



Australian Government

Australian Education International

Education Services for Overseas Students Legislation Amendments 2006

This information sheet is designed to provide an overview of key amendments to the *Education Services for Overseas Students Act 2000* (the ESOS Act) passed by the Australian Parliament in November 2006.

Registering approved providers (fit and proper person test) Sections 9(6), 11(1), 17(1), 83(1), 89(A)

Purpose

The 'fit and proper' test is designed to identify any past behaviour of a provider, associate or high managerial agent of the provider which may impact on the suitability of the provider to be registered to provide education and training to overseas students.

The ESOS Act has been amended to:

- allow for the Minister or the designated authority for the State to apply the 'fit and proper' test at any point in a provider's registration;
- extend the 'fit and proper' test to high managerial agents of a provider; and
- allow for sanctions to be applied against a provider's registration where the provider is no longer found to meet the 'fit and proper' test.

Key requirements

As from 1 January 2007:

- these amendments provide for the 'fit and proper' test to be applied not only on registration, but at any time during a provider's registration.
- compliance with the 'fit and proper' test (section 9(6) of the ESOS Act) extends to high managerial agents of a provider.
- as part of the registration process an approved provider must notify the Secretary and designated authority of previous breaches etc. of the ESOS Act (section 11(1) of the ESOS Act) by a high managerial agent of the provider.
- registered providers must notify the Secretary if they become aware of breaches etc. by a high managerial agent of the provider (section 17(1) of the ESOS Act).
- sanctions can be applied for non-compliance (sections 83(1) and 89(A) of the ESOS Act).

What does this amendment involve?

- The 'fit and proper' test will now extend to high managerial agents of a provider. This means an employee, agent or officer of the provider with duties of such responsibility that his or her conduct may be fairly assumed to represent the provider in relation to the business of providing courses (see definition in Section 5 of the ESOS Act).
- The intention of this amendment is to cover persons with managerial responsibilities who are not 'associates' of the provider. For example teachers who simply teach courses would not come within the scope of the definition. However, a deputy principal or department head may be considered a high managerial agent of the provider.
- From 1 January 2007 if a provider becomes aware that a high managerial agent of the provider has committed any of the offences or breaches set out in s.17 of the ESOS Act they must notify DEST as soon as possible.
- From 1 January 2007 a provider seeking registration or re-registration will also need to provide this information to the designated authority.

For more information about this amendment, your questions may be sent to esosmailbox@dest.gov.au.
