ESOS Act: Staff Obligations

1. The ESOS framework

The ESOS legislative framework is designed to ensure that Australia's reputation for delivering quality education services is maintained and that the interests of overseas students are protected. It sets minimum standards and provides tuition and financial assurance. Together with Australian immigration law, the ESOS framework also imposes visa related reporting requirements on both students and educational institutions. Australian Education International (AEI) has produced an Easy Guide to ESOS.

What is an International Student?

If a student is not an Australian citizen or permanent resident or a New Zealand citizen, then they are an International Student.

Does the ESOS framework apply to all International Students?

The ESOS framework only applies to those International Students who have Student Visas. The ESOS Act refers to these students as Overseas Students.

Can International Students study part-time?

If the student does not have a Student Visa, they may study part-time. If the student has a Student Visa, they must complete their course within the standard full-time completion period, unless certain circumstances apply (see Student Visa conditions).

2. Student visa conditions

If Student Visa holders do not uphold their visa conditions, their visa may be cancelled and they may have to leave Australia. A full list of conditions is available from the Department of Immigration and Border Protection with the most important listed below:

- The Student Visa holder must remain enrolled in a course registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS).
- The Student Visa holder must make satisfactory course progress according to AICC's rules.
- The Student Visa holder must advise AICC of their Australian address within seven days of arriving in Australia, and within seven days of any change of address.
- The Student Visa holder must maintain enough money to pay for travel, tuition and living expenses for themselves, their spouse and their dependent children for the duration of their stay in Australia.
- Any family members of school age (between five and 18 years) living in Australia must attend school in Australia.
- The Student Visa holder must maintain health insurance for themselves and their family members while in Australia.
- Students granted permission to work cannot undertake work until they have commenced their course in Australia. This applies to all student visa holders.

Student visa holders, are permitted, once their course has commenced, to work a maximum of 40 hours per fortnight during the semester and unlimited hours when their course is not in session.

3. Pre-enrolment information

Standard 2 of the National Code requires AICC to give students detailed information about their course and about studying at AICC before the student accepts the offer of a place in a course. All marketing material for prospective Student Visa holders should refer students to the website, which provides links to this information.

4. Promotional Material - Requirements for International Students

All promotional material for prospective Student Visa holders must meet the requirements of the ESOS Act, National Code and Standards for RTOs, 2015 and must be submitted to the PEO for approval.

The legislation details the information that a prospective international student must receive before accepting the offer of a place at AICC. The purpose is to make sure that the student has a clear and accurate picture of the course, the RTO and the location before they make the commitment to come here.

To ensure that advertising material and or brochure is compliant, and without having to insert a large amount of information, follow these guidelines:

1. Ensure that the brochure shows the name of Sydney Metropolitan International College, contact details and our CRICOS provider code and RTO ID number.
2. Send a draft copy to the PEO
3. Include, as a minimum, the following basic information about the course (either in the brochure text or by providing the address of a web site at which the students can access this information):
   a. a general description of the course content
   b. the qualification
   c. the duration and the commencement dates
   d. the mode of study and training methods
   e. the assessment methods used
   f. if another provider is also involved in providing the course, that fact and the location of course delivery by that provider and that provider's CRICOS and RTO codes
   g. details of any arrangements with other providers for recognition of the course or completed components of the course
   h. information about the minimum level of English language proficiency, educational qualifications and whether course credit is available

   Include the following text:
   "International Students should also visit AICC website(address), which gives more information about the study environment, course fees and refund policy, support services, and schooling obligations for dependent children."

   The website covers the remaining general information that is relevant to all International Students and is required by the legislation and also has links to other AICC pages with specific information."

5. Satisfactory course progress

The National Code (refer to Standard 8 of the National Code) requires AICC to have an Intervention Strategy to identify and assist students at risk of not meeting their course progress requirements. AICC has a detailed course progress policy and the Intervention Strategy is described below:

Identifying students at risk of not meeting course progress requirements

Students can be identified in one of three ways:

1. At the end of each semester, Student Visa holders who have failed 50 per cent or more of the units attempted are identified as at risk. The students receive a letter requesting that they meet the DOS to discuss their progress.
2. A student can be identified as at risk by staff member, for example on the basis that written materials are not submitted or not to standard, or by a support staff member who has identified a risk factor. The staff member contacts the DOS, who contacts the student to discuss the student's options.
3. A student can identify themselves as at risk, by contacting their trainer and explaining why they are having difficulty with their course.

Strategies to assist identified students to achieve satisfactory course progress

AICC's Intervention Strategy offers a range of different kinds of assistance for students to choose from.

Trainer Assistance

The trainer provides help and assistance to their students. This can be ‘catch up’ classes, additional reading, recommendations for pod casts and You Tube clips etc

A reduction in study load can be approved by the DOS, if course rules permit and it is relevant to the student's situation, and as long as the National Code requirement for the student to study at least one unit face-to-face per teaching period is met. The details of this new study load are placed in the student's file.

Students who do not make satisfactory course progress

If a Student Visa holder does not make satisfactory course progress according to AICC's rules, they are sent a letter informing them of this, and of the RTO's intention to report this breach of their Student Visa conditions to the Department of Immigration and Border Protection (DIBP), unless they lodge a formal appeal against their course Progress Status within 20 working days of the date of the letter, and their appeal is successful.

If they are reported to DIBP for failure to meet course requirements, this may result in their visa being cancelled and their being unable to re-enter Australia for a period of three years.

