

2019 – 2020 - 2021

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**EDUCATION SERVICES FOR OVERSEAS STUDENTS (REGISTRATION CHARGES) AMENDMENT
BILL 2021**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Education & Youth, the Hon Alan Tudge MP)

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GLOSSARY

Abbreviation	Definition
ASQA	Australian Skills Quality Authority
CRICOS	Commonwealth Register of Institutions and Courses for Overseas Students
ESOS Act	<i>Education Services for Overseas Students Act 2000</i>
ICESCR	<i>International Covenant on Economic, Social and Cultural Rights</i>
OBPR	Office of Best Practice Regulation
Registration Charges Act	<i>Education Services for Overseas Students (Registration Charges) Act 1997</i>
RIS	Regulation Impact Statement
RTO	registered training organisation
TEQSA	Tertiary Education Quality Standards Agency
The Bill	Education Services for Overseas Students (Registration Charges) Amendment Bill 2021
The department	Department of Education, Skills and Employment
UNCRC	<i>Convention on the Rights of the Child</i>

EDUCATION SERVICES FOR OVERSEAS STUDENTS (REGISTRATION CHARGES) AMENDMENT BILL 2021

OUTLINE

The Australian Government decided, as part of the 2021–22 Budget, to implement an updated cost recovery model for registration on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) and associated regulation costs. These changes will be achieved through amendments in four separate bills:

- the Education Services for Overseas Students (Registration Charges) Amendment Bill 2021 (Bill) will amend the *Education Services for Overseas Students (Registration Charges) Act 1997* (Registration Charges Act)
- the ESOS Amendment (Cost Recovery and Other Measures) Bill 2021 will amend the *Education Services for Overseas Students Act 2000* (ESOS Act)
- the Education Services for Overseas Students (TPS Levies) Amendment Bill 2021 will amend the *Education Services for Overseas Students (TPS Levies) Act 2012*
- the Tertiary Education Quality and Standards Agency (Charges) Amendment Bill 2021 will amend the *Tertiary Education Quality and Standards Agency (Charges) Act 2021*.

The purpose of the Bill is to amend the Registration Charges Act to update the registration charges to recover the costs for certain regulatory activities under the ESOS Act. The Bill establishes new registration charges that are consistent with the *Australian Government Charging Framework* (available from www.finance.gov.au).

The Bill will enable ESOS agencies to implement their own cost recovery arrangements to support the regulation of education providers registered under the ESOS Act. The Tertiary Education Quality Standards Agency (TEQSA), the Australian Skills Quality Authority (ASQA) and the Secretary of the department are the ESOS agencies for providers registered under the ESOS Act.

The Bill sets out the annual charges payable by providers who are registered on CRICOS, as well as the charges related to ESOS Agency functions for applications by schools for initial registration and renewal of registration on CRICOS.

The Bill also authorises Regulations to be made that:

- prescribe the amount, or the method for working out the amount, of the charges (and, in doing so, the Regulations may provide for indexation of the charges); and
- exempt one or more classes of providers from paying the charges.

FINANCIAL IMPACT STATEMENT

The new CRICOS charging arrangements set out in this Bill will reduce registration charges by approximately \$7 million per year. Changes to charges for individual education providers will vary depending on providers' size and sector.

CONSULTATION

The department undertook public consultation in January 2020 and May 2021.

No substantive issues were identified during the consultation period that warranted changing the model.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Education Services for Overseas Students (Registration Charges) Amendment Bill 2021

The Education Services for Overseas Students (Registration Charges) Amendment Bill 2021 (the Bill) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

The Australian Government decided, as part of the 2021–22 Budget, to implement an updated cost recovery model for registration on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) and associated regulation costs. These changes will be achieved through amendments in four separate bills:

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The Bill will enable ESOS agencies to implement their own cost recovery arrangements to support the regulation of education providers registered under the ESOS Act. The Tertiary Education Quality Standards Agency (TEQSA), the Australian Skills Quality Authority (ASQA) and the Secretary of the department are the ESOS agencies for providers registered under the ESOS Act.

The Bill sets out the annual charges payable by providers who are registered on CRICOS, as well as the charges related to ESOS Agency functions for applications by schools for initial registration and renewal of registration on CRICOS.

