



Education Services for Overseas Students (Registration Charges) Act 1997

Act No. 18 of 1997 as amended

This compilation was prepared on 31 October 2011
taking into account amendments up to Act No. 105 of 2011

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

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An Act to impose registration charges in relation to the Commonwealth Register of Institutions and Courses for Overseas Students

1 Short title *[see Note 1]*

This Act may be cited as the *Education Services for Overseas Students (Registration Charges) Act 1997*.

2 Commencement *[see Note 1]*

This Act commences on the day on which the *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Amendment Act (No. 1) 1997* commences.

3 Crown to be bound

This Act binds the Crown in each of its capacities.

4 Interpretation

An expression used in this Act that is also used in the *Education Services for Overseas Students Act 2000* has the same meaning as in that Act, unless the contrary intention appears.

5 Annual registration charge

- (1) A provider who is a registered provider on 1 January of a year is liable to pay an annual registration charge for the year.

Note: This section extends to a registered provider whose registration has been suspended.

Amount of the charge

- (2) The amount of the charge for the provider for the year (the **charge year**) is the sum of the following components:
- (a) \$1,300;
 - (b) \$10 multiplied by the total enrolments for the provider in the previous year;

- (c) \$100 multiplied by the total number of courses for which the provider is registered on 1 January of the charge year;
- (d) if the Minister has taken action against the provider under section 83 of the *Education Services for Overseas Students Act 2000* in the previous year—\$1,000.

Note 1: The dollar amounts are indexed under section 7.

Note 2: Regulations made under subsection (7) of this section may provide for lower dollar amounts and exemptions.

Total enrolments

- (3) The **total enrolments** for a provider in a year is worked out by adding together the number of enrolments of overseas students for each course for which the provider is registered in the year.
- (4) When working out the enrolments for a course for a year:
 - (a) for a course of at least 26 weeks duration—each student who is enrolled in the course at any time during the year counts as one enrolment; and
 - (b) for a course of 13 or more weeks, but less than 26 weeks, duration—each student who is enrolled in the course at any time during the year counts as 0.5 of an enrolment; and
 - (c) for a course of less than 13 weeks duration—each student who is enrolled in the course at any time during the year counts as 0.25 of an enrolment.

Working out what constitutes a course

- (5) For the purposes of this section, a course that spans 2 or more years is taken to be a separate course in each of those years.
- (6) For the purposes of this section, if:
 - (a) a provider is registered to provide a course for a State; and
 - (b) the Register lists one or more locations within the State where the course will be provided;the course is taken to be a separate course at each of those locations.

Regulations

- (7) The regulations may prescribe any one or more of the following:
 - (a) a lower dollar amount for the purposes of paragraph (2)(a);

- (b) one or more classes of providers who may pay the lower dollar amount prescribed under paragraph (a) of this subsection;
 - (c) one or more classes of providers who are exempt from the requirement to pay:
 - (i) the annual registration charge entirely; or
 - (ii) one or more components of the charge listed in paragraph (2)(a), (b) or (c).
- (8) Regulations made under subsection (7) must be expressed to apply to the first calendar year beginning after the regulations are made and all later calendar years.

6 Entry to market charges

Application of section

- (1) This section applies if:
- (a) a designated authority for a State recommends under section 9 of the *Education Services for Overseas Students Act 2000* (the *ESOS Act*) that a provider be registered under that Act to provide a course for the State to overseas students; and
 - (b) the provider meets the requirements in subsection 9(2) of that Act, other than the requirement in paragraph 9(2)(aa); and
 - (c) at the time the provider meets those requirements, the provider is not registered to provide any course for any State.

Amount of the entry to market charges and due dates

- (2) The provider is (subject to subsection (3) of this section) liable to pay 3 entry to market charges of the amount specified in column 1 by the time specified in column 2.

Entry to market charge

Item	Column 1 Amount of each charge	Column 2 Time by which each charge is payable
1	\$7,500	The time when the provider becomes registered to provide the course for the State under section 9 of the ESOS Act
2	\$5,000	The end of the first anniversary of the day on which the provider was registered to provide the course for the State under section 9 of the ESOS Act
3	\$2,500	The end of the second anniversary of the day on which the provider was registered to provide the course for the State under section 9 of the ESOS Act

Note: The dollar amounts of the charges are indexed under section 7.

- (3) A provider is liable to pay the second or third entry to market charge only if the provider is still registered to provide the course for the State on the relevant anniversary referred to in column 2 of table item 2 or 3.

Exemptions from the charges

- (4) The regulations may prescribe one or more classes of providers who are exempt from the requirement to pay the entry to market charges.

7 Indexation of amounts

Application of section

- (1) This section applies for the purpose of working out the amount of an entry to market charge for a year (the **current year**) after the initial year.
- (1A) This section also applies for the purpose of working out the amount of annual registration charge for any year (also called the **current year**) after the initial year, unless that year is the first year to which regulations made under paragraph 5(7)(a) apply.

