

# Understanding ESOS

## Managing student success

# 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

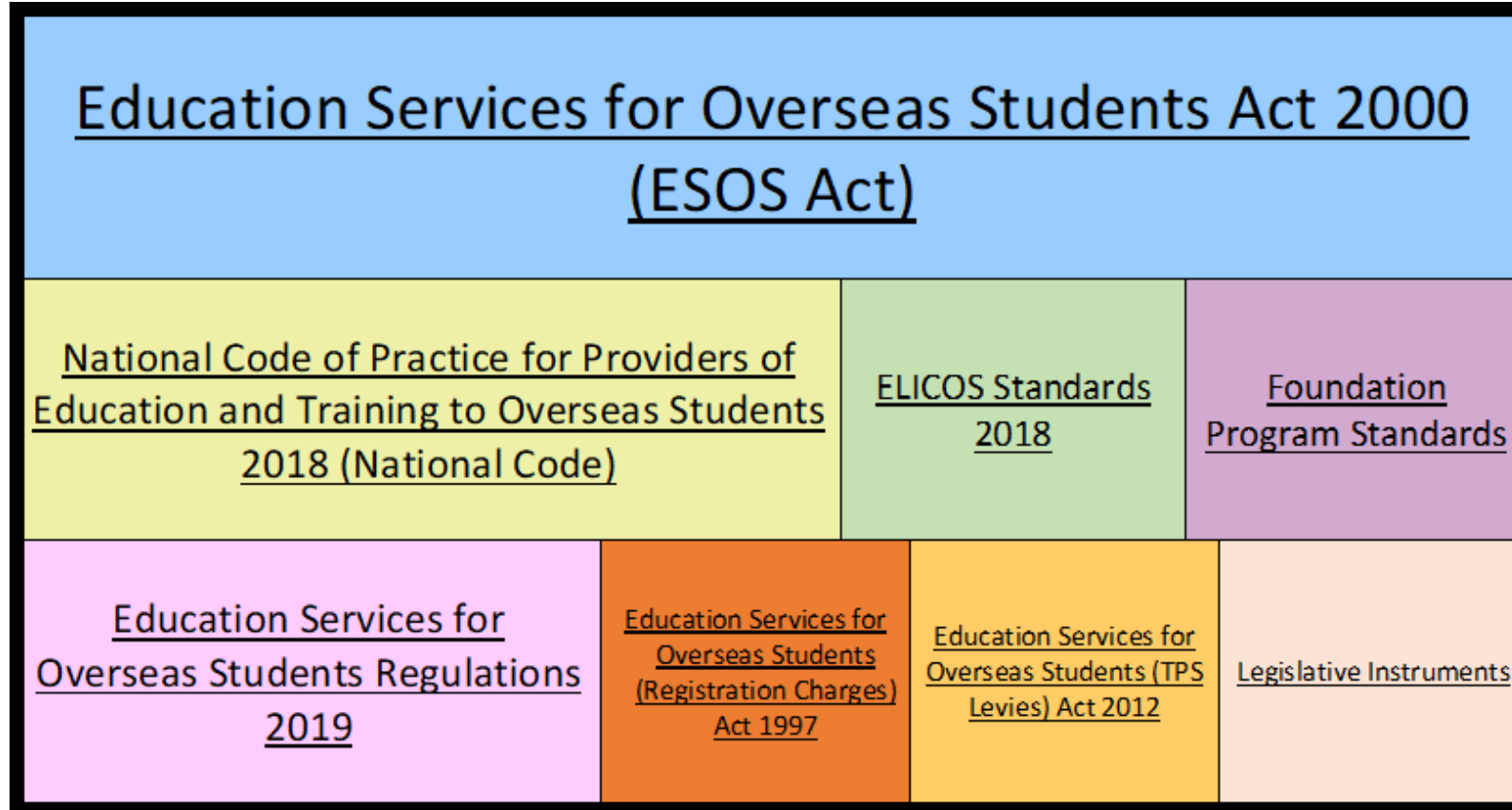
- Introductions
- What is the ESOS framework?
- CRICOS
- Why policies and procedures?
- National Code Standards 8 & 9
- Assessing compassionate or compelling circumstances
- Questions

# 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 Act governs the registration process and obligations of registered providers, the Tuition Protection Service, enforcement and compliance arrangements
- 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.



