

**Guide
for Providers
of Education and Training Services
to Overseas Students**

ESOS Act 2000



Department of Education, Science and Training

Guide
for Providers
of Education and Training Services
to Overseas Students

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Department of Education, Science and Training

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FOREWORD

Australia welcomes more than 150,000 students from overseas each year. In addition, more than 30,000 overseas students are enrolled at offshore campuses of Australian education providers. These students, and the Australian students and academics who participate in various exchanges, are the face of Australia's internationalised education and training sectors.

Australia benefits from the contribution this industry makes to its intellectual, cultural, technological and economic links with other countries.

The Federal Government recognises the value of the industry, and seeks to protect and enhance its reputation and integrity.

From 4 June 2001, the *Education Services for Overseas Students (ESOS) Act 2000* has regulated education and training providers that enrol students studying in Australia on student visas. It requires that a provider must be registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) in order to enrol and provide courses to overseas students. The Act and its National Code provide nationally consistent standards for registration and for the conduct of CRICOS-registered providers. Breaches of the Act and the Code can lead to the imposition of sanctions, including suspension or cancellation from CRICOS.

This Guide is intended to provide simple and straightforward guidance on the Federal requirements of the industry. It is designed as an adjunct to the Act and the Code, and provides no further requirements beyond what is in them. Providers should consult the ESOS Act 2000 and the National Code, and see this document only as a useful aid in understanding them.

This Guide, the ESOS Act 2000 and the National Code, can be found on the website: <http://www.dest.gov.au/esos>



Sara Cowan
A/g First Assistant Secretary
International, Analysis and Evaluation
Division

Table of Contents

1	Introduction	1
1.1	Disclaimer	1
1.2	Getting started: becoming registered on CRICOS	1
1.3	Purpose of the ESOS Act 2000	2
1.4	Availability of this Guide	2
1.5	Contacts for further information	2
1.6	ESOS Act 2000 terminology	3
2	Some New Requirements under the ESOS Act 2000	3
2.1	Registration charges and fees	4
2.2	Electronic Confirmation of Enrolment (eCoE)	4
2.3	National Code of Practice	4
2.4	Tuition Assurance Scheme (TAS) membership	4
2.5	ESOS Assurance Fund	5
2.6	Commonwealth discretion not to register a provider	5
2.7	New Commonwealth powers to investigate and impose sanctions	6
2.8	Record keeping	6
3	Registration	6
3.1	Introduction	6
3.2	How to become registered on CRICOS	8
3.3	Compliance with Federal tuition and financial assurance requirements	8
3.4	Full-time courses	10
3.5	Course duration	10
4	Tuition Assurance Scheme	10
4.1	Provider must be in a TAS	11
4.2	What TASs do	11
4.3	Establishing a TAS	12
4.4	Exemption from TAS membership	13
4.5	Provider reporting requirements	14
4.6	TAS reporting	14
5	ESOS Assurance Fund	15
5.1	Purpose of the Fund	15
5.2	Contributions Review Panel	15
5.3	Fund Manager	16
5.4	Annual Fund contribution	16
5.5	A new provider's first annual Fund contribution	17
5.6	Review of the contribution amount	17
5.7	Special levy	18
5.8	Exemption from the ESOS Assurance Fund	18
6	Registration fees and charges	20
6.1	Initial Registration Charge (IRC)	20
6.2	Annual Registration Charge (ARC)	20
6.3	Reinstatement Fee	20
6.4	Late Payment Penalty	21
6.5	Debts due to the Commonwealth Government	21
7	Advertising, promoting and providing courses to overseas students	21
7.1	General provider responsibilities	21
7.2	Course information to intending students	22
7.3	Student enrolment	22
8	Arrangements with other providers	23
8.1	CRICOS registration	23
8.2	Course money	24

8.3 Advertising	25
9 Provider Registration & International Students Management System	25
9.1 PRISMS access	25
9.2 How the system works	26
9.3 Enrolling students	27
9.4 Reporting on students	27
9.5 False or misleading information	27
9.6 Recognition of Prior Learning (RPL) and eCoE	28
10 Record keeping	28
11 Refunds	29
11.1 Refund if provider defaults	29
11.2 Refund if student defaults	29
11.3 Debt recovery	31
11.4 Alternative arrangements	31
11.5 Notify the Fund Manager	31
12 Agents	31
12.1 Agent definition	31
12.2 Agent's responsibilities	31
13 ESOS enforcement – sanctions and powers	32
13.1 Sanctions for non-compliance	32
13.2 Offences	35
13.3 DEST powers to investigate	37
13.4 Production and attendance notices	38
13.5 DEST monitoring powers	39
13.6 DEST search powers	40
Appendix A: Legislation referred to in this Guide	41
Appendix B: State and Territory registration authorities	42
Appendix C: Tuition Assurance Scheme operators	45
Appendix D: Other useful contacts	46
Appendix E: Glossary	47

1 Introduction

The purpose of this Guide is to assist providers of education and training to overseas students to understand their obligations under Commonwealth legislation. This includes the *Education Services for Overseas Students Act 2000* (the ESOS Act 2000) and associated Acts and instruments. Appendix A provides a complete listing of the legislation. Providers should also consult the ESOS website at <http://www.dest.gov.au/esos>

Providers should be aware that they need to meet various obligations under the ESOS legislation, which can be described broadly as:

- being registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS);
- meeting quality assurance standards;
- complying with tuition and financial assurance requirements; and
- encouraging overseas students recruited to study in Australia to comply with the conditions of their visas, and reporting those who do not.

1.1 Disclaimer

This Guide provides an overview of the requirements that providers of education or training for overseas students must satisfy under the ESOS Act 2000 and the National Code. It is not intended to cover every requirement of the ESOS Act 2000 and the National Code, and should be read in association with the legislation, not as a replacement for it.

1.2 Getting started: becoming registered on CRICOS

Chapter 3 explains the Commonwealth requirements providers must meet in order to become registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS). These requirements aim to enhance the integrity of the education and training export industry and protect the interests of overseas students.

Providers must also meet the requirements of the registration authority in each State or Territory in which they wish to operate. Appendix B provides a listing of State and Territory authorities.

Initial registration on CRICOS involves:

- State/Territory authority approval;
- compliance with financial, quality assurance and tuition assurance requirements (including payment of annual Fund contribution unless exempt);

- payment of an Initial Registration Charge to the Commonwealth; and
- becoming a registered user of the Provider Registration and International Students Management System (PRISMS).

Registered providers are expected to be familiar with their obligations under the legislation and to ensure that relevant staff and associates are familiar with these obligations.

1.3 Purpose of the ESOS Act 2000

The ESOS Act 2000 and the National Code have the following aims of providing:

- quality assurance for overseas students by ensuring that education or training meets nationally consistent standards;
- financial and tuition assurance for overseas students;
- assurance of integrity in the industry, through measures regarding “fit and proper persons,” previous convictions, and actions concerning non bona fide students;
- powers to enable the Commonwealth to monitor and sanction providers as appropriate.

1.4 Availability of this Guide

This Guide can be found on the Internet at <http://www.dest.gov.au/esos/#Guide>. Printed copies can be obtained by sending an email to esos@dest.gov.au or writing to:

Industry Regulation Unit – ESOS
AEI Educational Standards Branch (LC 155)
Department of Education, Science and Training
PO Box 9880
CANBERRA ACT 2601.

1.5 Contacts for further information

Further information on the requirements of ESOS, PRISMS or visa conditions can be obtained at the following:

General ESOS inquiries	esos@dest.gov.au Phone: (02) 6240 5069 Fax: (02) 6240 7789
PRISMS inquiries	prisms@dest.gov.au Phone: (02) 6240 7647 Fax: (02) 6123 7558
Student visa inquiries	DIMIA World Index – Contact Details

1.6 ESOS Act 2000 terminology

The ESOS Act 2000 includes a number of important definitions and concepts. For example:

Accepted Student:	An accepted student is a student who is accepted for enrolment, or enrolled in a course, and who is, or will be, required to have a student visa to undertake a course.
Agent:	The definition of agent covers a person within or outside Australia who represents or acts on behalf of a provider, or purports to do so, in dealing with overseas students or intending overseas students. It does not have to be an arrangement that involves a contract with the agent (see Chapter 12 on page 31).
Associate	Associate is defined in detail under section 6 of the ESOS Act 2000. It is a broad definition that includes officers and members of companies and other bodies, as well as family members of individuals. There is an obligation on providers to advise DEST and the State authority of certain breaches by associates under section 11 of the Act.
Resident	To be registered on CRICOS, a provider must be a resident of Australia (sections 9 and 16 of the ESOS Act 2000). A company must be incorporated in Australia, carry on business in Australia and have its central management and control in Australia. An unincorporated body must carry on its business in Australia and have its central management and control in Australia.

Further definitions of terms used throughout this Guide can be found in Appendix E: Glossary.

2 Some New Requirements under the ESOS Act 2000

The ESOS Act 2000 replaced the *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991*. It commenced operation on 4 June 2001.

2.1 Registration charges and fees

The amended *Education Services for Overseas Students (Registration Charges) Act 1997* establishes a new schedule of fees payable by registered providers from 1 January 2001, including the Initial Registration Charge (IRC) for new registrations and the Annual Registration Charge (ARC) for continuing registrations. New providers must pay the IRC upon registration. Providers registered at 1 January of any given year must pay the ARC for that year by the last working day in February. Chapter 6 on page 20 provides information on the fees and charges payable.

2.2 Electronic Confirmation of Enrolment (eCoE)

The ESOS Act 2000 requires registered providers to use the Provider Registration and International Students Management System (PRISMS) to generate an electronic Confirmation of Enrolment (eCoE) for intending overseas students. DIMIA uses this information in assessing the prospective student's application for a student visa.

Providers are also required to use PRISMS to notify the Commonwealth of student non-compliance with visa conditions relating to attendance and academic performance, and of changes to the student's enrolment.

Chapter 9 provides further information on PRISMS, and on how to become a registered user.

If you need help or advice regarding PRISMS, please call the PRISMS Help line on 02-6240 7647 or send an email to prisms@dest.gov.au.

