

Understanding ESOS

Acknowledgement of Country

In the spirit of reconciliation, IEP Advisory acknowledges the Traditional Custodians of countries throughout Australia and their connections to land, sea and community.

We pay our respect to their Elders' past and present and extend that respect to all Aboriginal and Torres Strait Islander peoples today.

Outline

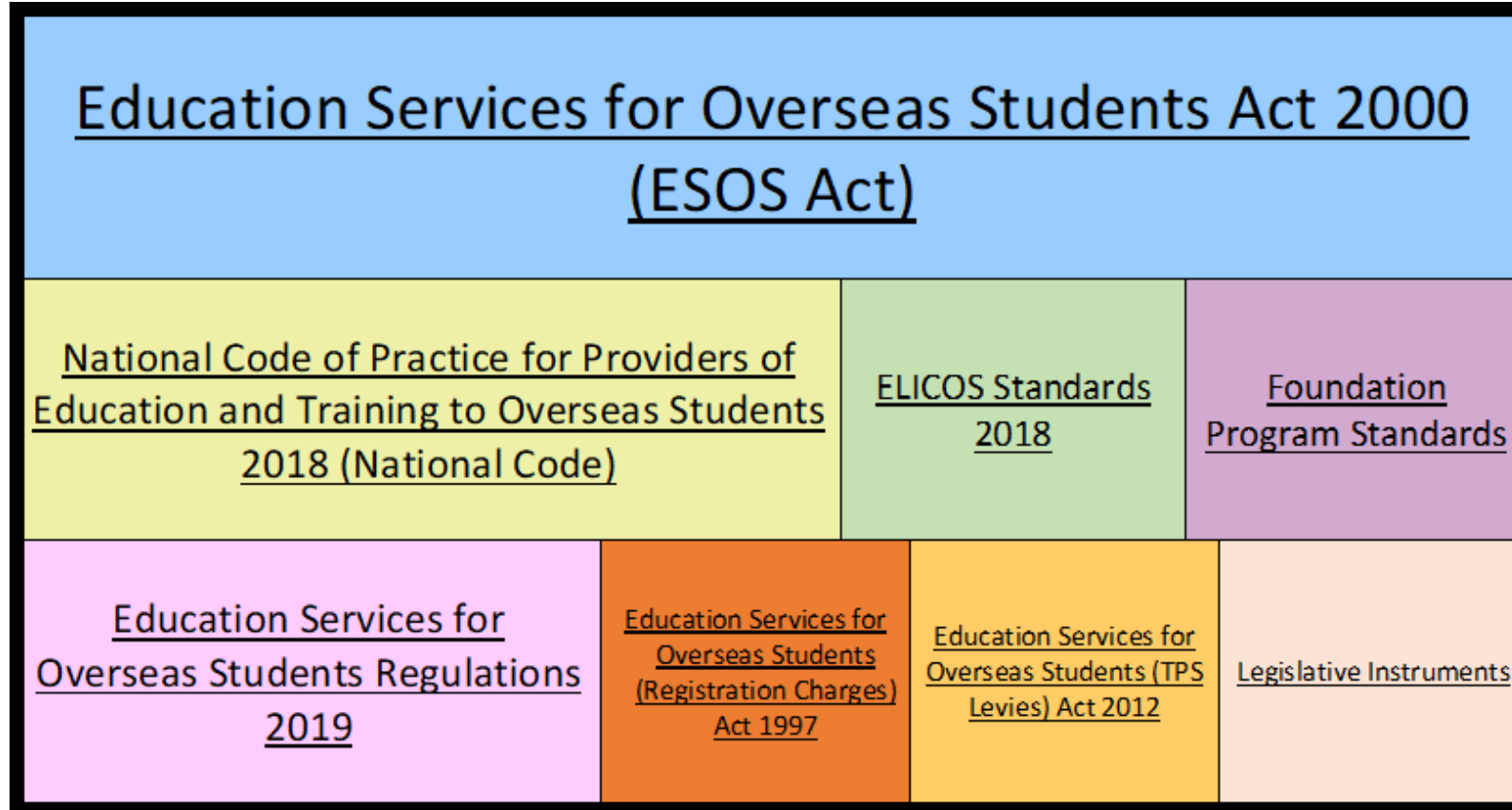
- Introductions
- ESOS framework
- National Code Standards

Education Services for Overseas Students

- The *Education Services for Overseas Students Act* (ESOS Act) and related legislation provides protection for international students , enhances Australia’s reputation for quality education , provides tuition protection and supports the integrity of the student visa program
- The ESOS legislative framework is complemented by:
 - *Migration Act 1958* (Migration Act) and Migration Regulations 1994 (Migration Regulations)
 - *Tertiary Education Quality and Standards Agency Act 2011* (TEQSA Act)
 - *National Vocational Education and Training Regulator Act 2011* (NVETR Act)
 - State and territory legislation relevant to the education and training of overseas students

What is the ESOS framework?