The Bill also authorises Regulations to be made that:

- prescribe the amount, or the method for working out the amount, of the charges (and, in doing so, the Regulations may provide for indexation of the charges); and
- exempt one or more classes of providers from paying the charges.

Human rights implications

The Bill engages the following rights:

- the right to education – Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), and Article 28 of the *Convention on the Rights of the Child* (UNCRC); and
- the right to work – Article 6 of the ICESCR.

Right to education

The Bill engages the right to education contained in Article 13 of the ICESCR and Article 28(1) of the UNCRC, insofar as the Bill relates to the provision of education and training services to overseas students in Australia on a student visa.

Article 13(1) of the ICESCR recognises each person's right to education, and that education is important to '*the full development of the human personality*', and enables '*all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups*'.

Article 28(1) of the UNCRC recognises the '*right of the child to education...with a view to achieving this right progressively and on the basis of equal opportunity*'.

The Bill makes amendments to the Registration Charges Act to help implement an updated cost recovery model that reflects the department's costs of administering and regulating CRICOS providers in accordance with the *Australian Government Charging Framework*. It will mean that only the department's CRICOS regulatory effort will be collected through the Registration Charges Act, while ASQA and TEQSA will separately charge under their own legislative frameworks.

The amendments seek to ensure that ESOS agencies are properly resourced to fulfil their ongoing compliance, analysis and monitoring obligations under the ESOS Act in an efficient and effective manner so that the quality and integrity of Australia's international education and training system is maintained. A strong international education system, which includes appropriate protections for overseas students, allows Australia to promote and support the right to education.

Right to work

The Bill engages the right to work, contained in Article 6(1) of the ICESCR; '*the right to work, which includes the right of everyone to the opportunity to gain [their]... living by work which [they] freely [choose] or [accept]*'. Article 6(2) provides that States must take steps to achieve the full realisation of this right including providing '*technical and vocational*

guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.'

The Commonwealth's commitment to the delivery of quality education and training services to overseas students provides a solid foundation and opportunity for people to engage with and pursue quality work objectives after completing their studies. The promotion of the right to education inherently leads to the promotion of the right to work, as education is one of the pathways to employment. A high-quality international education system provides a foundation on which overseas students may pursue broader employment opportunities.

Conclusion

The Bill is compatible with human rights because it promotes the protection of human rights.

Minister for Education and Youth, the Hon Alan Tudge MP

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NOTES ON CLAUSES

Clause 1: Short title

1. This provision specifies the short title of the Act, which is how it is to be cited.

Clause 2: Commencement

2. This clause provides that the whole of the Act commences on 1 January 2022.

Clause 3: Schedules

3. This clause gives effect to the provisions in Schedule 1 to the Bill.

Schedule 1—Amendments

Part 1—Amendments

Education Services for Overseas Students (Registration Charges) Act 1997

4. The Bill will amend the Registration Charges Act to better align the charging framework under that Act with the *Australian Government Charging Framework* (available from www.finance.gov.au). The Bill will set out the new charges payable by certain providers who are registered under the ESOS Act to deliver education and training services to overseas students through CRICOS, and school providers who are applying to register or renew their CRICOS registration.
5. Part 1 of Schedule 1 to the Bill includes the main amendments to the Registration Charges Act. Part 2 of Schedule 1 to the Bill includes a transitional provision.

Item 1: After section 3

6. Item 1 amends the Registration Charges Act to insert new section 3A which includes definitions to reflect the new charges. This includes a definition of an “amount” which is defined to include a nil amount, “CRICOS annual registration charge” which is defined by reference to subsection 5(2), “schools initial registration charge” which is defined by reference to subsection 6(2), “schools renewal registration charge” which is defined by reference to subsection 7(2) and “year” which is a reference to calendar year.

Item 2: Sections 5 to 8

7. Item 2 repeals and replaces sections 5 to 8 in the Registration Charges Act (which impose annual registration and entry to market charges). The charges currently provided by section 5 to 8 are no longer necessary, as they will be replaced with the charges set out in this Bill, as well as the fees and charges which ASQA and TEQSA will separately impose under their own legislative frameworks.

