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HOUSE OF REPRESENTATIVES

**EDUCATION SERVICES FOR OVERSEAS STUDENTS (REGISTRATION
CHARGES) AMENDMENT BILL 2011**

**EDUCATION SERVICES FOR OVERSEAS STUDENTS AMENDMENT
(REGISTRATION CHARGES CONSEQUENTIALS) BILL 2011**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Tertiary Education, Skills, Jobs and
Workplace Relations, Senator the Honourable Chris Evans)

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OUTLINE

The *Education Services for Overseas Students (Registration Charges) Act 1997* (the ESOS Charges Act) operates in conjunction with *the Education Services for Overseas Students Act 2000* (the ESOS Act) with the aim of:

- ensuring only courses and providers of those courses registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) may offer or provide courses to students on student visas;
- ensuring that international students in Australia receive the education and training for which they have paid;
- protecting the reputation and integrity of Australia's education and training export industry; and
- strengthening public confidence in the integrity of the student visa program.

The Commonwealth recovers the costs of administering the ESOS Act through compulsory registration fees charged to all providers wishing to be registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS), which allows them to offer courses to overseas students.

The purpose of the Education Services for Overseas Students (Registration Charges) Amendment Bill 2011 and the Education Services for Overseas Students Amendment (Registration Charges Consequential) Bill 2011 (the Bills) is to make amendments to the ESOS Charges Act and the ESOS Act to provide for recommendations arising from the review of the Education Services for Overseas Students legislative framework, dated February 2010, titled *Stronger, simpler, smarter ESOS: supporting international students* (the ESOS Review) conducted by the Hon Bruce Baird AM.

Key recommendations of the ESOS Review were, *inter alia*, for regulators to adopt a risk assessment and management approach to the registration and ongoing monitoring of education providers delivering courses to international students, including the costs to apply at registration and through the period of registration; and that ESOS be made stronger by ensuring resourcing levels for regulatory activities are adequate.

The Bills creates a new fee structure to replace the current charging structure for the compulsory annual registration charge payable by all CRICOS registered providers. The new base fee, the compliance history fee, charge per student enrolment and charge per registered course is designed to cover the administrative costs of the

registration process and reflect the size of any associated supervision, compliance or enforcement activity needed to ensure that only reputable providers are permitted to operate.

The Bills also introduces an entry to market charge payable for the first three years of registration which will replace the current initial registration charge. The entry to market charge is designed to recoup the additional costs associated with new applications for registration and the additional supervision required by institutions with a shorter history of registration.

FINANCIAL IMPACT

The Bills will have the following impact on the fiscal balance as registration charges are collected from international education providers on a cost recovery basis. The financial implications for the Commonwealth outlined below are appropriated back to the department to administer the ESOS Act.

11/12	12/13	13/14	14/15
\$6.5m	\$6.6m	\$6.5m	\$6.6m

NOTES ON CLAUSES

For ease of description, this explanatory memorandum uses the following abbreviations:

‘CRICOS’ means the Commonwealth Register of Institutions and Courses for Overseas Students as provided under section 10 of the *Education Services for Overseas Students Act 2000*

‘the Amendment Act’ means the *Education Services for Overseas Students (Registration Charges) Amendment Act 2011*;

‘the Amendment Bill’ means the Education Services for Overseas Students (Registration Charges) Amendment Bill 2011.

‘the Consequentials Bill’ means the Education Services for Overseas Students Amendment (Registration Charges Consequentials) Bill 2011

‘the ESOS Act’ means the *Education Services for Overseas Students Act 2000*

‘the ESOS Charges Act’ means the *Education Services for Overseas Students (Registration Charges) Act 1997*

**Education Services for Overseas Students
(Registration Charges) Amendment Bill 2011**

Clause 1 - Short title

Provides for the Act to be cited as the *Education Services for Overseas Students (Registration Charges) Amendment Act 2011*.

Clause 2 - Commencement

This clause inserts a three column table setting out commencement information for various provisions of the Act. Each provision of the Act specified in column 1 of the table commences (or is taken to have commenced) in accordance with column 2 of the table and any other statement in column 2 has effect according to its terms.

Table item 1 provides that sections 1 to 3 and any other provisions of the Act not otherwise covered by the table to commence on Royal Assent.