The [Education Services for Overseas Students Act 2000](#) (ESOS Act) forms the legal framework for the quality assurance of education and training institutions offering courses to international students (students studying in Australia on student visas). It is administered by the Australian Government Department of Education.



The ESOS Act

- The ESOS Act governs the registration process and obligations of registered providers, the Tuition Protection Service, enforcement and compliance arrangements
- Education providers can only offer courses to international students if they are registered under the ESOS Act and listed on the [Commonwealth Register of Institutions and Courses for Overseas Students \(CRICOS\)](#)
- The [Tuition Protection Service \(TPS\)](#) assists international students whose education providers are unable to fully deliver their course of study. The TPS ensures that international students are able to either complete their studies in another course or with another education provider or receive a refund of their unspent tuition fees

The ESOS Act

- Offence for a registered provider to promote or promote a course to overseas students without being appropriately registered
- Providers must not engage in deceptive or misleading conduct
- Giving information about accepted students within 31 days (14 days if the student is under 18 years of age)
- Record keeping, including the student's current residential address, mobile phone & email address
- Maintain a list of current education agents and publish the list on the provider website

ESOS Regulations

- The ESOS Regulations support the implementation of the ESOS Act by setting out:
 - information that must be entered on the register about the provider and each course and location
 - student details that providers must include on the Provider Registration and International Student Management System (PRISMS)
 - information about students that providers must give relating to student visa conditions
 - penalties and infringement notices
 - student records that a provider must keep

PRISMS

- Provider Registration and International Student Management System (PRISMS) is a secure database maintained by the Department of Education for the purposes of administering the ESOS Act
- Education providers issue a Confirmation of Enrolment (CoE) as evidence of enrolment in a CRICOS registered course. This evidence is required before the Department of Home Affairs will issue a student visa
- PRISMS also facilitates the monitoring of student compliance with visa conditions, as well as provider compliance with the ESOS Act
- The use of PRISMS reports to monitor compliance enrolment and agent data

CRICOS

- Commonwealth Register of Institutions and Courses for Overseas Students
- CRICOS: <https://cricos.education.gov.au/>
- CRICOS is the official register of all Australian education providers that are permitted to offer courses to students studying in Australia on student visas
- Education providers wanting to enrol international student visa holders into higher education courses must apply for CRICOS approval through TEQSA
- RTO's wanting to enrol international student visa holders into vocational education and training courses must apply for ESOS registration through ASQA

What is the National Code?

- The National Code 2018 provides nationally consistent standards and procedures for registered providers of education and training
- Split into two parts:
 - Part A outlines the ESOS Framework and international education quality assurance processes
 - Part B outlines the Standards that registered providers must comply with
- <https://www.legislation.gov.au/Details/F2017L01182>

Standard 1 – Marketing information and practices

- This standard sets out that registered providers must uphold the integrity and reputation of Australia's education industry by ensuring the marketing of their courses and services is not false or misleading.

Standard 1 – Marketing information and practices

- Ensure that the marketing and promotion of courses and education services, including through an education agent, is not false or misleading, and is consistent with Australian Consumer Law
- The registered provider must not claim to commit to secure a migration outcome from undertaking any course or guarantee a successful education assessment outcome
- Include CRICOS registered name and registration number in any written or online material providing or offering to provide a course, inviting a student to undertake or apply for a course, or indicate it is able or willing to provide a course
- Not actively recruit where it conflicts with Standard 7

Standard 2 – Recruitment of an overseas student

- This standard sets out that registered providers must recruit responsibly by ensuring students are appropriately qualified for the course for which they seek enrolment, including having the necessary English language proficiency, educational qualifications and work experience. Students must have sufficient information to enable them to make informed decisions about studying with their chosen registered provider in Australia.

