

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Employment, Workforce, Skills, Small & Family
Business

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.

Commencing on 1 January 2022, the *Education Services for Overseas Students (Registration Charges) Amendment Act 2021* (the Amendment Act) will amend the Act to establish new charges and provide for those charges to be set by regulation. Under section 4 of the *Acts Interpretation Act 1901*, the power to make regulations may be exercised before the commencement of the Amendment Act, as if the relevant commencement had occurred.

Further, 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. The repeal of the *Education Services for Overseas Students (Registration Charges) Regulations 2011* (the former regulations) by Schedule 1 of the *Education Services for Overseas Students (Registration Charges) Regulations 2021* (the Regulations) is made in reliance on this power.

LEGISLATIVE BACKGROUND

The Act imposes charges on providers that are registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) to provide a course (or courses) 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 the registration of providers on CRICOS, as well as for other associated regulation costs, will commence. The cost recovery model enables the Commonwealth to recover the likely costs of the performance of the Secretary's powers and functions under parts of the ESOS Act. The cost recovery model has been implemented by recent legislative amendments which establish the new charges and provides authority for the charges to be set by regulation. Those legislative amendments are contained in the Amendment Act and the *Education Services for Overseas Students Amendment (Cost Recovery and Other Measures) Act 2021* (ESOS Amendment Act).

The new charges include the CRICOS Annual Registration Charge (CARC) which is a charge payable by all providers who apply for registration on CRICOS, as well as the Schools Initial Registration Charge (SIRC) and Schools Renewal Registration Charge (SRC). The latter two charges apply to schools when they apply for initial CRICOS registration or renew their CRICOS registration.

For each charge, the Act permits regulations to:

- prescribe the amount, or method for working out the amount, of the relevant charge for a year;
- prescribe components of the charge;
- provide for indexation of specified amounts; and
- prescribe classes of provider that are exempt from the relevant charge.

PURPOSE AND OPERATION

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 consistent with the *Australian Government Charging Framework* (available from www.finance.gov.au). The Regulations also remake the former regulations, which are due to sunset on 1 April 2022.

The Regulations replace the former regulations to prescribe the charges payable under the new cost recovery model, by specifying the method for working out the CARC through a sum of components and prescribing the amount of the SIRC and SRC.

The Regulations also prescribe a class of providers that are exempt from paying charges imposed during the calendar year beginning 1 January 2022, continuing exemption arrangements in place under the former regulations. This measure is designed to reduce the regulatory and cost burden on education providers during the COVID-19 pandemic.

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

The Regulations commence on 1 January 2022.

CONSULTATION

The Department of Education, Skills and Employment (the department) undertook a review and public consultation on revised CRICOS charging arrangements in 2020 and 2021, in the lead up to amendments made by the Amendment Act and ESOS Amendment Act. On

29 January 2020, the department published a *CRICOS Cost Recovery Consultation Paper* on its website (see <https://www.dese.gov.au/esos-framework/resources/cricos-cost-recovery-consultation-paper>). The department received 11 submissions in response. The feedback was generally 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 and received six submissions which 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 in response to the *CRICOS Cost Recovery Consultation Paper* did not identify any major concerns with the proposed arrangements that warranted changing the model, but did argue for the Government to delay imposing regulatory charges while the education sector continues to experience financial challenges due to the COVID-19 pandemic.

In October 2021, the department published an Exposure Draft of the Regulations and an Exposure Draft of the Explanatory Statement. Three submissions were received which did not recommend modification to the charging model, but identified the need for ongoing communication with all providers on the charging arrangements. Providers also continued to request a delay of regulatory charging until at least 1 July 2022. A provision exempting providers from the requirement to pay charges imposed during the calendar year beginning 1 January 2022 has been included in the Regulations.

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

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 Regulations) are 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 Regulations and enabling legislation give effect to a Government decision announced in the 2021-22 Budget to implement an updated cost recovery model for provider registration on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS). This updated model is consistent with the *Australian Government Charging Framework* (available from www.finance.gov.au). The Regulations also remake the *Education Services for Overseas Students (Registration Charges) Regulations 2011* (the former regulations), which are due to sunset on 1 April 2022.

The new charges in the updated cost recovery model include the CRICOS Annual Registration Charge (CARC), which is a charge payable by all providers who apply for registration on CRICOS, as well as the Schools Initial Registration Charge (SIRC) and Schools Renewal Registration Charge (SRC). The latter two charges apply to schools when they apply for initial CRICOS registration or renew their CRICOS registration.

The Regulations replace the former regulations to prescribe the charges payable under the new cost recovery model, by specifying the method for working out the CRICOS Annual Registration Charge through a sum of components and prescribing the amount of the SIRC and SRC.

The Regulations also prescribe a class of providers that are exempt from paying charges imposed during the calendar year beginning 1 January 2022, continuing exemption arrangements in place under the former regulations. This measure is designed to reduce the regulatory and cost burden on education providers during the COVID-19 pandemic.

Human rights implications

The Regulations engage 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 Regulations engage 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 who hold 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'*.

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

The Regulations replace the *Education Services for Overseas Students (Registration Charges) Regulations 2011* to set out the charges payable by international education providers in accordance with an 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 Regulations seek to ensure that the department is properly resourced to fulfil its ongoing compliance, analysis and monitoring obligations under the *Education Services for Overseas Students Act 2000* in an efficient and effective manner, so that the quality and integrity of Australia's international education and training system can be maintained. Having amounts prescribed in regulations means that the Government can act quickly, when needed, to vary the amount of the charges, or, as it has done during the COVID-19 pandemic, waive the charges.

