



Australian Government

Department of Education, Employment
and Workplace Relations

Education Services for Overseas Students Amendment (Re-registration of Providers and Other Measures) Act 2010

Questions and Answers

What is the ESOS Act?

The *Education Services for Overseas Students (ESOS) Act* is the legal framework for the provision of education services to international students.

The objectives of the current ESOS Act are:

- (a) to provide financial and tuition assurance to overseas students for courses for which they have paid
- (b) to protect and enhance Australia's reputation for quality education and training services
- (c) to complement Australia's migration laws by ensuring providers collect and report information relevant to the administration of the law relating to student visas.

What are the amendments that have been passed as part of the Act?

A summary of the amendments is listed below:

- A requirement for all institutions currently registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) to undergo a re-registration process by 31 December 2010 (noting re-registration and registration applies to the provision of a course in a given state or territory).
- Two new registration requirements for education providers:
 - the principal purpose of the provider is to provide education; and
 - the provider has demonstrated capacity to provide education of a satisfactory standard.
- Providers to be required to list the names of education agents who represent them and promote their education services and to require providers to comply with any matters prescribed in the regulations concerning their agents.
- Discretionary removal of the prohibition on education providers collecting monies from studying students when a course has been suspended.
- Conditions imposed by states and territories on education providers to be recognised by the Commonwealth.
- Exemptions from punitive provider default refund requirements for providers changing their legal entity.
- An amendment to clarify the definition of "suitable alternative course".
- A requirement for the ESOS Assurance Fund Manager to provide the Minister with a report within 60 days after a provider default that sets out, among other things, the number of students affected, the total amount of payments from and claims against the Fund, and the number of students placed in suitable alternative courses. The Minister must table the report in both Houses of Parliament.
- That a Designated Authority use a risk-management approach when considering whether to recommend that an approved provider should be re-registered.

Why is re-registration being required? What difference will it make?

Re-registration is intended to help reinforce confidence in the quality of Australia's international education sector and demonstrate early and concerted action by government to ensure that international education providers meet high standards.

The states and territories as well as the Commonwealth have various intensified audit activities underway targeted at high risk providers. Building on these, the re-registration process will be a streamlined and shorter process that will provide the opportunity to fast track a review of the registration of all providers.

The introduction of two new criteria requiring providers, on top of existing requirements, to also demonstrate their principal purpose is to provide education and that they have the capacity to provide education of a satisfactory standard, will ensure a comprehensive review of current providers and strengthen the registration process into the future. This will mean that, after 31 December 2010, all providers on CRICOS and new applicants will have passed a more rigorous test for re-registration or registration.

Why does every provider have to go through re-registration, why not just the high risk ones?

The re-registration provisions are intended to strengthen the review and ongoing entry provisions for all providers who wish to deliver education and training to international students. This will benefit all providers by reinforcing Australia's reputation for quality education as the CRICOS register from 1 January 2011 will only include providers who have passed the new strengthened tests.

Details for implementing the re-registration process in practice have been finalised in consultation between the states and territories and the Commonwealth, to ensure a nationally consistent approach, based on the proposed new provisions of the ESOS Act.

Both the Australian Government and states and territories have finalised a nationally consistent risk managed approach to re-registration as required in the legislation. This will mean that the re-registration process for established providers of good repute will not be onerous.

Providers' Questions

Will all providers need to be re-registered?

Yes, all institutions that were registered on CRICOS on 3 March 2010 (the date the Bill received Royal Assent) will need to undergo the re-registration process. However, the actual process undertaken will vary from provider to provider, according to an assessment of each provider's risk. All providers wishing to be registered after that date to provide education to international students will also be assessed against the two new registration criteria.

What is the time-frame for re-registration?

Applications for re-registration will open in mid-March, and will close in mid-April. Providers will be notified of details once dates are finalised. The re-registration process is to be completed by 31 December 2010.

What will be the process for re-registration?

In general a provider's re-registration process will commence with the provider submitting an application for re-registration to the relevant state or territory designated authority/registering body. The PRISMS system is being enhanced to allow the application form to be completed and submitted electronically through PRISMS.

Information provided on the application form related to other quality assurance processes the provider has been assessed against may be sufficient for the designated authority/registering body to assess the provider and decide whether to make a recommendation to the DEEWR Secretary for re-registration. Should a designated authority/registering body consider that it is unable to make such a decision based on the information provided, the designated authority/registering body could seek further information from the provider, which may require a self-assessment, provision of documentation to support the application and a site visit, according to the risk profile of the organisation.

Once the state or territory designated authority/registering body has completed its assessment of a provider it will decide whether to make a recommendation to the DEEWR Secretary to re-register the provider.

If the authority notifies the Secretary that it does not make a recommendation to re-register (it is not mandated in ESOS that an authority has to notify the Secretary of this decision), the provider will be automatically removed from CRICOS in respect of the course in question.

