Legal Compliance
Education and Awareness

Education Services for Overseas Students
Act 2000

(Commonwealth)
adelaide.edu.au
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 2007 (Cth) (NC 2007)

• 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
ESOS Act 2000 (Cth)

What does the ESOS Act do specifically?

- Requires all registered education & training providers offering courses 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
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 2007 (Part C)

• 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
- courses & subjects
- cultural identity of staff or students
- past & future success
- affiliates

It also includes marketing & communications materials promoting the University;

- in TV, radio & print 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 courses to people studying in Australia on student visas &
  - Approved courses 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 Standards Agency (TEQSA).

- Prior to CRICOS approval, a course cannot be advertised or promoted, except for the purpose of assessing demand for the course

- Courses must be CRICOS registered before being offered

- The University can apply for different locations to be added to the registration

- All marketing material must contain the provider name & code – the University’s Provider Number is 00123M
**Penalties for breach of CRICOS registration requirements**
- TEQSA can impose conditions or require further action
- 2-year imprisonment for non-compliance

**University obligations:**
- Ensure courses are registered on CRICOS before being offered
- Clearly identify the provider name (University of Adelaide) & CRICOS Code (00123M) in all written marketing & other materials for students
- Actively monitor enrolment of students to ensure no student holding a student visa is enrolled in a non-CRICOS registered course
- Maintain a record of audits conducted of CRICOS-registered courses & student and action arising
- Pay a registration charge (for the Tuition Protection Scheme) by the last business day of February each year
Delivery of offshore courses

• The Act regulates the delivery of courses **in Australia** for the holders of student visas:
  - it **does not apply** to the delivery of courses 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 course (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
The Act applies to any international student who holds one of the following Visas:

- **Obtained after 1 July 2016:**
  - 500 Student

- **Obtained before 1 July 2016:**
  - 570 ELICOS Sector
  - 571 Schools Sector
  - 572 Vocational Education & Training Sector
  - 573 Higher Education Sector
  - 574 Postgraduate Research Sector
  - 575 Non-Award Sector (Study Abroad and Exchange Students)

- any student holding a Student (Temporary) (Class TU) visa excepting students who satisfy the secondary criteria for these visa subclasses (dependants), Australian Aid students & Commonwealth sponsored scholarship holders

- The University is required to monitor students' compliance with their visa obligations
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 course 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, send them a written notice informing them that we have made a report and that they will be contacted by the Department of Home Affairs
- Report to Department wherever a student breaches their study-related student visa obligations.
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 course or transferring from an AQF level course to a non-AQF Award course 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 course must apply for, and be granted, a new student visa before they change their course.
  – More information is available about changing courses.

• Standard 7 of the National Code of Practice for Providers of Education and Training to Overseas Students 2007 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 & Course Money

- One of the principal objects of the Act is to provide financial & tuition assurance for courses for which international students have paid.

- ESOS does this by protecting course 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 course

- In addition, students may have assurance rights under state or territory consumer laws, fair trading laws & tenancy regulations.
University obligations:

- Refund course fees within two weeks in the case of provider default & within four weeks in the case of student default
- If that remedy fails, place the student in an alternative course 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 a National Code of Practice

- Fifteen Standards for Registered Providers 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 courses for international students must be conducted in a professional manner & with integrity & accuracy

University obligations:

• Ensure marketing materials do not contain any false or misleading information in relation to (among others):
  – course fees
  – claims of association between the providers
  – the employment outcomes associated with a course
  – possible migration outcomes

• Clearly identify the provider name (University of Adelaide) & CRICOS Code (00123M) in all written marketing & other materials for students
The University must be ethical & responsible in its recruitment of students

**University obligations:**

- Prior to accepting a student for enrolment in a course, provide the student with information 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 course content & duration, study periods (ie: Semester 1, Semester 2, Summer, Winter), modes of study & assessment methods
  - indicative course-related fees
  - information about the grounds by which the student's enrolment may be deferred, suspended or cancelled
  - relevant information on living in Australia, including costs of living and accommodation options
Standard 3 – Formalisation of enrolment

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

University obligations:

• Provide a written agreement to all students containing, as a minimum, information relating to:
  – The course to be provided
  – Course money payable
  – Refunds in the event of a course not being delivered
  – The circumstances where personal information about the student may be shared
  – The obligation by the student to notify the provider of change of address while enrolled.
Standard 4 – Education Agents

A written agreement must be entered into with every agent that represents the University

**University obligations:**

- Ensure that agent agreements:
  - clearly & easily identify the locations in which agents are authorised to operate on behalf of the University
  - specify situations in which the agreement may be terminated

- Provide agents with accurate, up-to-date information with which to provide students
- Maintain a list of all agents & publish that list on the University web site
Standard 5 – Younger Students

Where 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.

University obligations:

• Ensure that the dates for which the University accepts responsibility for the welfare of younger students are given to the Department of Home Affairs.

• 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.

NOTE: The University has entered an agreement with Eynesbury College (a 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.
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 & access to services to assist students meet course requirements
- Provide opportunity for students to access welfare-related support services
- Document critical incident policy & procedure
- Designate members of staff as the official points of contact for students.
- Offer student support personnel sufficient to meet the needs of students
- Ensure students are made aware of their obligations under the ESOS framework
Standard 7 – Transfer between registered providers

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 course.

- Provide a Release Letter (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 course.

- Where a Release Letter is not provided, provide written reasons for the refusal & inform the student of their appeal rights.

- Maintain records of all transfer requests.
Standard 8 – Complaints and Appeals

The University’s complaints & appeals processes must be independent, easily & immediately accessible, & inexpensive for the parties involved

**University obligations:**

- Ensure arrangements 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

- Inform the student of their right to access external process & ensure their student enrolment is maintained during this time

- Where the final decision supports the student, immediately implement the decision
Standard 9– Completion within the expected duration of study

The University is expected to monitor the workload of students to ensure that at all times the student is in a position to complete the course within the expected duration and 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’ course progress according to documented policies & procedures
  - Given that the duration of most coursework courses 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 deferment 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 10 – Monitoring course progress

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

University Obligations

• Systematically monitor, record & assess course progress of each student for each course

• Ensure that documented course progress policies & procedures are available for each course which specifies prescribed information

• Implement a well-documented Intervention Strategy

• Be proactive in notifying & counselling students who are at risk of failing to meet course progress requirements

• Report students who have breached the course progress requirements
Standard 11 – 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 Unsatisfactory Academic Progress by Coursework Students Policy.

- Attendance records are compulsory for English language courses.
Standard 12 – Course Credit

The University must appropriately recognise course credit within the ESOS framework.

University Obligations:

- The University must have documented procedures in place for the assessment & recording of credit within the ESOS framework.

- The University must report to Department of Home Affairs on the duration of study calculation as a result of advanced standing or credit and revise the confirmation of enrolment (COE) and create a new end date.
Standard 13 – Deferring, suspending or cancelling the student’s enrolment

The University may only enable students to defer or temporarily suspend their studies (including granting a leave of absence) during the course 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 14 – Staff capability, educational resources and premises

• University staff must be suitably qualified or experienced in relation to the functions they perform for students

University obligations:

• Ensure the educational resources provided by the University support the delivery of courses to students

• Ensure the University campus (including that floor space available for each student is adequate & that facilities can support students to achieve their course outcomes) are conducive to a high standard of student learning

• Implement appropriate policies & procedures to make certain that this standard is achieved
Standard 15 – Changes to registered providers ownership or management

- Registered providers must proactively inform the designated authority of prospective ownership and/or management changes

**Note:** For the University, an ownership change is not possible as the University was created for public benefit by an Act of the South Australian Parliament (*University of Adelaide Act*) & may not be sold
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 courses 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 courses
- Damage to the University’s reputation
ESOS Act 2000 (Cth)

Additional Resources

- University of Adelaide - ESOS website
- Education Services for Overseas Students Act 2000 (Cth)
- ESOS Regulations 2001 (Cth)
- The National Code of Practice 2007 (Cth) for Registration Authorities & Providers of education & training to overseas students
- 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 one of the Legal and Risk Branch if you are unsure of your compliance obligations under the Act.

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