Table item 2 provides that that Schedule 1 commences on a single day to be proclaimed, or if any of the provisions do not commence within 6 months from Royal Assent, they commence on the day after that 6 month period expires.

A note makes it clear that these commencement times will not be amended by any later amendments of the Act.

Clause 3 - Schedule(s)

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

Schedule 1—Amendments

Education Services for Overseas Students (Registration Charges) Act 1997

Rebased annual registration charge

Items 1 and 6 amend the ESOS Charges Act to revise respectively, the annual registration charge (under section 5 of the ESOS Charges Act) and the initial registration charge (under section 6 of the ESOS Charges Act).

Section 5 provides for the annual registration charge. Subsection 5(1) provides that all providers who are registered on 1 January of a year must pay the annual registration charge for the year. Subsection 5(2) sets out the basis for calculation of the annual registration charge. Section 6 sets out the initial registration charge payable by all bodies seeking their first CRICOS registration under the ESOS Act.

Item 1 repeals and substitutes subsection 5(2) of the ESOS Charges Act to provide a revised formula for calculation of the annual registration charge. Item 2 makes a technical amendment for the purpose of Item 1.

Under this amendment, the annual registration charge is calculated by adding together four components. The first component is a flat fee in the amount of \$1,300 which will be payable by all providers except by government and non-government schools that wish to maintain a CRICOS registration but do not have any enrolled overseas students. The second component is calculated by multiplying \$10 by a provider's 'total enrolments' (as determined under subsections 5(3) and (4) of the ESOS Charges Act) for the previous year. The third component is calculated by multiplying \$100 by the provider's total number of courses registered on 1 January of the year in which the annual registration charge is to be paid. The fourth component, in the amount of \$1,000, is only payable by a provider against whom the Minister has imposed sanctions for non-compliance under section 83 of the ESOS Act.

Item 3 amends the mechanism for determining the quantum of 'total enrolments' under subsection 5(3) of the ESOS Charges Act. Subsection 5(3) provides that 'total enrolments' for a provider in a year is calculated by adding together the number of enrolments of overseas student for each course provided by the provider in the year. Under this amendment, each student who is enrolled in a course of 13 weeks or more, but less than 26 weeks duration at any time during the years shall count as 0.5 of an enrolment; and each student who is enrolled in a course of less than 13 weeks duration at any time during the year shall count as 0.25 of an enrolment.

Items 4 and 5 provide a mechanism for varying the amount of the annual registration charge for those providers who represent a lower risk of defaulting on their obligations. Currently section 5A of the ESOS Charges Act allows the annual registration charge to be varied by a written instrument made by the Governor General for which the Parliament must have passed a resolution approving the instrument. Under these amendments, Items 4 and 5 repeal section 5A and, instead, provide a regulation-making power to allow the imposition of the annual registration charge to be varied for different classes of providers on the basis of their

risk profile. Under this proposal the regulations may exempt certain classes of providers from the requirement to pay all components of the annual registration charge, and/or to prescribe a lesser amount of the annual registration charge to be paid by certain classes of providers.

New entry to market charge

As part of the broader rebasing of the annual registration charge, Item 6 substitutes the initial registration charge with the entry to market charge. The entry to market charge will be generally imposed on those providers seeking their first registration, and on those providers whose registration has been cancelled or, in some cases, expired. The entry to market charge will be payable annually by registered providers in each of their first three years of registration. Currently, before becoming registered, a provider must pay the initial registration charge. Under this proposal, a provider will pay: \$7,500 at the time the provider first becomes registered; \$5,000 on the first anniversary of the day on which the provider was registered; and \$2,500 on the second anniversary of the day on which the provider was registered.

Item 6 also provides a regulation making power to exempt those providers from the requirement to pay the entry to market charge. Those providers to be exempted would be publicly-funded providers who present a significantly lower risk of defaulting on their obligations under the ESOS Act such as publicly funded providers (ie, Table-A providers under the *Higher Education Support Act 2003* and, TAFEs), and government schools. The rationale for the exemption from the entry to market payment is based on the evidence that the likelihood of publicly-funded institutions closing or defaulting on their obligations is extremely low compared to some private providers. On this basis, such bodies require far less supervisory activity under the ESOS framework, and accordingly should be charged a reduced or lesser amount. Item 12 makes a minor consequential amendment for the purpose of Item 6.