2.3 National Code of Practice

The National Code is established under section 37 of the ESOS Act 2000. To be registered on CRICOS, a provider must have been assessed by the relevant State or Territory registration authority, and certified as compliant with the National Code. Appendix B provides a listing of State and Territory authorities.

The requirements of the National Code are explained under the relevant headings throughout this Guide. Breaches of the National Code can lead to the imposition of sanctions, including conditions on registration, suspension or cancellation (see chapter 13). The breach of certain requirements of the National Code may also be an offence.

2.4 Tuition Assurance Scheme (TAS) membership

Providers (unless exempted under the ESOS Act 2000) are required to be a member of a Tuition Assurance Scheme (TAS), or seek exemption under the Regulations (see paragraph 4.4). However:

- holding an insurance policy is no longer an option as an alternative to TAS membership (as it was under the ESOS Act 1991); and

- non-TAS members may find that their ESOS Assurance Fund contributions will cost more than those of a comparable TAS member. This is because the risk of a claim on the Fund is likely to be higher for a non-TAS member.

Provider reporting

Providers who have been granted an exemption from being a member of a TAS must report annually to the Secretary of DEST. Paragraph 4.5 on page 14 provides further information on this report.

TAS operator reporting

TAS operators are required to provide the Secretary of DEST and the Fund Manager with an annual report. Paragraph 4.6 on page 14 provides further information on this report.

2.5 ESOS Assurance Fund

The ESOS Assurance Fund commenced operation in June 2001 and replaced the requirement on providers under the ESOS Act 1991 to operate a Notified Trust Account (NTA). The changes introduced by the ESOS Act 2000 do not change State legislation and providers should consult with their State or Territory registration authority as to whether they are required to maintain a trust account under State or Territory legislation. Appendix B provides a listing of State and Territory authorities.

The Assurance Fund is a central fund managed by a Fund Manager, established with the purpose of protecting the interests of overseas students and intending overseas students of registered providers. It does this by ensuring that students are provided with suitable alternative courses, or have their money refunded, if the provider cannot provide the courses the students have paid for.

All providers are required to contribute to the fund unless exempted under the ESOS Act 2000. Paragraph 5.7 on page 18 provides information on exemptions.

The Commonwealth has granted \$1 million to the Fund as a seeding grant to provide its initial reserves. Annual fund contributions are payable on a calendar year basis, except for the 2001 contribution, which was payable for the period 4 June - 31 December.

Paragraph 5.4 on page 16 provides further information on the annual Fund contribution.

2.6 Commonwealth discretion not to register a provider

The Secretary is required not to register a new provider if he/she has reason to believe that the provider does not, or will not, comply with the ESOS Act 2000 or the National Code.

2.7 New Commonwealth powers to investigate and impose sanctions

The Commonwealth has powers to investigate providers suspected of breaching the ESOS Act 2000 and National Code, or providers who might not be able to provide courses or refund moneys to students, and to impose sanctions on providers. Sanctions include suspension, cancellation, and the imposition of conditions on a provider's registration. Breach of certain provisions of the ESOS Act or the National Code may also be an offence. Chapter 13 provides further information on the powers and sanctions.

2.8 Record keeping

The ESOS Act 2000 imposes requirements on providers for the keeping of student records. These include records of student attendance, academic performance and residential address. Chapter 10 provides further information on records required to be kept.

3 Registration

3.1 Introduction

Any provider of education and training that seeks to recruit, enrol or teach overseas students, or to advertise its ability to do so, must be registered on CRICOS, or must do so in accordance with an arrangement it has with a provider registered for the relevant course (in which case the registered provider is responsible for all obligations under the Act). The provider must be registered for each course it offers to overseas students, and for each State or Territory in which it offers the course (section 8 ESOS Act 2000). A listing of State and Territory registration authorities is provided in Appendix B on page 42.

If a provider that is not registered on CRICOS, or that does not have an appropriate arrangement with the relevant registered provider, provides a course to an overseas student, or holds itself out as able or willing to provide such a course, is in breach of the ESOS Act 2000 and risks a penalty of 2 years imprisonment.

In summary, to be registered on CRICOS and maintain that registration, a provider must:

- be approved by a State or Territory authority in line with that State or Territory's registration requirements
 - that approval must include certification that the provider complies with the National Code (subsection 9(2)(c) ESOS Act 2000);
- satisfy the State authority that they are fit and proper to be registered (subsections 9(2)(ca) and 9(6) ESOS Act 2000)

- providers who satisfy subsection 9(5) of the ESOS Act 2000 are exempt from this requirement;
- advise the Secretary and the State or Territory authority of any previous offences, suspensions, cancellations or conditions imposed on them or an associate, either under the old ESOS Act or the ESOS Act 2000 (section 11 ESOS Act 2000);
- have paid their annual contribution to the ESOS Assurance Fund, unless exempt from this requirement (subsection 9(2)(b)(i) ESOS Act 2000);
- be a member of a TAS, unless exempted from this requirement (section 22 ESOS Act 2000 and regulation 3.11 ESOS Regulations 2001);
- be a resident of Australia (subsection 9(2)(a) and section 16 ESOS Act 2000)
 - this does not preclude foreign ownership of an Australian registered company;
- pay an initial registration charge (IRC) or an annual registration charge (ARC) (sections 5 and 6 ESOS Registration Charges Act 1997 and sections 12 and 23 ESOS Act 2000);
- not engage in misleading or deceptive conduct in the recruitment or the provision of courses to overseas students (section 15 ESOS Act 2000);
- maintain proper students records, including current residential address, details of moneys payable and paid, and any written agreements with students (section 21 ESOS Act 2000, regulation 3.04 ESOS Regulations 2001);
- advise the ESOS Fund Manager of any matter that might cause the Fund Manager to increase the amount of contribution the provider is required to pay (section 26 ESOS Act 2000);
- maintain the required information on the Provider Registration and International Students Management System (PRISMS);
- send out to students notices of breaches of their visa conditions relating to attendance or satisfactory academic record (section 20 ESOS Act 2000);
- advise the State or Territory authority of any change in ownership or management of the provider (National Code paragraph 14); and
- comply with the ESOS Act 2000, the ESOS Regulations 2001 and the National Code.

The following chapters of this Guide provide further detail of these requirements of the ESOS legislation.

3.2 How to become registered on CRICOS

To become registered on CRICOS, a provider must:

- (a) obtain the approval of the State or Territory authority in which the course is to be provided (see Appendix B for contact information); and
- (b) comply with the Federal legislative requirements for registration on CRICOS.

Applications for registration should be sent to the relevant State or Territory authority (see Appendix B).

3.3 Compliance with Federal tuition and financial assurance requirements

Any new provider should seek to identify whether it will have to comply with the Federal tuition and financial assurance requirements prior to registration on CRICOS.

Providers seeking to be registered on CRICOS must:

- i) join a Tuition Assurance Scheme (TAS) (see Chapter 4 for further details); and
- ii) join the ESOS Assurance Fund and pay their first annual Fund contribution (see Chapter 5 for further details);

unless exempted under the ESOS Act.

Most providers will find that they are required to join both a TAS and the Fund.

Exemption from the requirement to join a TAS and/or the Assurance Fund can be obtained in the following ways:

A. Exemption from Assurance Fund and TAS

Providers administered by a State/Territory education authority, or a non-government school or university¹ entitled to receive recurrent Commonwealth funding for the provision of education or training, will not be required to pay an annual contribution to the Assurance Fund and will not be required to join a TAS. (for details see the ESOS Act 2000 Section 24, the ESOS Regulations 2001 3.17 & 3.18). Providers who are administered by the council of a Victorian TAFE college, or the governing body of a Victorian adult education institution are also exempt.

Providers that collect all tuition fees in arrears may also be exempt from payments to the Assurance Fund and from joining a TAS. This can be either through full payment after the course is completed, or partial payment after components of the course are completed, provided that there is an

¹ Except for those institutions of higher education specified in Table B of the definition of institution in subsection 4(1) of the *Higher Education Funding Act 1988*

approved credit transfer agreement with another CRICOS-registered provider.

Providers proposing to take payments in arrears must comply strictly with the requirements set out in Regulation 3.18 of the ESOS Regulations 2001. Payment in arrears agreements must be concluded with accepted students before the agreed commencement date of the course.

However, it should be noted that providers seeking CRICOS registration cannot have students enrolled, or even make an offer to an overseas student to provide a course, and so cannot have payment in arrears agreements in place. This means that new providers intending to take payments in arrears will nevertheless have to initially join the Assurance Fund. They will be asked to pay the Base Premium. Once the provider is registered it may approach students and enter into payment in arrears agreements with those students. When the registered provider can prove to the Fund Manager that it is exempt the Fund Manager will provide an ex post adjustment on a pro rata basis. Providers may wish to seek a Ministerially-approved TAS exemption on the basis of an assurance that all payments will be taken in arrears.

B: Exemption from TAS

Some providers who are not eligible for exemption from joining both the Assurance Fund and a TAS (as discussed above) may still be able to obtain exemption from the requirement to join a TAS. In each case, the provider will need to seek approval from the Minister's delegate. Briefly, the options are:

Indemnity Agreement

The indemnity agreement provides a parent organisation guarantee for amounts that the provider may be required to refund to a student, or alternatively, provides that if the provider cannot provide a course for which a student has paid the provider, the parent organisation will pay for provision of a suitable alternative course to the student.

Bank Guarantee

A bank guarantee provides an indemnity for refund amounts that the provider may be required to pay to its students.

Ministerial exemption from becoming a member of a TAS

A provider that the Minister believes on reasonable grounds should not be expected to become a member of a TAS established in accordance with the ESOS Regulations 2001 may be exempted from being required to become a member of a TAS under sub-regulation 3.11(d).

In each of the above cases, providers will need to write to the Minister's delegate:

**Assistant Secretary
International Policy Branch
Location 754
Department of Education, Science and Training
GPO Box 9880
Canberra ACT 2601.**

3.4 Full-time courses

Paragraphs 13.1 and 13.2 of the National Code require that only full-time courses be registered on CRICOS. The course must be accredited as full-time by the accrediting body for that course. The accrediting body will take into account whether the total demands of the course constitute full-time study. The default minimum is that the course must involve at least 20 contact hours per week, and the number of weeks of study in an academic year must not be less than 36.

