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Education Services for Overseas Students  
(Registration Charges) Amendment Bill 2000

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I N F O R M A T I O N   A N D   R E S E A R C H   S E R V I C E S

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Education Services for Overseas Students (Registration  
Charges) Amendment Bill 2000

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31 October 2000

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# Education Services for Overseas Students (Registration Charges) Amendment Bill 2000

**Date Introduced:** 30 August 2000

**House:** House of Representatives

**Portfolio:** Education, Training and Youth Affairs

**Commencement:** Royal Assent.

## Purpose

### Package Overview

This Bill is associated with a number of related Bills. The whole package is as follows:

- |  |   |
|--|---|
| • <b>'the Principal Bill'</b>            | Education Services for Overseas Students Bill 2000                                  |
| • <b>'the Assurance Fund Bill'</b>       | Education Services for Overseas Students (Assurance Fund Contributions) Bill 2000   |
| • <b>'the Consequential Bill'</b>        | Education Services for Overseas Students (Consequential and Transitional) Bill 2000 |
| • <b>'the Registration Charges Bill'</b> | Education Services for Overseas Students (Registration Charges) Amendment Bill 2000 |
| • <b>'the Migration Bill'</b>            | Migration Legislation Amendment (Overseas Students) Bill 2000                       |

A complete background to the context surround this legislative package is provided in the [Bills Digest](#) to the Education Services for Overseas Students Bill 2000.

### This Bill

The purpose of this Bill is to amend the *Education Services for Overseas Students (Registration Charges) Act 1997* to update the registration charge amounts.

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

## Background

The *Education Services for Overseas Students (Registration Charges) Act 1997* (the Registration Charges Act) requires education service providers to pay an initial charge and an annual charge for registration under the *Overseas Students (Registration of Providers and Financial Regulation) Act 1991*. The initial charge is imposed when a provider is first registered or is registered after having been de-registered.<sup>1</sup> It is \$300 and is weighted according to the proportion of months remaining in the year when a provider is registered. The annual charge is paid by every registered provider at the commencement of each year.<sup>2</sup> It is sliding scale from \$300 to \$5,000 depending on the number of enrolments in a previous year. Both the initial and annual registration charges are indexed to CPI.<sup>3</sup>

## Main Provisions

### Increasing the Charges

**Schedule 1, items 1 to 6** amend the sliding scale for annual registration charges increasing the charges for each category. The amendments are as follows:

<i>Student Enrolments</i>	<i>Old Charges<sup>4</sup></i>	<i>Current Charges<sup>5</sup></i>	<i>New Charges</i>	<i>% Increase</i>
0 to 10	300	308	<b>400</b>	30%
11 to 50	750	777	<b>1165</b>	50%
51 to 200	1500	1541	<b>2311</b>	50%
201 to 400	2500	2568	<b>3852</b>	50%
401 or more	5000	5136	<b>8000</b>	56%

**Item 7** inserts **proposed section 5A** which provides for amendment of these charges. The Governor-General must make a written instrument which must be tabled in Parliament. If it is approved by a resolution in each House of Parliament, the amended charges apply. The charges only apply to subsequent years but may discriminate among provider classes.

**Items 8** and **9** adjust the indexation of annual charges. Generally, annual charges are indexed to CPI. However, if the annual charges are amended in a given year, the indexation provisions do not apply until subsequent years (**proposed new section 7(1A)**).

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## The Principal Bill

Under the Principal Bill, **proposed section 12** requires that providers pay the initial charge within 28 days of being notified of registration. **Proposed section 23** requires that they pay the annual charge by the last business day in February of each year.

## Concluding Comments

**Proposed section 5A** contains an unusual parliamentary review mechanism.<sup>6</sup> Ordinarily, regulations and other disallowable instruments are valid until disallowed by a resolution in *either* House of Parliament. **Proposed sub-section 5A(5)** reverses this process, making the instruments *invalid* until approved by a resolution in *both* Houses of Parliament.

One possible reason for the apparently high threshold is the fact that the power to make instruments constitutes a '*Henry VIII* clause'. Such clauses effectively empower delegated legislation, such as regulations and disallowable instruments, to amend Acts of Parliament. As such, they have been criticised on the basis that they vest an 'enormous amount of power in the executive government' which was 'capable of abuse'.<sup>7</sup> The focus in **proposed section 5A(5)** on approval in both Houses of Parliament rather than disallowance in one arguably presents a formidable obstacle to abuse of the power to make regulations.

Another possible reason is the effect that the review process has on certainty. Generally, regulations once made are valid until they are disallowed. Thus, any existing rights, interests, obligations or liabilities which arose under the regulations are unaffected.<sup>8</sup> This may pose difficulties for executive government where regulations are disallowed, remade and subsequently disallowed, creating an uneven patchwork of administrative regimes.<sup>9</sup> The approach in **proposed section 5A(5)** virtually eliminates this possibility.

## Endnotes

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- 1 Section 6.
  - 2 Section 5.
  - 3 Section 7.
  - 4 Registration Charges Act, sub-section 5(2).
  - 5 Explanatory Memorandum, p. 8.
  - 6 A similar construction appeared in the *Telecommunications Act 1991* (section 409) and the *Transport And Communication Legislation Amendment Act 1991* (section 47).

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- 4 *Education Services for Overseas Students (Registration Charges) Amendment Bill 2000*
- 7 Dennis Pearce and Stephen Argument, *Delegated Legislation in Australia*, 2<sup>nd</sup> Edition, Butterworths, Sydney, 1999, p. 15 paraphrasing a recommendation of the United Kingdom Parliament's Committee on Ministers' Powers in its *Report*, 1932, Cmd 4060.
- 8 *Acts Interpretation Act 1901*, s 50.
- 9 For example, a series of regulations were made under the *Migration Act 1958* relating to liability of Australian residents for costs associated with migrant parents in Australia. They were largely disallowed, leaving a patchwork arrangement over a period of 5 years. See generally Migration Legislation Amendment (Parents and Other Measures) Bill 2000, *Bills Digest No 200, 1999-2000*, at <http://www.aph.gov.au/library/pubs/bd/1999-2000/2000BD200.htm> [27/10/00].

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