

EXPLANATORY STATEMENT

Education Services for Overseas Students (Registration Charges) Act 1997

Education Services for Overseas Students (Registration Charges) Amendment (COVID-19 Exemptions) Regulations 2020

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 that are required or permitted by the Act to be prescribed, or are 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.

Legislative background

The Act imposes charges on providers of education services to overseas students in Australia on a student visa that are registered under the *Education Services for Overseas Students Act 2000* (the ESOS Act) as providers on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS).

The charges imposed include an annual registration charge payable by all providers who are registered on 1 January of each year and three entry to market charges imposed on providers in each of their first three years of operation. The amount of the annual registration charge for each year is calculated in accordance with section 5 of the Act, and the amount of each entry to market charge is calculated in accordance with section 6 of the Act. These amounts are indexed each year under section 7 of the Act.

Subparagraph 5(7)(c)(i) of the Act provides that the regulations may prescribe one or more classes of providers who are exempt from the requirement to pay the full amount of the annual registration charge. Subsection 6(9) of the Act provides that the regulations may prescribe one or more classes of provider that are exempt from the requirement to pay the entry to market charges.

The *Education Services for Overseas Students (Registration Charges) Regulations 2011* (the Principal Regulations) prescribe the classes of providers that are currently exempt from the requirement to pay the annual registration charge and the entry to market charges.

Purpose and operation

The *Education Services for Overseas Students (Registration Charges) Amendment (COVID-19 Exemptions) Regulations 2020* (the Amendment Regulations) amend the Principal Regulations to:

- exempt all new and existing CRICOS registered providers from the requirement to pay the 2021 annual registration charge; and
- exempt all new and existing CRICOS registered providers from the requirement to pay the entry to market charges from 12 April 2020 until 30 June 2021.

These exemptions apply in addition to the existing exemptions in the Principal Regulations.

The Amendment Regulations give effect to the Government decision, announced as part of the Higher Education Relief Package on 12 April 2020, to provide refunds and waive or exempt the majority of registration charges imposed on providers by education regulators relating to the period from 1 January 2020 to 30 June 2021. This measure is designed to reduce the regulatory and cost burden on education providers during the COVID-19 pandemic.

Commencement

The exemption from the requirement to pay the entry to market charges commences retrospectively on 12 April 2020. The retrospective commencement of this aspect of the Amendment Regulations is not affected by section 12(2) of the *Legislation Act 2003*, because the regulations do not have a relevant negative impact on a person by affecting the person's rights so as to relevantly disadvantage them, or by imposing liabilities on the person in respect of anything done or omitted to be done before the draft regulations are registered i.e. the changes are beneficial to providers.

The exemption from the requirement to pay the 2021 annual registration charge commences the day after the Amendment Regulations are registered on the Federal Register of Legislation.

The Schedule of the Amendment Regulations which repeals the exemptions for the annual registration charge and entry to market charges commences on 1 July 2021.

Consultation

The following key stakeholders have been consulted on the Amendment Regulations:

- the Australian Skills Quality Authority (ASQA) as the National Vocational Education and Training Regulator and ESOS agency for registered VET providers for the purposes of the ESOS Act; and
- the Tertiary Education Quality and Standards Agency (TEQSA) as the ESOS agency for registered higher education providers for the purposes of the ESOS Act.

The above stakeholders have indicated their support for the Amendment Regulations. Stakeholder consultation on a draft of the Amendment Regulations was also undertaken from 3 to 11 June 2020. This included eight international education sector peak bodies and state and territory Designated State Authorities, which were consulted directly. All responding stakeholders expressed support for the Amendment Regulations.

The Government has welcomed the sector's feedback and will monitor outcomes of the change as it considers further responses to the COVID-19 pandemic.

Detailed explanation of the *Education Services for Overseas Students (Registration Charges) Amendment (COVID-19 Exemptions) Regulations 2020*

Section 1 - Name

This section provides that the title of the Amendment Regulations is the *Education Services for Overseas Students (Registration Charges) Amendment (COVID-19 Exemptions) Regulations 2020*.

Section 2 – Commencement

The table in this section provides for the commencement of the provisions of the Amendment Regulations as follows:

- Sections 1 to 4 and anything in the Amendment Regulations not elsewhere covered by the table commence retrospectively on 12 April 2020;
- Part 1 of Schedule 1 commences retrospectively on 12 April 2020;
- Part 2 of Schedule 1 commences the day after the Amendment Regulations are registered on the Federal Register of Legislation; and
- Part 3 of Schedule 1 commences on 1 July 2021.