The amendments made by Items 1 and 6 provide that both the revised annual registration charge (under new subsection 5(2)) and the entry to market charge (under new section 6) will be indexed in accordance with section 7 of the ESOS Charges Act. Items 7, 8, 9, 10 and 11 make technical and consequential amendments for the purpose of the indexation arrangements made under Items 1 and 6.

New regulation making power

Item 13 repeals section 9 and confers a regulation making power on the Governor-General. Under this amendment, the Governor-General may make regulations prescribing matters required, necessary or convenient for the operation of or giving effect to the ESOS Charges Act. Any such regulations would be legislative instruments under subsection 6(a) of the *Legislative Instruments Act 2003*. Section 9, which provided for transitional arrangements to deal with the commencement of the ESOS Charges Act in 1997, is now a redundant provision.

Application provisions

Item 14 is an application provision aimed at avoiding unintended consequences of the amendments made by this Act. Subitem 14(1) provides that all of the amendments

made by Schedule 1 to the Registration Charges Amendment Bill, except the amendments made by Item 6 (in relation to the new entry to market charge) and Item 13 (in relation to the new regulation making power in favour of the Governor-General) shall only apply on or after the first 1 January that occurs after a day to be fixed by Proclamation, or six months after the Amendment Act receives the Royal Assent, whichever is the sooner.

Subitem 14(2) provides that the amendment made by Item 6 shall apply in relation to any recommendation made by a designated authority for a State under section 9 of the ESOS Act on or after the first 1 January that occurs after Schedule 1 commences.

**Education Services for Overseas Students Amendment
(Registration Charges Consequentials) Bill 2011**

Clause 1 - Short title

Provides for the Act to be cited as the *Education Services for Overseas Students (Registration Charges Consequentials) Act 2011*.

Clause 2 - Commencement

This clause inserts a three column table setting out commencement information for various provisions of the Act. Each provision of the Act specified in column 1 of the table commences (or is taken to have commenced) in accordance with column 2 of the table and any other statement in column 2 has effect according to its terms.

Table item 1 provides that sections 1 to 3 and any other provisions of the Act not otherwise covered by the table to commence on Royal Assent.

Table item 2 provides that Items 1 to 6 of Schedule 1 commence at the same time as Schedule 1 to the *Education Services for Overseas Students (Registration Charges) Amendment Act 2011*, which commences on a single day to be proclaimed, or if any of the provisions do not commence within 6 months from Royal Assent, they commence on the day after that 6 month period expires.

Table item 3 provides that Item 7 of Schedule 1 commences on Royal Assent.

Table item 4 provides that Items 8 to 17 of Schedule 1 commence at the same time as the provisions covered by table item 2, which commence on a single day to be proclaimed, or if any of the provisions do not commence within 6 months from Royal Assent, they commence on the day after that 6 month period expires.

A note makes it clear that these commencement times will not be amended by any later amendments of the Act.

Clause 3 - Schedule(s)

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

Schedule 1—Amendments

Education Services for Overseas Students Act 2000

Summary

The Consequential Bill makes necessary consequential amendments to the ESOS Act to implement the rebased annual registration charge within the ESOS framework. The Consequential Bill also makes other amendments to harmonise ESOS with domestic regulators and the existing quality assurance frameworks.

Explanation of the changes

Rebased annual registration charge: consequential changes

Items 1, 2, 3, 4, 5, 6, 8 and 9 make consequential amendments for the purpose of Item 6 of the Registration Charges Amendment Bill. Among these amendments, Item 3 repeals the definition of *initial registration charge*. This concept is superseded by three new definitions: *entry to market charge* (inserted by Item 1), *first entry to market charge* (inserted by Item 2) and *second or third entry to market charge* (inserted by Item 4).

Determination of the registration period

Item 7 repeals and substitutes subsections 9(10) and (11) of the ESOS Act to clarify the apparent discretionary aspect of the Secretary's determination of a provider's registration period. New subsection 9(10) will require the Secretary to specify a period of registration at the time she or he registers a provider, and that the period specified be more than 2 years, but not more than 5 years.

