



Improving regulation of supplementary courses for overseas students

Discussion paper

The Australian Government seeks to create new market opportunities for the education sector and support overseas students by expanding the delivery of supplementary courses and micro credentials to student visa holders. International students will not be able to apply for student visas based on these courses.

Allowing the delivery of supplementary courses to overseas students outside of the *Education Services for Overseas Students Act 2000* (ESOS Act) would permit more education providers to enter the market to deliver a wider range of supplementary courses to overseas students. Expanding access to these courses and the opportunity to gain pre-requisite industry qualifications will improve overseas students' skills and employability, making them less vulnerable to exploitation in the workplace. It will also assist Australian businesses to fill short term skill shortages to deliver critically important goods and services.

The ESOS Act and its associated legislative framework provides important protections to overseas students studying in Australia as well as supporting the administration of the student visa system. These regulatory requirements are necessary to protect the fundamental objects of the ESOS Act where an overseas student has made a substantial investment in a course of education or training in Australia. However, the regulatory requirements in the ESOS Act may be less necessary for certain types of 'supplementary' study, where an overseas student already studying a course in Australia wishes to undertake extra study outside of their substantive program.

Current situation

Currently providers wishing to deliver any course to overseas students must meet requirements under the ESOS Act and its associated legislative framework. This Act is designed to protect overseas students in their primary course of study associated with their student visa by imposing requirements in addition to national, state and territory accreditation, registration and regulatory requirements.

Currently all courses, including supplementary courses, may only be offered to overseas students where the course and the provider offering it are registered on the Commonwealth Register of

Institutions and Courses for Overseas Students (CRICOS). The requirement that supplementary courses be registered on CRICOS has four unintended consequences:

- due to the additional administrative and financial investment needed to maintain CRICOS registration, few providers seek to offer the courses to overseas students;
- students' access to training for employment in industries such as hospitality, health and construction is limited, as some supplementary courses may be pre-requisites;
- students are denied opportunities to pursue their personal interests while studying in Australia;
- because student visa provisions use enrolment in a CRICOS-registered course as key element in eligibility, students enrolled in such courses can seek a visa based on their enrolment in these shorter courses, distorting the intent of the student visa program.

Proposal for regulating supplementary courses

The Australian Government's policy intent is to support and protect overseas students with regard to the course, or package of courses, for which their student visa was granted. This is because of the significant investment of money and time each overseas student makes in their Australian study experience and the value completion of their principal course and pathway of study has to their future opportunities.

The Government's intent is also to enable overseas students to undertake supplementary courses, including microcredentials, in addition to those specified in their visa pathway. Completion of an appropriate supplementary course could facilitate personal interests, enhancing the quality of students' Australian experience as well as enabling attendance of a workplace component approved as part of a substantive qualification's CRICOS registration and/or facilitating employment¹, within the student visa limitations on work hours, where applicable, enabling students to gain valuable work experience and broader interaction with the Australian community.

Specifically, the Government seeks to:

- reduce the regulatory and financial burden on providers to reflect the lower risk of these supplementary courses
- allow an expanded range of providers to be able to offer supplementary courses to overseas students;
- increase the range of providers and study opportunities available to students
- maintain student protections for the course or courses of study specified in their visa pathway
- ensure all casual/part-time employees can access essential qualifications to support Australian businesses to meet skill gaps in critical industries like health, aged and disability care
- ensure the ESOS legislative framework is no more complex than necessary.

¹ 82 per cent of respondents to the 2018 International Student Survey said opportunities to work while studying are an important in their decision to come to Australia. 2019 Australian Bureau of Statistics data shows 41 per cent of all student visa holders work while studying in Australia.

Proposed changes

The department proposes two changes to the ESOS legislative framework:

1. Narrow the definition of “course” in the ESOS Act to more explicitly align it with the established regulatory frameworks in place for formal education qualifications in Australia;
2. Give the Minister responsible for international education the power to make exemptions for certain courses from the ESOS Act requirements. This enables the exemption of some supplementary courses which may be components of an Australia Qualifications Framework (AQF) qualification, such as first aid courses which can be single “units of competency” of a training package or modules of a VET accredited course, as per the *National Vocational Education and Training Regulator Act 2011*.

Rationale

The scope of the ESOS Act should accord with the policy intent with respect to courses and student visas. Courses should be precisely defined to exclude courses not already endorsed or accredited under a national, state or territory framework such as microcredentials, non-nationally recognised training and hobby courses (with the exception of certain non-AQF award courses delivered by higher education providers and courses which fall under the Foundation Standards or English Language Intensive Courses for Overseas Students (ELICOS) Standards.

New definition

The new definition would capture only those courses which enable a student to:

- gain a substantive qualification
- study a component of a course which is necessary to gain a substantive qualification
- attend an English language or academic preparation course which would lead to substantive qualification
- have a genuine study experience in a course
- study in a course which complies with nationally recognised education quality frameworks, and with a registered education provider in Australia
- study a course which has direct relevance to a student’s career goals

Alignment with objectives of student visa program

The new definition of course better aligns with the objectives of the student visa program.