# CRICOS

- 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 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 \(CRICOS\)](#)

# 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 B outlines the Standards that registered providers must comply with
- <https://www.legislation.gov.au/Details/F2017L01182>

# Why policies and procedures???

- Guiding policies and procedures are key pieces of documentary evidence that regulators assess to demonstrate provider compliance with all requirements under the ESOS Framework, in particular the Standards of the National Code
- TEQSA expects “that most of the evidence you are referencing will be existing documents that have been produced and used for internal purposes.”
- TEQSA may ask you to “address apparent gaps in your evidence, or clarify aspects of your evidence, or explain how certain policies and procedures are implemented in practice.”

# Guiding Policies and Procedures:

## 01

**Policies:** most of the evidence you are referencing will be existing documents that have been produced and used for internal purposes

- Academic Integrity Policy
- Cancellation, Deferment and Suspension Policy
- Early Intervention for Students at Academic Risk Policy
- Code of Conduct/Student Misconduct Policy
- Monitoring Course Attendance Policy
- Monitoring Course Progress Policy
- Privacy Policy
- Records Management Policy
- Student Appeals Policy
- Student Support Policy

## 02

**Procedures:** most of the evidence you are referencing will be existing documents that have been produced and used for internal purposes

- Academic Progression Procedure
- Attendance Recording, Monitoring, Reporting Procedure
- Evidence of Participation (EOP) Guidelines
- Guidelines for Assessing Compassionate or Compelling Circumstances
- Leave of Absence Procedure
- Student Misconduct Procedure
- Student Refund Procedure
- Transfer Between Registered Providers Procedure

## 03

**Processes/Workflows:** most of the evidence you are referencing will be existing documents that have been produced and used for internal purposes

- Attendance Tracker/Class Roll
- Complaints and Appeals Register/ report of all student complaints and appeals received over the last 12 months with evidence of processes implemented and description of outcomes and actions taken
- Intervention Plan Template
- Notice of Intention to Report (NIR) correspondence
- Register or list of students identified as not meeting course progress requirements, including students identified for early intervention
- Register or list of all decisions to defer, suspend or cancel overseas student enrolments in the last 12 months

# 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.
- Policy perspective: The registered provider must have documented policies and processes to **identify, notify and assist an overseas student at risk of not meeting course progress or attendance requirements** where there is evidence from the overseas student's assessment tasks, participation in tuition activities or other indicators of academic progress that the overseas student is at risk of not meeting these requirements.

# 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

# Student visa conditions – sub-class 500

Student visa condition 8202 – you must:

- Remain enrolled in a registered course (ie. a course registered on CRICOS)
- Maintain enrolment in a registered course that is at the same AQF level or higher for which the student visa was granted
- Maintain satisfactory attendance in your course and course progress for each study period as required by your education provider

# ELICOS & Foundation Programs

The registered provider of a school, ELICOS or Foundation Program course must have and implement a documented policy and process for monitoring and recording attendance of the overseas student, specifying:

- requirements for achieving satisfactory attendance for the course which at a minimum must be 80% - must attend 80% of their fortnightly contact hours
- the method for working out minimum attendance under this standard – formal class attendance rolls; weekly input of attendance data
- processes for recording course attendance – attendance calculators are run each Monday
- details of the registered provider's intervention strategy – students absent for five consecutive days without approval are reported for a welfare check and issuance of warning notices (if necessary). Fortnightly list of students that have not attended 80% of their fortnightly contact hours
- processes for determining the point at which the overseas student has failed to meet satisfactory course attendance – When the attendance calculator shows the student is not able to meet the 80% attendance for their course, Notice of Intent to Report is issued

# Vocational education and training (VET)

**The registered provider of a VET course as defined in the NVETR Act must have and implement a documented policy and process for assessing course progress that includes:**

- requirements for achieving satisfactory course progress ... and processes to address misconduct and allegations of misconduct
  - Student progress is monitored and support strategies developed for students who do not achieve competency in at least 50% of the assessment requirements in an enrolment period
- processes for recording and assessing course progress requirements – student is provided with a personalised training plan; the training plan is monitored to ensure that student has accessed it in the first four weeks of class; a 'Progression Report' is run on a regular basis to monitor student progression in line with the training plan
- processes to identify overseas students at risk of unsatisfactory course progress – Notify overseas students of their academic risk status and visa implications who are:
  - not actively engaged in study
  - not submitting assessment tasks in a timely manner
- details of the registered provider's intervention strategy
  - students 'at risk' must be identified at an early stage and support and/or intervention must be put in place for the student
  - monitor student progress and identify students at risk. Ensure timely intervention (including the provision of counselling, learning support, resources and other assistance)
- processes for determining the point at which the overseas student has failed to meet satisfactory course progress

# Higher Education

**The registered provider of a higher education course must have and implement a documented policy and process for monitoring and recording course progress for the overseas student, specifying:**