While the charges ensure the department is properly resourced to fulfil its functions, the Act limits which functions the charges may recover the costs of and how much may be recovered. This means that the Commonwealth cannot use the charges to seek to recover costs which are able to be recovered under other charges, preventing double-charging of providers. There is also an appropriate limitation on the amount of each charge, as only the likely costs in connection with the Secretary's performance of functions and exercise of powers may be recovered. These limitations ensure that while the imposition of the charges promotes a strong international education system, the charges are not prohibitive to providers.

The Regulations also support the right of overseas students to receive an education from an Australian provider by offering financial relief to CRICOS registered providers at a time when the education sector is under economic pressure as a result of the COVID-19 pandemic. This

financial relief supports CRICOS registered providers to continue providing education services to overseas students during this difficult period in Australia's history, and strengthens Australia's international education sector.

The Regulations are compatible with the right to education.

Right to work

The Regulations engage 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, supported by an appropriately funded regulatory framework, provides a foundation on which overseas students may pursue broader employment opportunities.

The Regulations are compatible with the right to work.

Conclusion

The Regulations are compatible with human rights because they promote the protection of human rights and to the extent that they may limit human rights, those limitations are reasonable, necessary and proportionate.

Minister for Employment, Workforce, Skills, Small & Family Business

**EDUCATION SERVICES FOR OVERSEAS STUDENTS (REGISTRATION CHARGES)
REGULATIONS 2021**

EXPLANATION OF PROVISIONS

Section 1: Name

1. This section specifies the name of this legislative 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*.

Section 4: Schedules

4. This section provides that the Schedule to the Regulations has effect according to its 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' is defined as 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 of the term 'total enrolments' will, from 1 January 2022, be set out in section 4A of the *Education Services for Overseas Students (TPS Levies) Act 2012* as follows:
 - a) '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 that year;
 - b) a student counts towards 'total enrolments' if they are actively undertaking study in 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 purposes of the CARC;

- c) 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;
- d) 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; and
- e) 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

- 9. This section sets out the components which are used to calculate a provider's liability for the CARC.
- 10. The first component is set out at paragraph (a) and is \$440.
- 11. The second component is calculated in accordance with paragraph (b). This component is calculated by multiplying \$5 by the number of 'total enrolments' (defined as described above).
- 12. 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 ESOS Act (because section 4 of the Act clarifies that expressions used in the Act, and therefore regulations made under the Act, have the same meaning as terms defined in the ESOS Act). Under the ESOS Act, an approved school provider is a school provider approved by a designated State authority to, relevantly, provide courses to overseas students.
- 13. 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.
- 14. The note clarifies that the dollar figures referred to in section 6 are to be indexed in accordance with the method set out at section 9, in order to remain aligned with increases to the Consumer Price Index due to inflation.

Section 7: Schools initial registration charge

15. This section specifies that the amount of the schools initial registration charge (SIRC) imposed by subsection 6(1) of the Act is \$2,690.
16. Section 6 of the Act, as in force on 1 January 2022, imposes the SIRC. Subsection 6(1) of the Act 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, a charge is imposed on the application.
17. This means that approved school providers are liable to pay the SIRC 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).
18. Only approved school providers that are registered under the ESOS Act are liable to pay the SIRC.
19. The note clarifies that the dollar figure (\$2,690) referred to in section 7 is to be indexed in accordance with the method set out at section 9, in order to remain aligned with increases to the Consumer Price Index due to inflation.

Section 8: Schools renewal registration charge

20. This section specifies that the amount of the schools renewal registration charge (SRC) imposed by subsection 7(1) of the Act is \$1,080.
21. Section 7 of the Act, as in force on 1 January 2022, imposes the SRC. Subsection 7(1) of the Act 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, which relates to an outstanding liability to pay an SRC);a charge is imposed on the application.
22. This means that only approved school providers that have their registration renewed under the ESOS Act are liable to pay the SRC.
23. The note clarifies the dollar figure (\$1,080) referred to in section 8 is to be indexed in accordance with the method set out at section 9, in order to remain aligned with increases to the Consumer Price Index due to inflation.

Section 9: Indexation of amounts

24. This section provides for the indexation of CARC, SIRC and SRC. The indexation method relies on the All Groups Consumer Price Index (CPI) number published by the Australian Bureau of Statistics (as available on its website) and is an updated version of the indexation provisions previously set out in section 7 of the Act.
25. 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).
26. Subsections (2) to (6) provide additional details for calculating the indexed charges. The provisions enable indexation against CPI (which is indicative of inflation) and the formula operates by comparing the movement in the CPI between figures published by the Australian Bureau of Statistics for consecutive September quarters.

Section 10: Exemption from charges imposed from 1 January 2022 to 31 December 2022

27. This section has the effect that, for the purposes of subsections 5(9), 6(8) and 7(8) of the Act, the class of providers made up of all providers is exempt from having to pay the CARC, SIRC and SRC for the calendar year beginning 1 January 2022.
28. Unless further exemptions are put in place, the exemptions in this section end on 31 December 2022.

Section 11: Transitional provision

29. 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 to 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.
30. This section operates in a similar way to the transitional provision in Schedule 1, Part 2 of the *Education Services for Overseas Students (Registration Charges) Amendment Act 2021* (which also clarifies that charges payable under the former law remain payable).
31. 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.

32. 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.
33. From the commencement of these Regulations, and subject to the exemption in section 10, Provider A will be liable to pay the CARC (if that provider remains registered) and, if Provider A applies for renewal of its registration and is an approved school provider, they will be liable to pay the SRC (noting the SIRC will not be applicable where the provider is already registered).

SCHEDULE 1—REPEALS

Item 1: The whole of the instrument

34. 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.

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 will remove TEQSA's and ASQA's costs for CRICOS compliance activities from the department's charging model.

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.

Regulatory impacts associated with this proposal

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.

Regulatory costs/savings associated with this proposal

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

Regulatory burden estimate (RBE)

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