



Education Services for Overseas Students

Registration fact sheet for VET courses 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 **registered vocational education and training (VET) providers, as well as providers of English Language Intensive Courses for Overseas Students (ELICOS)** where these providers are regulated by the National VET Regulator – the Australian Skills Quality Authority (ASQA).

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

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

The changes to the ESOS Act make ASQA the ESOS agency for VET providers. ASQA becomes the ESOS agency for ELICOS providers, unless the course is delivered by a school, or higher education provider, or under an 'entry arrangement' with at least one higher education provider.

ASQA is also the ESOS agency for some non-VET aviation training providers until the end of March 2018, while those providers transition to the new regulatory arrangements under the amended

ESOS Act. Further information on arrangements for non-VET aviation training providers is available at: <https://www.legislation.gov.au/Details/F2016L00773>.

New registrations

Applying

From 1 July 2016 providers of VET courses and ELICOS (where ASQA is the responsible regulator) will continue to apply directly to ASQA for registration on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS). For more information about applying to ASQA for registration, please visit: <http://www.asqa.gov.au>.

Assessment of applications

ASQA will assess applications to determine whether the provider meets the conditions of registration. ASQA is also able to use information given by the provider for the purpose of registering VET courses for domestic students under the *National Vocational Education and Training Regulator Act 2011* (NVETR Act). This is to avoid ASQA asking institutions to provide the same information more than once, although ASQA can request additional information from the provider, or from another ESOS agency, if necessary.

Period of registration

The maximum period an institution can be registered on CRICOS is now 7 years. There is no minimum registration period. This is consistent with the registration period in the NVETR Act.

ASQA may decide to align a provider's registration period under the ESOS Act and the NVETR Act where appropriate to do so.

ASQA must use a risk management approach when determining the appropriate period of registration.

Approval

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

If ASQA decides to register the provider, ASQA will issue a notice including:

- the name of the provider
- if the provider is not an individual – the name of the provider's principal executive officer
- 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 to align the provider's registration under the NVETR Act)
- any conditions imposed on the provider's registration
- any other matters relating to the decision on registration that ASQA considers appropriate.

Renewing registration

The process for renewing CRICOS registration is similar to the process of applying for new registration. Providers need to apply to ASQA to renew the registration of their courses and the locations of those courses.

A provider must apply to renew their registration before it expires.

If a provider has made an application for renewal of registration, its registration continues until ASQA decides whether or not to renew its registration, and that decision *takes effect*.

If ASQA decides to renew a provider's registration, ASQA will issue a notice with the same details as a notice issued for a newly registered provider.

Adding courses and/or locations during registration

A VET provider or an ELICOS provider (where ASQA is the responsible regulator) must apply to ASQA to add a course and/or a location to its registration.

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

- the name of the additional course or courses
- the additional location or locations
- any conditions imposed on the provider's registration
- any other matters relating to the decision that ASQA considers appropriate.

Registration requirements

ASQA 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 provider meets the registration requirements if:

- it is located in Australia and has central management and control in Australia
- ASQA is satisfied the provider 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 National Standards
- 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 and TPS levies, as well as the relevant fees charged by ASQA to process and determine CRICOS applications.

ASQA also assesses whether the provider is fit and proper to be registered, considering matters such as bankruptcy, compliance with the *Corporations Act 2001*, past sanctions and whether the provider or a related person has ever been convicted of an offence.

If ASQA is satisfied that the provider meets the registration requirements under the ESOS Act, it may approve the provider's application for initial or renewed registration.

Conditions of registration

ASQA can impose, vary or remove conditions of registration at any time. Conditions can be imposed on a provider'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.

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

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

Aligning registration under the ESOS Act

Where appropriate, ASQA may now extend a provider's registration on CRICOS once to align with its registration under the NVETR Act. However, ASQA 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, providers were registered on CRICOS for between two and five years, creating a misalignment with their domestic VET registration periods. This change will make the process simpler and less costly.

Teaching students when registration expires or is not renewed

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

- ASQA 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 to students who commenced their course before its 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.

These provisions in the ESOS Act are not the same as the ‘teach-out’ provisions under ASQA’s General Direction for learner transition where the VET course or training product has been superseded, removed or deleted from the National Register at www.training.gov.au. For more information about ASQA’s ‘teach-out’ provisions, please visit <http://www.asqa.gov.au/news-and-media/learner-transition.html>

Enforcement action

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

Action may be taken because the provider:

- breaches the ESOS Act, National Code or, if applicable, the ELICOS Standards, or a condition of its registration
- 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 VET or ELICOS provider.

The provider will receive a notice if ASQA decides to impose a sanction on its registration.

Automatic suspension and cancellation

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

- ASQA is no longer satisfied that the provider is fit and proper (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).

A provider will receive a notice if its registration is automatically suspended.

Appealing an ASQA decision

The ESOS Act now enables providers to seek an internal review of certain decisions made by ASQA. 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 NVETR 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.

Providers' ability to seek an internal review under the ESOS Act is now consistent with the internal review provisions in the NVETR Act. If the provider is not satisfied following internal review, it can appeal to the Administrative Appeals Tribunal (AAT). The ESOS Act also allows providers 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>