



Australian Government

**Department of Industry
Innovation, Science, Research
and Tertiary Education**

Education Services for Overseas Students (Registration Charges)

Cost Recovery Impact Statement

February 2012 – February 2013

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GLOSSARY OF TERMS AND ABBREVIATIONS

ARC – Annual Registration Charge. The ARC is an annual charge payable by CRICOS registered providers.

Baird Review – review of the ESOS framework conducted by the Hon Bruce Baird AM. The final report of the Baird Review—*Stronger, simpler, smarter ESOS: supporting international students* was released in March 2010 and contained recommendations that are the subject of this CRIS.

Cost Recovery Guidelines – the *Australian Government Cost Recovery Guidelines, July 2005* provide a framework for the design and implementation of cost recovery arrangements that comply with the cost recovery policy.

CRICOS – Commonwealth Register of Institutions and Courses for Overseas Students. CRICOS is the official Australian Government website that lists all education providers authorised to offer courses to people studying in Australia on student visas and the courses offered.

CRIS – Cost Recovery Impact Statement. A statement documenting compliance with the Australian Government cost recovery policy.

DEEWR – Department of Education, Employment and Workplace Relations.

DIAC – Department of Immigration and Citizenship.

DIISRTE – Department of Industry, Innovation, Science, Research and Tertiary Education

ESOS Act – *Education Services for Overseas Students Act 2000*. An Act to regulate education services for overseas students, and for related purposes.

ESOS Charges Act – *Education Services for Overseas Students (Registration Charges) Act 1997*. An Act to impose registration charges in relation to CRICOS.

National Code – National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students. The National Code provides, *inter alia*, a set of nationally consistent standards for the conduct of CRICOS registered providers and the registration of their courses.

PRISMS – Provider Registration and International Student Management System. PRISMS is a secure database developed jointly by DEEWR and DIAC that provides a means for Australian education and training providers to comply with the ESOS legislation.

Migration Act – *Migration Act 1958*. An Act relating to the entry into, and presence in, Australia of non-citizens, and the departure or deportation from Australia of non-citizens and certain other persons.

1. OVERVIEW

1.1 Purpose

The purpose of this Cost Recovery Impact Statement (CRIS) is to amend existing cost recovery arrangements for the registration charges payable by providers of education services to international students. These registration charges are being rebased as part of the implementation of the Government's response to recommendations contained within the Baird Review of the Education Services for Overseas Students (ESOS) legislative and regulatory framework. This CRIS relates to the restructured and rebased Annual Registration Charge and the new Entry to Market Charge.

Receipts from these registration charges are expected to exceed \$5 million per financial year in operation. Accordingly, a CRIS is required to be completed in order to transparently demonstrate compliance with the *Australian Government Cost Recovery Guidelines, July 2005* (Cost Recovery Guidelines).

1.2 Background

The Commonwealth recovers the costs of administering the *Education Services for Overseas Students Act 2000* (the ESOS Act) and the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students (National Code) 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. Historically, an initial registration charge was payable on registration and an Annual Registration Charge (ARC) each calendar year thereafter. The Department of Industry, Innovation, Science, Research and Tertiary Education (the Department) is the agency responsible for maintaining CRICOS, administering the invoicing and collection of these charges and performing regulatory supervision and enforcement activities.

Revenue raised through the registration charges contributes to:

- maintaining and developing database applications to support administration and enforcement of the ESOS Act and *Migration Act 1958* (Migration Act)
- initial and ongoing registration, regulatory supervision, compliance and enforcement activities of CRICOS registered providers, and
- the Overseas Students Ombudsman's role in investigating complaints relating to private CRICOS registered providers.

In August 2009, the then Deputy Prime Minister and Minister for Education, the Hon Julia Gillard MP, asked the Hon Bruce Baird AM to review the ESOS framework and recommend changes that would ensure Australia continued to offer world-class international education (the Baird Review). The review was conducted in the context of significant growth in the number of overseas students resulting in a number of pressures on the sector in terms of education quality, increased demand on regulators with limited resources, and infrastructure. The final report of the Baird Review—*Stronger, simpler, smarter ESOS: supporting international students* was released on 9 March 2010 and recommended a number of changes to the ESOS Act to strengthen the Australian international education sector.

