

**EXPOSURE DRAFT OF THE *EDUCATION SERVICES FOR OVERSEAS
STUDENTS (REGISTRATION CHARGES) REGULATIONS 2021***

EXPLANATORY STATEMENT

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Issued by the authority of the Minister for Education and Youth

Education Services for Overseas Students (Registration Charges) Act 1997

Education Services for Overseas Students (Registration Charges) Regulations 2021

AUTHORITY

Section 9 of the *Education Services for Overseas Students (Registration Charges) Act 1997* (the Act) empowers the Governor-General to make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Schedule 1 of the *Education Services for Overseas Students (Registration Charges) Regulations 2021* (the Regulations) repeals the *Education Services for Overseas Students (Registration Charges) Regulations 2011* (former regulations).

LEGISLATIVE BACKGROUND

The Act imposes charges on providers that are registered to provide a course on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) to overseas students in Australia under the *Education Services for Overseas Students Act 2000* (the ESOS Act).

On 1 January 2022, an updated cost recovery model for registration on CRICOS and associated regulation costs will commence. To implement this new model, legislative amendments were made to the:

- *Education Services for Overseas Students (Registration Charges) Amendment Act 2021* (the Amendment Act) to amend the Act; and
- *Education Services for Overseas Students Amendment (Cost Recovery and Other Measures) Act 2021* (the ESOS Amendment Act) to amend the ESOS Act.

Section 5 of the Amendment Act amended the Act to set out the CRICOS Annual Registration Charge (CARC), which is payable by all providers who are registered to provide a course on CRICOS. Sections 6 and 7 of the Amendment Act, respectively, amended the Act to set out charges for schools which apply when the schools apply for initial CRICOS

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registration or are required to renew their CRICOS registration. These are the Schools Initial Registration Charge (SIRC) and the Schools Renewal Registration Charge (SRC).

For each charge, the Amendment Act permits the regulations to:

- prescribe the amount, or method for working out the amount, of the relevant charge for a year;
- provide for the amount of the charge imposed on a provider for a year to be equal to the sum of such components as are prescribed by, or ascertained in accordance with, the regulations;
- provide for indexation of amounts specified in the regulations; and
- prescribe one or more classes of provider to be exempt from the relevant charge.

PURPOSE AND OPERATION

The *Education Services for Overseas Students (Registration Charges) Regulations 2021* (the Regulations) and enabling legislation give effect to a Government decision announced in the 2021-22 Budget to implement an updated cost recovery model for registration on CRICOS. This updated model is designed to be consistent with the *Australian Government Charging Framework* (available from www.finance.gov.au).

The Regulations replace the former regulations to implement the charges payable under the new cost recovery model following commencement of the Amendment Act and ESOS Amendment Act.

The Regulations specify the method for working out the CARC through a sum of components and prescribe the amount of the SIRC and SRC.

REGULATORY IMPACT

The Office of Best Practice Regulation (OBPR) has assessed the updated cost recovery arrangements as having minor regulatory impact (OBPR ID: 43573). The Regulatory Impact Statement (RIS) is at Attachment A.

COMMENCEMENT

This instrument commences on 1 January 2022.

CONSULTATION

The department has undertaken public consultation on revised CRICOS charging arrangements during the review and legislation processes in 2020 and 2021. In January 2020, consultation was undertaken on outcomes of the review and a potential charging structure. The department received 11 submissions, in which the common points of feedback were supportive of the updated charging structure with providers requesting more detail prior to implementation such as the final charging amounts. In May 2021, the department consulted on a refined charging structure, receiving six submissions which

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indicated support for the revised charging arrangements and included requests to clarify the impact of the new model on particular groups of providers.

In August 2021, the department published an Exposure Draft of the CRICOS Cost Recovery Implementation Statement (CRIS). The CRIS provides details on the cost of the department's regulatory activities, the charges and the amounts and groups of providers that will be charged. The 11 submissions received did not identify any major concerns with the proposed arrangements that warranted changing the model, but did argue for the Government to delay regulatory charging while the education sector continues to experience financial challenges due to the COVID-19 pandemic.

The department also consulted with the Australian Skills Quality Authority, the Tertiary Education Quality and Standards Agency, and the Department of Finance in seeking agreement to the measure through the 2021-22 Budget process.

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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) Regulations 2021

The *Education Services for Overseas Students (Registration Charges) Regulations 2021* (the Instrument) 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 Legislative Instrument

The Instrument and enabling legislation give effect to a Government decision announced in 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) from 1 January 2022. This updated model is designed to be consistent with the *Australian Government Charging Framework* (available from www.finance.gov.au).

