Education Services for Overseas Students

Internal Review

In December 2015 the Education Services for Overseas Students (ESOS) Amendment (Streamlining Regulation) Bill 2015 passed through Parliament to amend the Education Services for Overseas Students Act 2000 (ESOS Act). The introduction of internal review of decisions relating to the registration of a provider will take effect on 1 July 2016.

Overview

- From 1 July 2016 providers will be able to apply for an internal review of decisions made by an ESOS agency about their registration on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS).
- The Australian Skills and Training Authority (ASQA) will be the ESOS agency for vocational education and training (VET) providers and the Tertiary Education Quality and Standards Agency (TEQSA) will be the ESOS agency for higher education providers.
- The Department of Education and Training will be the ESOS agency for school providers.
- An internal review can be about a decision to refuse to register or renew a provider’s registration, or a decision to take enforcement action against a provider.
- Providers will be able to question a decision by the ESOS agency without the need to appeal to the Administrative Appeals Tribunal (AAT).
- Providers can still appeal to the AAT either before or after the internal review if they wish to do so.

Benefits for providers

An internal review offers a fair and timely resolution of matters which the provider may previously not have been willing to appeal because of the cost involved in going to the AAT.

How will the internal review process operate?

If a provider applies to an ESOS agency for a review of a decision about its registration, the decision must be reviewed by a delegate of that agency. The internal reviewer must not have been involved in making the decision in the first place and must hold a position at least equivalent or senior to the
person who made the original decision. The reviewer can ‘affirm, vary or set aside’ the decision and make another decision.

Providers must apply for an internal review within 30 days of the initial decision being made. The ESOS agency must make a decision within 90 days of receiving an application for an internal review.

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**Reviewable decisions under section 169AB of the ESOS Act from 1 July 2016**

1. A decision by the ESOS agency for a provider to refuse to register the provider under section 10
2. A decision by the ESOS agency for a registered provider to register the provider under section 10 for a particular period
3. A decision by the ESOS agency for a provider or registered provider to impose a condition on, or to vary or remove a condition of, the provider’s registration under section 10B
4. A decision by the ESOS agency for a registered provider to refuse to renew the provider’s registration under section 10E
5. A decision by the ESOS agency for a registered provider to renew the provider’s registration under section 10E for a particular period
6. A decision by the ESOS agency for a registered provider to refuse to add a course at a location to the provider’s registration under section 10J
7. A decision by the ESOS agency for a registered provider to extend the provider’s period of registration under section 10L
8. A decision by the ESOS agency for a registered provider not to notify the provider under subsection 46A(4)
9. A decision by the ESOS agency for a registered provider to take action against the provider under section 83
10. A decision by the ESOS agency for a registered provider not to give the provider notice under section 89(4) or 95(3)

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**About the Education Services for Overseas Students Act 2000**

Australia protects international students through the *Education Services for Overseas Students* (ESOS) legislation, which requires institutions to meet nationally consistent standards to provide education and training services. It also enables the Australian Government to monitor education providers. Breaches of the Act are treated very seriously and the penalties can be significant.

All institutions wanting to deliver courses to international students in Australia must be registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) and meet the registration conditions set out in the ESOS Act. Providers must comply with the ESOS Act and the National Code and, if appropriate, the ELICOS or Foundation Program Standards to meet these conditions. They must be ‘fit and proper’ to be registered and have the principal purpose of
providing education. The ESOS agency must be satisfied that that the provider will provide education of a satisfactory standard to overseas students. Providers must also pay the registration and tuition protection fees that apply to their institution.

*Note: The changes to the ESOS Act creating the concept of an ESOS agency for a provider take effect on 1 July 2016