Implementation of the Government's response to the recommendations of the Baird Review has resulted in the need to amend the existing registration charges payable by providers of education services to overseas students.

1.3 Australian Government cost recovery policy

In December 2002 the Australian Government adopted a formal cost recovery policy to improve the consistency, transparency and accountability of its cost recovery arrangements and promote the efficient allocation of resources. The cost recovery policy is administered by the Department of Finance and Deregulation and outlined in the Cost Recovery Guidelines.

The underlying principle of the policy is that entities should set charges to recover all the costs of products or services where it is efficient and effective to do so, where the beneficiaries are a narrow and identifiable group and where charging is consistent with Australian Government policy objectives.

The policy applies to the Department as it falls within the definition of an Agency under this policy. In line with the policy, individual portfolio ministers are ultimately responsible for ensuring entities' implementation and compliance with the Cost Recovery Guidelines.

2. POLICY REVIEW – ANALYSIS OF ACTIVITIES

2.1 Overview

Commencing in August 2009 the Baird Review undertook a comprehensive analysis of the framework for the provision of education services to international students. The Review considered the need for enhancements to the ESOS legal framework in four key areas set out in the Terms of Reference: supporting the interests of students; delivering quality as the cornerstone of Australian education; effective regulation; and sustainability of the international education sector.

The need for a stronger, more robust and more visible compliance presence from regulators was a clear and consistent theme received from stakeholders during extensive industry consultations. This is in response to emerging issues in the international education sector related to quality, non-compliance, consumer protection and student welfare following a period of unprecedented growth and change. A major criticism of government has been that resourcing for regulatory activity at both the state and Commonwealth levels has not kept pace with growth in the sector and is disproportional to reputational risks associated with an industry worth approximately \$18 billion per annum to the Australian economy.

The final report of the Baird Review contained a number of recommendations to improve the ESOS framework in order to better protect international students and the integrity of the Australian international education sector. Key recommendations of the 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.

2.2 Registration on the Commonwealth Register of Institutions and Courses for Overseas Students

All education providers in Australia wishing to enrol students who come to Australia to study on student visas must be registered, and have their relevant courses registered, on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) as required under the ESOS Act. Registration on CRICOS is currently a two-stage process.

- An application is first assessed by the relevant state or territory government authority designated under ESOS. Once an applicant has satisfied domestic education requirements, the designated authority then considers whether the applicant meets further requirements under the ESOS Act prior to recommendation to the Department for CRICOS registration.
- Upon receipt of a recommendation, the Department assesses the application under a number of additional criteria provided in the ESOS Act. This includes checks relating to company history, previous involvement in the delivery of international education services, compliance history associations with other registered providers, and ensuring the provider has met the consumer protection obligations of the ESOS Act. If the applicant meets these requirements, has paid the Entry to Market charge, and there is no reason to believe the provider is not complying or will not comply with ESOS, the provider will then be registered.

2.3 Compliance monitoring and enforcement

Protection and enhancement of Australia's reputation for providing reliable and high quality education is crucial to achieving long-term sustainable growth of this important export industry. Compliance with the ESOS Act, National Code and the Migration Act and related regulations is essential to maintaining the reputation of the international education industry.

The compliance and enforcement activity undertaken in the international education sector under the ESOS Act is, in the vast majority of cases, taken through the application of a condition or conditions on a provider's CRICOS registration. That is, one or more conditions may be placed on a provider's existing registration, such as limiting the number of new enrolments a provider may take or that the provider not deliver a specified course.

Enforcement actions that have been undertaken to date have demonstrated that each case will be time consuming, require intensive investigation and usually be unique in the issues that must be addressed. While there has always been a range of activities that support compliance and enforcement, the recent amendments to the ESOS Act to enable a risk management approach to CRICOS registration and monitoring, in addition to information gathered through the re-registration process, form the basis of a targeted compliance strategy. In addition, there will continue to be reactive compliance activity in response to complaints and other information received.