For the purposes of defining full-time study, contact hours include the time a student is scheduled to attend classes for teaching purposes, course-related information sessions, supervised study sessions and examinations.

3.5 Course duration

Under paragraph 13.3 of the National Code, the registration of a course on CRICOS must include the duration of the course. Any work-based training that is necessary in order to obtain the course qualification is to be included in the course duration (This does not include any optional work experience not approved as necessary in order to obtain the qualification).

4 Tuition Assurance Scheme

A Tuition Assurance Scheme (TAS) is a scheme whose main objects include ensuring that overseas students receive the course they have paid for (section 5 ESOS Act 2000).

A TAS is the first line of call when a member-provider is unable to provide a course or a refund to its overseas students. TAS members must, however, also contribute to the Assurance Fund, which provides backup if the TAS is unable to provide suitable alternative courses/refunds to the students where the provider is unable to do this.

4.1 Provider must be in a TAS

All providers are required to be in a TAS (section 22 ESOS Act 2000) unless a provider:

- is exempt from the requirement to pay annual Fund contributions under subsection 24(2) of the ESOS Act 2000;
- has an approved bank guarantee;
- has an approved indemnity agreement; or
- has obtained a Ministerially-approved exemption, where the Minister (Minister's delegate) believes on reasonable grounds that the provider should not be expected to become a member of a TAS (because, for example, the courses are not covered by a TAS).

TAS contact details can be found at Appendix C on page 45.

A TAS operator that refuses or cancels a provider's membership must notify the Secretary and the Fund Manager within 14 days of the reasons for rejection or cancellation (sub-regulation 3.09(7) ESOS Regulations 2001). If those reasons call into question the provider's compliance with the ESOS Act 2000 and/or the National Code, then the Minister or delegate may investigate the matter.

4.2 What TASs do

A TAS must have arrangements in place to ensure the placement of students among member-providers when necessary. Students will need to be provided with suitable alternative courses, and must not be required to pay any additional amount for which course money has been paid to the original provider.

A TAS will need to have arrangements in place to:

- identify members or prospective members of the TAS, including the CRICOS registration details of members (to satisfy DEST of providers' compliance with section 22);
- identify courses offered by members or prospective members, including CRICOS codes;
- identify students enrolled with member-providers and the courses for which they have pre-paid course money;
- identify the circumstances that may result in a provider's membership of the TAS being cancelled;
- ensure that it meets its reporting requirements under regulation 3.09 of the ESOS Regulations; and
- ensure that placement of a student will occur when required.

The arrangements to ensure that placement of students occurs should include:

- mechanisms to identify students, both on-shore and off-shore, who require placement;
- establishment of placement committees or other bodies set up to manage the placement of students with member-providers;
- procedures to ensure that all interested parties are informed of any action taken;
- rules for determining the placement of students among member-providers, that take into account the number of students to be placed, the number of students in each member-provider's institution and the courses offered by member-providers, to enable matching of alternative courses with courses for which money was pre-paid.

The operator of a TAS must have expressed as one of its objects the operation of a tuition assurance scheme under the ESOS Act 2000.

4.3 Establishing a TAS

An application for approval of a TAS must be made in writing to the Minister (under sub-regulation 3.06 ESOS Regulations 2001) and must provide details of:

- the name and business address of the TAS operator;
- the way in which the TAS will be operated (such as a copy of the memorandum and articles of association of the TAS operator and of any corporate policies it may have in relation to the TAS), including details of the arrangements that would be made for the provision of suitable alternative courses to students if a provider cannot provide the courses that the students have paid for;
- each registered provider which is, or will become, a member of the TAS; and
- each course offered by a member or a prospective member of the TAS.

The application should be lodged with:

**Assistant Secretary
International Policy Branch
DEST – Location 754
GPO Box 9880
CANBERRA ACT 2601.**

4.4 Exemption from TAS membership

Indemnity Agreements

A provider who has an approved indemnity agreement with its parent organisation that:

- indemnifies the provider for amounts it may be required to refund under the ESOS Act 2000; or
- provides for the parent organisation to arrange and pay for the provision of a suitable alternative course to the student if the provider cannot provide a course for which a student has paid,

is exempt from the requirement to be a member of a TAS.

An indemnity agreement must satisfy the requirements of sub-regulations 3.11(c) and 3.14 of the ESOS Regulations 2001.

The provider must show that:

- the body corporate which indemnifies the provider under the agreement is a parent organisation of the provider;
- the parent organisation and the provider are different bodies corporate;
- the parent organisation is incorporated in Australia;
- the parent organisation has financial resources, or access to financial resources, to pay the amounts for which the indemnity is given (including the most recent audited balance sheet and profit and loss account of the parent organisation);
- the individuals signing the agreement for the provider have the authority to do so; and
- the individuals signing the agreement for the parent organisation have the authority to do so.

If a provider cannot identify a parent organisation that meets the above criteria, the provider is unable to claim TAS exemption on the grounds of the indemnity agreement provision in the legislation.

The Minister or delegate may reject an indemnity agreement if not satisfied that the parent organisation has the financial capability to satisfy the terms of the indemnity agreement.

Bank Guarantees

A provider that has an approved bank guarantee that indemnifies the provider for refund amounts the provider may be required to pay to its student under the ESOS Act 2000 is exempt from the requirement to be a member of a TAS.

Applications for approval of bank guarantees must be in writing and must include the following:

- (a) a copy of the guarantee;
- (b) information showing that the individuals signing the agreement for the provider have the authority to do so;
- (c) information showing that the individuals signing the agreement for the bank have the authority to do so.

The Minister (or the Minister's delegate) must approve the bank guarantee if there are reasonable grounds for believing that the bank that indemnifies the provider under the guarantee has, and will continue to have, financial resources, or access to financial resources, to pay the amounts for which the guarantee is given (sub-regulation 3.13 ESOS Regulations 2001).

Ministerial exemption

A provider that the Minister believes on reasonable grounds should not be expected to become a member of a TAS may be exempted under sub-regulation 3.11(d) of the ESOS Regulations 2001 from being required to become a member of a TAS. This might be, for example, where a provider has a unique course not covered by a TAS. Providers that believe this category applies to them should write to the Minister's delegate.

4.5 Provider reporting requirements

TAS-exempt providers

Providers who have been granted an exemption from being a member of a TAS by virtue of an indemnity agreement or bank guarantee must report annually to the Secretary of DEST and to the Fund Manager. The report must be made within 28 days after the end of the calendar year, and include an explanation of why they claim to be exempt from the requirement to join a TAS. It must also include a copy of the indemnity agreement or bank guarantee under which that exemption was granted (sub-regulation 3.16).

4.6 TAS reporting

TAS operators are required (sub-regulation 3.09) to provide the Secretary of DEST and the Fund Manager with an annual report. This report must be provided within 28 days after the end of the reporting period and must contain the following:

- the name and business address of each member-provider of the TAS;
- the name/s of the course/s provided by each member-provider of the TAS;

- the number of students² who pre-paid course money to member-providers; and
- the number of overseas students for whom a suitable alternative course was required to be provided and was provided under the TAS.

The report must be provided on a calendar year basis, except in 2001 when a report is required for the period 1 July – 31 December.

TAS operators are required to give the Secretary written notice of any change in the information provided in the annual report within 14 days (sub-regulation 3.09(6)).

If a TAS operator rejects a provider's application for membership or cancels a provider's membership, the operator must inform the Secretary of DEST and the Fund Manager of the provider's name and business address and the reason for rejecting the application or cancelling the membership. This should be done within 14 days of the rejection or cancellation (Sub-regulation 3.09(7)).

5 ESOS Assurance Fund

5.1 Purpose of the Fund

The Assurance Fund has the purpose of ensuring that overseas students are provided with suitable alternative courses, or have their course money refunded, if:

- the provider cannot provide the course for which the student has paid, or give a refund; and
- if the provider's TAS membership, Indemnity Agreement or Bank Guarantee is unable to cover the student (Chapter 4 provides information on TAS membership and exemption from TAS membership).

5.2 Contributions Review Panel

The Contributions Review Panel (the Panel), and its functions and powers, are established under sections 54-55 of the ESOS Act 2000. Its main function is to determine the contributions criteria for annual Fund contributions.

²The number of persons on student visas who enrolled at the institution during the reporting period. An overseas student who enrolled in two or more courses during the reporting period is counted as only one student.

The contributions criteria must allow the contribution paid by each provider to reflect the risk of calls being made on the Fund by that provider, including whether the provider is a member of a TAS. The Fund Manager then uses these criteria to calculate individual provider's contribution amounts. The Panel is also able to hear and determine appeals by providers against the determinations of their contributions (section 55 ESOS Act 2000).

The ten member Panel is appointed by the Education Minister. The list of Panel members is available at <http://www.dest.gov.au/esos>.

5.3 Fund Manager

An independent Fund Manager is appointed, and its functions and powers established, under sections 49-50 of the ESOS Act 2000. The contract is currently held by PricewaterhouseCoopers, who can be contacted by email at: esos.assurance.fund@au.pwcglobal.com.

The address for the Fund Manager's Internet site is <http://www.esosassurancefund.com.au>. The website contains the policies and procedures which the Fund Manager establishes for the operation of the Fund as well as the contributions criteria.

5.4 Annual Fund contribution

A registered provider who is not exempt under the ESOS Act 2000 or the ESOS Regulations 2001, must pay an annual fund contribution each calendar year.

The Fund Manager is responsible for applying the contributions criteria to each provider to determine the annual contribution payable to the Fund by that provider (section 58 ESOS Act 2000).

Providers should be aware of the following legislative requirements:

- The provider must comply with any request from the Fund Manager for information to assist them determine the provider's level of contribution (subsection 26(3) ESOS Act 2000). The information sought is confidential, for the purposes of determining the contribution amount.
- Failure to comply with the Fund Manager's request for information may result in suspension or cancellation of the provider's registration, or the imposition of conditions on their registration (see chapter 13 on page 32).
- The annual fund contribution must be paid to the Fund Manager by the date requested on the contribution notice sent to the provider by the Fund Manager (section 63 ESOS Act 2000). The date must be at least 14 days after the notice is given to the provider.