Standard 2 – Recruitment of an overseas student

Prior to accepting a student for enrolment, the provider must make comprehensive, current and plain English information available on:

- minimum level of English language proficiency, educational qualifications or work experience required, and course credit if applicable
- the CRICOS course code, course content, modes of study for the course including compulsory online and/or work-based training, placements, other community-based learning and collaborative research training arrangements
- course duration and holiday breaks
- course qualification award or other outcomes
- campus locations and facilities, equipment and learning resources available

Standard 2 – Recruitment of an overseas student

- the details of any arrangements with another provider who will provide the course or part of the course
- indicative tuition and non-tuition fees, including advice on the potential for changes to fees over the duration of a course, and the provider's cancellation and refund policies
- the grounds on which the overseas student's enrolment may be deferred, suspended or cancelled
- ESOS framework, including official Australian Government material
- where relevant, the policy and process the registered provider has in place for approving the accommodation, support and general welfare arrangements for younger overseas students
- accommodation options and indicative costs of living in Australia

Standard 2 – Recruitment of an overseas student

- Must have and implement a documented policy and process for assessing whether the overseas student's English language proficiency and educational qualifications or work experience is sufficient to enable them to enter the course
- Must have and implement a documented policy and process for assessing and recording recognition of prior learning (RPL), and granting and recording course credit
- If the registered provider grants the overseas student RPL or course credit that reduces the overseas student's course length:
 - The provider must inform the student of the reduced course duration and ensure the Confirmation of Enrolment (CoE) is issued only for the reduced duration of the course
 - Report any change in course duration in PRISMS if RPL or course credit is granted after the overseas student's visa is granted

Standard 3 – Formalisation of enrolment and written agreements

- This standard sets out that registered providers must formalise their enrolment of overseas students through written agreements with overseas students. The written agreements protect the rights and set out the responsibilities of each party, as well as the courses and related education services to be provided, tuition and non-tuition fees payable, and refund policies.

Standard 3 – Formalisation of enrolment and written agreements

- Must enter into a written agreement with the student signed or otherwise accepted, concurrently with or prior to accepting payment of tuition fees or non-tuition fees. A written agreement may take any form provided it meets the requirements of the ESOS Act and the National Code
- The written agreement must be in plain English:
- Course information, start date, location and modes of study
- Prerequisites and conditions
- Tuition, non-tuition fees and refund information
- Circumstances in which personal information may be disclosed by the registered provider in accordance with the Privacy Act 1988
- Outline the internal and external complaints and appeals processes
- State that the student is responsible for keeping a copy of the written agreement as supplied by the registered provider, receipts of any payments of tuition fees or non-tuition fees and must notify the provider of any change to contact details
- Only use links to provide supplementary material

Written Agreements and Australian Consumer Law

- Education providers must include their refund policy in the written agreements with international students
- Written agreements are given to students on a ‘take it or leave it’ basis, making them **standard form consumer contracts**
- These agreements are therefore subject to Australian Consumer Law, including provisions about Unfair Contract Terms (UCT’s)
- The Ombudsman can form an opinion that something is “contrary to law”
- Consideration is given to the gravity of the offence and the consequences of the outcome decision
- The Ombudsman will support the education provider if they think their decision has been “fair and reasonable”
- “Improving fairness in written agreements between international students and Australian education providers”
- [Issues paper - \[subject\] \(ombudsman.gov.au\)](#)