In an effort to reduce the ongoing effect across the whole industry of reactive compliance and enforcement action which may be appropriately taken on a few providers, the restructured registration charges recover the cost of higher levels of more targeted supervision. More targeted supervisory activity will be applied across the sector as the regulators are better able to use a broader suite of regulatory information gathered to assess those providers in need of direct action compliance visits or desk audits. Some improvements to this information gathering are being made

through the Government's second phase response to the recommendations of the Baird Review and through changes to the National Code. History demonstrates that industry standards are harder to maintain when supervisory activity is at its lowest point which is typically in a boom period and then the most supervisory activity occurs during more difficult operating periods across the industry. A more targeted supervisory and compliance framework focused on those providers identified as presenting a higher regulatory risk to the framework is designed to ameliorate these effects on the industry.

A further recommendation of the Baird Review was for all providers to utilise a statutorily independent complaints body as their external complaints and appeals process. In response, the *Ombudsman Act 1976* was amended to establish the Overseas Students Ombudsman with the capacity to investigate complaints relating to private CRICOS registered providers or initiate investigations about actions taken by providers in connection with overseas students. Investigations undertaken by the Overseas Students Ombudsman may also result in the examination of broader systemic issues uncovered in the course of their initial inquiries.

2.4 Stakeholders

The key stakeholders are education providers registered on CRICOS. Secondary stakeholders include education and training industry peak bodies, established Tuition Assurance Scheme (TAS) operators, education and migration agents, international students in Australia, prospective overseas students and their families, and the ESOS Fund Manager. The key stakeholders receive a service from the regulation of the sector and have also created the need for regulation of the international education sector. These key stakeholders also receive the benefit of being registered on the CRICOS to deliver courses to international students for private commercial benefit. The secondary stakeholders receive the benefit of a high standard of consumer protection for international students studying in Australia and the resulting continued strong reputation of the sector.

2.5 Conclusion

The collection of the registration charges recovers the cost borne by the Commonwealth in registering all international education providers on the CRICOS as well as in undertaking ongoing monitoring, compliance and enforcement activity across the sector. As international education providers have created the need for regulation, while also receiving a private commercial benefit from being registered on the CRICOS, it is appropriate for these costs to be recovered from them, as outlined on page 40 of the Cost Recovery Guidelines. As the receipts from the rebased registration charges are expected to exceed \$5 million per financial year in operation, a CRIS is required to be completed in order to transparently demonstrate compliance with the Cost Recovery Guidelines.

3. REGISTRATION CHARGES

3.1 Basis of charging

Through registration on CRICOS, education providers are permitted to offer education and training services to international students thereby allowing them access to the international education market. Enhanced industry regulation improves the integrity and reputation of the Australian international education and training industry which further benefits CRICOS registered providers by supporting long term sustainable growth of this important export market. Consistent with the

principles of the Australian Government Cost Recovery Guidelines, the international education sector needs to bear the cost of its regulation.

Evidence suggests that providers with a shorter history of CRICOS registration present a greater risk of ESOS non-compliance and provider default than those that have been in existence for longer periods. On this basis an Entry to Market Charge (EMC) will be payable by new providers that do not have any registrations for any courses in any state or territory. This will replace what is currently known as the initial registration charge. The EMC has been designed to more accurately recoup the additional costs associated with new applications for registration and the additional supervision required of providers with a shorter history of registration. The new EMC will enable the Commonwealth to recoup the cost of better targeted regulatory efforts for this group of providers, which will reduce the risk to quality, the student experience and the reputation of the sector as a whole.

The new model for the Annual Registration Charge (ARC) is also based on provider risk and will ensure a robust and comprehensive supervisory and compliance regime that will work in concert with the risk-based registration arrangements introduced under the first phase response to the Baird Review. As it is possible to identify all providers of education to overseas students operating in the industry, a levy is an efficient, cost effective and appropriate charging mechanism for registration charges.