- A provider who does not comply with a reminder notice for their annual fund contribution will be suspended from CRICOS automatically, and the suspension will only be lifted after payment of the outstanding amount, including a late payment penalty (section 90 ESOS Act 2000).
- A provider must inform the Fund Manager of any matter that might cause the Fund Manager to increase the amount of contribution the provider is required to pay (subsection 26(1) ESOS Act 2000). Such matters would include, for example, a significant increase in earnings from student fees or a change in TAS status. Failure to provide relevant information to the Fund Manager, or the provision of false or misleading information, may result in administrative action such as suspension or cancellation of the provider's registration or the imposition of conditions on their registration (see chapter 13 on page 32).

5.5 A new provider's first annual Fund contribution

If you are a new provider seeking registration on CRICOS, it is in your interests to comply with requests for information from the Fund Manager, as you will not be registered until your contribution has been paid (unless you are exempt from paying into the Fund under section 24 of the ESOS Act 2000).

5.6 Review of the contribution amount

A provider may apply in writing to the Fund Manager for a review of its contribution level, but not the contributions criteria themselves. The application must be made within 14 days after the provider is given the contribution notice (subsection 66 ESOS Act 2000). A review fee of \$300 is payable to the Fund Manager.

It should be noted that a provider must pay its annual Fund contribution on time even if it is applying/ has applied for a review.

Following consideration of the provider's application for review, the Fund Manager must give the provider written notice of its decision including its statement of reasons (subsection 67(2) ESOS Act 2000).

If the provider is dissatisfied with the outcome of the review by the Fund Manager, they may, within 14 days, apply in writing to the Panel for a further review (section 68 ESOS Act 2000). As with the Fund Manager's review, the grounds for a Panel review are limited to the application of the contributions criteria, rather than the criteria themselves. Requests for review must be made to the Fund Manager in the first instance.

A fee of \$300 is payable to the Secretary of DEST for a review by the Panel (sub-regulation 5.02 ESOS Regulations 2001).

5.7 Special levy

If the Fund Manager considers the Fund does not have enough money to meet its current or future liabilities, with the approval of the Contributions Review Panel, the Fund Manager can require a special levy be paid to it by a specified date. This would apply to all registered providers who must pay a Fund contribution in that year.

5.8 Exemption from the ESOS Assurance Fund

The following providers are exempt from the requirement to pay annual Fund contributions (section 24(2) ESOS Act and sub-regulation 3.17 ESOS Regulations 2001):

- a provider that is administered by a State or Territory education authority;
- a provider that is administered, throughout the year, by either the council of a TAFE college established under the *Vocational Education and Training Act 1990* of Victoria or the governing board of an adult education institution established under the *Adult, Community and Further Education Act 1991* of Victoria;
- any other provider that is entitled to receive funds under a law of the Commonwealth for recurrent expenditure for the provision of education or training, other than
 - a provider who is an institution of higher education specified in Table B of the definition of ‘institution’ in subsection 4(1) of the *Higher Education Funding Act 1988*³;
 - a provider who is not a non-government school or a university;
- a provider which conducts its courses for overseas students so that the tuition fees for a course are only payable after that full course has been completed, and the provider has a payment in arrears agreement with each student;
- a provider which conducts its courses for overseas students so that the tuition fees for each part of a course are only payable after the student has completed that part of the course, and the provider has a payment in arrears agreement with each student, and has a current credit transfer agreement known to each student prior to starting the course.

Payment in arrears upon completion of the entire course

In order to gain exemption from the ESOS Assurance Fund on the basis of payment in arrears a provider must have a tuition payment in arrears agreement with each student. Under sub-regulation 3.18(4) ESOS Regulations 2001, the agreement must:

- (a) be in writing; and
- (b) be made before the agreed starting day of the course; and

³ Avondale College and Marcus Oldham College

- (c) set out the following information about the course for which the student is accepted:
 - (i) the duration, level and field of study of the course;
 - (ii) the cost of the course;
 - (iii) the alphanumeric code used to identify the course; and
- (d) set out the date or dates by which the student must pay any tuition fees payable for the course, or the part of a course (which must be after the student completes the course or part); and
- (e) state that the provider may require payment of course money for items other than tuition fees before the student completes the course or part.

Examples of items for paragraph (e):

- Books, equipment and other materials needed for the course.
- Travel, accommodation and other domestic services provided to the student.
- Health insurance cover for the student.

Payment in arrears upon completion of units/modules and credit transfer agreement

In order to gain exemption from the ESOS Assurance Fund on the basis of payment in arrears upon completion of units, a provider must have both a tuition payment in arrears agreement and credit transfer agreement. The payment in arrears agreement must meet the requirements listed in the section above.

Under sub-regulation 3.18(5) of the ESOS Regulations 2001, the credit transfer agreement must:

- (a) be in writing; and
- (b) be made between the provider (original provider) for the course (original course) and another provider (alternative provider) who provides a suitable alternative course to the original course; and
- (c) be made before the agreed starting day of the original course; and
- (d) provide that the alternative provider will accept an application by an accepted student of the original provider to transfer to the alternative course if the original provider is unable to provide the original course or the part of the original course; and
- (e) provide that, if the accepted student of the original provider completes the part of the original course, the part and the grade awarded for it by the original provider will be recognised by the alternative provider as if:
 - (i) the part of the course were provided to the student by the alternative provider; and
 - (ii) the grade were awarded by the alternative provider; and
- (f) provide that no additional amount is payable to the alternative provider for the part of the course for which course money has been paid to the original provider.

6 Registration fees and charges

6.1 Initial Registration Charge (IRC)

An Initial Registration Charge (IRC) must be paid each time a provider is registered on CRICOS.

The amount of the IRC payable by an individual provider is calculated on the basis of the remaining months of the year. Details of the calculation procedure can be found at: <http://www.dest.gov.au/esos>. The IRC must be paid by the date specified in the invoice sent by DEST to providers upon registration.

6.2 Annual Registration Charge (ARC)

All providers registered on CRICOS on 1 January of each year are liable to pay the ARC , including providers whose registration is suspended on that date, and providers who seek cancellation after that date. If a provider no longer intends to enrol overseas students and wishes to avoid paying the ARC the following year, the provider must cancel its registration on CRICOS with the relevant State authority before 1 January.

DEST issues self-assessment notices to all providers in January each year. The ARC is a self-assessed charge, and providers are required to make their ARC payment in accordance with the payment schedule, which can be accessed at <http://www.dest.gov.au/esos>. A provider is responsible for assessing the amount they are liable to pay. On receipt of payment, DEST will issue providers with a receipt.

Payment of the ARC is due on the last business day in February each year. Penalties apply to providers who fail to pay the ARC by the due date or who under assess, including an interest rate of 20 per cent (%) per year on the amount unpaid and the imposition of sanctions.

DEST may require a provider to substantiate their calculation of the ARC. Records of provider course enrolments on the eCoE system will facilitate this in cases where the Secretary or their delegate requests confirmation of enrolment totals in writing.

6.3 Reinstatement Fee

A provider is liable to pay a reinstatement fee if a suspension or condition on their registration is removed (section 171 ESOS Act 2000). The reinstatement fee for the current year can be accessed at the following link: <http://www.dest.gov.au/esos>. The fee must be paid by the date stated in the reinstatement notice.

6.4 Late Payment Penalty

A registered provider must pay a late payment penalty of 20 per cent (%) per annum on any of the following that were left unpaid when due for payment (section 172 ESOS Act 2000):

- annual registration charge;
- reinstatement fee;
- annual Fund contribution; or
- special levy.

The calculation procedures can be found at: <http://www.dest.gov.au/esos>.

6.5 Debts due to the Commonwealth Government

If unpaid, the charges detailed above remain as debts to the Commonwealth. The Commonwealth may apply to a court to recover debts by a provider on the following payments (section 173 ESOS Act 2000):

- annual registration fee;
- reinstatement fee;
- late payment penalty;
- annual Fund contribution; and
- special levy.

The Fund Manager may recover a debt on behalf of the Commonwealth if it relates to the Fund.

7 Advertising, promoting and providing courses to overseas students

7.1 General provider responsibilities

Providers and their agents must not promote a course to overseas students or intending overseas students unless the provider and its courses are registered on CRICOS (section 8 of the ESOS Act 2000), or unless they do so in accordance with an arrangement they have with a provider registered for the relevant course (in which case the registered provider is responsible for all obligations under the Act). All written materials, including those in electronic form, must identify the registered provider and provider number (section 107 ESOS Act 2000).

Providers and their agents must not mislead or deceive overseas students, or intending overseas students, when recruiting or providing a course (section 15 ESOS Act 2000).

The National Code (paragraph 19) requires that a provider must ensure that the marketing of their education and training services is carried out with integrity and accuracy – both by providers and their agents. False or misleading comparisons must not be made with any other provider or their courses. The marketing and advertising of education and training services by providers must not contain any inaccurate claims of association with any other provider or organisation, or inaccurate advice as to acceptance into another course.

7.2 Course information to intending students

Information supplied to intending students must, in addition to identifying the registered provider and their CRICOS number, be clear, unambiguous and accurate, in order to enable students to make informed decisions about the provider and the services they offer. This information should include:

- an accurate description of the courses offered by the provider. This should include accreditation status, content, level of qualification, course duration, credit transfer, facilities, resources, equipment and learning resources and methods of study and assessment;
- an itemised list of all fees payable to the provider;
- a fair representation of the local environment in which the provider is operating, including location of campuses and indicative costs of living;
- the provider's written agreement for refunds, if they have one, or a statement that the provider has no such agreement. A provider's written agreement for refunds must meet the requirements of paragraphs 42-44 of the National Code;
- the minimum level of English language proficiency, educational qualifications and work experience required to undertake the course of study; and
- advice to students that any school-aged dependants accompanying them will be required to pay full fees if they are enrolled in a school in Australia.

