**EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Education

**Tertiary Education Quality and Standards Agency (Charges) Regulations 2022**

## 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.

## Legislative background

Section 6 the Act imposes a ‘registered higher education provider 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 may prescribe the amount of the higher education provider charge for that year or prescribe a method to work out the amount of higher education provider charge for that year.

## Purpose and operation

The purpose of the *Tertiary Education Quality and Standards Agency (Charges) Regulations 2022* (the Regulations) is to prescribe a method for working out the amount of the registered higher education provider charge for a year for a registered higher education provider.

Section 26C of the TEQSA Act imposes a condition on the registration of all registered higher education providers that requires them to pay the registered higher education provider charge. The registered higher education provider charge is designed to recover the costs of the Tertiary Education Quality and Standards Agency’s (TEQSA) sector risk monitoring and regulatory oversight activities. The charge will complement other changes, including updated fees for applications, set out in the Cost Recovery Implementation Statement (CRIS) published by TEQSA. The CRIS, drafted following a 2018–19 Government decision to implement revised cost recovery arrangements for TEQSA, sets out how TEQSA will implement the transition from 15 to 90 per cent cost recovery for its regulatory and quality assurance services and activity from 1 January 2023.

The method for calculating the registered higher education charge set out in the Regulations reflects the information set out in Part 4 of CRIS. The registered higher education provider charge is payable in addition to the application-based fees paid by higher education providers to cover activities such as provider registration and course accreditation.

The Regulations specify that the registered higher education provider charge consists of two components:

1. the base component of the charge, that all registered higher education providers will have to pay annually, covers costs associated with TEQSA’s non-application-based regulatory activities, such as risk monitoring and sector oversight. The costs covered by the base component of the charge are those where the regulatory effort involved cannot be attributed to a particular provider; and
2. the compliance component of the charge. For some registered higher education providers, the compliance component of the registered higher education provider charge for a particular year will be nil. This is because the method set out in the regulations for the calculation of this component sets out amounts a provider will have to pay where the provider has conditions imposed on its registration or the accreditation of a course, where TEQSA conducts a compliance assessment or investigation in relation to the provider, or where the provider has given a compliance undertaking to TEQSA.

The base component of the registered higher education provider charge will be applicable to all higher education providers that are included in the National Register of Higher Education Providers on 1 January each calendar year. The amount of the base component of the registered higher education provider charge for each provider will be recalculated each calendar year as the numbers of students and registered providers change and to reflect the most up to date cost estimates TEQSA has for each element contributing to the charge.

The base component of the registered higher education provider charge will be phased in over three years. In 2023, the base component of the registered higher education provider charge will be 20 per cent of the amount calculated in accordance with the formula set out in the Regulations. In 2024, the base component of the registered higher education provider charge will be 50 per cent of the amount calculated in accordance with the formula set out in the Regulations and, in 2025, providers will pay the full amount of the base component.

The compliance component of the registered higher education provider charge covers costs associated with regulatory effort that can clearly be attributed to a particular provider. This includes the regulatory effort associated with monitoring compliance with conditions, monitoring compliance with compliance undertakings and the regulatory effort associated with undertaking compliance assessments and investigations.

The compliance component of the registered higher education provider charge will commence on 1 January 2023 and will not be subject to any phase-in period.

## Regulatory impact

The Office of Best Practice Regulation (OBPR) has assessed TEQSA’s cost recovery arrangements as having minor regulatory impact (OBPR ID: 23377).

## Commencement

This instrument commences on the day after the instrument is registered.

## Consultation

TEQSA undertook public consultation on its revised cost recovery arrangements with higher education sector stakeholders in 2021. TEQSA received 39 stakeholder submissions through the consultation process, including from peak bodies and individual higher education providers. TEQSA incorporated feedback received from the consultation process in finalising its CRIS.

## 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) Regulations 2022

The Tertiary Education Quality and Standards Agency (Charges) Regulations 2022 (the Regulations) are 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’ 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 registered higher education provider charge or the method for calculating the charge.

The Regulations set out the method for calculating the registered higher education provider charge for each registered higher education provider. The registered higher education provider charge consists of two components:

1. the base component of the charge, that all registered higher education providers will have to pay annually to cover costs associated with Tertiary Education Quality and Standards Agency’s (TEQSA) non-application-based regulatory activities, such as risk monitoring and sector oversight. The costs covered by the base component of the charge are those where the regulatory effort involved cannot be attributed to a particular provider; and
2. the compliance component of the charge. For some registered higher education providers, the compliance component of the registered higher education provider charge for a particular year will be nil. This is because the method set out in the Regulations for the calculation of this component sets out amounts a provider will have to pay where the provider has conditions imposed on its registration or the accreditation of a course, where TEQSA conducts a compliance assessment or investigation in relation to the provider, or where the provider has given a compliance undertaking to TEQSA.

