



Reducing regulatory barriers in the international education sector

1. Delivery of supplementary courses

The Australian Government has implemented a number of changes to the legislative framework for overseas students to make it easier for education providers to offer students short courses to supplement their primary course of study. Two sets of legislative change needed to be made, as outlined below.

Firstly, changes were made to the *Education Services for Overseas Students Act 2000* (the ESOS Act):

- The definition of course was changed to more explicitly align it with the established regulatory frameworks in place for formal education qualifications in Australia, effectively only requiring formal courses, which lead to an education outcome, to be included for coverage under the Act; and
- A power was created for the Minister for Education and Youth to include or exempt other courses from this definition and from the Act's coverage.

These changes were made to the ESOS Act through the *Education Services for Overseas Students Amendment (Refunds of Charges and Other Measures) Act 2021* (Amendment Act) which was passed on **2 March 2021**.

Secondly, the Minister for Education and Youth used the power under the Amendment Act to create a legislative instrument to exempt other courses from the definition of *course*. This instrument came into effect on **29 June 2021**.

The change to the definition of *course* had the immediate effect of removing informal or hobby courses, like yoga or guitar lessons, from ESOS coverage, except when delivered by a higher education provider. The creation of the instrument had the effect of explicitly listing a small group of short duration VET courses which on their own do not lead to a qualification recognised under the Australian Qualifications Framework from ESOS coverage and, exempting most non-award courses delivered by higher education providers. Taken together, these changes allow some courses to be offered to international students without being registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS), which was not possible before.

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.

The changes to the definition of course in the ESOS Act provide the ability for more education providers to more easily enter the market to deliver a wider range of courses to overseas students and will assist Australian businesses to fill short term skill shortages to deliver critically important goods and services.

Definition of course

Clarifying what constitutes a *course* for the purposes of the ESOS Act more explicitly aligns it with courses 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. Unless otherwise exempted, all courses offered by a registered higher education provider fall within the definition.

Consequently, the definition does not include 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.

The definition of *course*, which commenced on **2 March 2021**, is below:

- (1) 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;
 - (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.

For clarity, in respect of vocational education and training (VET) courses, where a course leads to a qualification recognised in the Australian Qualifications Framework, or otherwise meets the definition of VET course in the *National Vocational Education and Training Regulator Act 2011* (including because the units of competency required to complete the course are based on a nationally recognised training package), CRICOS registration will still be required where the course is delivered to overseas students, unless the course is exempt under the instrument discussed below.

Effect of legislative instruments

The Amendment Act allows the Minister to determine, through a legislative instrument, that a course is or is not a course for the purposes of the ESOS Act. In other words, the Minister may exempt certain courses from, or include certain courses within, the operation of the ESOS Act.

Courses which are included in the definition through a legislative instrument will require CRICOS registration to be offered to international students. However, courses exempted through an instrument will not require CRICOS registration to be offered to international students. The

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

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

Supplementary courses exemption

Following consultation with the sector, the Minister for Education and Youth made the *Education Services for Overseas Students (Exempt Courses) Instrument 2021*. This instrument commenced on **29 June 2021** and exempts courses, commonly referred to as *supplementary courses*, from the definition of *course*. Supplementary courses 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. It will also make them less vulnerable to exploitation in the workplace because, as holders of the relevant occupational certificates, they will be better able to choose the employers for whom they will work. Students will be more competitive in the job market and can be assured they have the appropriate qualifications to seek employment with law-abiding employers. Supplementary courses can be undertaken by students alongside their main, CRICOS registered course.

Please refer to the 'ESOS Supplementary Courses Fact Sheet' for additional details.

2. Refunds of charges

The *Education Services for Overseas Students Amendment (Refunds of Charges and Other Measures) Act 2021* (Amendment Act), passed on **2 March 2021**, also created a power for refunds of fees paid by education providers registered on CRICOS.

The provisions in the Amendment Act concerning refunds of registration charges enable the Secretary, on behalf of the Commonwealth, to refund charges to providers 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.

As part of the Australian Government's economic response to the COVID-19 pandemic, registered providers were not required to pay the Annual Registration Charge (ARC) in 2020 and 2021 and any Entry to Market Charges (EMC) for the period from 1 January 2020 to 31 December 2021. Registered providers who had already paid a 2020 ARC or EMC were refunded using act of grace provisions in the *Public Governance, Performance and Accountability Act 2013*, to a total of more than \$10.9 million. This process was required because there was no existing ESOS provision to make refunds to registered providers.

The purpose of the refunds of charges provisions in the Amendment Act 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 regulatory fees and levies upon CRICOS registered providers. 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.

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?

The Minister for Education and Youth approved an instrument listing certain courses for exemption on 29 June 2021. The list of exempted courses will be made available through the legislative instrument, which can be found [here](#).

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](#), made on 29 June 2021, allows additional courses to be delivered without CRICOS registration.

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

How will I know if a course is exempt?

The list of exempted courses is included in the [instrument](#) and in the [ESOS Supplementary Courses Fact Sheet](#).

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 still 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 Minister is able to (through a future legislative instrument) reinstate courses under the ESOS Act or determine that 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?

There is no formal application process set out in the legislation for applying for refunds. Under the new provisions, 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, as that power already exists. 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>.