7.3 Student enrolment

Paragraph 30 of the National Code requires that a registered provider must enrol overseas students only in full-time courses. The only exception is where, in order to complete a course of study, the remaining required unit/s do not constitute a full-time load. In these circumstances an overseas student may be enrolled on a part-time basis in order to complete the course of study. When an overseas student is repeating a unit in order to complete a course of study, the student may only do so once, if studying part-time.

At all other times, an overseas student must be enrolled in a full-time course of study. Paragraph 40 of the National Code does not preclude a student from repeating a unit more than once while in a full-time course of study, where there are reasons to allow this. An overseas student may not be enrolled part-time in order to repeat a prerequisite unit mid-course that is necessary for them to continue their studies. In these circumstances, a student should repeat the prerequisite unit together with other units so that they are undertaking a full-time load.

Under visa condition 8202, the student must achieve an academic result that is certified by the education provider to be at least satisfactory. A student might be performing satisfactorily, but still have to do some repeats. However, in these circumstances the provider should ensure that a student is achieving satisfactory academic results and, where they are not, report the student to DIMIA via PRISMS (as required under section 20 of the ESOS Act). The provider should also consider whether a student requires support services (as under paragraphs 45 and 46 of the National Code) or diversion into another course more suited to their abilities (the latter would necessitate a course variation advice to be generated through PRISMS as required under section 19 of the ESOS Act).

If a student encounters exceptional circumstances while repeating their course or at any other time in the course (eg death in the family), it remains open to them to defer their current studies (National Code paragraph 38).

Under DIMIA requirements, students are not permitted to undertake work components as part of the study, unless the work-based training is necessary in order to obtain the course qualification. The work-based training must be included in the registered duration of the course on CRICOS. (National Code paragraph 13.3).

A registered provider must obtain evidence that assessment of an intending overseas student's proficiency in English has been carried out by a suitably qualified person unless this is clearly not relevant (National Code paragraph 28).

8 Arrangements with other providers

8.1 CRICOS registration

Where more than one provider is involved in the provision of the one course, only one provider is to be registered to provide that course. The relevant State authority will decide which provider is to be registered. The involvement of other providers in the provision of the course must be under an arrangement with the registered provider, and with the approval of the

State/Territory Authority. The registered provider will be responsible for ensuring that provision of the course meets the requirements of the ESOS Act 2000 and the National Code, and the registered provider will be subject to any sanctions that might be imposed.

8.2 Course money

A registered provider, who enters into an arrangement with one or more providers to provide a course to overseas students, must ensure that students pay their course money to the registered provider (section 18 ESOS Act 2000), unless there is a clearly understood arrangement between the registered provider and the other provider, whereby the other provider collects the fees as agent of the registered provider.

The consequence of such an arrangement is that, even though another provider (or entity) collects the course money on behalf of the registered provider, the registered provider remains responsible for all obligations relating to the course money under the ESOS Act 2000, including the refund provisions of the Act.

Under such an arrangement any payment for these services from the registered provider to its agent would be a separate matter as per their arrangement.

8.3 Advertising

Where a person or business provides a course under arrangement with a registered provider, they may only advertise the provision of courses with the express permission of the registered provider. They must also identify the registered provider and its CRICOS provider number in all their written materials, including those in electronic form, for that course (section 107 ESOS Act 2000).

9 Provider Registration & International Students Management System

The Provider Registration and International Students Management System (PRISMS) is a computer system developed by DEST in co-operation with the Department of Immigration and Ethnic Affairs (DIMIA) for the purposes of the ESOS Act 2000 and the *Migration Act 1958*. It provides a secure system for providers registered on CRICOS to comply with legislative requirements by:

- creating and authorising electronic confirmations of enrolments (eCoEs) for overseas students enrolling (either from offshore or onshore) with the provider (as required under the ESOS Act); and
- reporting changes in course enrolment, and student non-compliance with visa conditions relating to attendance and academic performance (required under the ESOS Act).

eCoEs were introduced in 2000 to improve the integrity and efficiency of confirmation of enrolment for the purposes of student visa issue. They can only be generated through PRISMS. DIMIA requires an eCoE as “evidence of enrolment” in a registered full-time course before it will issue a student visa.

9.1 PRISMS access

To gain access to PRISMS providers will require:

- a valid PRISMS login identifier and password;
- a computer with an Internet connection and World Wide Web (WWW) access (a minimum of a 56K dial-up modem is recommended);

- a current web browser that supports cookies, HTTP, style sheets, JavaScript (ECMIA Script) and the Secure Sockets Layer (SSL) protocol. Internet Explorer 5.5 or Netscape 4.7 are the minimum recommended versions and free downloads via the Internet are available at: <http://www.microsoft.com/msdownload/search.asp> for Internet Explorer or <http://home.netscape.com/download/> for Netscape; and
- the Adobe Acrobat Reader 4.0 (to view and print the PRISMS User Manual). The Adobe Acrobat Reader is available for the Macintosh, Windows and UNIX platforms as a free download via the Internet from: <http://www.adobe.com/products/acrobat/readermain.html>.

Access to PRISMS is only granted to those people nominated by the Principal Executive Officers (PEO) of providers registered on CRICOS. PEOs and delegates will also have the discretion to nominate the level of access required to allow staff to only create eCoEs, or to create and authorise eCoEs and report on students. PEOs are also able to nominate agents to create eCoEs for them, but only the provider's staff are able to authorise forms created by agents.

All providers will need to complete a PRISMS User Registration Request form for each individual who is to be granted access to the system. Registration forms can be obtained by contacting the PRISMS Help Line.

If you experience difficulties with PRISMS please call the PRISMS Help line on 02 6240 7647, or send an email to prisms@dest.gov.au.

9.2 How the system works

Student enrolment information is entered into PRISMS in order to create an enrolment record and thus print out an enrolment letter to give to the student (an eCoE).

The information entered is transmitted to the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) who forward it to their visa processing offices so that when a student applies for a student visa the DIMIA officer is able to authenticate the enrolment letter (eCoE).

DIMIA transmit student visa grants, visa refusals and student movements to DEST where this data is used to determine the status of the student, i.e. have they arrived, are they studying, should their eCoE be cancelled, etc.

When a provider reports a student via PRISMS for non-compliance the information is transmitted to DIMIA who will investigate the student and will respond to DEST with the outcome of their investigation.

9.3 Enrolling students

Providers must create and authorise an eCoE, within 14 days of a student from overseas enrolling in a course. This applies to students enrolling from offshore or onshore, or, students who will have to apply for a student visa, or those who already hold one. Section 19 of the ESOS Act 2000 and sub-regulation 3.01 of the ESOS Regulations 2001 prescribe the information providers must enter into PRISMS when enrolling a student. Entering this data results in an eCoE letter being created for the student.

Current PRISMS users should refer to the User Manual on PRISMS for detailed instructions on how to create eCoEs for newly enrolling and currently enrolled overseas students.

9.4 Reporting on students

Apart from the requirement to enter the enrolment of every student from overseas into PRISMS, the reporting required via PRISMS is exception reporting (see the provider obligations under sections 19 and 20 of the ESOS Act 2000). This means if the student:

- does not commence (i.e. simply does not turn up, or has not arranged with the provider for a later start because of health or compassionate reasons); or
- terminates their studies before course completion; or
- changes their course or its duration; or
- fails to comply with their visa conditions regarding attendance or academic performance.

the provider has an obligation to report this via PRISMS. In the non-compliance cases, the provider will find the PRISMS system generates a “non-compliance notice” letter for the provider to print out and send to the student.

Current PRISMS users should refer to the User Manual on PRISMS for detailed instructions on how to report student non-compliance.

9.5 False or misleading information

Providing false or misleading information is an offence when complying or purporting to comply with the PRISMS reporting requirements of the ESOS Act 2000:

- section 19 – by providing false or misleading information about accepted students; and
- section 20 – by providing false or misleading information with regard to sending students notice of visa breaches.

9.6 Recognition of Prior Learning (RPL) and eCoE

If a provider intends to grant an overseas student recognition of prior learning as grounds for shortening the student's study, the provider must have a formal process for conducting and recording this.

- If the RPL is granted before visa grant, the actual net duration (as reduced by RPL) must be specified in the eCoE (National Code paragraph 32.1).
- If the RPL is granted after visa grant, the provider must report the change in course duration for the student via PRISMS (National Code paragraph 32.2, ESOS Act 2000 section 19(e)).

10 Record keeping

Providers are required to keep records for all accepted overseas students who are enrolled with the provider, or who have paid course money to the provider (section 21 ESOS Act 2000). These include:

- the overseas student's current (Australian) residential address as supplied by the student (section 21 ESOS Act 2000). The provider must remind students in writing at the beginning of their course of the visa requirement to advise the provider of any change in their contact details, such as a new Australian residential address and contact telephone number (National Code paragraph 41);
- a record of student academic performance, attendance and compliance with visa conditions relating to attendance and academic performance (Attendance records are not required for students studying for a higher education qualification (National Code paragraph 35)). (Detail regarding attendance records is at paragraph 39 of the National Code);
- records of course money the student has paid/not yet paid (sub-regulation 3.04 ESOS Regulations 2001);
- copies of written agreements between the provider and student (sub-regulation 3.04(c) ESOS Regulations 2001).

The provider does not need to update the student records after the overseas student completes their studies; however, the provider must keep the student records for at least 2 years after the overseas student stops studying with the provider (subsection 21(3) ESOS Act 2000).

11 Refunds

A registered provider is obliged under the ESOS Act 2000 to pay a refund to overseas students in certain circumstances.

11.1 Refund if provider defaults

A provider defaults if:

- the course they offer does not start on the agreed starting day;
- the course stops being provided after it starts and before it is completed;
or
- the course is not provided fully to the student because the registered provider has had a sanction imposed.

If a provider defaults, it must pay a full refund to the student within two weeks after the default day. (sections 27- 31 ESOS Act 2000) The provider must give the student a statement that explains how the refund amount has been worked out.

11.2 Refund if student defaults

A student defaults if:

- the course offered by the provider started on the agreed starting day, but the student did not start the course on that day and has not previously withdrawn from the course; or
- the student withdraws from the course either before or after the agreed starting day.

