



Australian Government

Australian Education International

Education Services for Overseas Students Act 2000

Legislation Amendment Act 2011

Questions and Answers

The *Education Services for Overseas Students Legislation Amendment Act 2011* was enacted on 8 April 2011, with changes commencing immediately.

Why are these amendments being introduced?

The ESOS Review, conducted by the Hon Bruce Baird AM recommended a number of changes to the ESOS Act to strengthen the international education sector.

These amendments represent an initial Government response to a number of the Baird review recommendations. The Government's response to the remaining recommendations will be considered in the coming months.

Strengthen registration requirements for providers

The policy intent of this amendment is to prevent the entry of high risk providers into the international education sector. The amendment clarifies the scope and purpose of the registration criteria related to demonstrated capacity to deliver quality education to ensure it is consistently and transparently applied by regulators.

What additional requirements will a provider have to meet before they are registered on CRICOS?

Currently a provider has to meet four main criteria: comply with the National Code; have the principal purpose of providing education; have the clearly demonstrated capacity to provide education of a satisfactory standard; and meet a fit and proper person test.

As part of the demonstrated capacity criteria a provider will be required to demonstrate that it has:

- access to the financial resources to meet the objects of the ESOS Act,
- a sustainable business model, and
- the capability, governance structures and management to deliver education of a satisfactory standard.

Risk Management Approach

A risk management approach recognises the diversity of providers in the international education sector and that a one-size-fits-all approach to regulation is not feasible. A national risk management approach will assist regulators to better identify risk, target their activities and ensure a consistent assessment of risk by all regulators. This will prevent the entry of high risk providers into the international education sector and set appropriate conditions on a provider's registration, including for ongoing monitoring, to better manage risk throughout a provider's registration period.

What is intended by this approach?

The intent of this amendment is to apply a risk management approach to all registrations and throughout the registration period.

What will a risk management approach mean for a provider's registration?

This measure will mean that when assessing a provider for registration and making a recommendation to the Commonwealth for initial registration on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS), a regulator will set a period of review, and any conditions that should apply arising from an assessment of the provider's exposure to risk. This is common practice already but aims to bring a nationally consistent approach to risk management related to registration.

The Australian Government may also apply risk assessment at anytime.

Other ESOS Review recommendations suggested a risk approach be used when considering issues such as a provider's contribution to a tuition protection scheme and annual charges. These issues will be considered in developing the Government's response to the remaining Baird recommendations.

What will a risk management approach mean for a provider's regulatory activity?

The details of the risk management approach will be developed following further consultation with regulators and the sector. It is anticipated that the assessment of risk will determine the level of scrutiny at registration; the frequency and nature of ongoing monitoring requirements the provider will have to undergo, as well as any conditions that may be placed on the provider's registration. The regulator will also have the flexibility to assess risk and adjust the regulatory plan at any time where there is supplementary evidence to support such action.

How will a provider's exposure to risk be determined?

The Government will work with regulators to agree on the details of a national risk management approach including the risk factors and other evidential requirements that a provider will be assessed against at initial registration and throughout the registration period. This will build on the risk management approach developed for the re-registration measure enacted in March 2010, industry responses from phase 2 of the Baird Review consultation process, risk management

frameworks being developed by the national regulators and other key documents on risk management approaches.

Will information on a provider's exposure to risk be made public?

There is no intention of making this information publicly available at this time.

Limit a provider's registration period to support a risk management approach to registration

The policy intent of this measure is to introduce consistency into the registration regime to allow ESOS to formally recognise and align with limited periods of registration for each provider determined by the regulators and to support the risk management approach.

Isn't a provider's registration period already limited under CRICOS?

Currently ESOS does not allow the Australian Government to place an end date on the CRICOS registration of a provider. However, the legislation places an indirect end date on CRICOS registrations as the registration period is linked to the domestic quality assurance registration periods for providers. In practice, therefore, CRICOS registration in most cases is already limited because under the ESOS Act, CRICOS registration is dependent on a provider first meeting all domestic quality assurance requirements. In addition, as part of the CRICOS re-registration process conducted during 2010, an end date was placed on all providers' registrations.

How does limiting the CRICOS registration period of a provider support a risk management approach?

Limiting the registration period would:

- confine the risk to that period only, particularly for higher risk providers
- ensure a maximum timeframe before a thorough review of risk and compliance must be undertaken for all providers at point of registration renewal.

How long will a provider's registration period be?

This will depend on the provider's risk assessment determined by the regulator. The maximum period of registration will be five years.

What will happen at the end of my registration period?

Every provider will need to have their registration renewed by their expiry date in order to remain on CRICOS. Providers and regulators will be sent regular reminders in the lead up to a provider's expiry date. If a provider's registration is not renewed by the expiry date they will be permitted to teach out existing students.

Imposition of conditions on a provider to support a risk management approach to registration

The policy intent of this amendment is to support the risk management approach to registration by recognising that risk is not static, allowing ESOS regulators to engage in regular review of providers and to provide an avenue for imposing additional scrutiny on providers where needed.

When can conditions be set?

Conditions can be set as appropriate on registration, including for ongoing monitoring, or at any time during the registration period where a change in risk profile indicates conditions are warranted to better manage risk.