The Instrument replaces the *Education Services for Overseas Students (Registration Charges) Regulations 2011* to implement the charges payable under the new cost recovery model following commencement of the *Education Services for Overseas Students (Registration Charges) Amendment Act 2021* and *Education Services for Overseas Students Amendment (Cost Recovery and Other Measures) Act 2021*.

The Instrument specifies the method for working out the CRICOS Annual Registration Charge (CARC) through a sum of components which is payable by all providers who are registered to provide a course on CRICOS, and prescribe the amount of the Schools Initial Registration Charge and the Schools Renewal Registration Charge which apply when schools apply for initial CRICOS registration or are required to renew their CRICOS registration.

Human rights implications

The Instrument 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 Instrument engages the right to education contained in Article 13 of the ICESCR and Article 28(1) of the UNCRC, insofar as the Instrument 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

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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’.*

A strong international education system, which includes appropriate protections for overseas students, allows Australia to promote and support the right to education.

The Instrument replaces the *Education Services for Overseas Students (Registration Charges) Regulations 2011* to set out the charges payable by international education providers in accordance with the updated cost recovery model. This updated model reflects the department’s costs of administering and regulating CRICOS providers in accordance with the *Australian Government Charging Framework*.

The charges outlined in the Instrument seek to ensure that the department is properly resourced to fulfil its 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. Having amounts prescribed in Regulations means that the Government can act quickly when needed to vary the amount of charges, or, as it has for the last two years, waive the charges.

The Instrument is compatible with the right to education.

Right to work

The Instrument engages the right to work, contained in Article 6 of the ICESCR. Under Article 6, State Parties recognise ‘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] and will take appropriate steps to safeguard this right’. Article 6 also provides that States must take steps to achieve the full realisation of this right, including through ‘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 assuring quality in 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.

The Instrument is compatible with the right to work.

Conclusion

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

Minister for Education and Youth

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EDUCATION SERVICES FOR OVERSEAS STUDENTS (REGISTRATION CHARGES) REGULATIONS 2021

EXPLANATION OF PROVISIONS

Section 1: Name

1. This section specifies the name of the instrument as the *Education Services for Overseas Students (Registration Charges) Regulations 2021* (the Regulations).

Section 2: Commencement

2. This section specifies that the Regulations commence on 1 January 2022.

Section 3: Authority

3. The Regulations are made by the Governor-General under the *Education Services for Overseas Students (Registration Charges) Act 1997* (the Act).

Section 4: Schedules

4. This section provides that the Schedules have effect according to their terms (that is, to repeal the *Education Services for Overseas Students (Registration Charges) Regulations 2011 (F2021C00769)*).

Section 5: Definitions

5. Section 5 defines the terms 'Act' and 'total enrolments' for the purposes of the Regulations.
6. 'Act' refers to the *Education Services for Overseas Students (Registration Charges) Act 1997*.
7. The definition of 'total enrolments' has the same meaning as in the *Education Services for Overseas Students (TPS Levies) Act 2012* and is a factor that partly determines a provider's CRICOS Annual Registration Charge (CARC) liability.
8. The definition provides that 'total enrolments' for a provider in a year is to be calculated by adding together the number of enrolments of overseas students for each course provided by the provider in the year.
9. A student counts towards 'total enrolments' if they are undertaking the course at any time during the relevant year, in addition to being enrolled in the course. This means that a student who enrolls in a course and then withdraws before the course commences, or remains enrolled and defers for the entire year, is not factored into the calculation of total enrolments for the CARC.

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10. Each student who is enrolled and undertakes a course of at least 26 weeks duration at any time during the year will count as one enrolment.
11. For courses of 13 weeks or more, but less than 26 weeks duration, each student who is enrolled and undertakes the course at any time during the year will count as 0.5 of an enrolment.
12. For courses of less than 13 weeks duration, each student who is enrolled and undertakes the course at any time during the year will count as 0.25 of an enrolment.

Section 6: CRICOS annual registration charge

13. This section sets out the components which are used to calculate a provider's liability for the CARC.
14. The first component is set out in paragraph (a) and is \$440.
15. The second component is calculated in accordance with paragraph (b). This component is calculated by multiplying \$5 by the number of total enrolments. Total enrolments are calculated in accordance with the definition in section 5.
16. The third component of \$116 only applies to providers that are approved school providers. The meaning of 'approved school provider' is set out in the *Education Services for Overseas Students Act 2000*.
17. The fourth component of \$695 only applies to providers that are approved school providers and have had at least one overseas student enrolled in the previous year for a course for which the provider was registered for that year. For the purposes of this paragraph, a student is considered to be enrolled if they were enrolled in and undertook a registered course at any time during the previous year.
18. The note clarifies that these amounts will be indexed in accordance with the method set out in section 9.