**Human rights implications**

*Right to education*

The Regulations engage 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 Regulations provide for the introduction of a registered higher education provider charge which will recover the costs of TEQSA’s monitoring and compliance functions and, in turn, maintain high quality and reputation of Australia’s higher education system.

Payment of these charges by registered higher education providers will contribute to the Australian Government’s consolidated revenue fund. The contributions to this fund will 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 currently required to pay a fee in relation to certain applications they initiate 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 registered higher education provider charges will 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 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 Regulations engage and promote the right to education because it supports 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 Regulations are compatible with the right to education.

**Conclusion**

The Regulations are 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) Regulations 2022**

## EXPLANATION OF PROVISIONS

Section 1: Name

1. This section specifies the name of the instrument as the *Tertiary Education Quality and Standards Agency (Charges) Regulations 2022* (the Regulations).

Section 2: Commencement

1. This section specifies that the Regulations will commence on the day after the instrument is registered.

Section 3: Authority

1. This section provides that Regulations are made under the *Tertiary Education Quality and Standards Agency (Charges) Act 2021* (the Act).

Section 4 - Definitions

1. This section of the Regulations sets out definitions for the purpose of the Regulations.

Section 5 – Amount of charge

1. This section prescribes the formula for calculating the amount of the registered higher education provider charge for a year for each registered higher education provider. Subsection 5(1) provides that the total amount of the registered higher education provider charge for each year commencing after 1 January 2022 is the sum of two components, the base component and the compliance component (if any).
2. Subsection 5(2) provides the formula for calculating the base component of the registered higher education provider charge. There are two parts to the formula which, when added together, are the base component of the registered higher education provider charge. The base component will recover TEQSA’s costs in relation to six areas of regulatory activity:
3. Concerns and complaints
4. Communications and engagement
5. Risk Assessment
6. General Enquiries
7. Corporate Support
8. Guidance and education standards
9. The first part of the formula set out in subsection 5(2) distributes the total costs for activities(ii) – (vi) listed above, $5,304,000, evenly across all higher education providers that are registered higher education providers on 1 January of the relevant year. The formula does this by dividing the costs, $5,304,000, by the total number of registered providers. The first part of the formula is drafted in this manner because the regulatory effort and costs associated with these regulatory activities cannot be attributed to particular providers.
10. The second part of the formula set out in subsection 5(2) distributes the total costs of activity (i) above (Concerns and Complaints), $206,000, among registered higher education providers based on each provider’s share of total equivalent full-time students. The formula does this by dividing the costs, $206,000, by the total number of equivalent full-time students and then multiplying that number by the particular provider’s number of equivalent full-time students.
11. The second part of the formula is drafted in this manner because the regulatory effort TEQSA expends in relation to each registered higher education provider for ‘Concerns and Complaints’ differs between providers depending on the number of students enrolled with the provider.
12. Subsection 5(2) explains that the term ‘number of providers’ means the number of registered higher education providers at the start of the year for which the charge is being calculated.
13. Subsection 5(2) explains that the term ‘provider’s equivalent full-time students’ means the total number of students enrolled, on an equivalent full-time basis, in each accredited course provided by the relevant higher education provider in the year that is 2 years before the year in which the charge is being calculated. Subsection 5(2) similarly explains that term ‘total equivalent full-time students’ means the total number of students enrolled, on an equivalent full-time basis, in each accredited course provided by each registered higher education provider in the year that is 2 years before the year in which the charge is being calculated. These terms refer to data from 2 years prior to the year in which the charge is being calculated as this will be the most recent academic year for which data is available at the time when the registered higher education provider charge is being calculated.
14. Subsection 5(3) provides how the number of students enrolled on a full-time equivalent basis must be calculated for the purposes of subsection (5)2. Subsection 5(3) explains that each student that has a full-time study load for the course and the year should be counted as one student and that any student with less or more than a full-time study load should be counted as a fraction of a student. The example set out under subsection 5(3) explains that if a part‑time student is enrolled in 4 units of study as part of that course where a full-time student would be enrolled in 8 units, that student is counted as half of 1 student. If another student is enrolled in 10 units of study as part of that course, that student is counted as 1 and a quarter of 1 student.
15. Subsection 5(4) provides a formula for calculating the compliance component of registered higher education provider charge. The subsection provides that the compliance component of the registered higher education provider charge for a provider will be the sum of the fixed charges set out in paragraphs 5(4)(a) to (f).
16. Paragraph 5(4)(a) provides that the compliance component of the registered higher education provider charge will include $36,000 for each compliance assessment TEQSA decided to commence in the previous year under section 59 TEQSA Act to assess whether the registered higher education provider continued to meet the Threshold Standards.
17. Paragraph 5(4)(b) provides that the compliance component of the registered higher education provider charge will include $36,000 for each accreditation assessment TEQSA decided to commence in the previous year under section 61 TEQSA Act to assess whether the accredited course continues to meet the Threshold Standards.
18. Paragraph 5(4)(c) provides that the compliance component of the registered higher education provider charge will include $8,375 for each condition, imposed under subsection 32(1) of the TEQSA Act, subsection 10B(1) or subsection 83(3) of the ESOS Act, that applied to the registered higher education provider’s registration at any time during the previous year.
19. Paragraph 5(4)(d) provides that the compliance component of the registered higher education provider charge will include $3,350 for each condition, imposed under s 53 of the TEQSA Act, that applied to the accreditation of a course of study at any time during the previous year.
20. Paragraph 5(4)(e) provides that the compliance component of the registered higher education provider charge will include $1,675 for each compliance undertaking that was in force at any time during the previous year.
21. Paragraph 5(4)(f) provides that if, at any time in the previous year, TEQSA conducted an investigation in relation to a matter that constitutes or may constitute a contravention of an offence or civil penalty provision by a registered higher education provider, the compliance component of the registered higher education provider charge will include $165 for each hour members of the staff of TEQSA spend conducting the investigation in the previous year.
22. Any decision to commence an investigation will be made in light of the principles of procedural fairness and in line with the basic principles of regulation set out in Part 2 of the TEQSA Act. A decision to commence an investigation, and the conduct of that investigation, will be overseen by the TEQSA Commissioners.
23. Subsection 5(5) provides that a registered higher education provider will not need to pay the $165 per hour amount set out in subsection 5(4)(f) in relation to staff made available to TEQSA under section 157 of the TEQSA Act unless there is an arrangement for the Commonwealth to reimburse the relevant State or Territory with respect to the services of those staff.

