



Education Services for Overseas Students

Registration fact sheet for schools

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 **schools** that deliver courses to students on a student visa.

Key changes

- National regulators are now ESOS agencies, with direct regulatory powers under the ESOS Act.
- Schools require a designated State authority (DSA) assessment certificate for new registrations, or a DSA recommendation certificate for renewals, to accompany their application to the Department of Education and Training, which is the ESOS agency for schools.
- 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

The changes to the ESOS Act make the Secretary of the Australian Government Department of Education and Training (Education) the **ESOS agency for schools** registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS).

States and territories continue to play their existing role in assessing and recommending schools' registration on CRICOS. They will be referred to as designated State authorities (DSAs)—that is, the education agency responsible for approving schools to operate in their state or territory.

New registrations

From 1 July 2016, schools will need to apply for CRICOS registration to Education through their DSA. The DSA will assess the school's appropriateness for CRICOS registration, identify any conditions that should be placed on the school's registration, and issue a DSA assessment certificate. The DSA assessment certificate must accompany the school's application for CRICOS registration to Education, which will make a final decision on whether to register the school on CRICOS.

Each DSA has its own process for schools to apply for CRICOS registration. Information is available on their websites:

- Australian Capital Territory: <http://www.education.act.gov.au/home>
- New South Wales: <http://www.boardofstudies.nsw.edu.au/>
- Northern Territory: <https://education.nt.gov.au/>
- Queensland: <http://www.qld.gov.au/education/international/pages/cricos.html>
- South Australia: <http://www.eecrsb.sa.gov.au/>
- Tasmania: <https://www.tasc.tas.gov.au/>
- Victoria: <http://www.vrqa.vic.gov.au/Pages/default.aspx>
- Western Australia: <http://www.des.wa.gov.au/schooleducation/International-education/Pages/default.aspx>.

A list of CRICOS contacts for each state and territory can also be found at <http://cricos.education.gov.au/Contacts/CRICOSContacts.aspx>.

The maximum period a school can be registered on CRICOS is now 7 years. There is no minimum registration period. The registration period is determined by Education, which takes into account the DSA's assessment and recommendation on the school.

Education will use a risk management approach in making the final decision on whether to register a school on CRICOS.

When Education decides to register a school, the school will receive a written notice setting out the courses and locations from which the school can deliver education services to international students. If there are any conditions of registration, those will also be in the notice. If Education refuses to register a school, the school will receive a refusal notification.

Renewing registration

The process for renewing CRICOS registration is similar to the process of applying for new registration — that is, the school must apply to Education, through its DSA. The DSA will assess the school's application and, if successful, the DSA will issue an assessment certificate. The DSA assessment certificate must accompany the application to Education, which will then conduct a final assessment and make a decision on whether the school still meets the registration requirements of the ESOS Act (see 'Registration requirements' below).

If the school meets the requirements, its registration will be renewed on CRICOS for a specified period and the school will receive written notification of its renewal, and any conditions of registration if relevant.

Adding courses and/or locations during registration

A school must apply to Education through its DSA if it wishes to add a course and/or a location to its registration. The DSA will issue a recommendation certificate if it supports the application, and the recommendation certificate goes to Education.

If Education decides to add a course and/or a location to a school's registration it must give the school a notice setting out:

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

Registration requirements

Education must use a risk management approach in assessing a school's application for registration, renewal of registration or adding a course or location to a provider's registration, taking into account the assessment or recommendation of the school's DSA.

From 1 July 2016, a school meets CRICOS registration requirements if:

- the school is located in Australia and has central management and control in Australia
- Education is satisfied the school 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) and, if relevant, the ELICOS standards
- the school has the principal purpose of providing education, and has a clearly demonstrated capacity to provide education of a satisfactory standard
- the school has paid any applicable entry to market charges, annual registration charges, penalties, TPS levies or other charges associated with CRICOS registration.

For some schools, additional checks may be needed to determine the school is fit and proper to be registered, unless that school is exempt.

Exempt providers are schools:

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

In determining if a school is fit and proper, Education considers matters such as bankruptcy, compliance with the *Corporations Act 2001*, past sanctions and whether the school or a related person has ever been convicted of an offence.

If Education is satisfied that the school meets the registration requirements of the ESOS Act, it may approve the school's application for new or renewed registration.

Conditions of registration

Education can impose, vary or remove conditions of registration at any time either on the school's registration or on specific courses or locations offered by the school. Education can do this on its own or by taking into account advice from a school's DSA. Examples of conditions include:

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

Education can also impose conditions on a school's registration as an enforcement action (see 'Enforcement action' below).

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

Teaching students when registration expires or is renewed

The ESOS Act includes provisions allowing a school to continue teaching students who have already commenced their course, where:

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

However, if the school has not finished teaching existing students after its registration expires, it can only continue to teach those students until the end of the calendar year.

Even though a school can continue teaching students who commenced their course before registration expired, the ESOS Act now makes it clear that the school cannot recruit, enrol or commence new students after its registration expires.

All schools 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, schools may still be subject to regulatory action by Education. Sanctions include suspension, cancellation or imposition of conditions on registration.

Action may be taken because the school:

- breaches the ESOS Act, National Code or, if applicable, the ELICOS 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 an approved school provider within the relevant state or territory.

Only Education can impose sanctions directly on schools, based on its knowledge of the school's compliance with relevant legislative frameworks, but it can take into account advice from the relevant DSA. Education must also consider any recommendation made by the TPS Director about taking enforcement action against a school.

The school will receive a notice if Education decides to impose a sanction on its registration.

Automatic suspension or cancellation of a school provider

Automatic suspension or cancellation of a school's CRICOS registration now only occurs in limited circumstances where:

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

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

Appealing an Education decision about registration

Schools can seek an internal review by Education of its decisions on the provider's CRICOS registration.

Decisions that can be reviewed include, but are not limited to:

- refusing to register a school on CRICOS
- registering a school for a particular (limited) period
- not renewing a school's registration
- renewing a school's registration for a particular (limited) period
- extending a school's period of registration for the purposes of alignment with its period of registration as a school provider
- refusing to add a location to a school'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 school's registration.

If the school is not satisfied with the outcome of Education's internal review, it can appeal to the Administrative Appeals Tribunal (AAT). Schools can also 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>