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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**TERTIARY EDUCATION QUALITY AND STANDARDS
AGENCY (CHARGES) BILL 2021**

EXPLANATORY MEMORANDUM

**(Circulated by the authority of the Minister for Education and Youth,
the Honourable Alan Tudge MP)**

Tertiary Education Quality and Standards Agency (Charges) Bill 2021

OUTLINE

The purpose of the Tertiary Education Quality and Standards Agency (Charges) Bill 2021 (Bill) is to establish a new registered higher education provider charge to recover the costs of the Tertiary Education Quality and Standards Agency's (TEQSA) sector risk monitoring and regulatory oversight activities. These include: concern management and resolution; stakeholder communications and engagement; risk assessment; enquiries; business support; and guidance notes. These activities do not currently attract a charge.

The associated Tertiary Education Quality and Standards Agency Amendment (Cost Recovery) Bill 2021 (Cost Recovery Bill), amends the *Tertiary Education Quality and Standards Agency Act 2011* (TEQSA Act) to give TEQSA the capacity to collect and administer the registered higher education provider charge.

The 2018–19 Budget included a measure providing additional resources and revised cost recovery arrangements for TEQSA. It provided additional resources of \$24.3 million over four years to strengthen the agency's regulatory oversight of the higher education sector, meet a significant increase in applications for registration from prospective providers, and protect Australia's reputation for high quality higher education. It also included a shift to increased cost recovery for TEQSA's regulatory activities.

TEQSA's fees for application-based activities are determined by a legislative instrument made by TEQSA under section 158 of the TEQSA Act. Those fees will increase from 1 January 2022 to reflect the Australian Government's decision to implement increased cost recovery for TEQSA's regulatory activities. The increased resources for TEQSA's other regulatory functions will be cost-recovered through the new registered higher education provider charge, developed in line with the Australian Government Charging Framework (available from www.finance.gov.au) and imposed by this Bill.

The Bill also authorises regulations to be made that:

- prescribe the amount, or the method for working out the amount, of the registered higher education provider charge (and, in doing so, may provide for indexation of the charge); and
- exempt a registered higher education provider (including a class of registered higher education provider) from paying the charge.

Prior to making such regulations, TEQSA will seek stakeholder feedback on a draft Cost Recovery Implementation Statement, consistent with *the Australian Government Cost Recovery Guidelines* (available from www.finance.gov.au). The charge is designed to recover the costs of TEQSA's sector risk monitoring and other regulatory oversight activities that are not covered by application-based fees.

The new sector-wide charge will be phased in over three years commencing on 1 January 2022, when 20 per cent of these costs will be recovered; rising to 50 per cent of costs on 1 January 2023; and 100 per cent cost recovery from 1 January 2024.

FINANCIAL IMPACT STATEMENT

The new charge will be set at a level sufficient to recover the cost of TEQSA's regulatory activities that are not the subject of its application-based fees. TEQSA estimates the total cost of these activities to be around \$5.7 million annually. The charge will be phased in over three years. From 1 January 2022, the charge will be set to recover 20 per cent of the total cost of these activities. From 1 January 2023, the charge will increase to cover 50 per cent of the total cost. From 1 January 2024 and ongoing, the charge will be set to recover the full cost of these regulatory activities. The actual amount of the charge for each provider will be determined each year based on the anticipated cost of TEQSA's regulatory activity for that year.

The charge will be imposed on all providers on TEQSA's national register at the start of that year. The amount of the charge payable by each registered provider will be determined in accordance with a formula set out in regulations made under section 9 of the Bill. The proposed approach to apportioning the charge will be set out in TEQSA's draft Cost Recovery Implementation Statement.

LIST OF ABBREVIATIONS

TEQSA Act	<i>Tertiary Education Quality and Standards Agency Act 2011</i>
Cost Recovery Bill	Tertiary Education Quality and Standards Agency Amendment (Cost Recovery) Bill 2021

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) Bill 2021

The Tertiary Education Quality and Standards Agency (Charges) Bill 2021 (Bill) 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 Bill

The purpose of the Bill is to establish a new registered higher education provider charge to recover all the costs of the Tertiary Education Quality and Standards Agency's (TEQSA) sector risk monitoring and regulatory oversight activities. These include: concern management and resolution; stakeholder communications and engagement; risk assessment; enquiries; business support; and guidance notes. These activities do not currently attract a charge.

The associated Tertiary Education Quality and Standards Agency Amendment (Cost Recovery) Bill 2021 (Cost Recovery Bill), amends the *Tertiary Education Quality and Standards Agency Act 2011* (TEQSA Act) to give TEQSA with the capacity to collect and administer the registered higher education provider charge.

The 2018–19 Budget included a measure providing additional resources and revised cost recovery arrangements for TEQSA. It provided additional resources of \$24.3 million over four years to strengthen the agency's regulatory oversight of the higher education sector, meet a significant increase in applications for registration from prospective providers, and protect Australia's reputation for high quality higher education. It also included a shift to increased cost recovery for TEQSA's regulatory activities.

TEQSA's fees for application-based activities are determined by a legislative instrument made by TEQSA under section 158 of the TEQSA Act. Those fees will increase from 1 January 2022 to reflect the Australian Government's decision to implement increased cost recovery for TEQSA's regulatory activities. The increased resources for TEQSA's other regulatory functions will be cost-recovered through the new registered higher education provider charge, developed in line with the Australian Government Charging Framework (available from www.finance.gov.au) and imposed by this Bill.

The Bill also authorises regulations to be made that:

- prescribe the amount, or the method for working out the amount, of the registered higher education provider charge (and, in doing so, may provide for indexation of the charge); and
- exempt a registered higher education provider (including a class of registered higher education provider) from paying the charge.