What type of conditions can be set?

The types of conditions that may be imposed include:

- placing a cap on enrolments
- limiting a provider's ability to collect fees in advance
- additional regular reporting requirements.

Can't the Minister or Secretary already impose conditions on a provider's registration?

The Minister can only impose conditions on a provider's registration for non-compliance with legislative obligations or conditions that are already attached to the provider's registration, as per Section 83 of the ESOS Act.

How does this amendment fit with the amendment about conditions introduced by the ESOS Amendment Act in March 2010?

Section 14A enables conditions imposed by state regulators on providers to also be imposed by the Australian Government, in part or in whole, on the provider's CRICOS registration.

Extension of financial penalties for a broader range of non-compliant behaviour by providers

The policy intent of this amendment is to better address emerging issues confronting the international education sector, such as unethical recruitment activity and failure to maintain student records. This would also give ESOS regulators more options and flexibility around enforcement activity, and to effectively take corrective action for relatively minor non-compliance without having to restrict a provider's ability to operate.

What are the new offences being introduced?

A provider will be guilty of an offence and liable to pay a penalty if it breaches:

- Section 21A – requirement to list the education agents that formally represent the provider
- Section 28 – refund under a written agreement about student default
- Section 29 – refund in other cases

Publication of targets and regular reporting of regulatory activities

The policy intent of this amendment is to make ESOS stronger, by publishing targets and regularly reporting on all major regulatory activities undertaken by the Commonwealth. This measure will allow the Secretary to publish any actions taken by the Commonwealth under the ESOS Act Part 6 – Enforcement and Part 7 - Monitoring. The appeals of providers against the enforcement action taken will be no bar to the publication of this information, with the publication corrected if the appeal is upheld.

What type of information will be published by the Secretary?

It is envisaged that the type of information published may include any significant regulatory activity or administrative action taken by the Commonwealth under the ESOS Act, for example, details of sanctions imposed against a provider.

Extend the jurisdiction of the Commonwealth Ombudsman to include private providers

Recommendation 8 of the Baird review is that all providers must utilise a statutorily independent complaints body as their external complaints and appeals process, and to amend the *Ombudsman Act 1976* to extend the Commonwealth Ombudsman’s jurisdiction to include those providers without access to such a body. This amendment to the *Ombudsman Act 1976* therefore implements the second part of this recommendation by making the Overseas Students Ombudsman a new external complaints and appeals mechanism available to all private registered education providers (except in South Australia, see below) and current - or intending - overseas students under standard 8 of the National Code 2007.

Standard 8 of the National Code requires *registered providers to have arrangements in place for a person or body independent of and external to the registered provider to hear complaints or appeals arising from the registered provider’s internal complaints and appeals process or refer students to an existing body where that body is appropriate for the complaint or appeal...at minimal or no cost.*

Currently public providers are under the jurisdiction of the relevant state and territory Ombudsman and in South Australia the Office of the Training Advocate South Australia already offers free, independent complaints handling for all overseas students in that state. This amendment now enables the Overseas Students Ombudsman to investigate any complaints of a student against a private registered provider and so ensures that all students have access to a statutorily independent external body.

The Overseas Students Ombudsman will investigate complaints at no cost to the provider or student.

The Overseas Students Ombudsman can investigate complaints about action taken by private providers in connection with overseas students. Complaints might, for example, be about:

- refusing admission to a course

- fees and refunds
- course or provider transfers
- course progress or attendance
- cancellation of enrolment
- accommodation or work arranged by a provider
- incorrect advice given by an education agent.

The Overseas Students Ombudsman cannot investigate complaints about:

- public providers (which are already covered by the State and Territory Ombudsman)
- domestic Australian students
- students from overseas who are not on a student visa (e.g. students studying on a visitor, working holiday or temporary business visa).

The Overseas Students Ombudsman will refer any complaints received about South Australian private providers to the Office of the Training Advocate.

ESOS will be amended to specify this requirement which will be put into effect through the revision of the National Code at the earliest opportunity. In the meantime, it is strongly recommended that private providers utilise the Overseas Students Ombudsman as their independent body to fulfil this requirement and transition to the new requirements under the revised National Code. Providers will need to update advice to students on how they can complain and appeal.

More information about the Overseas Student Ombudsman is available at www.oso.gov.au

How do these amendments fit with the National Regulators?

A national risk management approach aims to ensure consistency in the assessment and management of risk in international education. It will help inform and align with risk assessment frameworks developed for both the Tertiary Education and Quality Standards Agency (TEQSA) and the Australian Skills Quality Authority (ASQA) (formally the National VET Regulator).

Both TEQSA and ASQA will gather information and evidence to inform their risk management approaches for the higher education and VET sectors. Once established, the national regulators will also manage a provider's registration for and compliance with ESOS. In line with current practice, it is envisaged that a provider's ESOS requirements will sit above the underpinning requirements of the domestic quality frameworks, recognising that there are particular risks associated with overseas students, including reputational, consumer protection and visa related risks which require separate consideration.

Given this, the national regulators will be well placed to form an overall risk assessment of each provider in their sector considering both their domestic and international profiles. This will support greater efficiency, consistency and reduce regulatory burden, key objectives of national regulation.