



THE UNIVERSITY
of ADELAIDE

Legal Compliance Education and Awareness



CRICOS PROVIDER 00123M

Education Services for Overseas Students Act 2000

(Commonwealth)

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seek LIGHT

What does the ESOS Act do?

- Regulates the delivery of education to overseas students studying in Australia on a student visa
- Operates in conjunction with the [National Code of Practice for Providers of Education and Training to Overseas Students 2018 \(Cth\)](#) (National Code 2018)
- Governs:
 - the registration process and obligations of registered providers
 - the [Tuition Protection Service](#)
 - enforcement and compliance powers
- Provides consumer protection for international students
- Supports the [Migration Act 1958 \(Cth\)](#) & Regulations by
 - reinforcing students' obligations under their student visas
 - requiring institutions to monitor students' compliance with their visa obligations
- Protects & enhances Australia's international reputation for quality education
- The *ESOS Act* is administered by the **Australian Department of Education and Training**

What does the ESOS Act do specifically?

- Requires all registered education & training providers offering programs in Australia to international students on a student visa to:
 - Register on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS)
 - Meet quality assurance standards
 - Comply with tuition & financial assurance requirements
 - Meet the obligations of registered providers
 - Report students who do not comply with student visa conditions related to their studies

How does the Act impact?

- The University is considered a registered provider under the Act and is listed on CRICOS (Provider Number 00123M) – as required under the *National Code 2018* (Part B)
- The Act impacts every aspect of the University's business where international students are concerned, but particular attention should be given to:
 - Fee structures
 - Marketing materials
 - Claims made by staff or Agents of the University to existing or potential International students
- International students are afforded various levels of financial & tuition assurance & additional consumer protection under the Act, in addition to what the [Competition & Consumer Act 2010 \(Cth\)](#) provides for all students

What are the implications of the Act?

Ensure that any information given to current or prospective overseas students is accurate. This includes information about :

- programs & courses offered by the University
- conditions of entry
- the existence of scholarships
- facilities & teaching staff
- academic, employment and migration outcomes
- association with third parties

It also includes marketing & communications materials promoting the University;

- in TV, radio, print media online and social media
- on posters, banners & letterheads
- locally, nationally & internationally

CRICOS registration

- The [Commonwealth Register of Institutions and Courses for Overseas Students \(CRICOS\)](#) lists all
 - Australian education providers who offer programs to people studying in Australia on student visas &
 - Approved programs offered
- Providers can only be registered on CRICOS after they have been approved by the relevant “ESOS Agency” – in the case of the University, that is the Tertiary Education Quality and Standards Agency (TEQSA).
- Prior to CRICOS approval, a program cannot be advertised or promoted
- Programs must be CRICOS registered before being offered
- The University can apply for different locations to be added to the registration
- All marketing material must clearly identify the provider name & CRICOS Code (00123M)

CRICOS registration (cont.)

Penalties for breach of CRICOS registration requirements

- The University may not be allowed to issue Confirmation of Enrolments (CoE's) to students for a particular program or at a particular location
- TEQSA can impose conditions on the University's registration or require further actions
- 2-year imprisonment for non-compliance

University obligations:

- Ensure programs are registered on CRICOS before being offered
- Clearly identify the provider name & CRICOS Code (00123M) on all marketing materials
- Actively monitor enrolment of students studying on a student visa to ensure they are appropriately enrolled in the correct CRICOS registered program
- Maintain a record of audits conducted of CRICOS-registered programs & student and action arising from any reports made by the University
- Pay a registration charge (for the Tuition Protection Scheme) by the last business day of February each year

Delivery of offshore programs

- The Act regulates the delivery of programs **in Australia** for the holders of student visas:
 - it **does not apply** to the delivery of programs by the University offshore
- Students who commence study offshore & complete it in Australia are subject to ESOS upon arrival in Australia
- Although ESOS does not extend to offshore delivery, it does extend to matters such as information provided to prospective onshore students & imposes a responsibility on providers for the actions of their agents & associates
- If a person makes an offer to an overseas student or invites an application for a program (registered on CRICOS & to be delivered in Australia), then the written materials must identify the University & CRICOS number
- Before accepting a student for enrolment, additional prescribed information must be provided to the student, by either the University or an international agent (See [Standard 2: Recruitment of and overseas students](#))

Student visa conditions

- The Act applies to any international student who holds the Subclass 500 Student Visa*
- The University is required to monitor students' compliance with visa conditions related to their study.

