



Changes to ‘fit and proper provider’ requirements

A number of changes have recently been made to the ‘fit and proper provider’ requirements and processes under the *Education Services for Overseas Students Act 2000* (the ESOS Act).

When determining whether a provider is fit and proper to be a registered provider under the ESOS Act, and appear on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS), an ESOS agency must now consider:

- ownership and control arrangements between education providers and education agents (see page 1), and
- whether a provider or a related person of the provider is being investigated for a specified offence (see page 2)

These requirements apply where a provider is applying for registration and to maintaining their registration.

This fact sheet is intended as a plain language guide to the changes and should not be relied upon as legal advice. Where there is doubt, please refer to the [ESOS Act](#).

Assessing cross-ownership arrangements between providers and education agents

What is changing?

When determining if a provider is fit and proper to be CRICOS-registered, ESOS agencies or designated State authorities (DSAs) must now consider ownership or control arrangements, both in Australia and overseas, between education agents and education providers (and their associates).

The existence of ownership arrangements does not automatically mean that a provider is not fit and proper to be registered, but ESOS agencies and DSAs must consider the nature of these arrangements in making an assessment as to whether the provider is fit and proper to be registered or maintain their registration.

Specifically, ESOS agencies and DSAs must consider:

- whether the provider, or an associate of the provider, has direct or indirect ownership or control of an *education agent*, and if so, the value or extent of the ownership or control
- whether an education agent, or an associate of the education agent, has direct or indirect ownership or control of the *provider*, and if so, the value or extent of the ownership or control.

In addition, a registered provider must notify its ESOS agency within 10 business days of any event relating to a change to the ownership or control between an education agent and the provider. Specifically, the provider must advise the ESOS agency of the following events:

- the provider, or an associate of the provider, begins to own or control an education agent
- there is a change in the ownership or control of an education agent by the provider or an associate of the provider
- an agent, or an associate of the education agent, begins to own or control the provider
- there is a change in the ownership or control of the provider by an education agent or an associate of the agent.

Why the change?

The *Rapid Review into the Exploitation of Australia's Visa System* (Nixon Review) identified that some non-genuine providers are colluding with disreputable education agents in issuing student visas and then funnelling overseas students into work or criminal activities.

These changes will support integrity in the international education sector by strengthening the existing fit and proper provider test to better identify and limit collusive and unscrupulous business practices between providers and education agents.

Providers under investigation for offences

What is changing?

When determining if a provider is fit and proper to be CRICOS-registered, ESOS agencies and DSAs must now consider whether a provider or a related person of the provider (defined under subsection 7A (3) of the ESOS Act) is being investigated for a specified offence.

The specified offences covered in the fit and proper test include:

- an offence under the ESOS Act
- an offence under Division 270 (slavery and slavery-like conditions) or Division 271 (trafficking in persons and debt bondage) of the *Criminal Code Act 1995*
- an offence under section 590 of the *Corporations Act 2001* (offences by officers of certain companies)
- an offence specified in a legislative instrument made by the Minister for Education.

ESOS agencies and DSAs are not required to automatically determine that a provider is not fit and proper to be registered if a provider is under investigation – only consideration of this factor is required.

If an ESOS agency or DSA has determined that a provider who is under investigation for a specified offence does not meet the fit and proper requirements, the provider's registration will be automatically suspended under section 89 of the ESOS Act. The ESOS agency or DSA may also impose a condition on a provider's registration or cancel the registration under section 83 of the ESOS Act.

Why the change?

Recent reviews and inquiries, such as the Nixon Review and the Joint Standing Committee on Foreign Affairs, Defence and Trade's *Inquiry into Australia's tourism and international education sectors*, found serious exploitation of overseas students by unscrupulous providers. This change addresses the risk of exploitation of students by providers who are being investigated for integrity concerns or serious criminal offences. Suspending providers who are under investigation for a specified offence ensures that vulnerable students are protected and further exploitation is limited while investigations are being undertaken.

Frequently Asked Questions

Who do these new requirements apply to?

The new requirement in the fit and proper test applies to all providers (except for exempt providers, as defined under the ESOS Act). This includes:

- a provider applying for registration or re-registration after commencement of the new requirement
- a provider who applied for registration or re-registration before commencement of the new requirement, but the ESOS agency or DSA has not yet made a decision on the application
- a provider who is registered before or after commencement of the new requirement.

The requirement to consider investigation for offences will apply to providers (except for exempt providers, as defined under the ESOS Act) regardless of whether an alleged offence occurred before, on or after commencement of the new requirement. This means an ESOS agency can consider any specified offences that occurred prior to the commencement of this amendment.

I am a registered provider with ownership of an education agent. What action do I need to take?

Registered providers must notify their ESOS agency of any new or changed ownership or control arrangements with education agents within 10 business days of the change.

Registered providers with existing arrangements before the commencement date do not need to report those arrangements unless there is a change in those arrangements or are specifically requested to by their ESOS agency.

I am a university that holds a share in IDP Australia. What does this change mean for me?

IDP Australia began as a government development and education outreach program and is now an Australian-listed international education services company with global operations.

Some Australian universities still hold a share in IDP Australia but are holding, at most, 0.66 per cent each. As this is not a controlling interest, and reflects an existing arrangement, these providers do not need to report their shares in IDP Australia.

Why should ownership and control be considered when deciding whether a provider or registered provider is fit and proper?

The requirement to report the ownership and control that exists between providers and education agents will increase transparency in the sector and give confidence in the business activities of registered providers. It will also ensure the business arrangements of registered providers will not act as vehicles for the exploitation of overseas students.

What information will ESOS agencies rely on when considering whether an organisation, provider or registered provider is fit and proper?

In making an assessment, ESOS agencies will rely on information gathered through:

- provider submissions during application processes for registration or registration renewal
- notification of changes in ownership or control
- regulatory activities
- publicly available sources.

A registered provider may commit an offence if it gives false and/or misleading information to an ESOS agency.

Will there be any exemptions given to genuine providers with a record of good practice who hold a controlling interest in an education agent business?

Ownership or control of, or by, an education agent is not an individual ground for determining a provider is not 'fit and proper' to be registered. ESOS agencies must consider the ownership and control that exists between providers and education agents and will take this into consideration when making an overall determination of whether a provider is 'fit and proper' to be registered.

How will ESOS agencies know whether a provider is under investigation for a specified offence?

ESOS agencies regularly communicate with other government and law enforcement agencies and have information sharing arrangements in place that guide when and what information is shared.

What will happen if an ESOS agency finds a provider is no longer fit and proper to be registered?

If an ESOS agency finds a provider is no longer fit and proper to be registered, the provider's registration will be automatically suspended under section 89 of the ESOS Act. The provider will not be able to recruit or enrol overseas students, solicit or accept any money from current or intending students or allow a student to begin a course while its registration is suspended.

How will a provider know that its registration is suspended?

If a provider's registration has been suspended, the ESOS agency must notify the provider of the suspension in writing.

Is a provider able to seek review of the suspension?

The suspension of a provider's registration under section 89 of the ESOS Act is automatic by operation of law and is not subject to review.

What will happen if the investigation for a specified offence finds no fault?

If the ESOS agency becomes satisfied that the provider is fit and proper to be registered again, the ESOS agency may lift the suspension of the provider's registration.