

Understanding the ESOS framework – assessing compassionate or compelling circumstances

Acknowledgement of Country

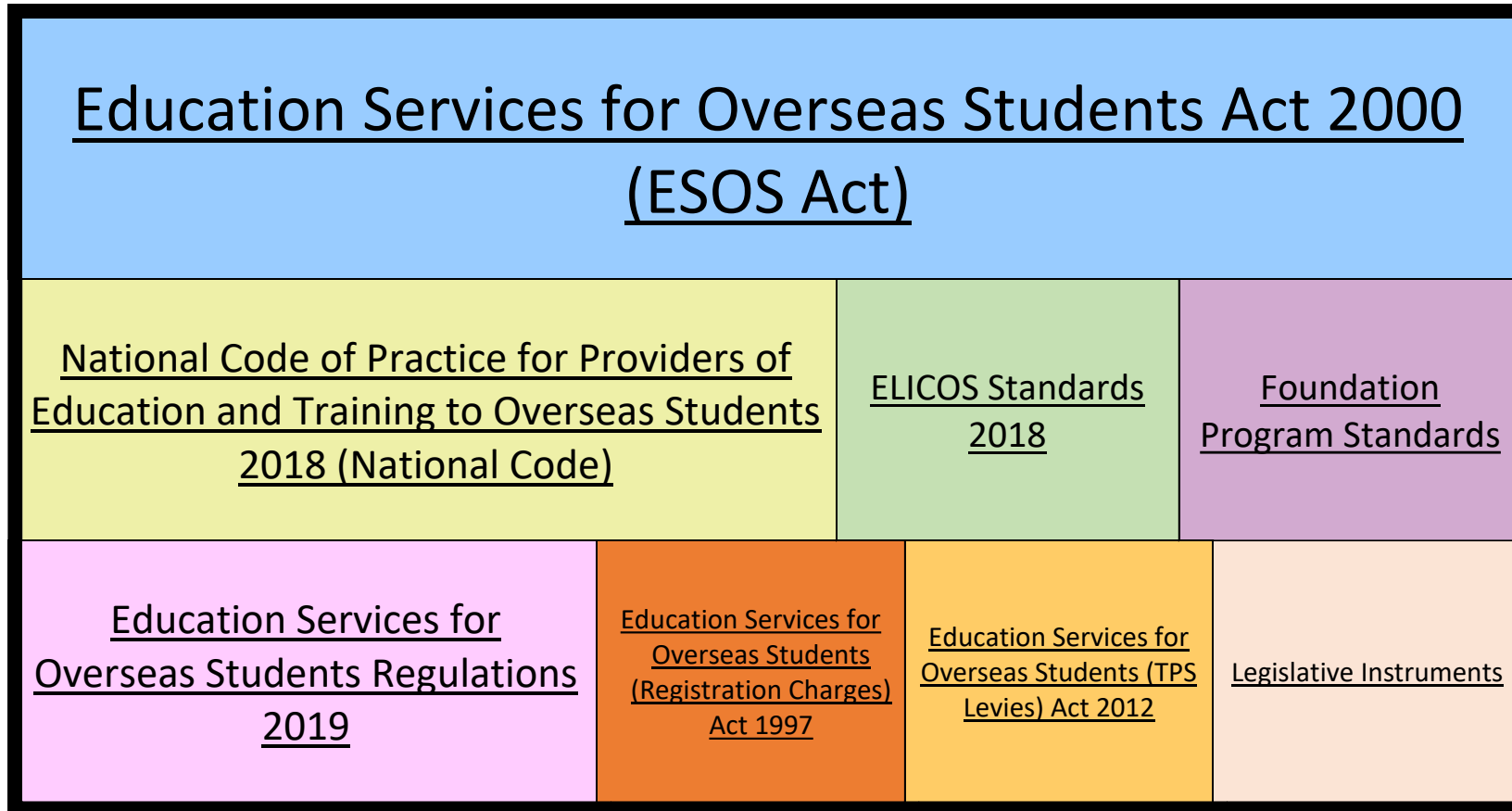
In the spirit of reconciliation, IEP Advisory acknowledges the Traditional Custodians of countries throughout Australia and their connections to land, sea and community.