If the authority makes a recommendation to re-register, then the Secretary must re-register the provider if a number of other factors specified in the ESOS Act are also satisfied.

In particular, it is possible for the Secretary to decide not to re-register the provider that has been recommended for re-registration from the authority if the Secretary has reason to believe that the provider does not or will not comply with ESOS or the National Code (which applies in the current ESOS registration process), or that the provider does not meet either of the two new registration requirements referred to above.

If not re-registered by 31 December 2010, then the provider will not be included on CRICOS after that date.

What tests will be used for principal purpose and demonstrated capacity?

A summary of the type of documentation that would support a provider's claims against the two new registration criteria will be included in any request to a provider to undertake a self assessment (if requested). The following definitions provide a general guide.

Principal purpose of providing education:

The principal purpose of providing education test draws upon section 16-25 of the *Higher Education Support Act 2003* (HESA), which sets out the criteria bodies corporate must meet in order to be approved as higher education providers. One criterion requires the body's principal purpose to be **either or both** the provision of education or conduct of research.

A body corporate that is approved as a higher education provider under HESA is, for ESOS re-registration purposes, taken to have a principal purpose of providing education on the basis that it already meets that criterion in HESA.

For any provider (whether or not a HESA higher education provider), its principal purpose may be determined from examination of one or more of its establishment documentation (such as a company constitution or rules of association), strategic plans and policies, governance arrangements, board / governing body decisions, qualifications and experience of teaching and management staff, infrastructure and teaching materials, and financial statements related to business activities.

Note that the provision of education (as defined in the ESOS Act) does not have to be the provider's sole purpose, but it does have to be its principal purpose.

Clearly demonstrated capacity to provide education of a satisfactory standard:

This criterion refers to the capacity of the provider to deliver education to overseas students to the standards set by domestic quality assurance processes (for example, the Australian Quality Training Framework and the National Protocols for Higher Education) and the ESOS National Code 2007. Capacity is a measure taken relative to the number of students enrolled and courses offered, and would be likely to include: adequate and relevant infrastructure; financial viability; teaching materials and student support services; relevant qualifications and experience of teaching staff and management; and student educational outcomes and satisfaction.

If I am found not to meet the requirements for re-registration, will I have the opportunity to rectify those aspects of my delivery which are not satisfactory?

It will be at the discretion of the relevant state or territory designated authority/registering body whether to allow opportunity for rectification of identified deficiencies before a final decision is made or whether to allow for a further application.

What will be my avenue for complaint/appeal if I am not re-registered?

Providers that are not recommended by the relevant designated authority/registering body for re-registration may have access to review processes in the relevant state or territory court or tribunal. Providers may also have access to the relevant state or territory ombudsman.

Where the DEEWR Secretary does not re-register a provider, even though the authority has made a recommendation to re-register, the provider may have access to legal review through the Commonwealth Administrative Appeals Tribunal.

Where can I go for more information on the Re-registration?

The Provider Registration and International Students Management System (PRISMS) will have more information on the re-registration process.

Other Amendments

What are the new provisions relating to the use of education agents?

The new provisions will require a registered provider to maintain and publish (on a website or by other means specified in the Regulations) a list of all of the persons (whether within or outside Australia) who represent or act on behalf of the provider in dealing with overseas students or intending overseas students. The Regulations may also specify other requirements for providers to meet in their dealings with their agents.

The Minister for Education has also supported a proposal put forward by the Shadow Minister for Employment Participation, Training and Sport during debate of the Bill in the House of Representatives that providers only engage agents that:

- have completed an agent training course, such as the Education Agents Training Course (EATC) offered by PIER (Professional International Education Resources) or a recognised equivalent; and
- belong to a professional organisation representing education agents where one exists.

Stakeholders will be consulted about this proposal with a view to its inclusion in the ESOS Regulations in the near future.

Why do I need to list the agents I use on my website?

Under Standard 4 of the National Code 2007 providers are required to take all reasonable measures to use education agents that have an appropriate knowledge and understanding of the Australian international education industry and do not use education agents who are dishonest or lack integrity. The requirement on providers to list the agents they use on their website is intended to make providers' use of education agents more transparent and accountable.

Consultations will be held with providers about a reasonable transition period for implementing the new requirements, after which the Department would be seeking to enforce compliance with the provision.

How is the requirement to publicly list education agents going to be enforced?

The Department will monitor education provider websites and follow up with providers if there is evidence to suggest that their list of agents is not comprehensive or up to date.

I don't have an agreement with any education agents, but I accept students who are represented by agents. Do I need to list these agents on my website?

All providers who have an agency agreement with an agent must list that agent on their website. The Regulations may also specify that this requirement must be met for ad hoc dealings between a provider and an agent, even if the arrangement between the provider and the agent is not in writing.

Do I need to list all the agents I use on my website, that is, migration and education agents?