*The Subclass 500 student visa was [introduced on 1 July 2016](#). Any students enrolled prior to 1 July 2016 this time may have subclasses differentiated according to the educational sector

Student visa conditions (cont)

University obligations:

- Keep records of each accepted student
 - The South Australian Tertiary Admissions Centre (SATAC) store documents on the University's behalf
 - The University maintains students' University records
- Give information about an accepted student to the Department of Home Affairs within 31 days of any specified change in the status of the student's enrolment or the program they are undertaking
 - Except where the student is under 18 years of age and either; does not commence the program or terminates their studies in which case the provider must report within 14 days
- Monitor students compliance with their study-related visa conditions (enrolment status, enrolment load, academic progress)
 - Some students or groups of students may have specific conditions applied (for example, Iranian students may in some circumstances be required to seek permission from the Minister before a significant change of program or topic can be approved – *Condition 8203*)
- If a student has breached a study-related visa condition
 - Report the breach to the Department of Home Affairs
 - Send the student a written notice informing them that we have made a report, and of their responsibility to contact the Department of Home Affairs about potential impact to their student visa.

Student Visa and enrolment conditions

Student enrolment status:

- All Student visa (subclass 500) holders must maintain enrolment at the same level or a higher Australian Qualification Framework (AQF) level for which they were granted a visa
 - Unless they are undertaking a doctoral degree (AQF10) and transfer to a master's degree (AQF9)
- Transferring to a lower AQF level program or transferring from an AQF level program to a non-AQF Award program may be a breach of visa condition and might result in the visa being cancelled.
- Students who want to change to a lower level course or non-award program must apply for, and be granted, a new student visa before they change their program.
 - More information is available about [changing programs](#).
- Standard 7 of the National Code 2018 also applies to transfers between CRICOS registered providers.
 - More information is available at the [Department of Education and Training](#)'s website.

Tuition assurance: Fees, Refunds & Program Money

- One of the principal objects of the Act is to provide financial & tuition assurance for programs for which international students have paid
- ESOS does this by protecting program money received by the University, that is:
 - tuition fees
 - Overseas Student Health Cover premiums
 - any amount the student had to pay the University to undertake the program
- In addition, students may have assurance rights under state or territory consumer laws, fair trading laws & tenancy regulations

Tuition assurance: Fees, Refunds & Program Money (cont.)

University obligations:

- In the case of student default:
 - The University must refund program fees within four weeks
- In the case of provider default:
 - Offer the student either a refund of program fees within two weeks, or to enrol in an alternate program
 - If that remedy fails, place the student in an alternative program through a Tuition Assurance Scheme
 - If the second remedy fails, ensure the student has alternative tuition or a refund organised through the National Assurance Fund
- Belong to the Australian Government [Tuition Protection Service](#)
 - To meet TPS obligations providers only need to report on whether they have provided a refund to a student in two cases of student default:
 - Where a student's visa is refused, even if there is a compliant written agreement in place
 - Where there is no written agreement in place
 - Providers do not need to report on student refunds where a compliant written agreement is in place and it is not a case of visa refusal.

Standards for Registered Providers

Education services for international students is governed by the [National Code 2018](#)

- The Code includes eleven standards for registered providers which set out the University's obligations in delivering education & training to overseas students
- These standards detail the specific requirements the University must meet to comply with its obligations
- Such obligations need to be met at the point of CRICOS registration & throughout the CRICOS registration period

Standard 1 – Marketing information & Practices

All marketing of programs and education services to international students must be conducted in a professional manner & with integrity & accuracy and be consistent with Australian Consumer Law.

