



Education Services for Overseas Students

Registration fact sheet for higher education, foundation programs and ELICOS

On 11 December 2015 the *Education Services for Overseas Students Amendment (Streamlining Regulation) Act 2015* was passed by the Australian Parliament. It simplifies the registration process for education institutions that provide services to international students under the *Education Services for Overseas Students Act 2000* (ESOS Act). These changes start on 1 July 2016.

This fact sheet outlines the main changes affecting **higher education providers, as well as providers of English Language Intensive Courses for Overseas Students (ELICOS) and foundation programs**, which are regulated by the Tertiary Education Quality and Standards Agency (TEQSA).

Key changes

- National regulators are now ESOS agencies, with direct regulatory powers under the ESOS Act.
- Registration periods have changed from a minimum of 2 years and maximum of 5 years, to no minimum and a maximum of 7 years.
- New processes apply to continuing to teach existing students after the provider's registration expires.
- An internal review process for registration decisions has been introduced – previously providers could only appeal to the Administrative Appeals Tribunal (AAT).

Streamlining registration and regulation arrangements

TEQSA will now have direct regulatory responsibilities under the ESOS Act.

The changes to the ESOS Act make TEQSA the ESOS agency for higher education, foundation programs and some ELICOS providers registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS).

The legislative instrument determining the ESOS agency for ELICOS and foundation programs is available at: <https://www.legislation.gov.au/Details/F2016L00656>.

New registrations

From 1 July 2016 providers of higher education courses, foundation programs and relevant ELICOS will continue to apply to TEQSA for CRICOS registration using the form at:

<http://www.teqsa.gov.au/for-providers/registration/forms-and-guides>. TEQSA's application form has not changed significantly from the pre 1 July 2016 version.

TEQSA will assess each application for CRICOS registration based on the information provided by the education institution. Under the new arrangements, from 1 July it will also be able to use information given by the institution for the purpose of registering courses for domestic students under the *Tertiary Education Quality and Standards Agency Act 2011* (TEQSA Act). This is to avoid TEQSA asking institutions to provide the same information more than once, although TEQSA will still be able to request additional information from the provider, or from another ESOS agency, if necessary.

Also under the new arrangements, the timing of the provider's registrations under the ESOS Act and the TEQSA Act can be aligned so that the institution can undertake both domestic and international registration processes at once.

The maximum period an institution can be registered on CRICOS is now 7 years. There is no minimum registration period.

TEQSA can approve or reject an application for CRICOS registration. It can also impose conditions on the institution's registration at any time during the period of registration (see 'Conditions of registration' below).

If TEQSA decides to register the institution it will issue a notice that sets out details including:

- the name of the institution
- the name of the course or courses, and location or locations at which courses are delivered
- the period of registration (which cannot be longer than 7 years, though this period may be extended once for the purpose of aligning the provider's domestic and international periods)
- any conditions imposed on the institution's registration.

Renewing registration

The process for renewing CRICOS registration is similar to the process of applying for new registration. Education institutions will need to apply to TEQSA to renew the registration of their courses and the locations of those courses.

An institution must apply to renew their registration before it expires. TEQSA can determine when an application for renewal has to be made through a legislative instrument, which is published at www.legislation.gov.au.

The decision on whether or not to renew a provider's registration is made by TEQSA. Once an institution has applied for renewal of its registration, its registration continues (even after it would have expired) until TEQSA's decision on the renewal *takes effect*.

As with the process for new applications, if an institution's registration is to be renewed, TEQSA will send a notice advising that renewal has been approved.

Adding courses and/or locations during registration

A higher education, foundation program or ELICOS provider may apply to add a course and/or location to its registration.

If TEQSA decides to add a course and/or a location to an education institution's registration it must give the institution a notice setting out:

- the name of the additional course or courses
- the additional location or locations
- any conditions imposed on the institution's registration.

Registration requirements

TEQSA must use a risk management approach in assessing a provider's application for registration or renewal of registration, or adding a course or location to a provider's registration.

From 1 July 2016, a higher education, foundation program or ELICOS provider meets the registration requirements if:

- it is located in Australia and has central management and control in Australia or is a table C provider under the *Higher Education Support Act 2003*
- TEQSA is satisfied the institution is complying, or will comply, with the ESOS Act and the *National Code of Practice for Providers of Education and Training to Overseas Students* (National Code)
- TEQSA is satisfied the institution will also comply with the ELICOS standards or the foundation program standards for providers of those kinds of courses
- it has the principal purpose of providing education, and has a clearly demonstrated capacity to provide education of a satisfactory standard
- it has paid any applicable entry to market charges, annual registration charges, penalties, TPS levies or other charges associated with CRICOS registration.

