

## EXPLANATORY STATEMENT

### Issued by the authority of the Minister for Education

*Tertiary Education Quality and Standards Agency (Charges) Act 2021*

*Tertiary Education Quality and Standards Agency (Charges) Amendment Regulations 2023*

#### **Authority**

Section 9 of the *Tertiary Education Quality and Standards Agency (Charges) Act 2021* (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.

#### **Legislative background**

Section 6 the Act imposes a ‘registered higher education provider charge’ (RHEP charge) on all higher education providers registered under Part 3 of the *Tertiary Education Quality and Standards Act 2011* (TEQSA Act) and listed on the National Register of Higher Education Providers.

Section 7 of the Act provides that regulations may prescribe the amount of the RHEP charge for that year or prescribe a method to work out the amount of the RHEP charge for that year. These matters are prescribed in the *Tertiary Education Quality and Standards Agency (Charges) Regulations 2022* (Charges Regulations).

#### **Purpose and operation**

The purpose of the *Tertiary Education Quality and Standards Agency (Charges) Amendment Regulations 2023* (the Amending Regulations) is to amend the Charges Regulations. The amendments update the amounts in the formula used to calculate the base component of the RHEP charge, update the amount charged for monitoring compliance with conditions imposed on the registration of a higher education provider and, provide that there is a charge for audits undertaken by the Tertiary Education Quality and Standards Agency (TEQSA) under section 112A of the *Education Services for Overseas Students Act 2000* (ESOS Act).

Section 26C of the TEQSA Act imposes a condition on the registration of all registered higher education providers that requires them to pay the RHEP charge.

The RHEP charge recovers the costs of TEQSA’s sector-wide regulatory activities, which cannot be attributed to a particular provider, and the costs of certain compliance activities taken in relation to particular registered higher education providers. It is one part of TEQSA’s cost recovery model, as set out in the updated version of the Cost Recovery Implementation Statement (CRIS) published by TEQSA in November 2023. The CRIS, originally published in 2022 and drafted following a 2018–19 Government decision to implement revised cost recovery arrangements for TEQSA, has been updated to ensure the assumptions contained in the document remain accurate and the fees and charges continue to fairly reflect the cost of the relevant regulatory activities.

The method for calculating the RHEP charge set out in the Charges Regulations reflects the information set out in Part 4 of the CRIS. The RHEP charge is payable in addition to the application-based fees paid by higher education providers to cover the cost of assessing applications made to TEQSA for activities such as provider registration and course accreditation.

The Charges Regulations specify that the RHEP charge consists of two components:

1. the base component of the charge, that all registered higher education providers pay annually, which covers costs associated with TEQSA's regulatory activities, such as risk monitoring and sector oversight, the cost of which cannot be attributed to a specific provider. The amount of the base component for each provider varies from year to year based on the number of providers registered on 1 January of the relevant year and the provider's equivalent full-time student load.
2. the compliance component of the charge, that a registered higher education provider may pay where TEQSA has taken specified compliance actions in relation to the provider in the previous calendar year.

The Amending Regulations amend the Charges Regulations following TEQSA's annual review of the CRIS, which was conducted in accordance with the *Australian Government Cost Recovery Policy*.

The Amending Regulations:

1. Update the amounts in the formula used for calculating the base component of the RHEP charge to reflect the current costs of the relevant regulatory activities (see Part 4 of the CRIS).
2. Decrease the amount charged for the monitoring of a condition imposed on the registration of a higher education provider to reflect the current costs of this regulatory activity, the efficiency of which has been increased since the Charges Regulations were drafted.
3. Make clear that the charge for 'compliance assessments' set out in the CRIS covers audits commenced under subsection 112A of the ESOS Act.

### **Impact Analysis**

The Office of Impact Analysis (OIA) has been consulted and advised the instrument in its operation is unlikely to have a more than minor impact (ID: **OIA23-05889**).

### **Commencement**

This instrument commences on 1 January 2024.