3.2 Legal requirements for the imposition of charges

The registration charges are imposed on CRICOS registered providers under the *Education Services for Overseas Students (Registration Charges) Act 1997*. These charges are designed to recover the costs incurred by the Commonwealth in the implementation of the ESOS regulatory regime.

3.3 Costs to be included in charges

Activity 1 – Initial registration (EMC related activities)

The EMC is designed to recoup the costs associated with the assessment of applications for registration submitted by education providers who have no history of delivering courses to overseas students: As part of the broader restructuring and rebasing of the registration charges, the EMC will be imposed on this group of providers as evidence has suggested providers with no history of delivering courses to overseas students present a greater risk and require a greater regulatory effort than those established providers with a longer history of registration. As a consequence, the EMC has been designed to recover the costs associated with the greater amount of regulatory scrutiny on these providers in their first years of registration, which include site visits and desk audits.

The following table demonstrates the costs of undertaking site visits and desk audits for a group of initial registrants entering the market during the first year of the EMC operation based on historic average of 40 new registrants per annum. The cumulative estimate of cost recovery revenue collected from initial registrants over the first three years of the EMC operation will be \$1.4m (that is, \$0.3m in year 1, \$0.5m in year 2 and \$0.6m in year 3). Importantly, not every applicant for registration will be liable to pay the EMC. Consistent with the ESOS Act, only those providers that do not currently deliver any course for any state and have not delivered any courses to overseas students in the past 5 years (the maximum registration period under the ESOS Act) will be liable to pay the EMC as they present a greater regulatory risk. All providers will still be required to pay the

ARC which is more reflective of the regulatory effort associated with the group of providers who have a longer history of registration.

For the purposes of this CRIS, only \$0.3 million of the EMC revenue is expected to be collected in 2012 (year 1). In 2013 (year 2) and 2014 (year 3), the EMC revenue is estimated to be \$0.5m and \$0.6m respectively. The costs and revenue for the EMC related activities will be reviewed in the next CRIS following transition of regulatory responsibilities to TEQSA and ASQA.

*EMC costs in Year 1 (2012)			
Site visits – \$0.2 million			
Site visits Employee expenses and travel costs	Employee time (may require different time input from employees at different levels) and travel costs in assessing historical provider records, verifying information provided in the registration application and industry checks and liaisons with other jurisdictions as well as relevant follow up compliance and enforcement work.	Directly attributable cost. Each provider registering in the international education sector for the first time will receive a site-based audit. Based on historic average there are likely to be approximately 40 new registrants per annum.	\$5,000 per site visit * 40 registrants = \$0.2 million
Desk Audits – \$0.1 million			
Desk audits Employee expenses and on-costs	Employee time (may require different time input from employees at different levels) in assessing registration application, making recommendations to relevant delegate, verifying historical records, compliance information provided by designated authorities and assessing possible breaches of legislative requirements.	Directly attributable costs associated with desk audits for newly registered providers. Based on historic average there are likely to be approximately 40 new registrants per annum.	\$2,500 per desk audit * 40 registrants = \$0.1 million
TOTAL for EMC			\$0.3 million

* The registration charges are aligned to regulatory costs incurred during calendar years, e.g. registration charges collected in February 2012 will cover regulatory costs incurred in 2012, but are based on relevant providers data for 2011.

Activity 2 – Registration, compliance and monitoring (ARC related activities)

The Annual Registration Charge (ARC) is designed to recoup the costs of undertaking regulatory and supervisory activities under the ESOS Act, as well as registering providers on the CRICOS. All providers registered on the CRICOS at 1 January are required to pay an ARC for that calendar year. In addition, liable providers also pay the EMC as described in Activity 1.

The ARC paid by CRICOS registered providers consists of the following structural elements:

1. Flat Fee of \$1300 per CRICOS-registered provider. This component will be charged on all providers at the same rate* and reflects the cost of administering the systems which all providers must access and use in order to maintain the currency of their registration. Such costs are distributed equally among all providers through a flat fee.
2. Size Fee is comprised of \$100 per registered course** for the provider plus \$10 per enrolment based on the data for the preceding calendar year. The tiered structure reflects the need to strike an equitable and appropriate balance between large and small providers. The rebased ARC is more closely aligned to the monitoring and enforcement activities relative to the size of individual providers as measured by the number of courses that they offer and the overseas student cohort.

