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## Education Services for Overseas Students (Registration Charges) Amendment Bill 2003

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Education Services for Overseas Students (Registration  
Charges) Amendment Bill 2003

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7 August 2003

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# Education Services for Overseas Students (Registration Charges) Amendment Bill 2003

**Date Introduced:** 26 June 2003

**House:** House of Representatives

**Portfolio:** Education, Science and Training

**Commencement:** Royal Assent

## Purpose

The purpose of this Bill is to amend the *Education Services for Overseas Students (Registration Charges) Act 1997* to change the charges structure for the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS).

## Background

Providers of education services to overseas students are required to be registered on CRICOS. 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. The initial charge is imposed when a provider is first registered or is registered after having been de-registered. The annual registration charge is a five tiered rate structure linked to ranges of numbers of student enrolments. It is calculated on the previous year's enrolments using the table in the Registration Charges Act adjusted for an annual CPI increase.

The Registration Charges Act was amended in 2000 to allow for an increase in charges. It was part of a package of legislation to strengthen the Education Services for Overseas Students (ESOS) regulatory regime. The increased revenue from these charges was to defray some of the increased costs to the Commonwealth associated with its new enforcement powers. The increases ranged from 30 per cent for the first tier, 50 per cent for the second, third and fourth tiers and 56 per cent for the fifth tier. The rates for the annual registration charge in 2003 range from \$432 for providers with 1-10 enrolments to a maximum of \$8,462 for providers with 401 or more enrolments. The expected revenue from this charge for 2003 is estimated to be \$1.8 million.

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### **Proposed changes**

The provisions of this bill would change the annual registration charge structure. The new structure would comprise a \$300 base charge, and added to this \$25 for each enrolment for the provider in the previous year. The effect of this would be to link the charge more directly to the actual number of enrolments. The Explanatory Memorandum (EM) states that this will ‘strike a more equitable balance between large and small providers’.<sup>1</sup> It estimates that for half the registered providers there will be little or no change to the amount paid. However, for those with higher enrolments there will be a sizeable increase eg. in the case of a provider with 9,000 enrolments,<sup>2</sup> the new charge will be \$225,300 rather than the current maximum charge of \$8,462. The government has estimated that it will receive ‘an additional \$5.1 million over 4 years on an ongoing basis’ which it says it will use for ‘increased compliance and enforcement activity’.<sup>3</sup>

### **Regulatory responsibilities and costs under the ESOS Act**

The Commonwealth’s enforcement role in the Education Services for Overseas Students (ESOS) regulatory regime serves a number of purposes including protecting the integrity of Australia’s education export industry, enhancing Australia’s trade interests and protecting Australia’s immigration programme. The regime provides for a sharing of the responsibilities and of the costs of this regulation. It is shared between the Commonwealth Departments of Education, Science and Training and Immigration and Multicultural and Indigenous Affairs, State and Territory governments, education providers and the overseas students themselves.

Increased costs were expected to accompany the increased responsibilities associated with the regulatory strengthening in 2000. The Commonwealth was given greater investigatory powers and sanctions particularly to deal with education providers suspected of assisting illegal migration activities; the State and Territory governments’ activities relating to quality assurance and registration were to be more rigorous; and education providers had greater reporting responsibilities particularly in relation to overseas students’ compliance with the study conditions of their visas. In addition, providers were also required to make contributions to the tuition assurance fund and to pay higher registration charges.

The Commonwealth sought to defray some (not all) of the increased costs it would incur in exercising its stronger enforcement powers by increasing registration charges. It estimated that these costs would increase from \$1.1 million to \$2 million<sup>4</sup> and that the revenue from the increased registration charges would increase to \$1.5 million.<sup>5</sup> In 2003 the estimated revenue is \$1.8 million, higher than that expected. However, though there has been regulatory strengthening, a higher than expected increase in revenue to fund it, and some evidence that the enforcement activities have been successful,<sup>6</sup> the EM reports concerns that despite the stronger provisions of the ESOS Act there is insufficient enforcement. The reason given for this is that ‘the ESOS Charges Act returns insufficient funds’ for ‘proactive enforcement action’.<sup>7</sup> Therefore the changes to the cost structure,

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while presented as fairer, are also clearly a mechanism for increasing Commonwealth revenue significantly. Estimated as being worth an additional \$5.1 million over four years, the forward revenue estimates show totals of \$3.9 million in 2003-04, \$4.5 million in 2004-05, \$5.3 million in 2005-06 and rising to \$6.1 million in 2006-07,<sup>8</sup> three times the amount which would cover the costs of the Commonwealth's stronger regulatory responsibilities which were anticipated in 2000.