In these circumstances, the provider must make a refund to the student as follows:

Written Agreement

If there is a written agreement between the provider and the student covering refunds in situations where a student defaults, the refund (if any) is to be made according to the terms of that agreement and the provider must pay the amount within four weeks after receiving a written claim by the student.

Where a provider seeks to enter into a written agreement with an overseas student regarding refunds for student default, the provider must not engage in conduct that is false, misleading, deceptive or otherwise unconscionable (National Code paragraph 42).

The National Code also requires that written agreements must:

- be clearly understandable by the student and be communicated to the student;
- be provided to the student prior to the student making any payment to the provider;
- be specific in its requirements as to when and how the student should apply for a refund;
- specify the refund provisions to apply if a student does not start a course on the agreed date, or withdraws before its completion. These provisions must generally be compatible with Commonwealth and State consumer protection law and include the statement that “This agreement does not remove the right to take further action under Australia’s consumer protection laws;”
- state clearly other (if any) circumstances in which the provider would provide a refund; and
- make clear that the provider’s dispute resolution processes do not inhibit the student’s right to pursue other legal remedies.

No Written Agreement

If there is no written agreement, the provider must pay the student within four weeks after the default day, the total of the course money, less any amounts related to expenses the provider incurred for the student’s course before the default day. Default day means the day on which the student withdrew from the course.

The amounts that can be deducted are:

- administration expenses totalling no more than the lesser of
 - \$250; and
 - 5% of the total amount of course money that the provider received in respect of the student for the course before the default day;
- the part of expenses for travel, accommodation and other domestic services that cannot be offset by providing the services to someone else;
- the amount of compulsory union fees;
- the cost of books, equipment and other materials needed for the course;
- the proportion of the course money that the provider received in respect of the student before the default day that is equal to the proportion of the course that was provided to the student before the default day (sub-regulation 3.19 ESOS Regulations).

When giving the student a refund the provider must give the student a statement that explains how the amount has been worked out (sub-regulation 3.19 ESOS Regulations).

11.3 Debt recovery

An overseas student is entitled to recover the refund amount owing to them as a result of either provider or student default, as a debt action in a court (section 30 ESOS Act 2000).

11.4 Alternative arrangements

A provider may arrange for another course, or part of a course, to be provided to the student at the provider's expense as an alternative to refunding course money. If the student agrees to accept the alternative arrangement, the provider is no longer liable to refund the student the money owed for the original enrolment (section 31 ESOS Act 2000).

11.5 Notify the Fund Manager

If a provider fails to pay a student a refund, or becomes aware that it will not be able to pay a student a refund, the provider must notify the Fund Manager as soon as practicable.

12 Agents

12.1 Agent definition

The definition of an agent covers a person within or outside Australia who represents or acts on behalf of a provider, or purports to do so, in dealing with overseas students or intending overseas students. It does not have to be an arrangement that involves a contract with the agent.

12.2 Agent's responsibilities

Agents, in representing an Australian education provider, *must* do the following:

- market Australian education and training services honestly; and
- provide accurate information to students.

They *MUST NOT* do the following:

- make false or misleading comparisons with any other provider or their courses;
- make any inaccurate claims of association with any other provider or organisation;

- give inaccurate/dishonest advice as to acceptance into another course;
- hold out the promise of permanent residence in Australia following study, or suggest fraudulent means of achieving residence such as sham marriages;
- suggest to students that they can come to Australia on a student visa with a primary purpose other than full-time study;
- help applicants who intend to come to Australia on a student visa intending to breach the conditions of their visa;
- engage in false or misleading advertising or recruitment practices; or
- use PRISMS to create eCoEs for applicants who will not be bona fide (genuine) students.

A provider using an agent must ensure that anyone who acts on their behalf complies with the National Code requirements relating to marketing and student information (refer to the National Code paragraphs 19-25) and student recruitment and placement (refer to the National Code paragraphs 26-30).

Under the National Code, a provider can be held accountable for the actions of its agents in regard to marketing of its courses, and the recruitment and placement of overseas students. Under paragraph 49 of the National Code, a provider must not accept, or continue to accept, overseas students recruited by an agent, or authorise an agent to use PRISMS on their behalf, if they know, or reasonably suspect the agent to be engaged in any of the practices referred to in the dot points above.

13 ESOS enforcement – sanctions and powers

This Chapter sets out the sanctions available to DEST to enforce the ESOS Act 2000 in relation to breaches of the Act and/or the National Code.

13.1 Sanctions for non-compliance

Where there are reasonable grounds for the Minister (or Minister's delegate) to believe that a registered provider or an associate of the registered provider is breaching, or has breached the ESOS Act 2000, the ESOS Regulations 2001, the National Code, or a condition on the provider's registration, the Minister may impose one or more sanctions against the provider (see Part 6, ESOS Act 2000). In determining the sanction to be imposed, the Minister may take into account such considerations as the seriousness of the breach and the impact, or potential impact, that the breach might have on Australia's reputation as a provider of high quality education and training services to overseas students.

Sanctions include suspension and cancellation action and the imposition of conditions on a provider's registration. The Minister may also impose sanctions on a registered provider if the Minister believes on reasonable grounds that a provider that is providing the course with the registered provider is engaging, or has engaged, in misleading or deceptive conduct in connection with recruitment or courses it conducts.

Breach of certain provisions of the ESOS Act 2000 or National Code may also be an offence.

Conditions

Under section 83 of the ESOS Act 2000, the Minister may impose one or more conditions on a registered provider's registration for any one or more courses for any one or more States for a breach of the ESOS Act 2000, the National Code, or a condition on the provider's registration.

The Minister may also impose one or more conditions on a registered provider where a provider that is providing the course with the registered provider is engaging, or has engaged, in misleading or deceptive conduct in connection with recruitment or courses.

Examples of conditions that may be imposed (see section 86 ESOS Act 2000) are:

- that a limitation be placed on the number of further overseas students that a provider may enrol;
- the provider not deal with a specified agent in relation to overseas students or intending overseas students;
- the provider must not accept any new students from a particular country;
- the provider must not provide a specified course.

Before a condition is imposed on a provider a written notice stating that the Minister intends to impose a condition, and giving the provider time to make written submissions about the matter, will be sent to the provider.

Suspension

Under section 83 of the ESOS Act 2000, the Minister may suspend a registered provider's registration for all courses for any one or more States for a breach of the ESOS Act 2000, the National Code, or a condition on the provider's registration.

The Minister may also suspend a registered provider's registration where a provider that is providing the course with the registered provider is engaging, or has engaged in misleading or deceptive conduct in connection with recruitment or courses.

Under section 89 of the ESOS Act 2000, a provider's registration for a course is automatically suspended if a designated authority for a State suspends the approval of that course for the provider.

Under section 90 of the ESOS Act 2000, a provider's registration is automatically suspended if the provider fails to comply with a reminder notice to pay an amount of annual contribution or special levy given by the Fund Manager under section 75 of the ESOS Act 2000.

Under section 87 of the ESOS Act 2000, the Minister may suspend a provider's registration if the Minister believes on reasonable grounds that because of financial difficulty or any other reason the provider might not be able to provide courses or refund money to accepted students.

A provider whose registration is suspended for a State (see section 95 ESOS Act) must not:

- recruit or enrol any overseas students or intending overseas students for courses provided by the provider in that State;
- solicit or accept any money from an overseas student or an intending overseas student for a course provided by the provider in that State;
- permit an accepted student to begin a course in that State, if an accepted student of the provider has not begun the course.

Before a provider is suspended (except in the case of automatic suspension) a written notice stating that the Minister intends to suspend the provider, and giving the provider time to make written submissions about the matter, will be sent to the provider.

Cancellation

Under section 83 of the ESOS Act 2000, the Minister may cancel a registered provider's registration for all courses for any one or more States for a breach of the ESOS Act 2000, the National Code, or a condition on the provider's registration.

The Minister may also suspend a registered provider's registration where a provider that is providing the course with the registered provider is engaging, or has engaged in misleading or deceptive conduct in connection with recruitment or courses.

Under section 88 of the ESOS Act 2000 the Minister may cancel a provider's registration if the provider ceases to provide courses while the provider is suspended.

Under section 91 of the ESOS Act 2000, a provider's registration for a course is automatically cancelled if a designated authority for a State cancels the approval of that course for the provider.

Under section 92 of the ESOS Act 2000, a provider's registration is automatically cancelled for all courses if the provider becomes bankrupt (in the case of an individual), or if a winding-up order is made in respect of a provider (in the case of a body corporate).

The effect of cancellation is that the name and all other particulars in relation to the provider will be removed from CRICOS.

Before a provider is cancelled (except in the case of automatic cancellation) a written notice stating that the Minister intends to cancel the provider, and giving the provider time to make written submissions about the matter, will be sent to the provider.

Immigration Minister's suspension certificate

In exceptional circumstances the Immigration Minister may personally issue a suspension certificate to a registered provider. Details of the circumstances in which this may be considered and the procedure to be followed are at sections 97-103 of the ESOS Act 2000.

13.2 Offences

The breach of certain provisions of the ESOS Act 2000 or the National Code may be a criminal offence:

- providing or promoting a course to an overseas student or intending overseas student without being a registered provider or without having an arrangement with a registered provider (section 8 ESOS Act 2000)
 - maximum penalty: imprisonment 2 years;
- breach of information provision requirements (section 19(1) ESOS Act 2000)
 - maximum penalty: 60 penalty units;
- breach of information provision requirements concerning breach by accepted student of student visa condition relating to attendance or academic performance (subsection 19(2) ESOS Act 2000)
 - maximum penalty: 60 penalty units;
- breach of requirement to send accepted student notice of visa breaches (section 20 ESOS Act 2000)
 - maximum penalty: 60 penalty units;
- breach of record keeping requirement (section 21 ESOS Act 2000)
 - maximum penalty: 60 penalty units (dealt with by court) or see Infringement Notices above;
- failure to identify registered provider in written material (section 107 ESOS Act 2000)
 - maximum penalty: imprisonment 6 months;

- providing false or misleading information (section 108 ESOS Act 2000)
 - maximum penalty: imprisonment 12 months;
- breaching conditions of access to electronic notification system (section 109 ESOS Act 2000)
 - maximum penalty: imprisonment 6 months;
- bogus providers (section 110 ESOS Act 2000)
 - maximum penalty: imprisonment 2years, 100 penalty unity or both;
- failure to comply with a production/attendance notice (section 120 ESOS Act 2000)
 - maximum penalty: imprisonment 6 months;
- giving false or misleading information or documents in regard to a production/attendance notice (sections 121 and 122 ESOS Act 2000)
 - maximum penalty: imprisonment 12 months;
- failure to answer the question of an authorised person executing a monitoring warrant (section 134 ESOS Act 2000)
 - maximum penalty: imprisonment 6 months;
- giving false or misleading information or documents to an authorised person conducting monitoring (section 135, 136 ESOS Act 2000)
 - maximum penalty: imprisonment 12 months;
- breaching the requirement to provide authorised employees executing a warrant with all reasonable facilities and assistance.
 - maximum penalty: 10 penalty units.