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

Outline

- Welcome
- National Code References to ‘Compassionate or Compelling’
- Defining ‘Compassionate or Compelling’
- Documentary Evidence
- Case Studies
- Questions

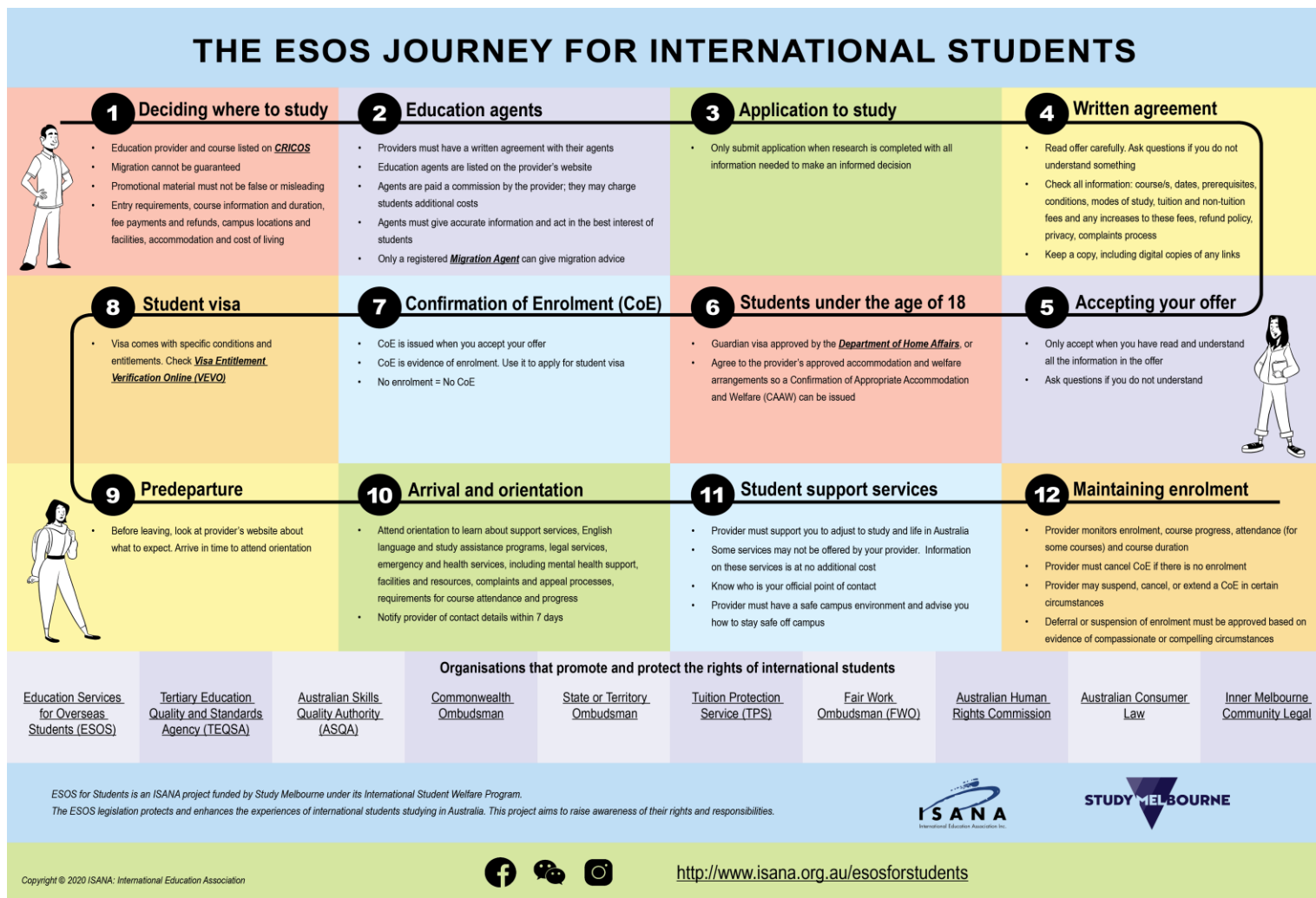
ESOS framework



National Code 2018

- The National Code of Practice for Providers of Education and Training to Overseas Students 2018 (National Code 2018) is a legislative instrument made under the Education Services for Overseas Students Act 2000 and sets out nationally consistent standards to support providers to deliver quality education and training to overseas students
- Education providers must comply with the National Code to maintain their registration to provide educational services to international students
- Students are granted a student visa for the primary purpose of studying in a registered course

ESOS student journey



National Code – Overseas Student Transfers

- Standard 7.2 - The registered provider 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:
 - 7.2.2 - circumstances in which the registered provider will grant the transfer request because the transfer is in the overseas student's best interests, including but not limited to where the registered provider has assessed that:
 - 7.2.2.2 - there is evidence of compassionate or compelling circumstances

National Code – Allowable Extensions of Course Duration & Deferral/Suspension

- 8.16 - The registered 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:
 - 8.16.1 – there are compassionate or compelling circumstances, as assessed by the registered provider on the basis of demonstrable evidence
- 9.2 - A registered provider may defer or suspend the enrolment of a student if it believes there are compassionate or compelling circumstances

What is meant by compassionate or compelling?