### **Consultation**

TEQSA undertook a public consultation on proposed changes to its cost recovery arrangements, including amendments to the Charges Regulations, between August to September 2023. All Vice Chancellors and CEOs of registered higher education providers were notified of the consultation process via email. In addition to providing an opportunity for written comment on the proposed changes, TEQSA held briefings for peak bodies and providers on 30 and 31 August 2023 respectively.

TEQSA received 17 stakeholder submissions through the consultation process, including 12 from individual higher education providers and four from peak bodies. TEQSA took this feedback into consideration when finalising its CRIS.

The submissions generally expressed approval for fee and charge decreases, expressed a desire for fees and charges to vary based on the financial capacity of a provider and expressed concerns about the amount of certain fees and charges. TEQSA's cost recovery arrangements reflect the Australian Government Cost Recovery Policy, which requires that fees and charges be aligned to the actual cost of performing regulatory activities. In line with the policy, the Amending Regulations reduce the amount charged for the monitoring of conditions imposed on the registration because TEQSA has identified opportunities for greater efficiency in performing these regulatory activities and the cost of performing the activities has been reduced.

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*  
Tertiary Education Quality and Standards Agency (Charges) Amendment Regulations 2023

The *Tertiary Education Quality and Standards Agency (Charges) Amendment Regulations 2023* (the Amending 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

Section 6 of the *Tertiary Education Quality and Standards Agency (Charges) Act 2021* (the Act) imposes a ‘registered higher education charge’ (RHEP charge) on all higher education providers registered under Part 3 of the *Tertiary Education Quality and Standards Act 2011* and listed on the National Register of Higher Education providers. Section 7 of the Act provides that regulations, made under section 9 of the Act, will specify the amount of the RHEP charge or the method for calculating the RHEP charge. These matters are prescribed in the *Tertiary Education Quality and Standards Agency (Charges) Regulations 2022* (Charges Regulations).

The Amending Regulations amend the Charges Regulations to update the amounts used in the calculation of the base component of the RHEP charge, reduce the amount providers will have to pay in relation to monitoring of compliance with conditions of registration and, clarify that the charge for compliance assessments applies in relation to compliance audits, undertaken by the Tertiary Education Quality and Standards Agency (TEQSA) under the *Education Services for Overseas Students Act 2000* (ESOS Act).

### Human rights implications

#### *Right to education*

The Amending Regulations engage the right to education which is set out in Article 13 of the *International Covenant on Economic, Social and Cultural Rights*. The right to education recognises the important personal, societal, economic and intellectual benefits of education, and provides that secondary education in its different forms, including higher education, shall be made generally available and accessible to all by every appropriate means.

The RHEP charge recovers the costs of TEQSA’s monitoring and compliance functions and, in turn, maintains the high quality and reputation of Australia’s higher education system. The Amending Regulations ensure that the amount of the charge continues to accurately reflect the current costs of TEQSA’s activities, and that TEQSA is able to recover its costs for compliance activity undertaken under the ESOS Act.

Payment of the RHEP charge by registered higher education providers contributes to the Australian Government’s consolidated revenue fund. The contributions to this fund ensure that the Australian Government can fund TEQSA to carry out its regulatory and quality assurance roles in the higher education sector. While providers are required to pay a fee in relation to certain applications they initiate with TEQSA, for example an application to accredit a course, these fees do not cover TEQSA’s broader sector oversight functions. The monies recovered through the RHEP charge fund TEQSA’s broader sector oversight activities, including concerns and complaints; communications and engagement; risk assessment; general enquiries; and guidance and education materials. These are unrelated to applications initiated by providers and are carried out by TEQSA to ensure standards and quality are maintained across the Australian higher education sector.

Australia's higher education sector delivers higher education to more than 1.6 million students and therefore contributes to the full development of the human personality and the sense of its dignity through education. The Amending Regulations engage and promote the right to education by supporting TEQSA's regulatory and quality assurance roles in ensuring that higher education providers remain compliant with regulatory and quality frameworks, which in turn ensures that quality education is made available and accessible to students both in Australia and those who come from overseas to study.

The Regulations are compatible with the right to education.

