

ESOS AND YOU



Essential Information on the Education Services for Overseas Students (ESOS) Act and Student Visa Reforms

The Australian Government has an Overseas Student Program that enables international students to apply for a student visa and study in Australia, and wants overseas students in Australia to have a safe, enjoyable and rewarding place to study. Australia's laws promote quality education and consumer protection for overseas students. The Department of Education, Employment and Workplace Relations (DEEWR) regulates the provision of education to international students. These laws are known as the Education Services for Overseas Students (ESOS) framework.

The ESOS Framework

The two major components of ESOS Framework are:

The ESOS Act 2000

The National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students (National Code)

The ESOS Act

On 4 June 2001, the Education Services for Overseas Students (ESOS) Act 2000 put in place a new set of legislative arrangements. The Act codifies the provision of education to international students on student visas and significantly affects the way education providers market, offer, and provide programs and services to overseas students. Provisions of the Act are legally enforceable and are subject to sanctions for breaches. The Act also places restrictions on students and obligations on education providers for monitoring and reporting on student progress.

The Act applies to all providers of education and training programs registered on CRICOS (Commonwealth Register of Institutions and Courses for Overseas Students), their agents and associates, (the Act itself does not impose obligations on students although they are covered by it). All staff, agents and associates dealing with international students must understand the requirements of the Act and National Code and the obligations imposed on them. This is the purpose of this brochure.

The National Code

The National Code is a schedule of requirements that are legally enforceable under the ESOS Act and must be complied with by an institution that provides programs to overseas students. The Code provides nationally consistent standards for the registration, conduct of registered providers and the conduct of people who deliver educational services to international students on behalf of registered providers. The revised code, the National Code 2007, came into effect on 1 July 2007 and may be accessed at http://www.dest.gov.au/sectors/international_education/publications_resources/profiles/revised_national_code.htm

The penalties for breaches to the National Code or other provisions of the ESOS Act

Breaches of the National Code, the ESOS Act or conditions of the provider's registration are punishable by fines, and/or imprisonment or the loss of the right to accept international students. The DEEWR Minister may impose conditions on, or cancel/suspend, a provider's registration. If registration is suspended or cancelled, a provider may only have limited dealings with international students.

The effect of a suspension certificate

The Immigration Minister may also issue a suspension certificate if the National Code or other provisions of the ESOS Act is breached. If a provider's registration is suspended, the provider cannot do anything to recruit or enrol international students for its programs; solicit or accept money from an international student for a program; or permit a student to commence a program.

Student Support Services

Education providers must have a documented Critical Incident Policy and give support to students to help them to:

- adjust to study and life in Australia
- achieve satisfactory academic progress

All staff, who interact with international students, must be aware of provider's ESOS obligations & their implications for students

CRICOS registration

CRICOS registration is the process by which both the providers of programs to international students, and programs themselves are registered on CRICOS. Each provider is given a CRICOS number and each program offered by the provider has to be registered with a corresponding code before it can be marketed or offered to international students. The ANU Provider Number is 00120C. This must appear on all documentation, including websites that are accessible by international students (in effect, all official documentation). If a provider offers programs or courses in another state in Australia, the provider must also obtain CRICOS registration for those programs or courses in that State.

The Office of Policy and Regulation (OPAR) administer this procedure for the ANU. Any program that will enrol international students must be registered and this is part of the Course and Program approval process. The relevant templates, fees information, and approvals must accompany all such requests. Each program is allocated a unique CRICOS code. If an amendment is made to a registered program (e.g. in terms of program title or change of name, duration or fees) this must be submitted to the OPAR with the approvals and any relevant paperwork. Depending on the type of change, a new CRICOS number may need to be issued. Please remember that no CRICOS codes are released until the program is registered and therefore no student visa or offer of a place can be issued until the CRICOS code is available.