University obligations:

- Ensure marketing materials do not contain false or misleading information in relation to (among others):
 - program fees
 - work based training
 - prerequisites for entry into a program (including English language)
 - claims of association between the providers
 - the employment outcomes associated with a program
 - possible migration outcomes
- Clearly identify the provider name (University of Adelaide) & CRICOS Code (00123M) in all written marketing & other materials for students
- Ensure recruitment complies with obligations under [Standard 7 – Overseas Student Transfers](#)

Standard 2 – Recruitment of an overseas student

The University must be ethical & responsible in its recruitment of students

University obligations:

- Prior to accepting a student for enrolment in a program, provide the student with current, comprehensive and easily accessible information in plain English, that will enable them to make informed decisions about studying at the University including (but not limited to):
 - the requirements for acceptance into a program, including the minimum level of English language proficiency or work experience required
 - the program content & duration, study periods (ie: Semester 1, Semester 2, Summer, Winter), modes of study & assessment methods
 - indicative tuition and non-tuition fees
 - information about the grounds by which the student's enrolment may be deferred, suspended or cancelled
 - relevant information on living in Australia, including indicative costs of living and accommodation options

Standard 3 – Formalisation of enrolment and written agreements

A written agreement must be entered into with all students (or their parents or legal guardian if the student is under 18 years of age) who accept an offer from the University. The agreement must be signed before the University can accept payment of any fees.

University obligations:

Provide a written agreement in plain English to all students containing, as a minimum, information relating to:

- Program information, expected start date, location(s), offered modes of study and any compulsory online or work-based components
- Any conditions imposed on the student's enrolment
- Any prerequisites to entry including English language requirements
- Indicative tuition and non-tuition fees
- The University's refund policy
- Circumstances where personal information about the student may be shared with a third party
- The student's obligation to notify the provider of change of address while enrolled
- Internal and external complaints and appeals processes, including their right to take action under Australian Consumer Law
- The requirement that the student is responsible for keeping a copy of the written agreement as supplied by the University and receipts of any fee payments

Standard 4 – Education Agents

Education agents are required to act ethically, honestly and in the best interests of overseas students and uphold the reputation of Australia's international education sector when recruiting students.

University obligations:

- Have a formal written agreement with each education agent they engage with outlining:
 - The responsibilities of the University, including for compliance with the *ESOS Act* and *National Code 2018*
 - The requirements of the agent in representing the University
 - Processes by which the University will monitor the agent's activities and ensure the education agent gives overseas students accurate and up-to-date information
 - Corrective actions which may be taken and situations in which the agreement may be terminated
 - When information about the agent may be shared by the University and government agencies

Standard 4 – Education Agents (cont)

University obligations:

- Provide agents with easily accessible, current, comprehensive and plain English information with which to provide students
- Ensure agents have appropriate knowledge and understanding of the Australian International Education and Training Agent Code of Ethics
- Not accept overseas students from agents if there is evidence or suspicion that the education agent is engaging in unethical recruitment processes
- Ensure education agents act honestly and in good faith and take immediate corrective action (such as termination of agreement) if an agent (or an employee or subcontractor) is not complying with the National Code 2018
- Maintain the details of all agents it engages in the Provider Registration and International Student Management System (PRISMS)

Standard 5 – Younger Overseas Students

Where overseas students under the age of 18 are not being cared for in Australia by a parent or suitable nominated relative, the University must ensure the arrangements made to protect the personal safety & social well-being of those students are appropriate.

The University's current arrangements enable 17 year olds to begin their studies at the University without a family member through a Welfare Monitoring Agreement (WMA) with the University.