*Providers in the schools sector that wish to maintain a registration but do not have any students will pay the lesser rate of \$366. This is to ensure that schools can maintain a registration to take on students during the school year and recognises the relatively lower cost associated with processing of registrations for this group of providers.

**This component will not be charged on universities listed in Table A under the *Higher Education Support Act 2003*, State or Territory VET institutions as defined in the *Education Services for Overseas Students (Registration Charges) Regulations 2011* and schools wholly funded or owned by the government of a state or territory. This reflects the relatively lower supervisory activity required for these groups of providers as they are also subject to the scrutiny of the respective regulators such as TEQSA and ASQA.

A regulation-making power has been introduced to allow the registration charges to be varied for different classes of providers on the basis of their risk profile. Under this power, providers deemed to require a significantly lower level of regulatory and supervisory effort may pay a lesser charge or be exempt from the requirement to pay particular components of the registration charges.

The site visits component of the ARC is different from that under the EMC because the site audits of providers who have been operating in the industry are undertaken as a result of pre-existing regulatory activity or intelligence that then necessitates a greater level of information gathering and preparation. This means that not every provider will be subject to a site visit or other more intensive regulatory intervention. However, CRICOS registered providers, as a group, will receive a suite of regulatory activities that they created the need for.

ARC costs in Year 1 (2012)			
Site visits – \$1.6 million			
Site visits Employee expenses and travel costs	Employee time (may require different time input from employees at different levels) and travel costs in order to gather information and assess whether the provider complies with the requirements of the CRICOS registration as well as relevant follow up enforcement work as required. On average, a	This cost is directly attributable to the CRICOS registered providers as a whole. Consistent with the requirements for registration under the ESOS Act, site visits will be	\$26,667 per site visit *60 per annum = \$1.6 million

	compliance site visit is estimated to require 6 weeks including preparation of compliance briefs and other necessary materials.	undertaken on those providers assessed to present a high risk of non-compliance.	
Desk Audits - \$0.4 million			
Desk audits Employee expenses and on-costs	Employee time (may require different time input from employees at different levels) in collecting and assessing relevant information to determine possible breaches of CRICOS registration requirements.	This cost is directly attributable to the CRICOS registered providers as a whole. Consistent with the requirements for registration under the ESOS Act, desk audits will be undertaken on those providers assessed to present a high risk of non-compliance.	\$5,130 per desk audit *78 per annum = \$0.4 million
CRICOS Registrations - \$0.9 million			
CRICOS registrations Employee expenses and on-costs	Assessment of applications and recommendations for registration from designated authorities. Assessment of compliance records and undertaking of a fit and proper person test on approximately 105 registrations per annum.	These costs are attributable to each provider registering on CRICOS both subject and not subject to the EMC. While there are some costs that can be attributed to each registration, the total cost per registration varies depending on a number of factors. Volume estimates are based on historic registration numbers since 2002.	\$8,570 (on average) per registration * 105 per annum = \$0.9 million
Authorisation of regulatory decisions - \$0.6 million			
Employee expenses and on-costs	Employee time (may require different time input from employees at different levels) in assuring quality and validity of regulatory decisions.	This is an indirect cost attributable to the CRICOS registered providers as a whole. Consistent with the requirements of the ESOS Act, any compliance action	\$0.6 million

		must be considered and taken by an authorised delegate.	
Information Technology Systems - \$1.5 million			
Maintenance of Information Technology Systems and related employee expenses	Ongoing maintenance and development of the Provider Registration and International Students Management System (PRISMS), the single most comprehensive repository of data and information used by the regulators and industry.	This is an indirect cost attributable to the CRICOS registered providers as a whole.	\$1.5 million per annum
Overseas Students Ombudsman (not administered by the Department) - \$1.2 million			
Administration costs	The Overseas Students Ombudsman investigates complaints about problems that overseas students have with private education and training in Australia. Further information about the Ombudsman's activities is available at www.oso.gov.au	These costs are directly attributable to the Overseas Students Ombudsman.	\$1.2 million per annum
TOTAL for ARC			\$6.2 million
TOTAL costs for EMC and ARC in 2012			\$6.5 million

3.4 Outline of charging structure

The registration charges are levied in January each year with invoices being sent to every CRICOS registered provider. Over the period since 2005, there has been an average of 105 applications for registration on CRICOS per annum. This historic average has been used as a demand estimate for 2012.