**Conclusion**

The Regulations are compatible with human rights because they promote the right to education.

**Minister for Education, the Hon Jason Clare MP**

**TERTIARY EDUCATION QUALITY AND STANDARDS AGENCY (CHARGES)  
AMENDMENT REGULATIONS 2023**

**EXPLANATION OF PROVISIONS**

Section 1: Name

1. This section specifies the name of the instrument as the *Tertiary Education Quality and Standards Agency (Charges) Amendment Regulations 2023* (the Amending Regulations).

Section 2: Commencement

2. This section specifies that the Amending Regulations will commence on 1 January 2024.

Section 3: Authority

3. This section provides that the Amending Regulations are made under the *Tertiary Education Quality and Standards Agency (Charges) Act 2021* (the Act).

Section 4 – Schedules

4. This section provides that the instrument specified in Schedule 1, namely the *Tertiary Education Quality and Standards Agency (Charges) Regulation 2022* (Charges Regulations), is amended as set out in Schedule 1.

Schedule 1

*Item 1 – Subsection 5(2) (formula)*

5. This item amends subsection 5(2) of the Charging Regulations to update the formula used for calculating the base component of the registered higher education provider charge (RHEP charge) for a given year.
6. The base component recovers TEQSA's costs in relation to six areas of regulatory activity, which are listed in Table 4 of Part 4 of TEQSA's Cost Recovery Implementation Statement (CRIS):
  - i. Concerns or Complaints
  - ii. Communications and Engagement
  - iii. Risk Assessment
  - iv. General Enquiries
  - v. Corporate Support
  - vi. Guidance and Education
7. The first part of the formula set out in subsection 5(2), outside of the brackets, distributes the total costs for regulatory activities (ii) – (vi) listed above evenly across all higher education providers that are registered higher education providers on 1 January of the relevant year. The amendment updates the total cost of those activities from \$5,304,000 to \$6,465,000.

8. The second part of the formula set out in subsection 5(2), inside of the brackets, distributes the total cost of activity (i) above among registered higher education providers based on each provider's proportional share of all equivalent full-time students at registered higher education providers. The amendment updates the total cost of that regulatory activity from \$206,000 to \$197,000.

*Item 2 – After paragraph 5(4)(b)*

9. This item inserts new paragraph 5(4)(ba) into the Charges Regulations. Paragraph 5(4)(ba) provides that the compliance component of the RHEP charge includes \$36,000 for each compliance audit TEQSA decided to conduct, under section 112A of the *Education Services for Overseas Students Act 2000* (ESOS Act), in the previous calendar year.
10. The amount to be charged for compliance audits is consistent with the amount set out in the 2022 version of TEQSA's Cost Recovery Implementation Statement (CRIS) for 'compliance assessments'. TEQSA's annual review of the CRIS identified that, while that CRIS referred to "compliance assessments", it did not specifically reference accreditation assessments (which are commenced under section 61 of the TEQSA Act) or compliance audits (which are commenced under section 112A of the ESOS Act). The updated version of the CRIS published in November 2023 makes specific reference to compliance audits commenced under section 112A of the ESOS Act and provides that the cost of those assessments is \$36,000.

*Item 3 – Subparagraph 5(4)(c)(ii)*

11. This item amends subparagraph 5(4)(c)(ii) of the Charges Regulations, reducing the amount that is charged as part of the compliance component of the RHEP charge where a condition applied to the registration of a provider in the previous calendar year. The amount is reduced from \$8,375 to \$4,100 to reflect an improved, and more efficient, process for monitoring compliance with these conditions that has been developed since the Charges Regulations were drafted.

*Item 4 – After subsection 7(1)*

12. This item inserts a new application provision, subsection 7(1A), into the Charging Regulations. The application provision clarifies that paragraph 5(4)(ba), providing a charge for compliance audits commenced under the ESOS Act, applies in relation to an audit conducted on or after 1 January 2024.
13. TEQSA has not commenced any compliance audits under section 112A of the ESOS Act to date in 2023 and does not think it is likely to do so before the end of 2023. The application provision has been included for the abundance of caution.