University obligations:

- Ensure students under 18 years are given age and culturally appropriate information on who to contact in emergency situations, and how to seek assistance and report abuse (See [Safer Campus Community](#))
- Meet all Commonwealth, State and other regulatory requirements relating to child welfare and protection
- Nominate start and end dates for which the University accepts responsibility for approving accommodation, support and welfare arrangements of younger students, and provide these to the Department of Home Affairs

Standard 5 – Younger Overseas Students (cont)

University obligations:

- Identify appropriate accommodation arrangements for each student
- Ensure there is no gap in welfare arrangements for younger students transferring to the University from another registered provider
- Recognise that if a student's enrolment is terminated, suspended or cancelled, the University has continued responsibility for checking the suitability of arrangements so long as the student is still under the age of 18 until one of the following occurs:
 - The overseas student has alternative welfare arrangements approved by another registered provider
 - The overseas student has a nominated guardian approved by the Department of Home Affairs
 - The overseas student leaves Australia
 - The University has notified the Department of Home Affairs through PRISMS that it is no longer able to approve the student's welfare arrangements
 - Make all effort to contact the student's parent or legal custodian immediately if they can no longer approve the student's welfare
 - The overseas student turns 18.
- Be aware of the circumstances and compliance reporting obligations surrounding the termination of the welfare agreement.

NOTE: The University has entered an agreement with the University of Adelaide College (our preferred partner organisation) to provide a [welfare monitoring service](#) to our international students aged 17 years who do not have a parent or eligible relative living in Adelaide

Standard 6 – Overseas Student Support Services

Support services & orientation programs must be available to all international students to help them to adjust to study in Australia & understand the cultural & educational environment they are entering

University obligations:

- Offer an age & culturally appropriate orientation program
- Provide assistance, referrals & access to services to students as requested and to assist students in meeting program requirements
- Provide opportunity for students to access welfare-related support services
- Designate members of staff as the official points of contact for students.
- Offer student support personnel sufficient to meet the needs of students
- Ensure staff members who interact directly with students are aware of their obligations under the ESOS framework
- Document critical incident policy & procedure
- Ensure a safe environment on campus and advice to University community on actions to enhance personal security and safety

Standard 7 – Overseas Student Transfers

The University must assess requests from students for a transfer between Universities within agreed timelines & in accordance with documented procedures

University obligations:

- Assess applications for transfer within the first six (calendar) months of the student's principal program
- Provide a release via the Department of Education and Training system, PRISMS (on application & at no cost to the student) to any student wishing to transfer at any time prior to the completion of the first six months of their principal program in accordance with documented procedures
- Where a release is not provided, provide written reasons for the refusal & inform the student of their appeal rights within 10 working days from the date the request was originally submitted prior to finalising the refusal in PRISMS
- Maintain records of all transfer requests

Standard 8 – Overseas Student Visa Requirements

Completion within the expected duration of study

The University must monitor the workload of students to ensure that at all times the student is in a position to complete the program within the duration as specified in the confirmation of enrolment (CoE).

NOTE: While students can vary their study load across an enrolment period, any period of part-time enrolment does not provide grounds for an extension.

University obligations:

- Monitor students' program progress according to documented policies & procedures
 - Given that the duration of most coursework programs is registered on the basis of a 52-week year, the standard completion time for an undergraduate degree is 156 weeks (three years) or 208 weeks (four years) for PhDs
- Understand the circumstances in which the duration of a student's study can be extended beyond the period specified:
 - compassionate or compelling circumstances (**NOTE:** documentary evidence is required)
 - implementation of the provider Intervention Strategy
 - approved deferral or suspension of study
- Ensure that variations in a student's enrolment load affecting the student's expected duration & the reasons for it, are kept on the student's file

Standard 8 (cont)

Monitoring program progress

The University must be proactive in notifying & counselling students who are at risk of failing to meet program progress requirements

University Obligations

- Systematically monitor, record & assess program progress of each student for each program
- Ensure that documented program progress policies & procedures are available for each program which specifies prescribed information
- Implement a well-documented Intervention Strategy
- Be proactive in notifying & counselling students who are at risk of failing to meet program progress requirements
- Report students who have breached the program progress requirements by firstly providing a written notice to the student of the intention to report including information on the complaints and appeals process within 20 working days.

Standard 8 (cont)

Monitoring attendance

The University must systematically monitor students' compliance with student visa conditions relating to attendance

University obligations:

- Although the University is not required to keep attendance records, attendance is informally monitored through Academic Performance via the [Academic Progress by Coursework Students Policy](#)
- Attendance records are compulsory for English language programs

Standard 8 (cont)

Online or Distance Learning

A program must not be delivered to an overseas student exclusively online or by distance learning.