Parties covered by the Act

- Education Providers
- International Students
- DIAC (Dept. of Immigration & Citizenship)
- DEEWR (Dept. of Education, Employment and Workplace Relations)
- State Accreditation Authorities

Education Providers

- Must be registered on CRICOS
- Programs must also be approved and registered on CRICOS
- Must comply with the Act in their dealings with international students

International Students

- The ESOS Act applies to international students on student visas.
- The legislation does not apply to students on other kinds of visa such as AusAID Students, Dependants, or Exchange Students.
- The ESOS Act sets no requirements on international students.
- Student visa conditions set requirements on international students (Migration Regulations 1994)

DIAC (Department of Immigration and Citizenship)

- Grants student visas to international students to study in Australia.
- Monitors international student visa compliance
- Has power to search & inspect providers' records
- Will only issue student visas for registered programs and the visa documentation must contain the CRICOS code for the program.

DEEWR (Department of Education, Employment and Workplace Relations)

- Has power to search & inspect providers' student records
- Can impose sanctions against an education institution if it breaches the Act. For example, suspension or cancellation of the provider's registration on CRICOS
- Maintains the Provider Registration and International Students Management System (PRISMS). PRISMS is an electronic database that records relevant information on individual students. Any variations to a student's enrolment that may affect student visa conditions must be entered on PRISMS. There are penalties for late or improper entries.

The Department of Immigration and Citizenship (DIAC) & Student visas

Amendments to the Migration Act have introduced new visa regulations which set out risk assessment levels, package program reform and automatic visa cancellation for non-compliance (including unsatisfactory academic progress). In addition, the amendments to the Migration Act provide search and entry powers for DIAC officers and investigatory powers for monitoring compliance with student visa conditions. Universities can be required to make available information or documents (for example international student records); employees of the University can be required to answer questions or give evidence; 'authorised employees' of DIAC can enter University premises under a monitoring warrant or a search warrant.

Assessment Levels & Program Offers

Students now have to apply for visas according to sector and AL, therefore areas must ensure that any offers to a program of study clearly outline the package that a student is being offered. For example a student can no longer automatically apply to extend a visa on completion of a Graduate Diploma and proceed to a Masters or PhD degree if this was not made clear in the original offer letter. Neither can a student automatically obtain a visa to progress from Foundation Studies to a Bachelor degree if this was not clearly stated in the offer letter.

Assessment Levels

Student visa applications are assessed according to an applicant's Assessment Level (AL). ALs determine requirements for financial capacity, English proficiency, health, likely compliance with visa conditions etc. AL 1 is the easiest assessment level (i.e. Canada); AL 4 is the most difficult assessment level (i.e. Cambodia). Some countries have different AL ratings depending on program level. For details on which country falls into which AL you may check the website www.immi.gov.au

Student visa sub-classes for which international students can apply to study in an Australian University are:

- 573 Undergraduate and Masters by Coursework
- 574 Masters by Research /Doctorate
- 575 Non-award (including Exchange & Study Abroad)
- 576 AusAID/Defence

Exchange, Study Abroad and AusAID/Defence visa holders are not covered by the ESOS Act.

Student Visa Conditions

- Full-time enrolment (study load)
- Satisfy academic requirements
- Advise provider of address in 7 days
- Have OSHC (health cover)
- Must not work more than 20 hours during session
- Must remain with provider for 6 months

Permission to work: As of 26 April 2008, all student visas issued automatically come with permission to work attached.

Packaging & the visa regulations

A package comprising a preliminary plus principal program is permitted.

Applicants apply for the visa associated with the principal program. For example, if an applicant intends to do English followed by Bachelor degree, he/she will apply for the Higher Education visa.

If international students are issued with eCoEs for the whole package, they can be issued with a visa for a whole package.

It is important when offering a package for programs that fall into separate visa classes to make this clear in the offer letter. There is no allowance for automatic progression. For example, a Graduate Diploma is in a separate visa sub-class from a Research Masters or PhD so the student will be applying for a visa under two separate sub-classes. If the offer letter makes it clear that the Graduate Diploma is followed by entry into a Research Masters/PhD program then the student will be issued with a visa which takes into account the duration of the principal program. In this case, since the offer to the principal program was conditional, if the student either does not meet the prerequisite or does not take up the offer to the principal program, staff must advise the Office of Policy and Regulation (OPAR) that the student has not progressed and this will be recorded on the Provider Registration and International Student Management System (PRISMS) by the OPAR or Student and Academic Services (SAS).