Noting the ESOS legislative framework is complemented by the *Migration Act 1958* (Migration Act) and *Migration Regulations 1994* (Migration Regulations).

The Genuine Temporary Entrant (GTE) requirement ensures the student visa program is accessed as intended and requires student visa applicants to be both genuine temporary entrants and genuine students. The new definition of course ensures student visa applications are made based on an enrolment in a substantive qualification or an ELICOS or academic preparation course which enables access to substantive qualification.

Embedding flexibility

Giving the Minister a power to declare that a course (or types of course) is not covered by the ESOS Act would give the Minister the flexibility and precision to respond to issues and emerging risks that concern overseas students and the integrity of the student visa system.

Proposed changes to the ESOS framework – the detail

Narrowing definition of “course” in the ESOS Act

Courses included in the new definition of course will be courses which meet any of these criteria:

- align with established regulatory frameworks in place for formal education qualifications in Australia - recognised under the Australia Qualifications Framework (AQF)
- VET courses within the meaning of the *National Vocational Education and Training Regulator Act 2011* (NVETR Act).
- the course includes primary or secondary education provided by a registered school
- courses for which the provider is subject to the “Foundation Program Standards” (as defined in s.5 of the ESOS Act and to which the provider’s registration applies as referred to in ss.6E(1)(d) and 11(b)(iii))
- courses for which the provider is subject to the “ELICOS Standards” (as defined in s.5 of the ESOS Act and to which the provider’s registration applies as referred to in ss.6E(1)(d) and 11(b)(iii))
- courses (even if they do not lead to an AQF qualification) delivered by a higher education provider that is registered by TEQSA under the *Tertiary Education Quality and Standards Agency Act 2011*

All other hobby and recreational courses are automatically excluded from the ESOS Act, meaning they would no longer have to be registered on CRICOS to be offered to overseas students.

Giving the Minister power to exempt certain courses from the ESOS Act

The Minister will be able to exempt courses from the definition of course by making a disallowable legislative instrument. These courses, (and any others to be identified in the future) may be VET courses which are skill sets, modules, units of competency.

Initially, the Minister would exempt courses where they are the type of courses that:

- students can attend concurrently with their full-time principal course, without jeopardising the attendance or progress of this course (which would breach visa requirements)
- pursue personal interests, while the student is studying enhancing the quality of students’ Australian experience or
- may be required for attending a workplace component approved as part of a substantive qualification’s CRICOS registration and/or for employment in industries which students could

reasonably undertake while meeting their student visa requirements for only working up to 40 hours a fortnight, such as:

- hospitality
- health
- construction
- infection control.

These supplementary courses would include courses such as first aid, responsible services of alcohol, barista courses, food handling/hygiene courses and white cards for working on construction sites.

If a student undertakes an exempt course which includes a work component, the work component of that course will count towards the 40 hour per fortnight student visa work limitation.

Proposed legislative instrument to exempt supplementary courses from the ESOS Act

To enable providers to offer the abovementioned courses, as well as a wider range of supplementary courses in other industries, the department proposes to recommend that the Minister makes an instrument to exempt from the ESOS Act single units of competency, or a module of an accredited course. This would allow RTOs which are not registered on CRICOS to deliver these supplementary courses to overseas students.

- The instrument would specify that no more than five of these exempted units could be combined together in a training package to be delivered to a student in one calendar year, unless the package is registered on CRICOS.
- If the provider wishes to deliver more than five “exempted” units to a student within one calendar year, the training module must be registered on CRICOS.

Request for comment

The department seeks the views of stakeholders in the international education system on the proposal presented in this paper. Please consider the questions below when developing your comments, and use the template provided to make your submission. Please include your contact details and note whether you consent for your submission to be published.

1. Do you have any comment on the benefits or risks of the proposal described in this policy paper?
2. Do you have any comment on how the proposed definition of “course” in the ESOS Act should be narrowed or expanded?
3. Are there any VET qualifications accredited under the AQF which you believe the Minister should specifically exempt from the coverage of the ESOS Act (meaning they would not need to be registered on CRICOS), noting the primary intention to enable pursuit of personal interests or attendance at a workplace component of a substantive qualification? If so, which VET courses and why?
4. The legislative instrument will enable RTOs which are not CRICOS registered to deliver single units of competency or training modules. However providers will not be able to combine more than five units together in one training package to deliver to a student in the same calendar year.

- a. Are there any specific combinations of units of competency, skill sets or training modules delivered by RTOs, (and which are not accredited as full qualifications under the AQF), that should not be exempt from the ESOS Act – that is they should be registered on CRICOS?
- b. Should there be a limit to the number of exempt units of competency a provider can deliver to a student per calendar year as either part of a skill set or as individual units? If so, what limit and why? Is a limit of five units in one calendar year appropriate?

Comments

Please provide your comments to ESOS-PolicyTeam@dese.gov.au by 5pm AEST Friday 9 October 2020.