- Neither term is defined in legislation, so education providers should consider their normal meanings. In this context, these meanings may be expressed as:
- **Compassionate circumstances:** circumstances that produce a feeling of sympathy for the student's troubles
- **Compelling circumstances:** circumstances that are powerfully convincing
- Please note the National Code only requires the circumstances to be assessed as either compassionate or compelling. It does not require students to demonstrate their circumstances are both compassionate and compelling, although some circumstances may naturally meet both definitions
- When developing policies and guidelines for assessing compassionate or compelling circumstances providers should be clear, not too restrictive, and allow decision makers discretion

National Code Fact Sheet

‘Compassionate or compelling’ circumstances are generally those **beyond the control of the overseas student** and which have an impact upon the overseas student’s course progress or wellbeing. These could include, but are not limited to:

- serious illness or injury, where a medical certificate states that the overseas student was unable to attend classes;
- bereavement of close family members such as parents or grandparents (where possible a death certificate should be provided);
- major political upheaval or natural disaster in the home country requiring emergency travel and this has impacted on the overseas student’s studies;

National Code Fact Sheet

- a traumatic experience, which could include:
 - involvement in, or witnessing of a serious accident; or
 - witnessing or being the victim of a serious crime, and this has impacted on the overseas student (these cases should be supported by police or psychologists' reports)
- where the registered provider was unable to offer a pre-requisite unit, or the overseas student has failed a prerequisite unit and therefore faces a shortage of relevant units for which they are eligible to enrol

Reasons Not Considered to be Compassionate or Compelling

- Financial – tuition fees and living costs
- Travel
- Employment
- Failure to read emails and understand provider's policy and procedures
- Circumstances that existed prior to accepting the offer to study
- Illness or medical condition that does not impact a student's ability to study

Policy/Procedure/Guidelines

- Registered providers should outline what is considered compassionate or compelling circumstances in their own policies and use their professional judgement to assess each case on its individual merits.
- When determining whether compassionate or compelling circumstances exist, registered providers should consider documentary evidence provided to support the claim and should keep copies of these documents in the overseas student's file

Examples of published guidelines

[Compassionate and compelling circumstances - RMIT University](#)

[Support for compassionate or compelling circumstances : International students \(unimelb.edu.au\)](#)

[Intermission | Students \(deakin.edu.au\)](#)

[Reducing Study Load for International Students | UNSW Current Students](#)

[Reduced study load \(student visa holders\) - The University of Sydney](#)

[Compassionate or Compelling Circumstances Guidelines / Document / Policy Directory \(uow.edu.au\)](#)

[Compassionate-and-Compelling-Circumstances-Guidelines.pdf \(chs.edu.au\)](#)

[Compelling and Compassionate Circumstances | University of Adelaide](#)

Decision-making considerations

- Is there a medical diagnosis?
- Is there a Medical Impact Statement?
- Is the medical practitioners' recommendation part of a treatment plan?
- Is there evidence that the student has reached out for support?
- Is it a pre-existing condition or a pre-existing circumstance?
- Following identification of medical condition, what subsequent support has been put in place?
- Is the documentary evidence authentic or are you concerned?
Is the documentary evidence translated?
- Does the student intend to return to study?
- Is this situation beyond the student's control?

Who can issue Medical Certificates?

- Australian Health Practitioner Regulation Agency (AHPRA).
 - AHPRA's operations are governed by the Health Practitioner Regulation National Law, as in force in each state and territory (the National Law). This law means that 16 health professions are regulated by nationally consistent legislation under the National Registration and Accreditation Scheme
 - AHPRA supports the [15 National Boards](#) that are responsible for regulating the health professions
- Australian Medical Association (AMA)
- The Royal Australian College of General Practitioners (RACGP)

AMA Guidelines for Medical Certificates

- The certificate may include information provided by the patient but the **doctor's assessment should be based on a medical condition** observed by the doctor or reported by the patient and accepted by the doctor
- **Medical certificates are legal documents.** Doctors who deliberately issue a false, misleading or inaccurate certificate could face disciplinary action under the Health Practitioner Regulation National Law
- Where a **third party contacts the doctor to verify the veracity of a medical certificate** (e.g., to determine if it is fraudulent in anyway), the doctor should verify the third party's identity, ask for a copy of the certificate and confirm the veracity of the certificate. The doctor should not provide any other information about the patient without the patient's express consent.
- The doctor should issue a certificate certifying **time that is clinically justifiable.**

Case studies

It's a safe space!



makeameme.org

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