



Reducing regulatory barriers in the international education sector

Background

The Australian Government is moving to implement changes to the *Education Services for Overseas Students Act 2000* (ESOS Act) to allow some courses to be offered to international students without being registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS). These courses are referred to as supplementary courses and are low-cost, short in duration and allow overseas students to gain pre-requisite industry qualifications that will enrich their Australian experience and also improve their skills and employability, making them less vulnerable to exploitation in the workplace. Supplementary courses can be undertaken by students alongside their principal course, for which their visa was granted.

Before the changes were made to the ESOS Act, the additional administrative and financial investment needed to maintain CRICOS registration meant few providers offered these courses to overseas students, limiting students' access to training for employment in industries such as hospitality, health and construction.

These changes permit more education providers to enter the market to deliver a wider range of supplementary courses to overseas students and assists Australian businesses to fill short-term skill shortages to deliver critically important goods and services.

These amendments are made under the [Education Services for Overseas Students Amendment \(Refunds of Charges and Other Measures\) Act 2021](#). Specifically, this new Act amends the ESOS Act to enable refunds of registration charges in special circumstances, redefine a course for the purposes of the ESOS Act and enable the Minister to include and exempt certain supplementary courses from the ESOS Act.

Supplementary courses

Refining the definition of "course" in the ESOS Act more explicitly aligns it with courses that are included in the *Australian Qualifications Framework*. The new definition of "course" includes only those courses which are already endorsed or accredited under a national, state or territory framework, as well as courses specific to the international education sector such as English Language Intensive Courses for Overseas Students (ELICOS courses) and Foundation Programs.

This has the effect of excluding non-accredited hobby or recreational courses when delivered by non-higher education providers. From 2 March 2021, CRICOS registration is no longer required to offer courses of this type to international students.

Individual units of competency remain within the definition of “course” and cannot be delivered to international students unless they are CRICOS registered.

The refined definition of *course* is below, which commenced from Royal Assent on 2 March 2021.

A **course** is a course of education or training that satisfies one or more of the following:

- (a) the course leads to a qualification recognised in the Australian Qualifications Framework;
- (b) the course is a course of education at a level that, under section 15 of the Australian Education Act 2013, constitutes primary education or secondary education;
- (c) the course is a Foundation Program;
- (d) the course is an ELICOS course;
- (e) the course is offered by a registered higher education provider;
- (f) the course is a VET course within the meaning of the National Vocational Education and Training Regulator Act 2011.

Legislative instrument

The Minister is now able to make a legislative instrument to include and exempt additional courses from the ESOS Act. This enables the exemption of supplementary courses which may be part of an Australian Qualifications Framework (AQF) qualification but the additional CRICOS requirements are not considered necessary. Once the legislative instrument is made, expected to be by July 2021, exempted courses will not require CRICOS registration to be offered to international students.

Consultation with the international education industry, international students and providers has confirmed support for the Minister to exempt courses that:

- students can attend in addition to their full-time main course of study, without jeopardising the attendance or progress of this course (which would breach visa requirements);
- pursue personal interests, while the student is studying to enhance the quality of the students’ Australian experience; or
- may be required ahead of attending a workplace component approved as part of a substantive qualification or for employment consistent with their student visa requirements of up to 40 hours a fortnight.

These courses are typically short in duration and low cost; such as first aid, infection control, construction white cards, or responsible service of alcohol courses.

Effect of the legislative instrument amendments

The Minister is able to make a legislative instrument from Royal Assent on 2 March 2021. Once the legislative instrument is made, expected to be by July 2021, exempted or included courses will not require CRICOS registration to be offered to international students.

The department will consult relevant stakeholders in making a legislative instrument to ensure any inclusions or exemptions are appropriate and consistent with the objectives of the ESOS Act.

When the legislative instrument is made, the department will release a separate factsheet detailing which courses are included or exempted under the ESOS Act.

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

Giving the Minister a power to declare that a course (or types of course) are included or exempt from the ESOS Act will ensure students are not able to obtain a student visa for courses of a short duration.

Refunds of charges

The purpose of this amendment is to enable the Secretary, on behalf of the Commonwealth, to refund charges under the *Education Services for Overseas Students (Registration Charges) Act 1997* (Registration Charges Act) if there are special circumstances that justify doing so. Special circumstances will include events which have a broad impact on the sector such as the COVID-19 pandemic.