Section 7: Schools initial registration charge

19. This section specifies that the amount of the schools initial registration charge imposed by subsection 6(1) of the Act is \$2,690.
20. Section 6 of the Act, as in force on 1 January 2022, imposes the schools initial registration charge. 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, and is not already registered under the ESOS Act to provide any course at any location,

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a charge is imposed on the application.

21. 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 or Territory.
22. Only approved school providers that are successfully registered under the ESOS Act are liable to pay the schools initial registration charge.
23. The note clarifies that these amounts will be indexed in accordance with the method set out at section 9.

Section 8: Schools renewal registration charge

24. This section specifies that the amount of the schools renewal registration charge imposed by subsection 7(1) of the Act is \$1,080.
25. Section 7 of the Act, as in force on 1 January 2022, imposes the schools renewal registration charge. 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.
26. This means that only approved school providers that have their registration renewed under the ESOS Act are liable to pay the schools renewal registration charge.
27. The note clarifies that these amounts will be indexed in accordance with the method set out at section 9.

Section 9: Indexation of amounts

28. This section provides for the indexation of CARC and schools initial and renewal registration charges. The indexation method relies on the All Groups Consumer Price Index number published by the Australian Statistician and is an updated version of the indexation provisions previously set out in section 7 of the Act.

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29. Subsection (1) provides that the dollar amounts in paragraphs 6(a) to (d) and sections 7 and 8 are to be indexed at the start of each year, after the year beginning 1 January 2022. This means that the charges will only begin to be indexed in 2023. They will be indexed according to the formula set out in subsection 9(1).
30. Subsections (2) to (6) provide additional details for calculating the indexed charges. The provisions enable indexation against the consumer price index (which is indicative of inflation) and the formula operates by comparing the movement in the CPI between published figures for consecutive September quarters.

Section 10: Transitional provision

31. This section is a transitional provision and provides that, despite the repeal of the *Education Services for Overseas Students (Registration Charges) Regulations 2011* by Schedule 1 of this instrument, those Regulations continue to apply in relation to a charge that became due for payment before 1 January 2022, as if that repeal had not happened.
32. This section mirrors the transitional provision in Part 2 of the *Education Services for Overseas Students (Registration Charges) Amendment Act 2021*.
33. This section 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.
34. 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, 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.
35. From 1 January 2022, 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.

SCHEDULE 1—REPEALS

Item 1: The whole of the instrument

36. This item repeals the *Education Services for Overseas Students (Registration Charges) Regulations 2011*, which were made by the Governor-General under section 9 of the Act.

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ATTACHMENT A

Regulation Impact Statement

Name of department/agency: Department of Education, Skills and Employment

OBPR Reference Number: 43573

Name of proposal: Updated cost recovery for registration on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS)

Summary of the proposed policy and any options considered:

The proposed policy introduces a new cost recovery model for registration on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS), and extends current fee relief arrangements for those charges until 31 December 2021.

The introduction of a new model will help ensure consistency with the *Australian Government Charging Framework* (Charging Framework) and its principles of fairness, transparency and consistency so that the costs of CRICOS regulatory activity are borne by the entity that creates the need for that activity.

The proposed cost recovery model removing from the department's charging model cost recovery for CRICOS compliance activities undertaken by TEQSA and ASQA.

The high level cost model underpinning the proposal has estimated the costs of regulatory effort, by identifying the costs of in-scope CRICOS regulatory activity in a method consistent with the Charging Framework. A detailed cost model to calculate and attribute the identified costs to providers will be agreed with the Minister of Finance.

The regulatory fee relief extension will provide financial relief to the small group of providers who are due to pay an Entry to Market Charge between 1 July 2021 and 31 December 2021, in recognition of the ongoing financial impacts of reduced international student enrolments due to COVID-19 related international border closures. The extension will have the effect of waiving all remaining fees that otherwise would have been payable under the old charging arrangements.

The proposal will lead to an overall reduction in charges (the exact amount is to be determined in discussion with the Department of Finance) paid to the Department of Education, Skills and Employment by education providers in the international education sector.

What are the regulatory impacts associated with this proposal? Explain.

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This proposal does not establish any additional regulatory requirements under the *Education Services for Overseas Students Act 2000* or the *Education Services for Overseas Students (Registration Charges) Act 1997*, with the fee relief extension providing regulatory relief.

What are the regulatory costs/savings associated with this proposal? Explain and quantify.

This proposal has zero regulatory cost. Changes to the amounts charged to providers are direct financial costs.

Regulatory burden estimate (RBE) table

This proposal is non-regulatory/machinery in nature and has zero regulatory cost.