TEQSA will also assess whether the education institution is fit and proper to be registered, except if that provider is exempt. Exempt providers are those:

- administered by a State education authority or
- entitled to receive funds from the Commonwealth for recurrent expenditure for education or training.

Fit and proper assessments consider matters such as bankruptcy, compliance with the *Corporations Act 2001*, past sanctions and whether the education institution or a related person has ever been convicted of an offence.

If TEQSA is satisfied that the institution meets the registration requirements under the ESOS Act, it may approve the application for new or renewed registration.

Conditions of registration

TEQSA can impose, vary or remove conditions of registration at any time. Conditions can be imposed on an education institution's registration or on specific courses or locations. Examples of conditions include:

- restrictions on the number of enrolments a provider may have
- restrictions on enrolments of students from a specified country
- that the provider not work with a specified agent
- that the provider not offer a specified course.

TEQSA can also impose conditions on an institution's registration as an enforcement action (see 'Enforcement action' below).

The institution will receive a notice if TEQSA decides to impose, vary or remove a condition of its registration.

Aligning registration under the ESOS Act and TEQSA Act

Where appropriate, TEQSA may now extend an education institution's registration on CRICOS once to align with its registration under the TEQSA Act. However, TEQSA is not obliged to make a decision to extend registration for the purposes of alignment, and will decide each case using a risk management approach.

Under previous arrangements, institutions were registered on CRICOS for between two and five years, creating a misalignment with their domestic registration periods under the TEQSA Act. This change will make the process simpler and less costly.

Teaching to students when registration expires or is not renewed

The ESOS Act includes provisions allowing a higher education, foundation program or ELICOS provider to continue teaching students who have already commenced their course, where:

- TEQSA has not yet made a decision on whether to renew the registration (section 10F) or
- the provider has not applied to have its registration renewed (section 10M).

Even though a provider can continue teaching students who commenced their course before registration expired, the ESOS Act now makes it clear the provider cannot recruit, enrol or

commence new students after its registration expires. All providers continuing to teach existing students must comply with the ESOS legislative framework, even if their registration is not renewed.

Enforcement action

Under section 83 of the ESOS Act, education institutions may still be subject to regulatory action by TEQSA. Sanctions include suspension, cancellation or imposition of conditions on registration.

Action can be taken because an institution:

- breaches the ESOS Act, National Code or, if applicable, the ELICOS standards or foundation program standards
- may not be able to provide courses to its accepted students or refund amounts to its accepted students due to financial difficulty or for any other reason
- is not fit and proper to be registered
- does not have the principal purpose of providing education
- does not have the clearly demonstrated capacity to provide education of a satisfactory standard, or has not provided education of a satisfactory standard
- ceases to be a registered higher education, foundation program or ELICOS provider or the course ceases to be an accredited course.

The institution will receive a notice if TEQSA decides to impose a sanction on its registration.

Automatic suspension or cancellation

Automatic suspension or cancellation of a higher education, foundation program or ELICOS provider's CRICOS registration now only occurs in limited circumstances where:

- TEQSA is no longer satisfied that the provider is fit and proper to be registered (suspension)
- the provider fails to pay any applicable levy, charge, fee or penalty in a timely manner according to the legislation (suspension)
- the provider becomes bankrupt (cancellation).

The education institution will receive a notice if its registration is automatically suspended.

Appealing a TEQSA decision

The ESOS Act now enables education institutions to seek internal review of certain decisions made by TEQSA. Decisions that can be reviewed include, but are not limited to:

- refusing to register a provider on CRICOS
- registering a provider for a particular (limited) period
- not renewing a provider's registration
- renewing a provider's registration for a particular (limited) period
- extending a provider's period of registration for the purposes of alignment with their TEQSA Act registration

- refusing to add at a location to a provider's registration
- imposing, varying or removing a condition under section 10B
- taking enforcement action (i.e. one or more of the actions listed at section 83(3)) in relation to a provider's registration.

An education institution's ability to seek internal review of decisions made by TEQSA under the ESOS Act is now consistent with the internal review provisions in the TEQSA Act.

If an education institution is not satisfied following internal review it can appeal to the Administrative Appeals Tribunal (AAT). The ESOS Act also allows institutions to appeal directly to the AAT without having to seek an internal review first.

Further information

For further information about changes to the ESOS Act made in December 2015, visit:

<https://www.education.gov.au/qualifications-recognition-esos-framework-tuition-protection-service>