**Section 6 - Transitional provision—base component of charge in 2022, 2023 and 2024**

1. This section provides that the base component of the registered higher education provider charge will be $0 in 2022 and will be phased-in during 2023 and 2024.
2. Paragraph 6(a) provides that in 2022, the base component of the registered higher education provider charge will be 0 per cent of the amount calculated in accordance with the formula set out subsection 5(2).
3. Paragraph 6(b) provides for a phased implementation of the base component of the registered higher education provider charge. In 2023, registered higher education providers will be charged at 20 per cent of the amount calculated in accordance with the formula set out subsection 5(2). Paragraph 6(c) provides that in 2024, registered higher education providers will be charged at 50 per cent of the amount calculated in accordance with the formula set out in subsection 5(2).

**Section 7 - Application provision—compliance component of charge**

1. This section provides when charging for each of the compliance related regulated activities will start applying.
2. Subsection 7(1) provides that paragraphs 5(4)(a) and (b) of the formula for calculating the compliance component of the registered higher education provider charge only apply to assessments conducted under sections 59 and 61 of the TEQSA Act that are commenced on or after 1 January 2023.
3. Subsection 7(2) provides that paragraphs 5(4)(c) and (d) of the formula for calculating the compliance component of the registered higher education provider charge only apply to conditions imposed on a registered higher education provider’s registration or on the accreditation of a course of study where those conditions are in force on after 1 January 2023. The date on when the condition was originally imposed on a provider’s registration, or the accreditation of a course, is irrelevant to whether paragraphs 5(4)(c) and (d) apply.
4. Subsection 7(3) provides that paragraph 5(4)(e) of the formula for calculating the compliance component of the registered higher education provider charge only applies to a compliance undertaking if the undertaking is in force on or after 1 January 2023. The date on which the compliance undertaking was originally accepted by TEQSA is irrelevant to whether paragraph 5(4)(e) applies.
5. Subsection 7(4) provides that paragraph 5(4)(f) of the formula for calculating the compliance component of the registered higher education provider charge only applies to investigations commenced on or after 1 January 2023.