Section 5

8. New section 5 inserts the CRICOS annual registration charge to replace the existing annual registration charge. New subsection 5(1) provides that a charge is imposed on a provider for a year if the provider is a registered provider under the ESOS Act on 1 January of that year.
9. New subsection 5(2) provides that the charge imposed by subsection 5(1) is to be known as the CRICOS annual registration charge. New subsection 5(3) provides that the CRICOS annual registration charge imposed on a provider for a year is payable by the provider.
10. This means that all registered providers under the ESOS Act are liable to pay the CRICOS annual registration charge on 1 January of each year, commencing on 1 January 2022.
11. New subsection 5(4) provides that the amount of annual registration charge that is imposed on a provider for a year is the amount prescribed by the regulations for that year, or worked out for that year in accordance with a method prescribed by the regulations.
12. New subsection 5(5) clarifies that the amount of the annual registration charge determined in accordance with the regulations may be made up of more than one component, with the charge being the sum of those components.
13. New subsection 5(6) provides that, before the Governor-General makes regulations for the purposes of new subsection 5(4), the Minister must be satisfied that the effect of those regulations will be to recover no more than the Commonwealth's likely costs in connection with the Secretary's performance of functions, and exercise of powers, under the ESOS Act. However, new subsection 5(7) provides that, for the purposes of new subsection 5(6) the following matters should be disregarded:
 - the costs in connection with the Secretary's performance of functions or powers listed in subsections 6(6) and 7(6);

- the costs that are likely to be offset by reinstatement fees.

14. This means that the Commonwealth cannot use the CRICOS annual registration charge to seek to recover its likely costs incurred in connection with functions and powers which are able to be recovered under the schools initial registration charge and schools renewal registration charge. Further, the Commonwealth cannot seek to recover costs that have already been recovered through the imposition of reinstatement fees under section 171 of the ESOS Act. Under section 171 of the ESOS Act, a registered provider must pay a reinstatement fee before the suspension of, or a condition on, the registration of the provider is removed under subsections 89(5), 90(2) or 94(2) or (4) of the ESOS Act. New subsection 5(7) therefore is intended to prevent double charging. The department will only recover the costs required to undertake its regulatory activities and is not seeking to charge more than once for an activity or to profit from its charging of registered providers.

15. Subsections 5(6) and (7) work together to provide an appropriate limitation on the amounts that can be recovered through the CRICOS annual registration charge, despite the amount of the charge not being capped in the Registration Charges Act.

16. The approach of setting the amount of the annual registration charge for a year, or a method for calculating the charge, in regulations provides flexibility to ensure that the Commonwealth recovers the likely costs of administering the ESOS Act (subject to the exclusions set out in new subsection 5(7)), and only that amount, from registered providers, as the cost of administration increases or decreases.

17. Further, prior to asking the Governor-General to make any regulations, the Department will seek stakeholder feedback on a draft Cost Recovery Impact Statement (CRIS) which will be consistent with the *Australian Government Charging Framework* and made publicly accessible on www.dese.gov.au prior to 1 January 2022.

18. It is also important to note that the regulations are a legislative instrument for the purposes of the *Legislation Act 2003* and, as such, are subject to the Parliamentary disallowance process. The disallowance process provides Parliamentary oversight and scrutiny over the making of, and any amendments to, these regulations.

19. New subsection 5(8) allows the regulations to provide for indexation of amounts specified in the regulations, to retain the existing provisions in the Registration Charges Act, for example to account for increases in Consumer Price Index (CPI).

20. New subsection 5(9) provides that the regulations may prescribe one or more classes of provider that are exempt from the annual registration charge, to retain the

existing provisions in the Registration Charges Act for regulations to prescribe exemptions for one or more classes of provider from the charges.

Section 6

21. New section 6 imposes the schools initial registration charge. New subsection 6(1) provides that if:

- a) a provider makes an application to become a registered provider under section 9 of the ESOS Act for registration to provide a course or courses at a location or locations; and
- b) the provider is an approved school provider when the application is made, meets the registration requirements (disregarding subparagraph 11(g)(i) of the ESOS Act), and is not already registered under the ESOS Act to provide any course at any location,

a charge is imposed on the application.

22. New subsection 6(2) provides that the charge imposed by subsection 6(1) is to be known as the schools initial registration charge. New subsection 6(3) provides that the schools initial registration charge imposed on an application made by a provider is payable by the provider.