International student dependent visa holders

Individuals on student dependant visas can study full-time or part-time for a maximum of 90 days during their stay in Australia. However, they must apply for their own student visa if they wish to enrol in a full degree program (i.e. a Bachelor or Master degree)

Electronic Confirmation of Enrolment (eCoE)

An eCoE is generated by the University through PRISMS once an international student has been accepted. An eCoE enables the student to apply for a student visa.

Extension to International students' eCoEs

Students may extend their CoEs, and student visas, in the following circumstances if they require the extra time to finish their program beyond the agreed duration:

- compassionate or compelling circumstances
- where the formal early intervention strategy has been implemented for students at risk
- where an approved deferment or suspension of study (Leave of Absence) has been granted.

International students should contact the OPAR if they require an extension of time to complete. International research students should contact Student and Academic Services (SAS) if they require an extension.

Request for change to eCoE

International students need a new eCoE when they:

- Change their level of study
- Change their program
- Require the extra time to complete
- Complete their program early

In these circumstances, international students should contact the OPAR where they will be provided with a form to be completed by the relevant College or area. A new eCoE will then be issued by the OPAR for the student to take to DIAC.

Reporting variations to international students' enrolments at the ANU

Universities are required to report all breaches of the ESOS Act; and, any changes to an International student's enrolment. Reporting is done through the OPAR and reporting of variations to student enrolment must occur on PRISMS within 14 days (10 working days) of the change. These are:

- Duration
- Deferment
- Approved Leave of Absence (no more than 6 months) if a reason is deemed "compassionate or compelling" under the National Code 2007
- Withdrawal
- Program Transfers

Reportable breaches

- Non-enrolment
- Failure to satisfy program requirements
- Non-Commencement
- Cancellation of Enrolment by the Education Provider (such as non-payment of fees)

Failure to satisfy Program requirements (Unsatisfactory Academic Progress)

All students at the ANU are subject to rules and policies governing satisfactory academic progress (<http://www.anu.edu.au/cabs/rules/index.html>). If an international student breaches these rules the University must notify DIAC. Reporting a student on PRISMS for unsatisfactory academic progress is a serious matter leading to automatic visa

cancellation and will only be done by the OPAR after internal and external appeal processes are exhausted. It is, therefore, extremely important that students experiencing difficulties are identified early and offered assistance under the Early Intervention Strategy.

100% Study load requirement for international students

International students must maintain 100% study load for the full duration of their programs. Any load less than this will be in breach of the visa regulations and must be reported to DIAC, which may lead to visa cancellation. Further information is available at: http://info.anu.edu.au/studyat/International_Office/student_life/_study_load.asp

At the ANU, this means that international students must enrol in 24 units per semester, or an equivalent enrolment period if the program is conducted in non-standard sessions. On the rare occasion where the program is structured as 18 unit per semester, international students can enrol in 18 units.

Exceptions to this rule

The exceptions are where an International student:

- a) may be completing a degree program and requires less than a full-time load to complete the program in the final semester.
- b) has a compassionate or compelling reason and it is approved by the university under the Early Intervention Strategy.

Attendance at classes for undergraduate/ postgraduate students

The University is not required to check attendance for undergraduate/postgraduate students. However, the University is required to report if the student is not making satisfactory progress. If an area is aware that a student is not attending classes or has concerns about an international student it should notify the OPAR or International Student Services (ISS).

Appeal and dispute resolution mechanisms at ANU

If the University makes a decision affecting an international student's enrolment, including decisions about the payment of program fees, refunds or exclusion from the university based on unsatisfactory academic progress, then the student have the right to access the University's formal internal appeal and dispute resolution mechanisms within 20 working days after the date when the decision is made by the university. Please note that the student also has the right to access independent external legal remedies to resolve disputes with the University. If all internal processes have been exhausted then, at the student's request, the University must advise the student of any independent external mechanisms available to them. The following links have more information: <http://www.anu.edu.au/cabs/rules/index.html> and http://info.anu.edu.au/StudyAt/International_Office/student_life/_mediation.asp

The effect of the new regulations on students suspending, taking approved leave, undertaking studies overseas (such as fieldwork/overseas study) or deferring commencement of studies

Students may not suspend or defer their programs on any grounds except illness and bereavement or "exceptional compassionate circumstances beyond the control of the student". No type of leave can be granted for more than six months (one semester) for any reason. Any suspension or deferrals must be brought to the notice of the OPAR for reporting purposes.

