



Education Services for Overseas Students Amendment (Cost Recovery and Other Measures) Act 2021

No. 83, 2021

**An Act to amend the *Education Services for
Overseas Students Act 2000*, and for other purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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No. 83, 2021

**An Act to amend the *Education Services for
Overseas Students Act 2000*, and for other purposes**

[Assented to 27 August 2021]

The Parliament of Australia enacts:

1 Short title

This Act is the *Education Services for Overseas Students
Amendment (Cost Recovery and Other Measures) Act 2021*.

*No. 83, 2021 Education Services for Overseas Students Amendment (Cost Recovery
and Other Measures) Act 2021 1*

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	27 August 2021
2. Schedule 1	At the same time as the <i>Education Services for Overseas Students (Registration Charges) Amendment Act 2021</i> commences. However, the provisions do not commence at all if that Act does not commence.	1 January 2022
3. Schedule 2	At the same time as the <i>Tertiary Education Quality and Standards Agency (Charges) Act 2021</i> commences. However, the provisions do not commence at all if that Act does not commence.	1 January 2022

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—General amendments

Part 1—Amendments

Education Services for Overseas Students Act 2000

1 Section 5 (definition of annual registration charge)

Repeal the definition.

2 Section 5

Insert:

compliance audit has the meaning given by section 112A.

CRICOS annual registration charge means CRICOS annual registration charge imposed by the *Education Services for Overseas Students (Registration Charges) Act 1997*.

3 Section 5 (definition of entry to market charge)

Repeal the definition.

4 Section 5 (definition of first entry to market charge)

Repeal the definition.

5 Section 5

Insert:

schools initial registration charge means schools initial registration charge imposed by the *Education Services for Overseas Students (Registration Charges) Act 1997*.

schools renewal registration charge means schools renewal registration charge imposed by the *Education Services for Overseas Students (Registration Charges) Act 1997*.

6 Section 5 (definition of second entry to market charge)

Repeal the definition.

7 Section 5 (definition of *third entry to market charge*)

Repeal the definition.

8 Subparagraph 11(g)(i)

Omit “the first entry to market charge”, substitute “schools initial registration charge”.

9 After subparagraph 11(g)(i)

Insert:

- (ia) National VET Regulator annual registration charge imposed by section 6A of the *National Vocational Education and Training Regulator (Charges) Act 2012* (if the provider is liable to pay that charge); and
- (ib) a fee determined under section 232 of the *National Vocational Education and Training Regulator Act 2011* (if the provider is liable to pay that fee); and
- (ic) a fee determined under section 158 of the *Tertiary Education Quality and Standards Agency Act 2011* (if the provider is liable to pay that fee); and

10 Subparagraphs 11(h)(i) to (iii)

Repeal the subparagraphs, substitute:

- (i) CRICOS annual registration charge; or
- (ii) schools renewal registration charge; or
- (iii) National VET Regulator annual registration charge imposed by section 6A of the *National Vocational Education and Training Regulator (Charges) Act 2012*;
or
- (iiia) charge payable under section 7 of the *National Vocational Education and Training Regulator (Charges) Act 2012*; or
- (iiib) charge payable under section 10 of the *National Vocational Education and Training Regulator (Charges) Act 2012*; or
- (iiic) a fee determined under section 232 of the *National Vocational Education and Training Regulator Act 2011*;
or

(iiid) a fee determined under section 158 of the *Tertiary Education Quality and Standards Agency Act 2011*; or

11 Section 11 (note 1)

Omit “Note 1”, substitute “Note”.

12 Section 11 (note 2)

Repeal the note.

13 Section 12

Repeal the section.

14 Sections 23 and 23A

Repeal the sections, substitute:

23 CRICOS annual registration charge

- (1) If a registered provider is liable to pay CRICOS annual registration charge for a year, the Secretary must give the registered provider a written notice (the *first notice*) that:
- (a) specifies the amount of the charge payable by the provider; and
 - (b) determines that the amount is due for payment at the end of the 30-day period beginning on the day after the first notice is given to the provider.

Note: CRICOS annual registration charge is imposed by section 5 of the *Education Services for Overseas Students (Registration Charges) Act 1997*.