- requirements for achieving satisfactory course progress ... and processes to address misconduct and allegations of misconduct – a) an attendance of more than 50% of classes of participation in 50% of online activities; b) pass grade for first assessment; c) submission of assessments by the due date or approved extension date
- processes for recording and assessing course progress requirements – Key metrics: assessment outcomes and attendance register information. Identify, at the end of Week 4 of each enrolment period, any student whose attendance of any one subject is less than 50% or if the subject is delivered online has participated in less than 50% of the online activities and has not submitted the first assessment by the due date or approved extension due date. Students identified at risk in Week 4 are reviewed again in Week 8
- processes to identify overseas students at risk of unsatisfactory course progress – A student who is identified as at risk of failing two subjects is classified as at risk of unsatisfactory performance. A student who fails to meet two of the three minimum requirements in the second progress review must be identified as 'at risk' of failing the subject: a) an attendance of more than 50% of classes or participation in 50% of online activities; b) pass grade for first assessment; c) submission of assessments by the due date or approved extension date
- details of the registered provider's intervention strategy – notify student that they have been identified as being at risk of failing a subject or at risk of unsatisfactory performance in writing. Ask student to make an appointment with xxxx to develop a study and support plan that supports the student to pass the subject/s. If the student identified in Week 4 remains 'at risk' in the Week 8 review, a second meeting is held to determine if adjustments need to be made to the support plan
- processes for determining the point at which the overseas student has failed to meet satisfactory course progress
  - Students who have failed a subject for a second time or more
  - Students who have failed a work placement (practicum, clinical placement or internship)
  - Students who have a) failed multiple subjects for the second time or more; b) failed 50% or more subjects in one enrolment period; or c) failed 50% or more subjects in two consecutive enrolment periods

# 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.
- Policy perspective: A registered 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.

# 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, 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

# Deferment, Suspension and Cancellation Considerations

**A registered 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.**

- Publish your criteria that you consider as a provider, to be considered compassionate or compelling circumstances for a deferment of commencement of study request: student visa delays, family emergencies, delayed commencement of enabling course, delay in achieving English Language Proficiency, unexpected events, travel restrictions or border closures
- Prescribe in your policy or procedure your provider timeframe for intermission/leave of absence approval and that it can only be approved on compassionate or compelling circumstances
- Prescribe in your policy or procedure when a Notice of Intent to Report will be issued
- Review your forms and letter templates to ensure that they inform the student of the need to seek advice from Immigration on the potential impact of enrolment suspension or cancellation on their student visa
- Favourite inclusion: 'that leave of absence will only be approved for a period that has the minimal impact on the student's experience at xxxx'

# 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.

# The NSO approach



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We don't just look at what's legal, we look at whether something is **right or fair**

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We can accept **historical complaints** without a specified time limit

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We can accept complaints from **currently enrolled, prospective and former students**

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We can accept complaints about **deregistered providers** (with conditions)

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We may take a **restorative engagement** approach in response to complaints

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Students **do not have to have exhausted their provider's internal complaints processes** prior to lodging a complaint with the NSO



# Compassionate or compelling circumstances

- The National Code requires education providers to assess compassionate or compelling circumstances in the following situations:
  - Standard 7 – a possible reason for release
  - Standard 8 – an allowable extension of course duration
  - Standard 9 – deferment or suspension of enrolment

# Compassionate or compelling circumstances

- ‘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; or

# Compassionate or compelling circumstances

- 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
- 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

# Institution considerations in assessing compassionate or compelling circumstances

- Medical diagnosis
- Medical practitioner's recommendation is part of a treatment plan
- Evidence that the student has reached out for support
- Student intends to return to study
- Is it a pre-existing condition or circumstances?
- Confirming authenticity of the evidence provided
- Following identification of medical condition, what subsequent support is put in place?

# PRISMS data

- Student Course Variation Export
- Deferment/Suspension – Compassionate or compelling circumstances
- Unsatisfactory course progress
- Unsatisfactory attendance
- Extension CoE created
- Specify the dates for the report
- Filter report using different fields
- Use of standardised comments to assist with filtering

Questions???

It's a safe space!



[makeameme.org](http://makeameme.org)

# Contact details

Danielle Hartridge & Melanie Duncan  
Co-Founders & Principals, IEP Advisory

e: [danielle@iepadvisory.com.au](mailto:danielle@iepadvisory.com.au)

e: [melanie@iepadvisory.com.au](mailto:melanie@iepadvisory.com.au)

w: [iepadvisory.com.au](http://iepadvisory.com.au)

