



Consultation on Education Services for Overseas Students (ESOS) course exemption instrument 2021

Why are we consulting?

The *Education Services for Overseas Students Act 2000* (ESOS Act) mandates all providers be registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) to deliver a course to overseas students. This requirement exists to quality-assure Australia's international education offering and upholds the integrity of the student visa system. However, these regulatory requirements do not suit some short duration courses that are low cost and supplementary to a student's main course of study. Specifically, the additional administrative and financial investment needed to maintain CRICOS registration has meant that few providers seek to offer the courses to overseas students and that students' access to training for employment in industries such as hospitality, health and construction is limited, as some supplementary courses may be pre-requisites.

On 2 March 2021, the [Education Services for Overseas Students Amendment \(Refunds of Charges and Other Measures\) Act 2021](#) received Royal Assent, and signifies the first step the Australian Government has taken toward removing these regulatory barriers. This new Act amended the ESOS Act, changing the definition of 'course' and allowing the Minister responsible to introduce a legislative instrument to 'exempt' certain courses from requiring CRICOS registration before being offered to overseas students, reducing regulatory barriers for students and providers.

Developing the exemption instrument is the second step in this process. Building on [consultation held for these changes in 2020](#), the Department of Education, Skills and Employment (DESE) is now seeking comments from the sector to inform the drafting of the instrument to ensure it effectively achieves its intended aims, and considers the views of stakeholders.

What will be the outcome of this consultation?

Your comments will be considered in finalising the exemption instrument, which is planned to commence by July 2021.

How you can express your opinion

You can provide comments to this public consultation process in the preferred template provided to ESOS-PolicyTeam@dese.gov.au between 22 March 2021 and 5pm AEST 5 April 2021.

Please consider the questions below.

1. Do you have any comment on the proposed courses listed for exemption in the draft instrument?

2. Noting the intent of the instrument is to remove regulatory barriers for providers, offer broader choice for international students and facilitate employment opportunities, are there any other specific courses or units of competency—that are not qualifications under the Australian Qualifications Framework (AQF)— that should be made exempt in the VET sector? Why?
3. The proposed higher education sector exemptions will not list specific courses but will be based on exemption criteria. These criteria are courses of up to 0.25 Equivalent Full-Time Student Load (EFTSL) per calendar year, and courses which do not lead to an AQF qualification. Noting CRICOS registration requirements will remain in place for some non-AQF courses, such as English Language Intensive Courses for Overseas Students (ELICOS) and Foundation Programs, are there other courses delivered by higher education providers that should be CRICOS registered by Tertiary Education Quality and Standards Agency (TEQSA)?

Addressing sector feedback

Feedback from consultation in 2020 on the *Education Services for Overseas Students Amendment (Refunds of Charges and Other Measures) Act 2021* indicated sector-wide support, with a clear recognition they will improve student choice and provide regulatory relief for providers, whilst maintaining quality assurance for exempted courses.

Some respondents noted a potential for exploitation by providers and students, as well as possible effects on a student's primary course of study. Submissions also indicated an interest in exempting 'hobby' or recreational courses delivered by higher education providers. DESE has considered this feedback in developing the instrument.

To limit risk associated with a student's main course of study, the department is seeking to exempt courses that are, generally, low cost and short in duration. Students will continue receiving quality education with strong regulatory and tuition protections under the ESOS Act for their primary (i.e. visa-connected) courses. All exempt courses will remain covered by the same quality assurance mechanisms that apply to that course in a domestic context. This includes regulatory oversight by the Australian Skills Quality Authority (ASQA) or TEQSA, and Australian consumer law protections.

The instrument will also be used to allow the delivery of some supplementary courses by higher education providers by exempting courses which do not lead to an AQF award, except for a limited number of courses that are identified as appropriate for CRICOS registration under the ESOS Act by TEQSA.

The instrument will also exempt a limited number of other supplementary courses from CRICOS registration. Study load caps will be used in the higher education sector to mitigate risks associated with unsatisfactory course progress and/or attendance in a student's primary course of study, should they undertake a supplementary course.

The proposed instrument

The instrument will enable the Minister for Education to exempt specific courses from the definition of *course* under the ESOS Act. This will allow providers to deliver these courses to overseas students without registering them on CRICOS. It will be a disallowable legislative instrument.

Initially, the instrument will only exempt courses that facilitate employment in a limited number of industries. AQF courses and non-AQF courses such as ELICOS and Foundation Program will continue to be regulated against the ESOS requirements for CRICOS registration.

The department has considered feedback from the first phase of consultation and has developed a list of courses for exemption, and has paid particular attention to courses that require occupational licensing across all states and territories, such as first aid, responsible service of alcohol, barista courses, food handling/hygiene courses and construction white cards.

Courses made exempt through the instrument may also be those 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. 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 work limitation.

Overseas students will not be able to apply for student visas based on exempt courses.

Proposed courses for exemption

VET courses

The instrument will exempt a short list of specific units of competency and courses, using course codes and names from the [National Register of VET](#). These courses are targeted at fulfilling occupational licensing requirements and enhancing employment opportunities.

The following VET units of competency accredited by ASQA are proposed for exemption:

1	HLTAID009	Provide cardiopulmonary resuscitation
2	HLTAID010	Provide basic emergency life support
3	HLTAID011	Provide First Aid
4	HLTAID012	Provide First Aid in an education and care setting
5	HLTAID013	Provide First Aid in remote or isolated site
6	HLTAID014	Provide Advanced First Aid
7	HLTAID015	Provide advanced resuscitation and oxygen therapy
8	HLTAID016	Manage first aid services and resources
9	HLTINFCOV001	Comply with infection prevention and control policies and procedures
10	HLTINF001	Comply with infection prevention and control policies and procedures
11	BSBWHS332X	Apply infection prevention and control procedures to own work activities
12	SITHFAB002	Provide responsible service of alcohol
13	SITHGAM001	Provide responsible gambling services
14	SITXFSA001	Use hygienic practices for food safety
15	SITXFSA002	Participate in safe food handling practices
16	CPCCWHS1001	Prepare to work safely in the construction industry
17	SITHFAB005	Prepare and serve espresso coffee

The following VET courses accredited by the Victorian Regulations and Qualifications Authority are proposed for exemption:

1	22556VIC	Course in the Management of Asthma Risks and Emergencies in the Workplace
2	22300VIC	Course in First Aid Management of Anaphylaxis

Higher education courses

The proposed criteria for exempting courses delivered by higher education providers are:

- (a) delivery of up to 0.25 EFTSL per calendar year by higher education providers; or
- (b) courses delivered by higher education providers which do not lead to a qualification recognised under the AQF, except for those that fall under the categories of:
 - ELICOS;
 - foundation programs;
 - study abroad;
 - student exchange;
 - postgraduate coursework and research preparatory courses; and
 - professional outcomes/placement courses.

Updating the exemptions list

The instrument will adopt precedent in similar legislation, allowing the inclusion and reference of later versions of exempt courses when/if they are superseded and updated to ensure the list remains valid.

As education needs change in the targeted labour market, the Minister may consider amending the instrument to either add or remove courses from the exemptions list, as required. The department may consult providers, industry and regulators when updating the instrument.