- (2) If the registered provider did not pay the amount of CRICOS annual registration charge at or before the time when it became due for payment, the Secretary must give the provider a written notice (the *second notice*) that:
- (a) specifies the amount of the charge payable by the provider; and
 - (b) states that the provider must pay that amount by the end of the 7-day period beginning on the day after the second notice is given to the provider; and
 - (c) sets out the effect of section 90.

Schedule 1 General amendments

Part 1 Amendments

Note: Section 90 provides that the provider's registration is automatically suspended if the provider does not comply with the second notice.

(3) If:

- (a) the registered provider fails to comply with the second notice; and
- (b) the Secretary is not the ESOS agency for the provider; the Secretary must notify the ESOS agency for the provider of the failure.

(4) A notice under this section is not a legislative instrument.

15 Paragraph 90(1)(b)

Omit "or 23A".

16 Division 1A of Part 7 (heading)

Omit "Division 1A", substitute "Division 1".

17 Section 111A

After:

- This Part provides for the monitoring of registered providers' compliance with this Act, the national code, the ELICOS Standards or the Foundation Program Standards.

insert:

- The ESOS agency for a registered provider may conduct a compliance audit of the provider.

18 Division 1 of Part 7 (heading)

Omit "Division 1", substitute "Division 1A".

19 Before Division 2 of Part 7

Insert:

Division 1B—Compliance audits

112A Compliance audits

- (1) The ESOS agency for a registered provider may conduct an audit of the registered provider for the purpose of determining whether the registered provider is complying, or has complied, with:
 - (a) this Act; or
 - (b) the national code; or
 - (c) if the ELICOS Standards or Foundation Program Standards apply in relation to the registered provider—those Standards.
- (2) An audit conducted under subsection (1) is to be known as a *compliance audit*.
- (3) If a compliance audit of a registered provider is being conducted by the ESOS agency for the registered provider, the registered provider must:
 - (a) cooperate fully with the ESOS agency in relation to the compliance audit; and
 - (b) provide the ESOS agency with all reasonable facilities and assistance in relation to the compliance audit.

Note: If the registered provider breaches subsection (3), the ESOS agency may take action against the registered provider under section 83.

20 Paragraphs 172(1)(a) to (ba)

Repeal the paragraphs, substitute:

- (a) CRICOS annual registration charge; or

21 Paragraphs 173(1)(a) to (ab)

Repeal the paragraphs, substitute:

- (a) CRICOS annual registration charge;
- (aa) schools initial registration charge;
- (ab) schools renewal registration charge;

Part 2—Transitional

22 Transitional—annual registration charge and entry to market charges

Despite the repeal of sections 23 and 23A of the *Education Services for Overseas Students Act 2000* by this Schedule, those sections continue to apply in relation to a charge that became due for payment before the commencement of this item, as if that repeal had not happened.

23 Transitional—automatic suspension

Despite the amendment of section 90 of the *Education Services for Overseas Students Act 2000* made by this Schedule, that section continues to apply in relation to a notice given under section 23 or 23A of that Act before the commencement of this item, as if that amendment had not been made.

24 Transitional—late payment penalties

Despite the amendment of section 172 of the *Education Services for Overseas Students Act 2000* made by this Schedule, that section continues to apply in relation to a charge that became due for payment before the commencement of this item, as if that amendment had not been made.

25 Transitional—debts due to the Commonwealth

Despite the amendment of section 173 of the *Education Services for Overseas Students Act 2000* made by this Schedule, that section continues to apply in relation to a charge that became due for payment before the commencement of this item, as if that amendment had not been made.

Schedule 2—Amendments contingent on the commencement of the Tertiary Education Quality and Standards Agency (Charges) Act 2021

Education Services for Overseas Students Act 2000

1 Before subparagraph 11(h)(iv)

Insert:

- (iiiie) charge imposed by the *Tertiary Education Quality and Standards Agency (Charges) Act 2021*; or

[*Minister's second reading speech made in—
House of Representatives on 24 June 2021
Senate on 10 August 2021*]

(78/21)