Note: The reason for the exception is that the possibility of indexation for that year can be taken into account in making the regulations, so there is no need for this section to apply as well.

Indexation formula

- (2) The dollar amounts specified in subsection 5(2), in regulations made under paragraph 5(7)(a), or in column 1 of the table in subsection 6(2), are to be adjusted for the current year by multiplying the amounts that applied to the year before the current year by the indexation factor worked out using the formula:

$$\frac{\text{Index number for the recent September quarter}}{\text{Index number for the previous September quarter}}$$

where:

index number, for a quarter, means the All Groups Consumer Price Index number that is the weighted average of the 8 capital cities and is published by the Australian Statistician for that quarter.

recent September quarter means the September quarter in the year before the current year.

previous September quarter means the September quarter before the recent September quarter.

Rounding factors and amounts

- (3) The indexation factor worked out under subsection (2) must be rounded up or down to 3 places (rounding up in the case of exactly halfway between).
- (4) Amounts worked out under subsection (2) must be rounded to the nearest whole dollar (rounding up in the case of 50 cents).

Changes to CPI

- (5) If at any time (whether before or after the commencement of this section) the Australian Statistician has changed or changes the reference base for the Consumer Price Index, then, for the purposes of applying this section after the change, only index numbers published in terms of the new reference base are to be used.

Definition of initial year

- (6) In this section, the *initial year* means the first calendar year in which the dollar amounts specified in subsection 5(2), and in the table in subsection 6(2), are imposed under section 8.

8 Imposition of charges

The annual registration charge and the entry to market charges are imposed by this section.

9 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Table of Acts

Notes to the *Education Services for Overseas Students (Registration Charges) Act 1997*

Note 1

The *Education Services for Overseas Students (Registration Charges) Act 1997* as shown in this compilation comprises Act No. 18, 1997 amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions see Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Education Services for Overseas Students (Registration Charges) Act 1997</i>	18, 1997	27 Mar 1997	24 Apr 1997 (see s. 2)	
<i>Education Services for Overseas Students (Consequential and Transitional) Act 2000</i>	166, 2000	21 Dec 2000	Schedule 1 (item 2) and Schedule 2: 4 June 2001 (see <i>Gazette</i> 2001, No. S175) (a)	Sch. 2
<i>Education Services for Overseas Students (Registration Charges) Amendment Act 2000</i>	167, 2000	21 Dec 2000	21 Dec 2000	Sch. 1 (item 11)
<i>Education Services for Overseas Students (Registration Charges) Amendment Act 2003</i>	89, 2003	23 Sept 2003	23 Sept 2003	S. 4
<i>Education Services for Overseas Students Legislation Amendment (2006 Measures No. 1) Act 2006</i>	143, 2006	6 Dec 2006	1 Jan 2007	Sch. 1 (item 37(1))
<i>Education Services for Overseas Students Amendment (Re-registration of Providers and Other Measures) Act 2010</i>	10, 2010	3 Mar 2010	Schedule 1 (items 27–30): Royal Assent	—

Notes to the *Education Services for Overseas Students (Registration Charges) Act 1997*

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Education Services for Overseas Students (Registration Charges) Amendment Act 2011</i>	105, 2011	26 Sept 2011	Schedule 1: 31 Oct 2011 (see F2011L02107) Remainder: Royal Assent	Sch. 1 (item 14)

Act Notes

- (a) The *Education Services for Overseas Students (Registration Charges) Act 1997* was amended by Schedule 1 (item 2) only of the *Education Services for Overseas Students (Consequential and Transitional) Act 2000*, subsection 2(4) of which provides as follows:
- (4) The remaining provisions of this Act commence on a day or days to be fixed by Proclamation.

Table of Amendments

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 4	am. No. 166, 2000
Subhead. to s. 5(3).....	ad. No. 105, 2011
Subhead. to s. 5(5).....	ad. No. 105, 2011
S. 5	am. No. 167, 2000; No. 89, 2003; No. 105, 2011
Note to s. 5(2)	rep. No. 167, 2000
Note 1 to s. 5(2).....	ad. No. 167, 2000 rs. No. 89, 2003; No. 105, 2011
Note 2 to s. 5(2).....	ad. No. 167, 2000 rs. No. 89, 2003; No. 105, 2011
S. 5A	ad. No. 167, 2000 am. No. 89, 2003 rep. No. 105, 2011
S. 6	am. No. 143, 2006; No. 10, 2010 rs. No. 105, 2011
Note to s. 6(1)	am. No. 10, 2010 rep. No. 105, 2011
Subhead. to s. 7(1).....	ad. No. 105, 2011
Subheads. to s. 7(2), (3).....	ad. No. 105, 2011
Subhead. to s. 7(5).....	ad. No. 105, 2011
S. 7	am. No. 167, 2000; No. 89, 2003; No. 105, 2011
Note to s. 7(1A)	am. No. 105, 2011
S. 8	am. No. 105, 2011
S. 9	rs. No. 105, 2011

Table A

Table A

Application, saving or transitional provisions

Education Services for Overseas Students (Consequential and Transitional) Act 2000 (No. 166, 2000)

Schedule 2

1 Application—starting day for obligations of registered providers

Minister must publish starting day

- (1) The Minister must publish a notice in the *Gazette* specifying the starting day of the obligations in sections 19, 20 and 21 of the new ESOS Act. The starting day must be at least 28 days after the day of the publication.
- (2) The Minister must also notify in writing each registered provider of the starting day.

