless—

- (a) if the student previously completed the relevant course—the registered provider is satisfied the student demonstrated a commitment to the student’s studies during the course, had a good attendance record for the course and paid all fees for the course; or
- (b) if the student has been enrolled in, but did not complete the relevant course—the registered provider is given a letter of release about the student for the relevant course.

(3) Also, the policy must provide that if an overseas student has not completed a registered course but asks for a letter of release, the registered provider must give the student a letter of release.

(4) In this section—

“letter of release” means a letter from the provider of a relevant course about a student that provides information about whether or not the student—

- (a) demonstrated a commitment to the student’s studies during the course; and
- (b) had a good attendance record for the course; and
- (c) paid all fees for the course.

“relevant course” means—

- (a) a registered course; or
- (b) a course registered under a law of the Commonwealth, or another State, for the registration of persons who provide courses to overseas students.

Policy about code of ethics

11.(1) An applicant for registration as a provider must have a written policy, expressed as applying to the applicant as a registered provider, that provides the registered provider is bound by the code of ethics.

(2) In this section—

“code of ethics” means the code, developed by Ministers of the Commonwealth and the States responsible for education matters, that is directed at ensuring overseas students are financially protected from default by providers.

Policy for protecting the financial interests of students

12.(1) An applicant for registration as a provider must have a written policy, expressed as applying to the applicant as a registered provider, about protecting the financial interests of overseas students and intending overseas students.

(2) The policy for protecting the financial interests of overseas students and intending overseas students must provide that the registered provider has a trust account for all amounts to be received from the students.

(3) However, the policy must also provide that the registered provider must not—

- (a) operate the trust account except for amounts received from overseas students and intending overseas students; and
- (b) withdraw or transfer an amount from the trust account, unless the withdrawal or transfer is under subsection (4).

(4) The policy must provide that the registered provider may withdraw or transfer from the trust account the following amounts for an overseas student or intending overseas student—

- (a) an amount to pay for a service that has been delivered to the student;
- (b) in the period of 2 weeks before the scheduled start of the registered course in which the student is enrolled—an amount that is not more than 20% of the student’s tuition fee for the course;
- (c) on the day the course starts—an amount that is not more than 45% of the total of the student’s tuition fee for the course.

(5) In this section—

“tuition fee”, for an overseas student or intending overseas student for a registered course, means—

- (a) if the total amount for all services to be provided to the student by the registered provider while the student is attending the course, and in conjunction with that attendance, has been paid, including the fees applicable to the tuition for the registered course—the total amount of the fees applicable to the tuition; or
- (b) in any other case—the amount stated in the registered provider's records as the amount received from the student in payment of the fees applicable to the tuition for the registered course.

Division 3—Registration criteria for courses

Registration criteria for applications for registration of courses

13.(1) A course must—

- (a) be conducted by the registered provider for the course; and
- (b) have written requirements for entry to the course, including applicable academic and English language skills reasonably necessary for the course; and
- (c) have stated and demonstrable educational outcomes for all students who enrol in the course and complete it; and
- (d) be suitable for overseas students, having regard to the qualifications, abilities and aspirations of the students.

(2) Also, if the registered provider of the course, or the course, must be accredited, approved, registered or otherwise recognised under a law (other than the Act), the registered provider or the course must be accredited, approved, registered or otherwise recognised under the law.

PART 3—REGISTER OF REGISTERED PROVIDERS AND REGISTERED COURSES

Information to be kept in register—Act, s 26

14.(1) This part states the information to be kept in the register of registered providers and registered courses, that the chief executive must keep under section 26(1) of the Act.

(2) However, the chief executive may keep other information in the register if the chief executive considers it appropriate.

Information about each registered provider

15. For each registered provider, the register must include—

- (a) the information to be included in a registration certificate under section 9(4)(a) of the Act; and
- (b) other names used by the registered provider in promoting registered courses conducted by the registered provider; and
- (c) if the registered provider is not an individual—
 - (i) information about its legal status; and
 - (ii) any Australian company number or Australian registered body number for the registered provider under the Corporations Law; and
 - (iii) the name and title of its chief executive officer; and
- (d) the address, a telephone number and a fax number (if any) for the central or head office or campus of the registered provider; and
- (e) details of any suspensions or cancellations about the registered provider.

Information about each registered course

16. For each registered course, the register must include—

- (a) the information to be included in a registration certificate under section 9(4)(b) of the Act; and

- (b) the cost and duration of the course; and
- (c) details of any suspensions and cancellations about the course and its registered provider.

PART 4—FEES AND REPEAL

Fee for application for registration as provider or renewal

17. The prescribed fee for an application for registration as a provider, or an application to renew the registration of a provider, is \$200.00.

Fee for application for registration of course or renewal

18.(1) The prescribed fee for a registered course application is \$50.00.

(2) If a registered course application relates to more than 20 courses, the prescribed fee is increased by \$50.00 for each multiple of 20 courses or part of a multiple.

(3) However, for a registered course application that is made on the same day as the provider of the course or courses makes a registered provider application—

- (a) the application fee otherwise payable under subsection (1) is waived if the provider application relates to not more than 20 courses; or
- (b) the application fee otherwise payable under subsections (1) and (2) is reduced by \$50.00 if the provider application relates to more than 20 courses.

(4) In this section—

“registered course application” means—

- (a) an application for registration of a course or courses; or
- (b) an application to renew the registration of a course or courses.

“registered provider application” means—

- (a) an application for registration as a provider; or
- (b) an application to renew the registration of a registered provider.

Fee for application to change registration of provider or course

19. The prescribed fee for an application to change the registration of a registered provider or registered course is \$50.00.

Repeal of Education (Overseas Students) Regulation 1997

20. The *Education (Overseas Students) Regulation 1997* SL No. 350 is repealed.

ENDNOTES

- 1. Made by the Governor in Council on 3 December 1998.
- 2. Notified in the gazette on 4 December 1998.
- 3. Laid before the Legislative Assembly on . . .
- 4. The administering agency is the Department of Education.