Unfair Contract terms

Australian Consumer Law

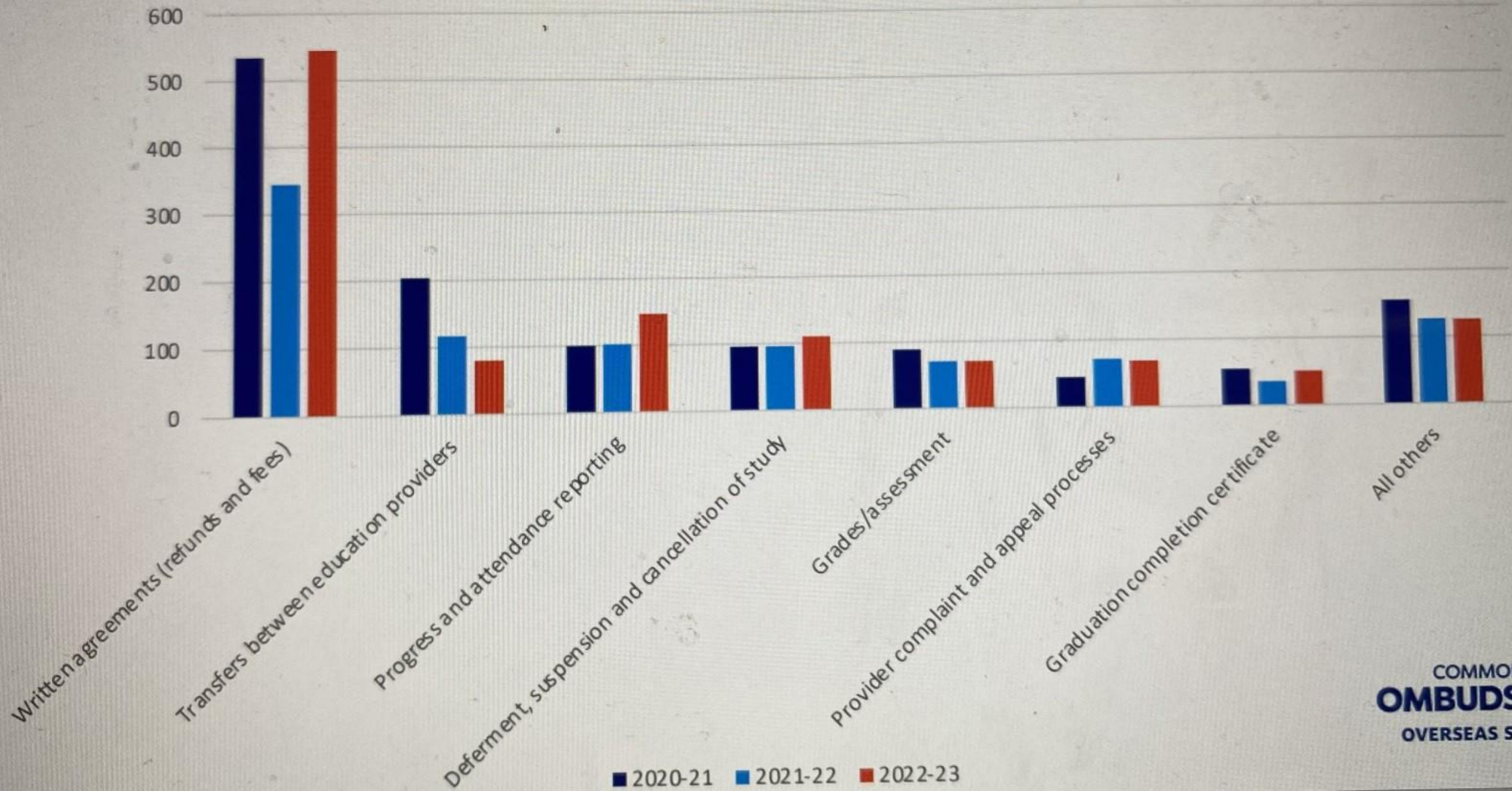
International student written agreements are 'standard form consumer contracts' subject to Australian Consumer Law rules on unfair contract terms.

Unfair contract terms:

1. cause a **significant imbalance** in the parties' rights and obligations arising under the contract, and
2. are **not reasonably necessary** to protect the legitimate interests of the party who would be advantaged by the term; and
3. **would cause detriment** (whether financial or otherwise) to a party if relied upon.

From mid-November 2023, courts will be able to impose penalties on parties proposing, using or relying on unfair contract terms.

Most common complaint issues 2020-21 to 2022-23



Standard 4 – Education agents

- The registered provider must enter into a written agreement with each education agent it engages to formally represent it, and enter and maintain the education agent's details in PRISMS.
- The written agreement must outline:
 - the responsibilities of the registered provider, including that the registered provider is responsible at all times for compliance with the ESOS Act and National Code 2018
 - the registered provider's requirements of the agent in representing the registered provider
 - the registered provider's processes for monitoring the activities of the education agent in representing the provider
 - the corrective action that may be taken by the registered provider if the education agent does not comply with its obligations under the written agreement
 - the registered provider's grounds for termination of the registered provider's written agreement with the education agent

Standard 4 – Education agents

A registered provider must require its education agent to:

- declare in writing and take reasonable steps to avoid conflicts of interests with its duties as an education agent of the registered provider
- observe appropriate levels of confidentiality and transparency in their dealings with overseas students or intending overseas students
- act honestly and in good faith, and in the best interests of the student
- have appropriate knowledge and understanding of the international education system in Australia, including the Australian International Education and Training Agent Code of Ethics.