Providers will need to publish on their website the names of the education agents who fall within the definition of “agent” in the ESOS Act. For further information on your role if you deal with education agents, refer to Standard 4 of the National Code 2007 and the Explanatory Guide on the AEI website at <http://aei.gov.au/AEI/ESOS/NationalCodeExplanatoryGuide/default.htm>

How will a “suitable alternative course” be determined?

This will be set out in regulations. Consideration will be given to comparing key characteristics of the original and alternative courses, including level and field of study, cost to the student, and duration and location of the course.

Why should providers whose registration has been suspended be permitted to continue receiving fees from students?

Providers who are suspended may not recruit or enrol new students or permit enrolled students who have not yet begun the course to commence. However a suspended provider is permitted to continue teaching students who were already enrolled and had commenced study before the suspension was imposed.

Depending on the circumstances it may be unreasonable to deny a provider the right to collect fees from students that it continues to teach. This amendment allows the Minister or the Minister’s delegate the flexibility to assess the circumstances on a case by case basis.

What is the benefit of the amendment to recognise conditions imposed by state or territory education authorities on a provider’s registration?

Sections 89 and 91 of the ESOS Act currently recognise suspensions or cancellations of registration that are imposed by a state/territory authority, by automatically applying those actions to the education provider’s CRICOS registration. Extending such recognition to the imposition of conditions upon a provider’s registration will strengthen regulatory cooperation between jurisdictions and reduce the potential for duplicated action by the Commonwealth. Quicker regulatory response to issues of concern will be of further benefit.

Students’ Questions

If my provider is not re-registered, how will I be affected?

If a provider is not re-registered it will not be able to re-enrol students from the date it is removed from CRICOS, i.e. 1 January 2011 or earlier if the relevant designated authority/registering body notifies the Secretary that it does not make a recommendation to re-register the provider. The Australian Government (DEEWR and DIAC) and state and territory designated authorities/registering bodies will work closely with the provider concerned and other relevant parties, such as the provider’s Tuition Assurance Scheme, to minimise the impact on students enrolled with the provider.

The ESOS Act provides a comprehensive suite of consumer protection mechanisms for overseas students in the event of a provider default. These protection mechanisms are in place to ensure that eligible students receive the education they paid for, or their money back.

ESOS Review

Why is the Review taking place?

The Australian Government has brought forward the planned 2010-11 review of the *Education Services for Overseas Students (ESOS) Act* - in the context of significant growth in the number of overseas students, the changing composition of the international student body and emerging issues in the sector. The Review is being led by the Hon Bruce Baird AM.

How does the review link to the Amendment Act?

The Amendment Act is one of a series of measures the Australian Government is taking to ensure Australia continues to offer quality international education. Complementary initiatives include the review of the ESOS Act and the development of the National International Students Strategy under the Council of Australian Governments.

The Amendment Act is an interim measure to strengthen the operation of the legislation, particularly with regard to registration of providers and provider obligations for the use of agents, until the findings of the ESOS Review are considered.

What will the review cover?

The Review will consider the need for enhancements to the ESOS legal framework in four key areas:

1. Supporting the interests of students;
2. Delivering quality as the cornerstone of Australian education;
3. Effective regulation;
4. Sustainability of the international education sector.

What are the terms of reference of the Review?

The Terms of Reference are available at www.aei.gov.au

What is the review process?

An issues paper was released on the AEI website (www.aei.gov.au) in September 2009, outlining the key issues for the international education sector and inviting written submissions.

Targeted forums with groups, including state and territory government officials, regulatory bodies, education providers, student bodies and diplomatic missions were held over October and November 2009.

Results of the International Student Round Table held in Canberra on 14-15 September have also been considered.

An Interim Report was released on 3 December 2009 and can be found on the AEI website.

A Final Report will be released in the near future.

What is the timeline for the Review?

- September - Issues paper was released outlining the key issues for the international education sector.
- September – November - Written submissions and consultation completed.
- December 2009 - An interim report from the Review was released on 3 December.
- Early 2010 - Final report.

Who is conducting the Review?

Former Federal Member for Cook, The Hon Bruce Baird AM is leading the Review of the *Education Services for Overseas Students (ESOS) Act*.

Mr Baird was the member for Cook in NSW in the House of Representatives from October 1998 to November 2007. He holds a Bachelor of Arts degree from the University of Sydney and an MBA from the University of Melbourne.

Mr Baird is a former Assistant Trade Commissioner at the Australian Embassy in Bonn, Germany and Trade Commissioner at Australian Consulate-General in New York.

He was a member of the New South Wales Legislative Assembly where he was Minister for Transport from 1988-95, Minister for Sydney's Olympic Bid 1990-93 and Minister for Tourism and Roads 1993-95. He was previously a board member of Tourism Training Australia.

Where can I go for more information on the Review?

Further information about the review including the terms of reference is available on the AEI website at www.aei.gov.au