23. This means that approved school providers are liable to pay the schools initial registration charge the first time they apply to provide a course under the ESOS Act, but not each time they subsequently apply to provide additional courses (whether or not those courses are to be provided in the same or a different location). The term 'approved school provider' is defined under section 5 of the ESOS Act to mean a school provider approved (however described) by a designated State authority to provide courses to:

- a) students of a State or Territory (if the school provider is located in Tasmania or the Australian Capital Territory); or
- b) for all other States and Territories, overseas students for the State.

24. Under new section 6, only approved school providers that are successfully registered under the ESOS Act (see new subparagraph 6(1)(b)(ii)) are liable to pay the schools initial registration charge.

25. New subsection 6(4) provides that the amount of the schools initial registration charge that is imposed on an application is the amount:

- a) prescribed by the regulations, or

- b) worked out in accordance with a method prescribed by the regulations.

26. New subsection 6(5) clarifies that the amount of the schools initial registration charge determined in accordance with the regulations may be made up of more than one component, with the charge being the sum of those components.

27. New subsection 6(6) provides that, before the Governor-General makes regulations for the purposes of new subsection 6(4), the Minister must be satisfied that the effect of those regulations will be to recover no more than the Commonwealth's likely costs in connection with the Secretary's performance of functions, and exercise of powers, under:

- a) Subdivision A of Division 3 of Part 2 of the ESOS Act; or
- b) section 11 of the ESOS Act, so far as that section relates to section 10 of the ESOS Act; or
- c) section 11A of the ESOS Act, so far as that section relates to an application made under section 9 of the ESOS Act; or
- d) section 11B of the ESOS Act, so far as that section relates to an application made under section 9 of the ESOS Act; or
- e) subsection 11C(1) of the ESOS Act, so far as that subsection relates to a notice given under section 10A of the ESOS Act;
- f) subsection 11C(2) of the ESOS Act; or
- g) section 14 of the ESOS Act;

so far as those functions and powers relate to the Secretary's capacity as the ESOS agency for approved school providers. New subsection 6(6) provides an appropriate limitation on the amounts that can be recovered through the schools initial registration charge, despite the amount of the charge not being capped in the Registration Charges Act, as the amount of the charge is limited by the costs that will be likely incurred by the Commonwealth in performing these specified functions and powers of an ESOS agency.

28. The approach of setting the amount of the schools initial registration charge, or a method for calculating the charge, in regulations provides flexibility to ensure that the Commonwealth recovers its likely costs of registering an approved school provider under the ESOS Act, and only that amount, from approved school providers, as the cost of the registration process increases or decreases.

29. Further, prior to asking the Governor-General to make any regulations, the Department will seek stakeholder feedback on a draft CRIS which will be consistent with the *Australian Government Charging Framework*.

30. It is also important to note that the regulations are a legislative instrument for the purposes of the *Legislation Act 2003* and, as such, are subject to the Parliamentary disallowance process. The disallowance process provides Parliamentary oversight and scrutiny over the making of, and any amendments to, these regulations.
31. New subsection 6(7) allows the regulations to provide for indexation of amounts specified in the regulations, to retain the existing provisions in the Registration Charges Act, for example to account for increases in the Consumer Price Index (CPI).
32. New subsection 6(8) provides that the regulations may prescribe one or more classes of provider that are exempt from the schools initial registration charge, to retain the existing provisions in the Registration Charges Act for regulations to prescribe exemptions for one or more classes of provider from the charges.

Section 7

33. New section 7 imposes the schools renewal registration charge. New subsection 7(1) provides that if:
 - a) a registered provider makes an application under section 10D of the ESOS Act for renewal of registration; and
 - b) the registered provider is an approved school provider when the application is made and meets the registration requirements (disregarding subparagraph 11(h)(ii) of the ESOS Act),a charge is imposed on the application.
34. New subsection 7(2) provides that the charge imposed by new subsection 7(1) is to be known as the schools renewal registration charge. New subsection 7(3) provides that the schools renewal registration charge imposed on an application made by a registered provider is payable by the registered provider.
35. Under new section 7, specifically due to subparagraph 7(1)(b)(ii), only approved school providers that have their registration renewed under the ESOS Act are liable to pay the schools renewal registration charge.
36. New subsection 7(4) provides that the amount of schools renewal registration charge that is imposed on an application is the amount:
 - a) prescribed by the regulations, or
 - b) worked out in accordance with a method prescribed by the regulations.