Standard 4 – Education agents

- The provider must take immediate corrective action if it becomes aware, or has reason to believe, the education agent, or an employee or subcontractor has not complied with outlined responsibilities in the written agreement
- The provider must immediately terminate its relationship if it becomes aware, or has reason to believe, the education agent, or an employee or subcontractor has engaged in false or misleading recruitment practices
- The provider must not accept students from an education agent if they are:
 - Providing migration advice, unless authorised under the Migration Act
 - Engaged in dishonest recruitment practices, including deliberate attempts to recruit in conflict with Standard 7
 - Facilitate the enrolment of a student who the education believes will not comply with visa conditions

Standard 5 – Younger overseas students

- This standard sets out that registered providers of overseas students aged under 18 must meet legislative or other regulatory requirements relating to child welfare and protection
- Registered providers of overseas students aged under 18 must provide the students with emergency contact information and information about how to report actual or alleged abuse
- Where the registered provider has taken on responsibility for the approval of welfare arrangements for a student who is under 18 years of age (for the purposes of the Migration Regulations), the registered provider must ensure the arrangements for the younger students are suitable, ongoing and appropriately managed until the student turns 18 years of age
- Policies and processes for selecting, screening and monitoring third parties

Standard 6 – Overseas student support services

- This standard sets out that registered providers must assist overseas students to adjust to study and life in Australia and have an appropriate orientation program that helps overseas students to access the information and services they require.

Standard 6 – Overseas student support services

- The registered provider must support the overseas student in adjusting to study and life in Australia by giving the overseas student information on, or access to an age and culturally appropriate orientation program that provides information about:
 - support services to help them adjust to study and life in Australia
 - English language and study assistance programs; legal services; emergency and health services; facilities and resources
 - complaints and appeals processes
 - course attendance and progress requirements
 - support services to assist students with general or personal circumstances that are adversely affecting their education in Australia
 - services to assist students on employment right and conditions

Standard 6 – Overseas student support services

- Give relevant information or provide referrals as appropriate to overseas students who request assistance in relation to the services and programs set out in Standard 6.1, at no additional cost to the overseas student
- Offer reasonable support to overseas students to enable them to achieve expected learning outcomes regardless of the overseas student's place of study or the mode of study of the course, at no additional cost to the overseas student
- Designate a member or members of its staff to be the official point of contact for overseas students. The student contact officer or officers must have access to up-to-date details of the registered provider's support services
- The registered provider must have sufficient student support personnel to meet the needs of the overseas students enrolled with the registered provider

Standard 6 – Overseas student support services

- Must ensure its staff members who interact directly with overseas students are aware of the registered provider's obligations under the ESOS framework and the potential implications for overseas students arising from the exercise of these obligations
- Must have and implement a documented policy and process for managing critical incidents that could affect the overseas student's ability to undertake or complete a course
- Must take all reasonable steps to provide a safe environment on campus and advise overseas students and staff on actions they can take to enhance their personal security and safety

Standard 7 – Overseas student transfers

- This standard sets out that registered providers must not knowingly enrol an overseas student wishing to transfer from another registered provider's course prior to the student completing six months of his or her principal course (or for the school sector, until after the first six months of the first registered school sector course), except in certain circumstances.

Standard 7 – Overseas student transfers

- Must not knowingly enrol an overseas student seeking to transfer from another registered provider's course prior to the overseas student completing six months of his or her principal course
- Must have and implement a documented policy and process for assessing overseas student transfer requests prior to the overseas student completing six months of their principal course
 - the policy must be made available to staff and overseas students, and outline the steps to lodge a request to transfer, including that they must provide a valid enrolment offer from another registered provider
 - the circumstances in which the release will be granted because the transfer is in the student's best interests, including but not limited to:
 - the student will be reported because they are unable to achieve satisfactory course progress after engaging with that registered provider's intervention strategy
 - evidence of compassionate or compelling circumstances
 - fails to deliver the course outlined in the written agreement
 - evidence that the student's reasonable expectations are not being met or evidence that the student was misled
 - grounds for refusal and a timeframe for processing

Standard 7 – Overseas student transfers

If the registered provider intends to refuse the transfer request, they must inform the overseas student in writing of:

- the reasons for the refusal
- the overseas student's right to access the provider's complaints and appeals process, in accordance with Standard 10 (Complaints and appeals), within 20 working days

Must not finalise the student's refusal status in PRISMS until the appeal finds in favour of the registered provider, or the overseas student has chosen not to access the complaints and appeals processes within the 20 working day period, or the overseas student withdraws from the process

Standard 8 – Overseas student visa requirements

- This standard sets out that registered providers must safeguard the integrity of Australia's migration laws by supporting overseas students to complete their course within the required duration and fulfil their visa requirements for course attendance and course progress. Standard 8 sets flexible provisions to allow online learning while maintaining appropriate standards for overseas students to comply with student visa conditions.