A registered provider must not deliver more than one third (33%) of total units required for a given program by online or distance learning.

University Obligations

- Where online or distance learning is offered, ensure overseas students study at least one face-to-face unit in each study period. The only exception is if the student is completing the last unit of their program that is only available online.

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

The University may only enable students to defer or temporarily suspend their studies (including granting a leave of absence) during the program through formal agreement & in limited circumstances.

University obligations:

- Ensure the “compassionate & compelling” circumstances in which students may defer or suspend their studies are clearly understood by staff & students:
 - circumstances include family, medical or ‘well being’ reasons that impact on a student’s ability to maintain their enrolment
 - Circumstances which generally fall outside these grounds are:
 - Travel & employment opportunities
 - Family or customary obligations such as weddings
 - Relationship problems
 - Financial difficulties
- Develop documented procedures for assessing, approving & recording a deferment of the commencement of study or suspension of study for the student

Standard 10 – Complaints and Appeals

Students have the right to formally appeal decisions and make complaints in relation to their program and university services. The University's complaints & appeals processes must be independent, easily & immediately accessible, & inexpensive for the parties involved.

University obligations:

- Ensure [documented procedures](#) are in place for students wishing to lodge a formal complaint if a matter cannot be resolved informally
- Ensure that an independent & external authority is available to hear the complaint or appeal arising from the internal process
- If a student is not successful in the University's internal review process, inform them of their right to access external complaints handling processes within 10 working days of the formal lodgement of the appeal, and ensure their student enrolment is maintained during this time
- Where the final decision supports the student, immediately implement the decision

Standard 11 – Additional registration requirements

The University must apply for registration as an institution and all programs for delivery to overseas students to the ESOS agency, currently the Tertiary Education Quality and Standards Agency (TEQSA).

University obligations:

- Seek approval from TEQSA for its programs' location, duration, modes of study, numbers of potential students and partnership arrangements.
- Evidence that it has the adequate staff and education resources, including facilities, equipment learning and library resources for the delivery of these programs.
- Report any proposed changes to the University's registration.
- Undertake an independent external audit within 18 months of the due date of the next registration. The University last undertook an external ESOS audit in 2017.

Consequences of non-compliance

- A breach of the ESOS obligations will expose the University & the Vice-Chancellor to penalty provisions ranging from the imposition of fines, through to imprisonment, cancellation of programs or even cancellation of CRICOS registration
- In instances where the University is found to have provided false or misleading information to international students, additional penalties may also apply under the [Competition & Consumer Act 2010 \(Cth\)](#)
- Breaches of the ESOS Act may also be breaches under the [Migration Act 1958 \(Cth\)](#) & additional penalties may apply

Consequences of non-compliance (cont.)

Individual Consequences:

- Monetary penalties
- A breach of the Act may be considered misconduct under the University's Enterprise Agreement

University Consequences:

- Monetary penalties
- Financial compensation awarded to students
- Cancellation of the University's registration
- Suspension of programs
- Damage to the University's reputation

Additional Resources

- [University of Adelaide - ESOS website](#)
- [ESOS Online Induction Course](#)
- [ESOS Guide for Staff](#)
- [Education Services for Overseas Students Act 2000 \(Cth\)](#)
- [ESOS Regulations 2001 \(Cth\)](#)
- [National Code of Practice for Providers of Education and Training to Overseas Students 2018 \(Cth\)](#)
 - [National Code 2018 Factsheets produced by Department of Education and Training](#)
- [Information from Department of Home Affairs on studying in Australia](#)

Contacts

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Disclaimer

The content of this material is intended only to provide a summary & general overview of the *ESOS Act* as it applies to the University of Adelaide.

It is not intended to be comprehensive nor does it constitute legal advice.

Please contact the Educational Compliance Team (lgseducompliance@adelaide.edu.au) if you are unsure of your compliance obligations under the Act.