As the actual registration charge per individual provider will vary depending on the number of courses and international students and applicable variations based on the risk profile, it would be misleading to present an average registration charge. Therefore, the table below outlines the aggregate cost recovery revenue estimated to be collected in 2012 from the registration charges.

Registration charge	Demand estimate	Total cost recovery revenue in 2012
EMC	40	\$0.3 million
ARC	105	\$6.2 million
TOTAL		\$6.5 million

The Australian Government Actuary has assisted in the development of a charging structure for the ESOS regulatory activities presented in this CRIS.

Once the ESOS regulatory functions are transferred to ASQA and TEQSA, these regulators may undertake a further review of the appropriateness and suitability of the current cost recovery structure to their circumstances.

4. ONGOING MONITORING

4.1 Monitoring mechanisms

The Department and both ASQA and TEQSA (once ESOS regulatory functions are transferred) will monitor their cost recovery position on an annual basis by comparing actual costs incurred relative to the registration charges collected. The purpose of this monitoring will be to:

- obtain feedback so the Department and regulators can review and, if necessary, adapt their approaches to cost recovery in response to changing circumstances,
- ensure fees and levies are based on efficient and transparent costs, and
- reduce the impact of major reviews of cost recovery arrangements by allowing minor issues to be addressed as they arise.

The fees and levies collected through this cost recovery arrangement will be reported in the Department's annual report, in accordance with the Finance Minister's Orders.

4.2 Stakeholder consultation

The amendments to the registration charges follow a comprehensive review of the ESOS framework as well as widespread and inclusive consultation with industry.

Extensive consultation was undertaken with industry stakeholders in the context of undertaking the Baird Review. During the consultation period in 2009, discussion forums were held with students and providers from the tertiary, English language and school sectors, involving some 200 individuals. Meetings were also held with state and territory government officials, regulatory bodies, student organisations, industry bodies and diplomatic missions. The Baird Review received around 150 formal submissions and more than 300 people registered with the online discussion forum.

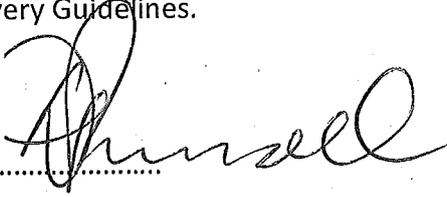
On 7 December 2010 the Government released the discussion paper *Reforming ESOS: Consultations to build a stronger, simpler, smarter framework for international education in Australia* to seek feedback on the second phase of its response to the Baird Review. A total of 52 submissions were received through this process, with the feedback provided used to inform the arrangements included in this CRIS.

4.3 Periodic review

The Cost Recovery Guidelines require that all cost recovery arrangements are subject to periodic review no less frequently than every five years. Due to the upcoming transfer of some regulatory functions outlined in this CRIS to the Tertiary Education Quality Standards Agency and Australian Skills Quality Authority, it is intended that a full review of the current cost recovery arrangements will occur prior to the expiry of this CRIS in February 2013 or earlier if required.

5. CERTIFICATION

I certify that this Cost Recovery Impact Statement complies with the Australian Government Cost Recovery Guidelines.



Dr Don Russell
Secretary
Department of Industry, Innovation, Science, Research and Tertiary Education

Date: 27-2-12

6. COST RECOVERY LINK

- The Australian Government Cost Recovery Guidelines and the accompanying Finance Circulars can be found at;

<http://www.finance.gov.au/financial-framework/financial-management-policy-guidance/cost-recovery.html>