37. New subsection 7(5) clarifies that the amount of the schools renewal registration charge determined in accordance with the regulations may be made up of more than one component, with the charge being the sum of those components.

38. New subsection 7(6) provides that, before the Governor-General makes regulations for the purposes of new subsection 7(4), the Minister must be satisfied that the effect of those regulations will be to recover no more than the Commonwealth's likely costs in connection with the Secretary's performance of functions, and exercise of powers, under:

- a) Subdivision C of Division 3 of Part 2 of the ESOS Act;
- b) section 10L of the ESOS Act; or
- c) section 11 of the ESOS Act, so far as that section relates to section 10E of the ESOS Act; or
- d) section 11A of the ESOS Act, so far as that section relates to an application made under section 10D of the ESOS Act; or
- e) section 11B of the ESOS Act, so far as that section relates to an application made under section 10D of the ESOS Act; or
- f) subsection 11C(1) of the ESOS Act, so far as that subsection relates to a notice given under section 10G of the ESOS Act; or
- g) subsection 11C(3) of the ESOS Act, so far as that subsection relates to a matter set out in paragraph (b) or (d) of that subsection;

so far as those functions and powers relate to the Secretary's capacity as the ESOS agency for approved school providers. New subsection 7(6) provides an appropriate limitation on the amounts that can be recovered through the schools renewal registration charge, despite the amount of the charge not being capped in the Registration Charges Act, as the amount of the charge is limited by the costs that will be likely incurred by the Commonwealth in performing these specified functions and powers of an ESOS agency.

39. The approach of setting the amount of the schools renewal registration charge, or a method for calculating the charge, in a legislative instrument provides flexibility to ensure that the Commonwealth recovers its likely costs of renewing the registration of an approved school provider under the ESOS Act, and only that amount, from approved school providers, as the cost of the renewal process increases or decreases.

40. Prior to asking the Governor-General to make any regulations, the Department will seek stakeholder feedback on a draft CRIS which will be consistent with the *Australian Government Charging Framework*.

41. It is also important to note that the regulations are a legislative instrument for the purposes of the *Legislation Act 2003* and, as such, are subject to the Parliamentary disallowance process. The disallowance process provides Parliamentary oversight and scrutiny over the making of, and any amendments to, these regulations.
42. New subsection 7(7) allows the regulations to provide for indexation of amounts specified in the regulations, to retain the existing provisions in the Registration Charges Act, for example to account for increases in CPI.
43. New subsection 7(8) provides that the regulations may prescribe one or more classes of provider that are exempt from the schools renewal registration charge, to retain the existing provisions in the Registration Charges Act for regulations to prescribe exemptions for one or more classes of provider from the charges.

Section 8

44. New section 8 provides that the Registration Charges Act does not impose a tax on property of any kind belonging to a State. Subsection 8(2) provides that the term *property of any kind belonging to a State* has the same meaning as in section 114 of the Constitution.
45. This section has been included in the Bill to confirm the intended Constitutional position in relation to this issue.

Part 2—Transitional

Item 3 - Transitional—annual registration charge and entry to market charges

46. Item 3 is a transitional provision and provides that, despite the repeal of sections 5 to 8 of the Registration Charges Act by the Bill, those sections continue to apply in relation to a charge that became due for payment before the commencement of item 3, as if that repeal had not happened.
47. This item has been inserted to ensure that registered providers who are liable to pay the annual registration charge and the entry to market charges prior to 1 January 2022 and were not included in the COVID-19 measure exemption between 1 January 2020 and 31 December 2021 continue to have an obligation to pay those charges.
48. For example, if Provider A was liable to pay the first entry to market charge prior to 1 January 2022, but had not yet paid the charge when the entry to market charges were repealed by this Bill, they are still liable to pay that charge despite the repeal.

However, if Provider A expected to become liable to pay the second entry to market charge after 1 January 2022, Provider A would not incur liability to pay that charge.

49. From 1 January 2022 and following the commencement of the Act for this Bill, Provider A will be liable to pay the new CRICOS annual registration charge and if Provider A applies for renewal of its registration and is an approved school provider, they will be liable to pay the schools renewal registration charge.

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