Section 3 – Authority

This section provides that the Amendment Regulations are made under the *Education Services for Overseas Students (Registration Charges) Act 1997* (the Act).

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to the Amendment Regulations is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Amendment Regulations has effect according to its terms.

Schedule 1 – Amendments

Part 1 of the Amendment Regulations commences on 12 April 2020. The effect of Part 1 is to divide the Principal Regulations into parts and to include a new exemption from the requirement to pay the entry to market charges.

Item 1 inserts the heading 'Part 1—Preliminary' into the Principal Regulations before existing regulation 1.

Item 2 repeals regulation 4 of the Principal Regulations and replaces it with a new:

- heading for new Part 2 of the Principal Regulations titled 'Part 2— Matters relating to charges imposed from the 2012 calendar year'; and

- regulation 4 which provides that new Part 2 of the Principal Regulations applies to charges imposed by the Act for 2012 and all later calendar years. New regulation 4 has substantially the same effect as existing regulation 4 of the Principal Regulations.

Regulations 5, 6 and 7 of the Principal Regulations, which specify existing exemptions from the requirement to pay the annual registration charge and the entry to market charges, and the requirement for certain providers to pay a lower dollar amount of the annual registration charge, are unaffected by the changes in item 2.

Item 3 inserts the following after regulation 7 in the Principal Regulations, a new:

- heading for new Part 3 of the Principal Regulations titled ‘Part 3—Exemption from entry to market charges imposed from 12 April 2020 to 30 June 2021’; and
- regulation 8 which provides that, for the purposes of subsection 6(9) of the Act, the class of providers made up of all providers (other than providers that are already exempt from the requirement to pay the entry to market charges under regulation 7) is prescribed for the entry to market charges imposed during the period commencing 12 April 2020 and ending on 30 June 2021. That is, all providers are prescribed as exempt from the requirement to pay the entry to market charges for the specified period.

Part 2 of the Amendment Regulations commences the day after the Amendment Regulations are registered on the Federal Register of Legislation.

Item 4 amends regulation 7 to delete the words ‘subsection 6(4)’ and replace them with ‘subsection 6(9)’. This amendment rectifies a referencing error in the Principal Regulations.

Item 5 inserts the following after new Part 3 of the Principal Regulations, a new:

- heading for new Part 4 of the Principal Regulations titled ‘Part 4—Exemption from annual registration charges imposed in the 2021 calendar year’; and
- regulation 9 which provides that for the purposes of subparagraph 5(7)(c)(i) of the Act, the class of providers made up of all registered providers on 1 January 2021 is prescribed for 2021 and all later calendar years. That is, all providers (who are registered on 1 January 2021) are prescribed as exempt from the requirement to pay the annual registration charge for 2021.

Part 3 of the Amendment Regulations commences on 1 July 2021.

Item 6 provides that new Parts 3 and 4 of the Principal Regulations are repealed effective from 1 July 2021.

This means that the exemption from the requirement to pay the entry to market charges in item 3 of the Amendment Regulations, and the exemption from the requirement to pay the 2021 annual registration charge in item 5 of the Amendment Regulations, end on 30 June 2021.

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) Amendment (COVID-19 Exemptions) Regulations 2020

This Legislative 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

The *Education Services for Overseas Students (Registration Charges) Amendment (COVID-19 Exemptions) Regulations 2020* (the Amendment Regulations) amend the *Education Services for Overseas Students (Registration Charges) Regulations 2011* (the Principal Regulations) to exempt all new and existing providers, that are registered under the *Education Services for Overseas Students Act 2000* (the ESOS Act) as providers on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS), from the requirement to pay the 2021 annual registration charge imposed under the *Education Services for Overseas Students (Registration Charges) Act 1997* (the Act), and the requirement to pay entry to market charges imposed under the Act from 12 April 2020 until 30 June 2021.

Human rights implications

The Amendment Regulations engage the following human 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).

Right to education

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*”.

Similarly, Article 28(1) of the UNCRC recognises the “*right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity*”.

The ESOS Act, the Act and the Principal Regulations provide the regulatory framework under which education providers can be registered as providers of CRICOS courses to overseas students. This framework protects the integrity of Australia's international education sector by ensuring that CRICOS registered providers have an appropriate level of Australian Government regulation and oversight.

The Amendment Regulations 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. A strong international education sector, which includes appropriate protections for overseas students and appropriate conditions for education providers, allows Australia to promote the right to education, especially to overseas students, including children studying in primary and secondary school.

The Amendment Regulations are compatible with the right to education.

Conclusion

The Amendment Regulations are compatible with human rights because the measures advance the protection of human rights.

Dan Tehan
Minister for Education