Students who do suspend under the above circumstances are obliged to leave the country unless circumstances such as extreme illness (being unfit to travel), or airline regulations regarding travel during pregnancy, apply. If students are taking approved leave or undertaking studies overseas this must be documented and the

OPAR must report this on PRISMS. International students should be provided with a letter to the effect that the student is on approved leave or undertaking study that is a formal requirement of the program if they are traveling overseas. Failure to do so may result in the student being refused permission to re-enter Australia or being required to re-apply for a student visa with no guarantee of success.

Transfer to another education provider within 6 months of commencement of principal program

Within the first 6 months of an international student's principal (i.e. non-preparatory) program, the student may only transfer to another education provider with the permission of the ANU and of DIAC, which means the student will need a release letter from the ANU. Students should contact the OPAR to arrange for their release letter.

Further information is available at:

http://info.anu.edu.au/StudyAt/International_Office/student_life/Release_Letter.asp

Recognition of Prior Learning (Course Credit)

Where course credit is granted, the provider must:

- Have documented procedures for the granting and recording of course credit
- Provide a record of the course credit to the student
- Be notified in writing by the student of their acceptance of the credit

Course credit granted after the commencement of study

According to the National Code if the granting of credit results in a change of program duration the University must report this via PRISMS (the OPAR must be advised immediately). Students should also be reminded that they must remain enrolled full-time

Early completion either because of Recognition of Prior Learning (RPL) or finishing program requirements (eg thesis)

If a student finishes early they must either register in another CRICOS registered program or depart Australia within 28 days unless they have been permitted to stay by DIAC. The OPAR must be advised of any student known to be completing their program early, so that it can be reported on PRISMS.

The full-time enrolment ruling if a student undertakes inter-session study

During the inter semester sessions students are not required to be enrolled full-time as long as they maintain 100% study load over the full year i.e. 24 units per semester.

An international student can enter the country before commencement of the program

An international student, who is issued with a student visa, may enter the country up to three months before the commencement of their program.

The information provided above is correct as at June 2008 and is subject to change. For further information on the ESOS Act or student visa requirements contact the Office of Policy and Regulation on 6125 1436 or policy.regs@anu.edu.au

Glossary of terms used	
CRICOS	Commonwealth Register of Institutions and Courses for International Students
DIAC	Department of Immigration and Citizenship (formerly DIMIA)
DEEWR	Department of Education, Employment and Workplace Relations (formerly DEST)
eCoE	Electronic Confirmation of Enrolment, generated through PRISMS
OPAR	Office of Policy and Regulation
International Student	person (inside or outside Australia) who holds a student visa
PRISMS	Provider Registration and International Students Management System
Provider	An institution (body or person) in Australia providing or seeking to provide courses to international students
RPL	Recognition of Prior Learning

Useful websites on ESOS and Student Visa information
DEEWR: http://aei.dest.gov.au/AEI/ESOS/Default.htm
DIAC: www.immi.gov.au
STUDY IN AUSTRALIA: the official Government website for international students: www.studyinaustralia.gov.au/sia/splash.htm
INTERNATIONAL EDUCATION OFFICE: www.anu.edu.au/ieo

The following sources of information have been used in the compilation of this brochure:

- AVCC – The Education Services for Overseas Students (ESOS) Act 2000. A Guide for AVCC Members prepared by Minter Ellison (May 2001)
- Department of Education, Employment and Workplace Relations – National Code of Practice for Registration Authorities and providers of education and training to Overseas Students (The National Code 2007)
- Department of Immigration and Multicultural Affairs – Student Visa Program: Education Provider Information Package (May 2003)

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