6. Completion within the expected duration of study

Standard 8 of the National Code requires AICC to ensure that, at all times, Student Visa holders are in a position to complete their studies within the duration specified in their CoE, unless certain circumstances apply. If a Student Visa holder chooses to study at less than a 100 per cent load in a particular teaching period, they will have to make sure that they can still complete their course in time. However, students must maintain an enrolment load, that is, a student cannot have zero load for their semester. A student may be reported to DIBP where we believe their enrolment does not

meet the full-time criteria to complete their course within the duration specified within their CoE, or, where we believe that the student is not studying.

If a Student Visa holder does not complete within the expected duration of their course, AICC can only issue them another CoE if

(a) there are compassionate or compelling circumstances;
(b) it was previously agreed to a reduced study load as part of AICC's Intervention Strategy; or
(c) they did not complete as the result of an approved deferment or suspension of their study.

Supporting documents should be saved in the student's file.

If a Student Visa holder completes their course early, AICC must report this to the Department of Immigration and Border Protection (DIBP), and the duration of the student's visa will most likely be reduced.

7. Mode of study

The National Code permits Student Visa holders to enrol in a limited amount of distance/online learning. No more than 33% of their entire course may be studied by units which are delivered 100% in distance/online mode, and they must study at least one unit face-to-face in each compulsory teaching period.

Online learning does not include the provision of online lectures, tuition or other resources that supplement scheduled classes or contact hours.

8. Change of course

Students who change course will be asked to sign a new Acceptance of Offer and will be issued a new CoE and may be subject to a new tuition fee.

If a Student Visa holder intends to transfer to another RTO within the first six months of their final course at AICC, their request will be assessed using the criteria in AICC's Student Transfer Request assessment policy and procedure.

9. Complaints and appeals

International Students have access to a complaints and appeals process. This information is in the Student Handbook and on the website.

10. Deferring, suspending or cancelling study

Any deferment, suspension or cancellation of a Student Visa holder's enrolment may have an effect on their visa, and it is important that they contact DIBP for advice before taking any action.

If a Student Visa holder wants to suspend enrolment or take leave, they must complete the approved Leave Form and have their leave approved by DOS, who can approve if compassionate or compelling circumstances apply. A new CoE is created and Offer and Acceptance signed by the student.

Compassionate or compelling circumstances are generally those beyond the control of the student and which have an impact upon the 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 student was unable to attend classes;

- bereavement of close family members such as parents or grandparents;
- major political upheaval or natural disaster in the home country requiring emergency travel and this has impacted on the student's studies;
- a traumatic experience which could include involvement in, or witnessing of a serious accident; or witnessing or being the victim of a serious crime;
- where AICC was unable to offer a pre-requisite unit;
- inability to begin studying on the course commencement date due to delay in receiving a student visa.

AICC's misconduct rules allow for the suspension of a student's enrolment for one or two semesters, or their expulsion. AICC is required to notify DET and DIBP of any suspension or expulsion for reasons of misconduct, and it is most likely that the student's visa will be cancelled and that they will be banned from returning to Australia for a three-year period.

11. Course credit

If a Student Visa holder is granted course credit, and this results in a shortening of their course, AICC will report their new expected course duration to DIBP, who may then reduce their visa duration.

12. CRICOS Registration of Courses for International Students

A course must be CRICOS registered by the national regulator to be available to International Students on Student Visas. A course that is not CRICOS Registered:

a) Cannot be advertised or marketed in any way to international students; and
b) International Students on Student Visas cannot be enrolled in the course.

CRICOS Registration is submitted to the national regulator, ASQA.

13. Refund of Tuition Fees for International Students

Refunds available to International Students for cessation or non-commencement of study are subject to specific legislation and differ to refund conditions for Domestic Students. Please refer to the International Student Refund Policy for further information.

14. Useful links and definitions

Useful Links

- Department of Immigration and Border Protection: Information about all visa issues.
- Education Services for Overseas Students (ESOS): AEI information about the ESOS Framework, including an Explanatory Guide for the National Code
- National Code of Practice for Providers of Education and Training to Overseas Students 2018
- National Code of Practice for Providers of Education and Training to Overseas Students 2018 – Explanatory Statement
- CRICOS: The official Australian Government website that lists all Australian education providers which offer courses to Student Visa holders, and the courses offered.

Definitions

- **CoE:** The Confirmation of Enrolment or CoE is a document that AICC creates on PRISMS for a prospective Student Visa holder when the student has signed their Acceptance of Offer. The student uses the CoE as proof of enrolment when applying for their Student Visa.
- **CRICOS:** institutions that offer courses to Student Visa holders, and the courses they offer, are listed on the Commonwealth Register of Institutions and Courses for Overseas Students.
- **DET:** the Department of Education and Training.
- **DIBP:** the Department of Immigration and Border Protection.
- **Enrol:** the words "enrolled" and "enrolment" are used in the ESOS Framework in the broad sense to mean that a student is undertaking a course.
- **ESOS Framework:** the Education Services for Overseas Students (ESOS) Acts and regulations set out the legal framework governing delivery of education to Student Visa holders.
- **International Student:** a student who is not a citizen or permanent resident of Australia, or a New Zealand citizen, and who must pay the international student fee for their course. International Students generally have Student Visas, but may have one of a range of other visas.
- **National Code:** National Code of Practice for Providers of Education and Training to Overseas Students 2018. The National Code provides standards and procedures that institutions which provide education to Student Visa holders must adhere to.
- **Overseas Student:** this term is used in the ESOS Framework to mean an International Student who has a Student Visa. The ESOS regulations only apply to these students.
- **PRISMS:** the Provider Registration and International Students Management System (PRISMS) is the web-based system that lists registered courses and is used to create CoEs or to report on changes in student enrolments.
- **Suspend:** in the ESOS Framework, "suspend" is used to mean any break in studies, for whatever reason, whether it is initiated by the student or the institution.

Document control

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