The EM states that the proposed changes continue 'the existing policy of seeking cost recovery from providers for the costs of administering the ESOS Act'. The extent of these revised costs however raise some questions - what is the optimum level of Commonwealth enforcement activity and associated costs required to secure the industry, and how is the relative benefit of education industry funded Commonwealth enforcement activity assessed against making more resources available for State and Territory government quality assurance and registration activities? Furthermore, to the extent that the Commonwealth's activities serve the broader interests of immigration and trade, what level of cost recovery from the education industry is appropriate?

While the 'Regulation Impact Statement' in the EM does not address these questions responses to Senate Estimates questioning give some indication of how the money may be used

The moneys that are obtained from the additional appropriations and the contributions by institutions and by students largely flows to ensure that we have a clean industry in Australia that will be reputable with genuine providers and students and that offshore we maintain standards and build a reputation for Australia, including where Australia partners with others, that will meet the expectations of people in the other countries, whether they are the governments or the students

and

We intend looking at the compliance strategy that we have in place and enhancing that significantly. We will look to more rigorously use the powers that we have under the ESOS Act. We would progress or certainly look to progress the use of, for example, monitoring warrants under the act. We will make greater use of the provisions to deal with registered providers without the financial capacity to stay in the industry. We will take more collaborative action with the states and territories to remove providers of concern from the industry. We will take advantage of the information matching using our PRISMS data to better target compliance activities. So when we add together the range of activities that we will look to enhance, we feel that we will significantly increase the output of the compliance activity we will undertake

and

...not being able to extend the ESOS Act internationally, we can either leave it to the market, which could damage the Australian reputation, or we can explore an industry self-regulation approach to look at how we can develop a set of protocols for the

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operation of Australian education and training providers in other countries. That is what we seek to do. That the government has provided resources for us to explore with the Australian institutions and providers our options for developing a quality trademark for Australian education overseas and mechanisms that can lead to an industry self-regulation approach in support of that trademark.<sup>9</sup>

It is also interesting to note that despite the significant impact on some providers, there appears to have been limited consultation regarding this proposal<sup>10</sup>, and that such significant changes are being introduced prior to an evaluation of the ESOS Act which is due to commence by December 2003.

## Main Provisions

The effect of **item 1** of **Schedule 1** is to repeal the existing table of charges in subsection 5(2) and replace it with the new charges structure namely the sum of \$300 and \$25 multiplied by total enrolments for the provider in the previous year. Indexation of the new charges structure is also provided for.

The effect of **items 2-4** is to amend subsections 5A(1), (3) and (5) respectively . These subsections deal with provisions for variation of the annual registration charge so that it is compatible with the new charges structure.

The effect of **items 5-6** is to amend the dates in subsections 7(1) and (1A) which are the reference point for the indexation of the initial and annual charges. The effect of **item 7** is to ensure that the means for indexing the initial charge and the annual charge reflects the changes made to the charge or allowed for under the variations.

## Endnotes

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- 1 *Explanatory Memorandum*, p. (6).
  - 2 This figure corrects that which appears in the *Explanatory Memorandum* on which an earlier version of the Bills Digests was based.
  - 3 *ibid.*
  - 4 For details on the background to these changes, see [Bills Digest, Nos. 62, 2000-01](#).
  - 5 *ibid.*
  - 6 *Senate Estimates Hansard*, Legal and Constitutional Legislation Committee, Immigration and Multicultural and Indigenous Affairs Portfolio, 28 May 2003. Departmental evidence presented indicates that “Fourteen providers have had sanctions applied under section 83 of

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the ESOS Act – that is either suspension or cancellation for breaches of the ESOS Act or the national code. Four have been suspended, five have been cancelled and five have had conditions imposed on their registration”.

7 *Explanatory Memorandum*, p. (5).

8 *Budget measures 2003-04*, Budget Paper no. 2, p. 12.

9 *Senate Estimates Hansard*, Employment, Workplace Relations and Education Legislation Committee, Education, Science and Training Portfolio, 5 June 2003.

10 *Ibid.*

There is conflicting information about the level of consultation. The EM states that additional consultations have not been conducted for this regulation impact statement, but the following Departmental evidence was presented recently - “ In developing this package we did consult with the industry. There is a strong willingness on the part of the genuine providers to safeguard their reputation by making sure that non-genuine providers are not able to continue. So our own assessment of the need, the support from industry, together with the need for the Commonwealth to work cooperatively with the states and, if necessary, to undertake activity where the states will not has led to the formation of this package”.

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