**EXPLANATORY STATEMENT**

**Select Legislative Instrument 2011 No. 210**

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

*Education Services for Overseas Students (Registration Charges) Regulations 2011*

**Authority**

The *Education Services for Overseas Students (Registration Charges) Act 1997* (the Registration Charges Act) provides for the imposition of two compulsory fees known as the annual registration charge (payable by all registered providers) and the entry to market charge (payable only by new providers seeking their initial registration).

The Registration Charges Act also allows the regulations to prescribe a lower dollar amount of the annual registration charge for one or more classes of providers. Paragraph 5(7)(c) and subsection 6(4) of the Act, respectively, permit that the Regulations may exempt one or more classes of providers from the requirement to pay the annual registration charge and the entry to market charge.

Section 9 of the Registration Charges Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Registration Charges Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Registration Charges Act.

The *Education Services for Overseas Students (Registration Charges) Regulations 2011* (the Regulations):

* prescribe a lower dollar amount of the annual registration charge for one or more classes of providers; and
* specify the class of providers that are exempt from the requirement to pay the annual registration charge and the entry to market charge.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

**Purpose and operation**

The *Education Services for Overseas Students (Registration Charges) Amendment Act 2011* (the Charges Amendment Act) and the Education Services for *Overseas Students Amendment (Registration Charges Consequentials) Act 2011* (the Charges Consequentials Act) amend the Registration Charges Act and the *Education Services for Overseas Students Act 2000* to:

* create a new fee structure to replace the current charging structure for the compulsory annual registration charge payable by all registered providers of courses to students on student visas; and
* introduce an entry to market charge payable for the first three years of registration which will replace the current initial registration charge.

The Charges Amendment Act and the Charges Consequentials Act implement key recommendations arising from the review of the Education Services for Overseas Students legislative framework, *Stronger, simpler, smarter ESOS: supporting international students* (the ESOS Review), conducted by the Hon. Bruce Baird AM. In particular, the ESOS Review recommended that regulators adopt a risk assessment and management approach to the registration and ongoing monitoring of education providers delivering courses to overseas students, including the costs to apply at registration and through the period of registration.

Under these amendments, the Registration Charges Act provides for two compulsory fees known as the annual registration charge (payable by all registered providers) and the entry to market charge (payable only by new providers seeking their initial registration). These two charges are structured to cover the administrative costs of the registration process and the size of any associated supervision, compliance or enforcement activity needed to ensure that only reputable providers are permitted to operate.

**Legislative background**

The Final Report of the ESOS Review was presented to the Government on 9 March 2010. Among the key findings of the Review was the recommendation that regulators adopt a risk assessment and management approach to the registration and ongoing monitoring of education providers delivering courses to international students. The ESOS Review also recommended that a risk assessment and management approach be used in relation to the determination of costs payable by providers at registration and through the period of registration.

In implementing a risk assessment and management approach to registration charges, it is proposed that providers deemed to present a significantly lower risk to the market may:

* pay a lesser amount of the annual registration charge; and/or
* be exempt from the requirement to pay certain of the components of the registration charges.

The proposed classes of providers captured by the Regulations are public universities, schools and providers of vocational education and training. These providers are already subject to rigorous quality control processes and therefore do not require the level of intensive on-going supervision by ESOS regulators that other providers may require.

**Commencement and application**

The proposed Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments and apply to charges imposed by the Registration Charges Act for the first calendar year beginning after the regulations are made and all later calendar years.

**Details of provisions**

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Education Services for Overseas Students (Registration Charges) Regulations 2011.*

Regulation 2 – Commencement

This regulation provides that the Regulations commence on the day after they are registered.

Regulation 3 – Definition

This regulation defines various terms used in the Regulations.

The term, Act, is defined to mean the *Education Services for Overseas Students (Registration Charges) Act 1997*.

The term, State or Territory VET institution, is defined to mean a vocational education and training institution that is owned or controlled (whether directly or indirectly) by a State or Territory.

The term, Table A provider, has the same meaning as in the *Higher Education Support Act 2003*.

Regulation 4 – Application

This regulation provides that the Regulations apply to charges imposed by the Act for the first calendar year beginning after the regulations are made and all later calendar years.

Regulation 5 – Annual registration charge — lower dollar amount

This regulation provides that for paragraphs 5(7)(a) and (b) of the Registration Charges Act, the class of providers described in an item in the table may pay the lower amount of the charge component of the annual registration charge listed in paragraph 5(2)(a) of the Registration Charges Act. The charge component of the annual registration charge listed in paragraph 5(2)(a) is the amount of $1,300.

Under this regulation, the class of providers described as “registered providers that did not provide a course to an accepted student in the previous year and are a government school or non-government school” pay the lower dollar amount of $366 as their annual registration charge.

Regulation 6 – Annual registration charge — exemption

This regulation provides that for paragraph 5(7)(c) of the Registration Charges Act, the class of providers mentioned in an item in the table is exempt from the requirement to pay the charge component of the annual registration charge listed in paragraph 5(2)(c) of the Registration Charges Act. The charge component of the annual registration charge listed in paragraph 5(2)(c) is the amount of $100 multiplied by the total number of courses for which the provider is registered on 1 January of the charge year.

Under this regulation, the class of providers who are “Government Schools”, “Table A providers” and “State or Territory VET institutions” is exempt from the requirement to pay the charge component of the annual registration charge listed in paragraph 5(2)(c) of the Registration Charges Act.

Regulation 7 – Entry to market charges — exemption

This regulation provides that for subsection 6(4) of the Registration Charges Act, the class of providers mentioned in an item in the table is exempt from the requirement to pay the entry to market charges.

Under this regulation, the class of providers who are “Government Schools”, “Table A providers” and “State or Territory VET institutions” is exempt from the requirement to pay the entry to market charges.

**Consultation**

The recommendations of the ESOS review related to improving risk management were informed by extensive consultation undertaken with industry stakeholders in the context of the ESOS Review. During the consultation period in 2009-10, discussion forums were held with students and providers from across the tertiary, English language and school sectors. These forums involved some 200 individuals. Meetings were also held with state and territory government officials, regulatory bodies, student organisations, industry bodies and diplomatic missions. The ESOS Review received approximately 150 formal submissions and more than 300 people registered with the online discussion forum.

A second consultative process was managed in late 2010 and into 2011 when the Government released the discussion paper *Reforming ESOS: Consultations to build a stronger, simpler, smarter framework for international education in Australia*. This paper was released on 7 December 2010 and was designed to seek and elicit feedback on the second phase of the Government’s response to the ESOS Review recommendations, including specific consultation questions on risk management and how this might be applied to charging practices. A total of 52 additional submissions were received through this process. The feedback received through this process was used to inform the development and refinement of the restructured and rebased Annual Registration Charge.

A series of meetings with key stakeholder groups and industry peak organizations was subsequently undertaken. Through these processes the Government’s proposal for a new registration charging arrangement was broadly outlined to key stakeholder and industry groups.