Notification of details about accepted students

- (3) The requirements in section 19 (giving information about accepted students) of the new ESOS Act apply to all events that happen on or after the starting day in relation to all persons who became or become accepted students on or after that day.
- (4) The requirements in paragraphs 19(1)(d) and (e) and subsection 19(2) of the new ESOS Act also apply to events that happen on or after the starting day in relation to persons who became accepted students before that day.

Notification of student visa breaches

- (5) The requirements in section 20 (sending students notice of visa breaches) of the new ESOS Act apply to all breaches that happen on or after the starting day.

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Record keeping

- (6) The requirements in section 21 (record keeping) of the new ESOS Act apply to all current and future accepted students from the starting day onwards.
- (7) However, the notice under subitem (1) may prescribe a period or further period giving providers who are registered when the requirement in section 21 takes effect extra time to comply with the requirement.

2 Transitional—registration

- (1) The registration of a provider that was in effect under the old ESOS Act immediately before the commencement of this item continues to have effect after that time as if the registration had been done for the same courses under the new ESOS Act.
- (2) If that registration was suspended under the old ESOS Act immediately before the commencement of this item, the new registration has effect after that time as if it had been suspended to the same extent under the new ESOS Act.

3 Transitional—national code

The national code may prescribe a period or a further period giving providers who are registered when the code takes effect extra time to comply with the requirements of the code.

4 Application—notified trust accounts and ESOS Assurance Fund

- (1) The requirements in the old ESOS Act relating to notified trust accounts continue to apply until Part 5 of the new ESOS Act commences even if Schedule 1 to this Act repealed those requirements earlier.
- (2) The requirements in the new ESOS Act relating to the ESOS Assurance Fund apply to 2001 and later years.
- (3) However, the Minister may publish a notice in the *Gazette* stating that those Fund requirements apply instead to 2002 and later years.

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- (4) In that case, the requirements in the old ESOS Act relating to notified trust accounts continue to apply until the later of:
- (a) the beginning of 2002; and
 - (b) the commencement of Part 5 of the new ESOS Act;
- even if Schedule 1 to this Act repealed those requirements earlier.

5 Transitional—money in notified trust accounts

- (1) This item applies to course money that was in a notified trust account immediately before the requirements in the old ESOS Act relating to such accounts ceased to apply.
- (2) The course money is no longer considered to be held on trust after that time.

6 Transitional—regulations

Regulations under the new ESOS Act may provide for the transition from the old ESOS Act to the new ESOS Act, and for related transitional matters.

Education Services for Overseas Students (Registration Charges) Amendment Act 2000 (No. 167, 2000)

Schedule 1

11 Application of amendments

The amendments made by this Schedule apply in working out the amount of charge payable for 2001 and all later years.

Education Services for Overseas Students (Registration Charges) Amendment Act 2003 (No. 89, 2003)

4 Application

The amendments made by Schedule 1 apply:

- (a) to the annual registration charge for the first calendar year after the calendar year in which this Act commences and all later calendar years; and

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- (b) to the initial registration charge for registrations on or after 1 January in the first calendar year after the calendar year in which this Act commences.

Education Services for Overseas Students Legislation Amendment (2006 Measures No. 1) Act 2006 (No. 143, 2006)

Schedule 1

37 Application

- (1) The amendments:
- (a) of the *Education Services for Overseas Students Act 2000* made by items 2, 3, 4, 8, 30, 31 and 33 of this Schedule; and
 - (b) of the *Education Services for Overseas Students (Registration Charges) Act 1997* made by item 36 of this Schedule;

do not apply to a liability to pay the initial registration charge or a reinstatement fee if the liability existed immediately before the commencement of this item.

Education Services for Overseas Students (Registration Charges) Amendment Act 2011 (No. 105, 2011)

Schedule 1

14 Application

- (1) The amendments made by this Schedule (other than the amendments made by items 6 and 13 of this Schedule) apply on and after the first 1 January that occurs after this Schedule commences.
- (2) The amendment made by item 6 of this Schedule applies in relation to any recommendation made by a designated authority for a State under section 9 of the *Education Services for Overseas Students Act 2000* on or after the first 1 January that occurs after this Schedule commences.