

EXPLANATORY STATEMENT

Issued by the authority of the Hon Alan Tudge MP, Minister for Education and Youth

Education Services for Overseas Students (Registration Charges) Act 1997

Education Services for Overseas Students (Registration Charges) Amendment (Exemptions from Entry to Market Charges) Regulations 2021

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 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. These amendments are made in reliance on this power.

LEGISLATIVE BACKGROUND

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

The charges include entry to market charges imposed on providers in each of their first three years of operation. The amount of each entry to market charge is calculated in accordance with section 6 of the Act and is indexed each year under section 7 of the Act.

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 entry to market charges. In response to the COVID-19 pandemic, amendments were made in July 2020 to exempt providers from entry to market charges imposed during the period commencing 12 April 2020 and ending on 30 June 2021.

PURPOSE AND OPERATION

The *Education Services for Overseas Students (Registration Charges) Amendment (Exemptions from Entry to Market Charges) Regulations 2021* (the Amendment Regulations) amend the Principal Regulations to extend the existing exemption to exempt all CRICOS registered providers from the requirement to pay the entry to market charges from 1 July 2021 until 31 December 2021.

The Amendment Regulations give effect to a Government decision announced on 30 April 2021 as part of the International Education Support measure in the 2021-22 Budget. The measure exempts providers registered on CRICOS from the requirement to pay entry to market charges (EMC). This measure is designed to further reduce the regulatory and cost burden on education providers during the COVID-19 pandemic.

This amendment extends the current EMC exemption period (beginning 12 April 2020 and ending on 30 June 2021) for six months, now ending on 31 December 2021, inclusive.

REGULATORY IMPACT

The Office of Best Practice Regulation (OBPR) has assessed this as having a minor regulatory impact (OBPR ID: 43871). The Regulatory Impact Statement is at Attachment A.

COMMENCEMENT

These amendments commence on 1 July 2021.

CONSULTATION

The following key stakeholders were consulted on EMC exemptions:

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

The above stakeholders and eight international education sector peak bodies and state and territory Designated State Authorities indicated their support for regulatory fee exemptions in June 2020. These new Amendment Regulations continue the exemption period for an additional six months.

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 (Exemptions from Entry to Market Charges) Regulations 2021

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 Bills

The *Education Services for Overseas Students (Registration Charges) Amendment (Exemptions from Entry to Market Charges) Regulations 2021* (the Amendment Regulations) amend the *Education Services for Overseas Students (Registration Charges) Regulations 2011* (the Principal Regulations). The Amendment Regulations 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 entry to market charges imposed under the *Education Services for Overseas Students (Registration Charges) Act 1997* (the Act) from 1 July 2021 until 31 December 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.

Alan Tudge

Minister for Education and Youth

***Education Services for Overseas Students (Registration Charges) Amendment
(Exemptions from Entry to Market Charges) Regulations 2021***

EXPLANATION OF PROVISIONS

Section 1: Name

This section provides that the title of the Amendment Regulations is the *Education Services for Overseas Students (Registration Charges) Amendment (Exemptions from Entry to Market Charges) Regulations 2021*.

Section 2: Commencement

The table in this section provides that the Amendment Regulations will commence immediately after Part 3 of Schedule 1 to the *Education Services for Overseas Students (Registration Charges) Amendment (COVID-19 Exemptions) Regulations 2020* (COVID-19 Exemption Regulations) commences.

Item 3 of Part 1 of Schedule 1 of the COVID-19 Exemption Regulations provides an exemption from entry to market charges for the period commencing 12 April 2020 and ending on 30 June 2021. Part 3 of Schedule 1 repeals this part, commencing on 1 July 2021.

The commencement provisions will operate so that the exemption from entry to market charges in the Amendment Regulations, for the period commencing 1 July 2021 and ending on 31 December 2021, will commence immediately after the exemption for the previous period is repealed. This will effectively extend the current exemption for a further 6 months.

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 simply clarifies that the Schedule is effective to make amendments on the terms set out in the Schedule.

Schedule 1 – Amendments

Item 1 inserts the following after regulation 7 in the Principal Regulations:

- A new heading for Part 3 of the Principal Regulations titled ‘Part 3—Exemption from entry to market charges imposed from 1 July 2021 to 31 December 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 1 July 2021 and ending on 31 December 2021. That is, all providers are prescribed as exempt from the requirement to pay the entry to market charges for the specified period.

Regulation Impact Statement

Name of department/agency: Department of Education, Skills and Employment

OBPR Reference Number: 43871

Name of proposal: Support for Australia's International Education Sector

Summary of the proposed policy and any options considered:

Border closures have affected the international education sector by limiting prospective international students from travelling to Australia and enrolling in Australian institutions. The measures in the NPP aim to deliver support to the international education sector, particularly targeting private education providers most exposed to the sharp declines in international student enrolments.

The Government has significantly invested in Australia's education systems with measures to encourage displaced workers to reskill, upskill or retrain, such as the Job-ready Graduates Package (sees Government funding grow by around \$2 billion by 2024), the JobTrainer Fund (\$500 million funding matched by states and territories in 2020-21). While this investment provides incentives for some (mostly public) international education providers to pivot to domestic delivery, private providers have less access to government funds than their public counterparts and require assistance to target new markets or refocus their education delivery models.

Regulatory fee relief extension

The extension of waivers for the costs and fees of registration under the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS), the Tertiary Education Quality and Standards Agency (TEQSA) and the Australian Skills Quality Authority (ASQA) aims to provide direct financial relief for education providers, particularly private providers most affected by border closures.

What are the regulatory impacts associated with this proposal? Explain.

Regulatory fee relief extension

This is an extension of an existing COVID-19-related industry support measure and will reduce administrative and compliance costs for providers. The extension will be welcomed by the sector.

There will be a regulatory saving for businesses as they will not be required to pay the normal regulatory fees that apply to activities such as higher education provider re-registration and course accreditation and re-accreditation. New applicants for registration as a higher education provider or

registered training organisation will still be required to pay applicable fees. This will maintain the integrity of the regulator's approach to new provider registration and discourage the emergence of frivolous or poor-quality applicants as an unintended consequence.

What are the regulatory costs/savings associated with this proposal? Explain and quantify.

Regulatory fee relief extension

There are no regulatory costs associated with the fee relief extension proposal. The fee relief component will cost the Government an estimated \$17.7 million in foregone fees and charges. The CRICOS fee relief component will cost an estimated \$0.6 million in foregone fees and charges. The ASQA fee relief component will cost an estimated \$14.8 million in foregone fees and charges. The TEQSA fee relief component will cost an estimated \$2.4 million in foregone fees and charges.