A penalty unit is currently \$110 for an individual; and penalty units are multiplied by 5 for corporate providers (section 4AA of the *Crimes Act 1914*).

Penalties for breaches of the National Code

Under section 44 of the ESOS Act 2000 and in accordance with sub-regulation 4.01 of the ESOS Regulations 2001, it is an offence to breach the following paragraphs of the National Code:

- paragraph 14: changes to provider details; 10
penalty units
- paragraphs 21: marketing information; 1
penalty unit
- paragraph 22: student information; 3
penalty units
- paragraphs 34 and 35: student records; and 1
penalty unit

- paragraph 51: use of personal information.
penalty unit

1

Such breaches are punishable by a fine not exceeding the number of penalty units prescribed for each paragraph. A penalty unit is currently \$110 for an individual; and penalty units are multiplied by 5 for corporate providers (section 4AA of the *Crimes Act 1914*).

Infringement notices

Under section 106 of the ESOS Act 2000, the Minister may give a registered provider an infringement notice seeking payment of a penalty as an alternative to prosecution for offences for breaches of sections 104(1) or 105 of the ESOS Act 2000.

Section 104(1) requires that a provider give the Secretary information about accepted students within 14 days when specified events occur (see subsection 19(1) ESOS Act 2000)

- maximum penalty: 4 penalty units by infringement notice; 60 penalty units if dealt with by a court (for an individual).

Section 105 requires providers to keep records of each accepted student (see section 21 ESOS Act 2000)

- maximum penalty: 4 penalty units by infringement notice; 60 penalty units if dealt with by a court (for an individual).

The time for payment of an infringement notice is 28 days.

Providers who choose to pay the infringement penalty are discharged from any further liability for the offence. Payment of an infringement penalty does not count as conviction for an offence.

13.3 DEST powers to investigate

The Commonwealth has a range of monitoring and investigation powers to ensure compliance with the Act. Usually authorised employees within the National Investigations Unit of DEST will conduct investigations.

These powers are exercisable in regard to a monitoring purpose, or to locate evidential material.

Under section 5 of the ESOS Act 2000, a monitoring purpose means a purpose of determining:

- whether a registered provider is complying or has complied with the requirements of the Act or the National Code; or
- whether, because of financial difficulty or any other reason, the provider may not be able to:
 - provide courses to overseas students; or

- refund course money to its accepted students.

Evidential material is defined as:

- (a) a thing that there are reasonable grounds for suspecting will afford evidence as to the commission or suspected commission of an offence against the ESOS Act 2000;
- a thing that there are reasonable grounds for suspecting is intended to be used for the purpose of committing any such offence.

13.4 Production and attendance notices

Please note: If you are issued with a notice under the ESOS Act 2000, DEST strongly advises that you read the relevant sections of the ESOS Act 2000. (see Part 7 of the ESOS Act 2000)

Production and attendance notices can be given to:

- an officer or employee of a registered provider; or
- a consultant to a registered provider; or
- a partner in a registered provider; or
- an individual trading as a registered provider.

NB: it is an offence to fail to comply with a notice, give false or misleading information, or provide a false or misleading document.

Persons cannot be excused from complying with a notice requiring them to give information or to attend and answer questions on the grounds that doing so will incriminate themselves or another person (section 123 of the ESOS Act 2000). However, the information is not admissible in evidence in any criminal proceedings other than proceedings under ss.121 and 122 of the ESOS Act for giving false or misleading information or documents.

Production notices

Where the Secretary of DEST (or his delegate) believes an the individual has, or has access to, information or documents that are relevant to a monitoring purpose, the Secretary may issue a written notice requiring the individual to:

- give information or documents relevant to a monitoring purpose to an authorised employee; or
- show such documents to an authorised employee; or
- make copies of documents and give the copies to an authorised employee.

Examples of the types of information or documents that may be requested include student records, students' addresses, academic transcripts, student attendance records and the provider's business record as they relate to the obligations of the ESOS Act 2000 or the National Code.

Attendance notices

Where the Secretary of DEST (or his delegate) believes an individual has, or has access to, information or documents that are relevant to a monitoring purpose, the Secretary may issue a written notice requiring the individual to attend before an authorised employee and answer questions about the matter.

13.5 DEST monitoring powers

An authorised employee of DEST may enter premises occupied by a registered provider for the purpose of providing courses, or any premises that there might be a thing or activity that is relevant to a monitoring purpose (section 130 ESOS Act 2000). Authorised employees can only do this if the occupier of the premises has consented and the employee has shown his/her identity card if requested, or the authorised employee is entering under a monitoring warrant.

An authorised employee may use such assistance and force as is necessary and reasonable to enter premises and may:

- search the premises for any thing relevant to a monitoring purpose;
- examine any such thing;
- examine any activity relevant to a monitoring purpose;
- take photographs or make video or audio recordings;
- inspect, take extracts or make copies of any document relevant to a monitoring purpose;
- ask questions relevant to a monitoring purpose;
- secure things until a search warrant is obtained to seize them;
- take onto the premises any equipment or materials required to exercise monitoring powers; and
- operate facilities and equipment.

Under section 134 of the ESOS Act 2000, it is an offence with a maximum penalty of imprisonment for 6 months to fail to answer questions or to give or show documents to an authorised employee who is authorised to enter the premises by a monitoring warrant. However a person in this situation will not be guilty of an offence if, in answering a question or giving a document they might tend to incriminate themselves or expose themselves to a penalty (subsection 134(2) ESOS Act 2000).

Under sections 135 and 136 of the ESOS Act 2000, it is an offence with a maximum penalty of imprisonment for 12 months to give false or misleading material when answering questions or to give or show documents that are false or misleading in material particulars to an authorised employee who is authorised to enter the premises by a monitoring warrant.

13.6 DEST search powers

An authorised employee may enter any premises if it is suspected that there may be evidential material (as defined in section 5 of the ESOS Act 2000), on the premises. Authorised employees can only do this if the occupier of the premises has consented and the authorised employee has shown his/her identity card (if requested), or the authorised employee is entering under a search warrant.

An authorised employee may use such assistance and force as is necessary and reasonable to enter premises and may:

- search the premises for evidential material;
- examine the evidential material;
- take photographs or make video or audio recordings or sketches on the premises of the evidential material;
- inspect any documentary evidential material;
- take extracts from or make copies of the evidential material; and
- take onto the premises any equipment and materials that the authorised employee requires for the purpose of exercising powers in relation to the premises;
- operate equipment on premises to determine whether it contains evidential material;
- seize equipment containing evidential material.

Appendix A: Legislation referred to in this Guide

This document is intended to help members of the education and training export industry (“providers”) understand their rights and obligations under the:

- Education Services for Overseas Students Act 2000 (the ESOS Act 2000);
- Education Services for Overseas Students Regulations (the ESOS Regulations) 2001;
- Education Services for Overseas Students (Registration Charges) Act 1997 (the ESOS Charges Act);
- Education Services for Overseas Students (Assurance Fund Contributions) Act 2000 (the ESOS Assurance Fund Act);

and the transitional arrangements for providers under the:

- Education Services for Overseas Students (Consequential and Transitional) Act 2000.

This Guide also outlines provider’s obligations under the:

- National Code for Registration Authorities and Providers of Education and Training to Overseas Students (the National Code).

Internet links to the above legislation can be found at <http://www.dest.gov.au/esos>.

Appendix B: State and Territory registration authorities

Australian Capital Territory

Contact: CRICOS Officer
Organisation: ACT Department of Education and Community Services
Office of Training and Adult Education
ACT Accreditation & Registration Council
Postal Address: PO Box 985, CIVIC SQUARE ACT 2608
Telephone: (02) 6205 7055
Facsimile: (02) 6205 7045

New South Wales

Non-Higher Education Courses

Contact: CRICOS - Administrative Assistant
Organisation: Department of Education and Training (DET)
NSW Vocational Education and Training
Accreditation Board (VETAB)
Postal Address: Locked Bag 21, DARLINGHURST NSW 1300
Telephone: (02) 9244 5503
Facsimile: (02) 9244 5344

Higher Education Courses

Contact: CRICOS Officer
Organisation: Universities Admissions Centre (NSW & ACT) Pty Limited
Postal Address: Locked Bag 112, SILVERWATER NSW 2128
Telephone: (02) 9330 7758
Facsimile: (02) 9330 7777

Northern Territory

Contact: CRICOS Administrator
Organisation: NT Department of Education
Human Resource Development Branch
Frog Hollow Education Centre Inc
Postal Address: GPO Box 4821, DARWIN NT 0801
Telephone: (08) 8999 3246
Facsimile: (08) 8999 3245

Queensland

Contact: Senior Education Officer
Organisation: Portfolio Programs Unit
Department of Education
Postal Address: PO Box 33, BRISBANE ALBERT STREET QLD
4002
Telephone: (07) 3237 1883
Facsimile: (07) 3237 0004

South Australia

SA Post Secondary School Courses

Contact: Executive Officer (CRICOS)
Organisation: Office of Vocational Education and Training
SA Department of Education, Training &

Employment

Postal Address: PO Box 1152, ADELAIDE SA 5001
Telephone: (08) 8226 3340
Facsimile: (08) 8226 0429

