

EXPLANATORY STATEMENT

Issued by the authority of Minister for Education

Tertiary Education Quality and Standards Agency (Charges) Act 2021

Tertiary Education Quality and Standards Agency (Charges) Amendment Regulations 2024

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.

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 amendments to the *Tertiary Education Quality and Standards Agency (Charges) Regulations 2022* (the Principal Regulations) made by the *Tertiary Education Quality and Standards Agency (Charges) Amendment Regulations 2024* (the Amending Regulations) rely on this provision.

In accordance with section 7 of the Act, the Minister is satisfied that the effect of the Amending Regulations is to recover no more than the Commonwealth's likely costs in connection with TEQSA's performance of its functions under a Commonwealth law.

PURPOSE AND OPERATION

The purpose of the Amending Regulations is to amend the Principal Regulations to update the amounts in the formula used to calculate the base component of the 'registered higher education provider charge' (RHEP charge). This ensures that these amounts continue to accurately reflect the cost of the relevant regulatory activities undertaken by the Tertiary Education Quality and Standards Agency (TEQSA).

Background

Section 6 of the Act imposes a 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 made under the Act may prescribe the amount of the RHEP charge for that a year or prescribe a method to work out the amount of the RHEP charge for a year. These matters are prescribed in the Principal Regulations.

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 2024. 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 Principal 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 Principal 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.

Amendments

The Amending Regulations amend the Principal Regulations following TEQSA's 2024 review of the CRIS, which was conducted in accordance with the *Australian Government Cost Recovery Policy*.

The Amending Regulations 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). The changes reduce the portion of the base component that is divided equally across all registered higher education providers and increase the amount that is divided proportionally between providers based on the number of equivalent full-time students a provider has.

This approach is based on the assessment that a significant part of TEQSA's regulatory activity is, and will continue to be, the review of concerns about activities relevant to larger providers, particularly in relation to safety and wellbeing on campus, freedom of speech, academic freedom, and the governance of institutional responses to wage underpayments.

IMPACT ANALYSIS

OIA has advised that an Impact Analysis is not required (OIA24-08669).

COMMENCEMENT

This instrument commences on 1 January 2025.

CONSULTATION

TEQSA undertook a public consultation on proposed changes to its cost recovery arrangements in October 2024. TEQSA announced the consultation period ahead of time during a “TEQSA Talks” webinar held for the sector on 3 October 2024. All Vice Chancellors and Chief Executive Officers of registered higher education providers were subsequently notified of the consultation process via email and the details of the consultation were advertised on TEQSA’s website.

TEQSA received 10 submissions on the proposed changes to the CRIS via the consultation process, including seven from individual higher education providers and three from peak bodies in the higher education sector. TEQSA took this feedback into consideration when finalising its CRIS.

Submissions were generally supportive of the proposal not to increase application fees or compliance related charges in the Principal Regulations.

Some submissions suggested that provider risk-profiling, rather than full-time student numbers, should form the basis for any proportionate division of costs between providers. As was noted in the consultation paper, TEQSA expects to consult with higher education providers on proposed changes to its regulatory processes, including our application-based processes. There will be capacity for TEQSA to consider, as part of that process, what proxies are the most appropriate for identifying likely regulatory costs in relation to providers.

Some submissions raised concerns about the transparency of TEQSA’s calculations and the extent to which TEQSA’s regulatory costs involve duplication with other activities. TEQSA is taking steps to reduce duplication and minimise the cost to providers wherever possible, including by finalising its updated service charter and by working closely with the Department of Education and other agencies on the implementation of reforms recommended by the Universities Accord. The finalisation of the service charter and the proposed changes to regulatory processes mentioned above will provide a clearer basis for measuring the amount of regulatory effort spent on various regulatory processes and thus, a clearer basis for the calculations involved in TEQSA’s cost recovery modelling.

Submissions concerning the timing of the review of the CRIS and the budgeting cycles of higher education providers will be considered as part of the ongoing review of TEQSA’s cost recovery arrangements.

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 2024

The Tertiary Education Quality and Standards Agency (Charges) Amendment Regulations 2024 (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

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* (Principal Regulations).

The Instrument amends the Principal Regulations to update the amounts used in the calculation of the base component of the RHEP charge, to ensure they continue to accurately reflect the cost of TEQSA's regulatory activities.

Human rights implications

The Instrument engages the following rights:

- right to education

Right to Education

The Instrument engages 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 Instrument ensures that the amount of the charge continues to accurately reflect the current costs of TEQSA's activities.

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 initiated 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 Instrument engages with and promotes 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 Instrument is compatible with human rights because it promotes the right to education.

Minister for Education, the Hon Jason Clare MP

TERTIARY EDUCATION QUALITY AND STANDARDS AGENCY (CHARGES) AMENDMENT REGULATIONS 2024

EXPLANATION OF PROVISIONS

Section 1: Name

1. This is a formal provision specifying the name of the instrument as the *Tertiary Education Quality and Standards Agency (Charges) Amendment Regulations 2024* (the Amending Regulations).

Section 2: Commencement

2. This section specifies that the Amending Regulations will commence on 1 January 2025.

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* (Principal Regulations), is amended or repealed as set out in Schedule 1.

Schedule 1

Item 1 – Subsection 5(2) (formula)

5. This item amends subsection 5(2) of the Principal Regulations, to update the amounts in 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 of the RHEP charge 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 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 \$6,465,000 to \$5,901,000.
8. The second part of the formula set out in subsection 5(2), inside the brackets, distributes the total cost of regulatory activity (i), ‘Concerns or Complaints’, 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 \$197,000 to \$1,128,000.
9. The change to the amounts set out in the formula reflects changes made to TEQSA’s cost recovery model based on an assessment that a significant part of TEQSA’s regulatory activity is, and will continue to be, the review of concerns about activities relevant to larger providers. The effect of these changes is that a greater proportion of TEQSA’s costs will be attributed to ‘Concerns and Complaints’ and distributed based on the share of all equivalent full-time students a provider has.