Prior to making such regulations, TEQSA will seek stakeholder feedback on a draft Cost Recovery Implementation Statement (available at www.tegsa.gov.au), consistent with *the Australian Government Cost Recovery Guidelines* (available from www.finance.gov.au). The

charge is designed to recover the costs of TEQSA's sector risk monitoring and other regulatory oversight activities that are not covered by application-based fees.

The new sector-wide charge will be phased in over three years commencing on 1 January 2022, when 20 per cent of these costs will be recovered; rising to 50 per cent of costs on 1 January 2023; and 100 per cent cost recovery from 1 January 2024.

The Bill engages the right to education – Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).

Analysis of human rights implications

Right to education

The Bill engages the right to education which is set out in Article 13 of the ICESCR. 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 Bill provides for the introduction of the new registered higher education provider charge which will ensure TEQSA's monitoring and compliance functions and in turn ensure that the high quality and reputation of Australia's higher education system is maintained.

Payment of the registered higher education provider charge by registered higher education providers will ensure TEQSA can carry out its regulatory and quality assurance roles in the higher education sector. There are more than 1.6 million students currently studying higher education in Australia and, prior to the pandemic, the annual economic benefit to Australia from higher education as an export was estimated to be over \$37 billion. The Bill engages and promotes the right to education because it supports TEQSA's role 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 who come from overseas to study.

The Bill is compatible with the right to education.

Conclusion

The Bill is compatible with human rights.

Tertiary Education Quality and Standards Agency (Charges) Bill 2021

NOTES ON CLAUSES

Clause 1 – Short title

Clause 1 provides for the Act to be the *Tertiary Education Quality and Standards Agency (Charges) Act 2021*.

Clause 2 – Commencement

The table in subclause 2(1) sets out the commencement information for the Act. It provides that the whole of the Act commences on 1 January 2022.

Subclause 2(2) provides that information in column 3 of the table at subclause 2(1) is not part of the Act and information may be inserted into column 3 or information in it may be edited in any published version of the Act.

Clause 3 – Crown to be bound

Clause 3 provides that the Act binds the Crown in each of its capacities. Amongst other things, this clause will ensure that, in keeping with the principles of competitive neutrality, higher education providers that are instrumentalities of the Crown in right of the Commonwealth or of a State or Territory are not excluded from paying the charge merely because they are instrumentalities of the Crown.

Clause 4 – Act does not impose tax on property of a State

Subclause 4(1) provides that the Act does not impose a tax on property of any kind belonging to a State and subclause 4(2) defines ***property of any kind belonging to a State*** as having the same meaning as in section 114 of the Constitution. That provision prohibits the Commonwealth imposing any tax on the property of any kind belong to a State.

Clause 5 – Definitions

Clause 5 provides definitions of the terms and expressions used in the Act, including the following:

property of any kind belonging to a State has the same meaning as in section 114 of the Constitution. That provision prohibits the Commonwealth imposing any tax on the property of any kind belong to a State.

registered higher education provider charge has the same meaning as in the TEQSA Act (i.e. a higher education provider registered under Part 3 of the TEQSA Act and listed on the National Register of Higher Education Providers established and maintained under section 198 of the TEQSA Act).

registered higher education provider charge means a charge imposed by section 6.

TEQSA means the Tertiary Education Quality and Standards Agency.

year means calendar year.

Clause 6 – Imposition of registered higher education provider charge

Clause 6 provides that a charge is imposed on a body, for a calendar year starting on or after the commencement of the Act, if the body is a registered higher education provider on the first day of that year – i.e. 1 January.

Clause 7 – Amount of registered higher education provider charge

Subclause 7(1) provides the amount of the registered higher education provider charge for a year is the amount (including a nil amount) prescribed by the regulations for that year; or worked out for that year in accordance with a method prescribed by the regulations.

Subclause 7(2) clarifies that the amount of the registered higher education provider charge determined in accordance with the regulations may be made up of more than one component, with the charge being the sum of those components.

Subclause 7(3) provides that before the Governor-General makes regulations for the purposes of subclause 7(1), the Minister must be satisfied that the effect of those regulations will be to recover no more than the Commonwealth's likely costs in connection with the administration of the TEQSA Act. While the amount of the charge is not set in primary legislation, this provision ensures that the amount of the charge set in the regulations, which will be subject to disallowance, must not be more than the Commonwealth's likely costs, which will provide a limit on how much the charge can be.

A note after subclause 7(3) provides that TEQSA's functions are set out in section 134 of the TEQSA Act and those functions include functions under other Commonwealth laws such as the *Education Services for Overseas Students Act 2000*.

Subclause 7(4) provides that for the purposes of subclause 7(3), any costs that are likely to be offset by fees determined by TEQSA under section 158 of the TEQSA Act, or an annual registration charge or entry to market charge imposed under the *Education Services for Overseas Students (Registration Charges) Act 1997* are to be disregarded.

This provision will ensure that the amounts collected by the Commonwealth under the regulations have not been collected by the Commonwealth through other measures.

Subclause 7(5) allows the regulations to provide for indexation of amounts specified in the regulations.

The approach of setting the amount of the charge for a year in a legislative instrument provides flexibility to ensure that the Commonwealth recovers the likely costs of administering the TEQSA Act, and only that amount, as the cost of administration increases or decreases.

Prior to such regulations being made, a fees schedule will be determined by TEQSA that is consistent with the *Australian Government Cost Recovery Guidelines* and documented in a Cost Recovery Implementation Statement.

Clause 8 – Exemptions from registered higher education provider charge

Clause 8 enables the regulations to provide for exemptions from having to pay the registered higher education provider charge.

Clause 9 – Regulations

Clause 9 provides that the Governor-General may 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.