Item 7 also inserts new subsection 9(10B) to avoid the situation where a registered provider's registration may expire as a result of the delay between the recommendation being made by a designated authority that a provider be re-registered, and the Secretary deciding whether to re-register the provider. Under this provision, the provider's registration is taken to continue until the Secretary makes his or her decision.

Lastly, new subsection 9(10A) has been included to make clear that the operation of new subsection 9(10), demarcating the Secretary's determination of a provider's registration period, does not limit the Minister's power to cancel a provider's registration during the initial two years of a provider's registration.

Entry to market charges: liabilities and obligations of registered providers

Item 10 repeals and substitutes section 12 for the purpose of the new entry to market charge (as inserted by Item 6 of the Amendment Bill). Currently, section 12 requires the Secretary to give a written notice to each provider who is liable to pay the initial registration charge. Under this amendment the Secretary must give each provider a

written notice setting out the amount of the first, second and third entry to market charges they must pay. A notice must be given at least 30 days before each the respective first, second and third charges become due for payment. The table under new subsection 6(2) of the Registration Charges Amendment Bill sets out the time when each of the three entry to market charges become due for payment.

Should the Secretary fail to provide the written notice, new subsection 12(3) clarifies that a provider is still required to pay an entry to market charge.

Item 11, which inserts new section 23A into the ESOS Act, imposes upon all registered providers who become liable for payment of a second or third entry to market charge an obligation to pay the charge. Item 12, which inserts new paragraph 90(1)(b) into the ESOS Act, includes a failure to pay a second or third entry to market charge (as imposed by new section 23A) as a ground for automatic suspension of a registered provider's registration (under subsection 90(1) of the ESOS Act).

Items 13 and 14 vary the amount of the reinstatement fee under section 171 of the ESOS Act. Subsection 171(1) of the ESOS Act requires a registered provider to pay a reinstatement fee before a suspension of, or a condition on, the registration of the provider is removed under subsections 89(3), 89A(3), 90(2) or 94(2) or (4). Under this amendment, the amount of the reinstatement fee will be \$500 for the first calendar year, and thereafter, for each later year, the amount of the reinstatement fee shall be indexed in accordance with subsection 171(5) of the ESOS Act.

Items 15 and 16 amend sections 172 and 173 of the ESOS Act respectively to include failure to pay a second or third entry to market charge as a ground for imposition of a late payment penalty (under subsection 172(1) of the ESOS Act) and as a recoverable debt due to the Commonwealth by court action (under subsection 173(1) of the ESOS Act).

Application provisions

Item 17 is an application provision aimed at avoiding unintended consequences of the amendments made by this Act. The application arrangement made by subitem 17(1) deals with new subsection 9(10) of the ESOS Act (inserted by Item 7) which concerns the requirement that the Secretary must specify a period of registration at the time she or he registers a provider, and that the period specified must be more than 2 years, but not more than 5 years. Subitem 17(1) provides that new subsection 9(10) shall only apply to registrations that occur after this Act receives Royal Assent.

The application arrangement made by subitem 17(2) concerns new subsection 9(10B) of the ESOS Act (inserted by Item 7) which deals with the situation where a registered provider's registration may expire as a result of the delay between the recommendation being made by a designated authority that a provider be re-registered, and the Secretary deciding whether to re-register the provider. Subitem 17(2) provides that new subsection 9(10B) shall only apply to a registration that is due to expire after this Act receives Royal Assent.

The application arrangement made by subitem 17(3) concerns new paragraph 171(4)(a) of the ESOS Act (inserted by Item 13) which varies the amount of the

reinstatement fee imposed under section 171 of the ESOS Act. Subitem 17(3) provides that the new amount of the reinstatement fee shall only apply in relation to a suspension of, or a condition imposed on, the registration of a provider on or after the first 1 January that occurs after commencement of the Amendment Act, which will be a day to be fixed by Proclamation or six months after the Amendment Act receives the Royal Assent, whichever is the sooner.

The application arrangement made by subitem 17(4) shall only apply to the amendments made by Schedule 1 (except the amendments made by Items 7 and 13) in relation to any recommendation made by a designated authority for a State under section 9 of the ESOS Act on or after the first 1 January that occurs after commencement of the Amendment Act, which will be a day to be fixed by Proclamation or six months after the Amendment Act receives the Royal Assent, whichever is the sooner.