Standard 8 – Overseas student visa requirements

- Monitor overseas students' course progress and, where applicable, attendance for each course in which the overseas student is enrolled
- The expected duration of study specified in the overseas student's CoE must not exceed the CRICOS registered duration
- The registered provider must monitor the progress of each overseas student to ensure the overseas student is in a position to complete the course within the expected duration specified on the overseas student's CoE
- Must have and implement documented policies and processes to identify, notify and assist an overseas student at risk of not meeting course progress or attendance requirements
- The registered provider must clearly outline and inform the overseas student before they commence the course of the requirements to achieve satisfactory course progress and, where applicable, attendance in each study period
- Must report a student for unsatisfactory course progress or attendance after notifying of the intention to report and allowing access to and completion of the internal and external complaints and appeals processes.

Standard 8 – Overseas student visa requirements

- The provider must not extend the duration of the overseas student's enrolment if the overseas student is unable to complete the course within the expected duration, unless:
 - There are compassionate or compelling circumstances, as assessed by the registered provider on the basis of demonstrable evidence
 - The provider has implemented, or is in the process of implementing, an intervention strategy for the overseas student because the overseas student is at risk of not meeting course progress requirements
 - An approved deferral or suspension of the overseas student's enrolment has occurred under Standard 9 (Deferring, suspending or cancelling the overseas student's enrolment)

Standard 8 – Overseas student visa requirements

- A provider must not deliver a course exclusively by online or distance learning to an overseas student
- Must not deliver more than one-third of the units (or equivalent) of a higher education or VET course by online or distance learning to an overseas student
- Must ensure that in each compulsory study period for a course, the overseas student is studying at least one unit that is not by distance or online learning, unless the student is completing the last unit of their course

Standard 9 – Deferring, suspending or cancelling the overseas student's enrolment

- This standard sets out that registered providers must appropriately manage the enrolment of their overseas students and ensure all necessary information about enrolments has been provided to the relevant government department by maintaining updated information in PRISMS.

Standard 9 – Deferring, suspending or cancelling the overseas student's enrolment

- A provider must have and implement a documented process for assessing, approving and recording a deferment of the commencement of study or suspension of study requested by an overseas student, including maintaining a record of any decisions
- A provider may defer or suspend the enrolment of a student if it believes there are compassionate or compelling circumstances
- A provider may suspend or cancel a student's enrolment including, but not limited to, based on - misbehaviour, failure to pay tuition fees and a breach of course progress or attendance requirements
- When there is any deferral, suspension or cancellation action taken under this standard, the registered provider must inform the student to seek advice from Immigration on the impact to the student visa and report the change to the overseas student's enrolment under section 19 of the ESOS Act

Standard 10 – Complaints and appeals

- This standard sets out that registered providers must ensure their overseas students have the right to natural justice protected through access to professional, timely, inexpensive and documented complaints handling and appeals processes.

Standard 10 – Complaints and appeals

- The provider must have and implement a documented internal complaints handling and appeals process and policy, and provide the overseas student with comprehensive, free and easily accessible information about that process and policy must include:
 - the process to lodge a formal complaint
 - commence assessment within 10 working days
 - ensure the student is given the opportunity to formally represent their case at minimal or no cost
 - must conduct the assessment of the complaint in a fair and transparent manner
 - must ensure the student is given a written outcome
- If the student is not successful, they must be advised within 10 working days of the external complaints and appeals processes

Standard 11 – Additional registration requirements

- This standard sets out that registered providers must continue to meet the requirements for CRICOS registration and ensure the ESOS agency for the registered provider approves, and has up-to-date information on, specific aspects of the registered provider's operations and any registered courses.

Standard 11 – Additional registration requirements

- In applying to register a full-time course at a location, a provider must seek approval from the ESOS agency for the following:
 - course duration, including holiday breaks
 - modes of study, including online, distance or work-based training
 - number of overseas students enrolled at the provider, within the limit or maximum number approved by the ESOS agency for each location
 - arrangements with other education providers, including partners, in delivering a course or courses to overseas students
- The registered provider must submit to its ESOS agency for approval, information on any proposed changes to the provider's registration for a course
- Registered providers who are self-accrediting must undertake an independent external audit during their period of CRICOS registration, within 18 months prior to renewal of that registration to inform the re-registration of the provider

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