The Registration Charges Act imposes the regulatory fees and levies CRICOS registered providers must pay. These charges reflect the cost of the department's regulatory effort to uphold the integrity and reputation of Australia's international education and training sector.

As part of the Australian Government's economic response to the COVID-19 pandemic, registered providers were either exempted or refunded a total of more than \$10.9 million. Exemptions or refunds have been made for the department's Annual Registration Charge (ARC) in 2020 and 2021 and Entry to Market Charges (EMC) for the period from 1 January 2020 to 30 June 2021. This process revealed there was no existing ESOS provision to make refunds to registered providers.

Effect of the refunds of charges amendments

The ability of the Secretary to refund CRICOS registration charges in special circumstances commenced from Royal Assent on 2 March 2021.

This strengthens the Commonwealth's ability to be responsive to the international education sector during special circumstances by enabling more flexible and timely refunds by the department in the future.

The Secretary will be guided by policy guidelines to inform and standardise the application of the power. Individual or groups of providers will not be able to apply for a refund.

Frequently asked questions

Supplementary courses

When will I be able to deliver courses such as first aid and white card to international students without a CRICOS registration?

Courses will only be exempt from CRICOS registration after the Minister makes an exemption instrument. The exemption instrument is expected to be made by 1 July 2021. The list of exempted courses will be made available through the legislative instrument.

CRICOS requirements for providers and courses that fall under the new definition of course under the ESOS Act remain in place until an exemption instrument is made.

I am an international student, what courses can I take?

Your principal course of study in Australia, for which you have been granted a student visa must be CRICOS registered. All institutions and courses available to international students are listed on CRICOS at <http://cricos.education.gov.au/>.

From 2 March 2021, non-higher education providers may deliver non-accredited hobby or recreational courses to international students without a CRICOS registration. You are able to continue to enrol or participate in these types of courses. The change affects providers' requirements, not international students' visa conditions.

An exemption instrument, once made, will allow additional courses to be delivered without a CRICOS registration. A list of exempted courses is expected to be made by 1 July 2021 and will be available to providers and international students through the department's communication channels, including the department's website.

Education providers will also be able to provide you with advice on what courses are available.

When will the legislative instrument to exempt or include courses be made?

The Minister has the power to make the instrument from the Royal Assent of the Bill. It is expected that the Minister will make the instrument in the first half of 2021.

How will I know if a course is exempt?

The list of exempted courses will be included in the instrument and will also be available through departmental communications channels, including the department's website.

Will ELICOS courses be exempted from CRICOS?

No, CRICOS requirements and compliance with the *ELICOS Standards 2018* will remain in place for ELICOS courses delivered to international students.

If a course is not registered on CRICOS, will this affect the quality of education provided to international students?

All exempted courses will remain covered by the same quality assurance mechanisms that apply to other domestic courses, including regulation by the Australian Skills Quality Authority (ASQA) or Tertiary Education Quality and Standards Agency (TEQSA).

Will international students have tuition fee and other protections when undertaking courses with non-CRICOS providers?

The quality assurance protections that are in place for the domestic delivery of exempted courses, with oversight from ASQA and TEQSA will apply. Just like domestic students in these courses, international students will have remedies under Australian consumer law for their tuition fees.

Additionally, the exempted courses are generally short in duration and cost, limiting the risk to international students. The instrument also allows the Minister to reinstate courses under the ESOS Act or determine certain courses must be registered under the ESOS Act and will act to do so where poor practice is identified.

Refunds of charges

I am a CRICOS provider, how will this affect me?

This will have no effect on existing or new CRICOS providers and their registration. The purpose of this amendment is to allow refunds of charges to be made in special circumstances, if required in the future.

Can I apply for a refund?

No. If there is a special circumstance, the Secretary will authorise the provision of sector-wide relief. Information for providers will be available at that time, however providers need not apply for a refund individually.

What classifies an event as a special circumstance for the purposes of refunds being provided?

Generally, such circumstances would be characterised by unexpected events or situations, across the sector, creating undesirable or anomalous outcomes that could be improved or remedied by refunds of charges.

This amendment does not apply to administrative errors, like returning overpayments, with that power already existing. Similarly, this amendment will not apply to waiving charges as there are existing powers under the Registration Charges Act to exempt providers from the requirement to pay CRICOS charges.

More information

The *Education Services for Overseas Students Amendment (Refunds of Charges and Other Measures) Act 2021* can be found here: <https://www.legislation.gov.au/Details/C2021A00018>.