Government School Courses

Contact: International Business Manager – Policy and
Planning
Organisation: International Education Services Directorate
SA Department of Education, Training &

Employment

Postal Address: GPO Box 1152, ADELAIDE SA 5001
Telephone: (08) 8226 3402
Facsimile: (08) 8226 3655

Non-Government School Courses

Contact: Registrar
Organisation: Non-Government Schools Registration Board
Postal Address: GPO Box 2370, ADELAIDE SA 5001
Telephone: (08) 8226 1006
Facsimile: (08) 8226 1616

Tasmania

Contact: Manager
Organisation: Tasmanian Government Schools International
Department of Education
Postal Address: GPO Box 169, HOBART TAS 7001
Telephone: (03) 6233 7016
Facsimile: (03) 6234 8447

Victoria

Post Secondary Level Courses

Contact: Registration Officer
Organisation: Office of Employment, Training and Tertiary
Education
Quality Assurance and Review Division
Postal Address: GPO Box 266D, MELBOURNE VIC 3001
Telephone: (03) 9637 2776
Facsimile: (03) 9637 2520

Higher Education Courses

Contact: CRICOS Registration
Organisation: Office of Employment, Training and Tertiary
Education,
Higher Education Division
Postal Address: GPO Box 4367, MELBOURNE VIC 3001
Telephone: (03) 9637 3211
Facsimile: (03) 9637 2720

Non-Government School Courses

Contact: Coordinator for Overseas Students in Non-
Government Schools
Organisation: Department of Education Employment and Training
Registered Schools Board
Postal Address: GPO Box 4367, MELBOURNE VIC 3001
Telephone: (03) 9637 3352
Facsimile: (03) 9637 2940

Government School Courses

Contact: Coordinator, International Students Unit
Organisation: VIC Department of Education, Employment and
Training
International Division
Postal Address: GPO Box 4367, MELBOURNE VIC 3001
Telephone: (03) 9637 2202
Facsimile: (03) 9637 3010

Western Australia

Contact: Registration and Policy Officer
Organisation: Office of Non-Government and International
Education
Department of Education Services WA
Postal Address: PO BOX 7533, Cloisters Square PERTH WA 6850
Telephone: (08) 9324 6834
Facsimile: (08) 9322 6629

Appendix C: Tuition Assurance Scheme operators

Organisation	Address	Name and contact details
Australian Council of Independent Vocational Colleges (ACIVC) TAS	Suite 203, 25 Watt Street NEWCASTLE NSW 2300	Ms Paula Casey Office Manager Phone: (02) 4927 8646 Fax: (02) 4929 4835 E-mail: paula@acivc.edu.au
Australian Council for Private Education and Training (ACPET) TAS	PO Box Q1076 Queen Victoria Building SYDNEY NSW 1230	Ms Kathy Bruce Administration Assistant Phone: (02) 9299 4555 Fax: (02) 9299 4221 E-mail: acpet@acpet.com.au
English Language Intensive Courses for Overseas Students (ELICOS) TAS	Level 3, 162 Goulburn Street SURRY HILLS NSW 2010	Ms Alyson Moore Chairperson Phone: (02) 9389 0133 Fax: (02) 9389 6880 E-mail: easec@englishaustralia.com.au
Melbourne College of Divinity (MCD) TAS	21 Highbury Grove KEW VIC 3101	Dr Paul Beirne Dean Phone: (03) 9853 3177 Fax: (03) 9853 6695 E-mail: mcd@ariel.unimelb.edu.au
Sydney College of Divinity (SCD) TAS	Level 1, 3 Gibbons Street OATLANDS NSW 2117	Dr Vivienne Keely Director of Post graduate studies Phone: (02) 9630 0711 Fax: (02) 9630 0277 E-mail: scdiv@bigpond.com
South Pacific Association of Bible Colleges (SPABC) TAS	C/- Morling College 120 Herring Road EASTWOOD NSW 2122	Rev. Kerry Connell Enquiry officer Phone: (02) 9878 0201 Fax: (02) 9878 2175 E-mail: morling2@baptist.org.au
WA Private Education and Training Industry Association (WAPETIA) TAS	WAPETIA Secretariat c/o M Matheson 28 Cornfield Place HILLARYS WA 6025	Mrs Marjorie Matheson Executive Officer Phone: (08) 9402 5347 Fax: (08) 9402 5348 E-mail: wapetia@iinet.net.au

Appendix D: Other useful contacts

Providers may find the following web addresses useful, in providing quality services to overseas students. These links are provided for your convenience only. Inclusion in this list in no way implies endorsement by DEST and ultimate responsibility for all information contained in these web addresses rests solely with the publisher.

Australian Education International
<http://aei.dest.gov.au/>

Australian Vice-Chancellors Committee
<http://www.avcc.edu.au/>

Department of Immigration and Multicultural and Indigenous Affairs
<http://www.immi.gov.au>

National Council of Independent Schools Associations
<http://www.ncisa.edu.au/>

National Catholic Education Commission
<http://www.ncec.catholic.edu.au>

Provider Management and International Student Management System
<https://prisms.dest.gov.au/>

Sydney College of Divinity
<http://www.scd.edu.au/>

TAFE Directors Australia
<http://www.tda.edu.au/>

National Liaison Committee for International Students in Australia
<http://www.geocities.com/Athens/5880/>

Council of Australian Postgraduate Associations
<http://www.capa.edu.au/>

National ELT Accreditation Scheme Ltd
<http://www.neas-accred.com/>

Australian National Training Authority
<http://www.anta.gov.au/>

Austrade
<http://www.austrade.gov.au/StudyAustralia/index.asp>

Australian Qualifications Framework
<http://www.aqf.edu.au/>

Appendix E: Glossary

Agent	A person within or outside Australia who represents or acts on behalf of a provider, or purports to do so, in dealing with overseas students or intending overseas students.
ARC	Annual Registration Charge - a fee payable to the Commonwealth each year by all registered providers, based on the total number of overseas students enrolled in all courses in the previous calendar year.
Assurance Fund	Established under section 45 of the ESOS Act 2000. All non-exempt providers pay into the fund. The Assurance Fund places collective responsibility for safeguarding students' pre-paid course fees on industry.
Course money	See section 7 of the ESOS Act 2000.
CRICOS	Commonwealth Register of Institutions and Courses for Overseas Students. CRICOS is the Commonwealth listing of approved providers and the courses that may be offered to overseas students. If a course is not listed on CRICOS, it must not be offered or provided to overseas students.
Delegate	A person who has been authorised to exercise the Minister's powers under the ESOS legislation. (Unless the context indicates otherwise).
DEST	Commonwealth Department of Education, Science and Training: previously named the Department of Education Training and Youth Affairs (DETYA).
DIMIA	Commonwealth Department of Immigration and Multicultural and Indigenous Affairs.
eCoE	Electronic confirmation of enrolment – generated by providers through PRISMS.
ELICOS	English Language Intensive Course for Overseas Students.
ESOS Act	<i>Education Services for Overseas Students Act 2000.</i>
ESOS Charges Act	<i>Education Services for Overseas Students (Registration Charges) Act 1997.</i>
ESOS legislation	Refers to any or all of the ESOS Act 2000, the ESOS Regulations 2001 and the ESOS Charges Act 1997, as applicable in the context where used.
ESOS Regulations	<i>Education Services for Overseas Students Regulations 2001.</i>
Exempt provider	A provider that is <i>exempt</i> , under section 24 of the ESOS Act 2000, from the requirement to pay an annual Fund contribution.
Fund Manager	Manager of the ESOS Assurance Fund.

Indemnity Agreement	See sub-regulations 3.14 and 3.15 of the ESOS Regulations 2001.
IRC	Initial Registration Charge - a fee payable to the Commonwealth when a provider obtains registration (or re-registration if registration has been cancelled).
Minister	Unless the context shows otherwise, means the Commonwealth Minister responsible for the ESOS Act 2000. Currently, this is the Minister for Education, Science and Training.
MCEETYA	Ministerial Council On Education, Employment, Training and Youth Affairs. Membership of the MCEETYA comprises Australian State, Territory and Commonwealth and New Zealand Ministers with responsibility for the portfolios of education, employment, training and youth affairs, with Papua New Guinea and Norfolk Island having observer status.
National Code	National Code for Registration Authorities and Providers of Education and Training to Overseas Students.
Non-exempt provider	A provider that is not <i>exempt</i> by virtue of the ESOS Regulations 2001 from the requirement to pay an annual Fund contribution.
NTA	Notified Trust Account. A NTA is defined in the old ESOS Act as an account that meets all the following requirements: (a) it is a trust account maintained by the provider with an ADI (Authorised Deposit-taking Institution) in Australia; (b) details of the account have been notified to the Secretary of DEST in writing; (c) the ADI has been notified that the account is a trust account.
Old ESOS Act	<i>Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991</i> – repealed 4 June 2001.
OSHC	Overseas Student Health Cover - a specific form of health insurance provided for overseas students because they are not covered by Australian Medicare.
Overseas student	A person who holds a student visa issued under regulations made under the <i>Migration Act 1958</i> .
Provider	An institution or other body or person in Australia that provides or seeks to provide courses to overseas students. (see definition in ESOS Act 2000 s.3.) To provide courses, a provider must comply with State or Territory approval requirements and become registered on CRICOS.

PRISMS	Provider Registration and International Students Management System (the electronic system that holds CRICOS and the eCoE). This is the approved form for reporting information under s19 of the ESOS Act 2000, unless the Secretary changes this requirement.
Registered Training Organisation (RTO)	In the vocational education and training sector, any training organisation registered in accordance with the Australian Recognition Framework to provide training delivery and/or assessment services. An RTO may include TAFE colleges/institutes, private commercial providers, community providers, schools, higher education institutions, enterprises, firms and industry bodies.
Student visa	Visa granted under the <i>Migration Act 1958</i> to overseas students. The Department of Immigration and Multicultural and Indigenous Affairs administers that Act.
Secretary	The Secretary of the Commonwealth department that administers the ESOS Act 2000 (currently DEST).
TAS	Tuition Assurance Scheme. The objective of this scheme is to ensure that overseas students receive the education or training for which they have paid.