

Guidelines for Approved NSW School Providers Delivering Courses to Overseas Students

November 2020

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1 Introduction

The *Guidelines for Approved NSW School Providers Delivering Courses to Overseas Students* (the Guidelines) provide information about the regulatory framework and requirements for school providers delivering courses to overseas students under the following NSW and Commonwealth legislation and guidelines:

NSW legislation

- Education Act 1990 (the Education Act)

Commonwealth legislative framework

- *Education Services for Overseas Students (ESOS) Act 2000* (amended 2015)
- *ESOS Regulations 2019*
- *National Code of Practice for Providers of Education and Training to Overseas Students (The National Code) 2018*
- *Education Services for Overseas Students (TPS Levies) Act 2012*
- *English Language Intensive Courses for Overseas Students (ELICOS) Standards 2018* (the ELICOS Standards)

A school provider seeking to deliver course(s) of study to overseas students must first be listed on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS). CRICOS is maintained by the Australian Government Department of Education under the *Education Services for Overseas Students Act 2000* (ESOS Act). CRICOS lists providers registered to deliver course(s) to overseas students and the course(s) they are approved to deliver. An overseas student is a person (within or outside) Australia who holds a student visa as defined by the ESOS Act.

CRICOS registration for school providers is a two-stage process. The first stage is the approval of providers and their courses by the Designated State Authority (DSA) in each Australian state or territory. The NSW Education Standards Authority (NESA) is the DSA for NSW. The second stage is undertaken by the Australian Government Department of Education. It is at this stage that school providers and courses are registered by being listed on the [CRICOS website](http://cricos.education.gov.au) (cricos.education.gov.au).

Approval of a school provider to deliver course(s) to overseas students may be granted by NESA for a period of up to five years. The main purpose of the approval is to ensure that the requirements for the delivery of courses to overseas students under the ESOS Act and associated legislation are being, or will be, met.

Once approved, a school provider must ensure that it maintains evidence of compliance with the ESOS legislative framework as detailed in these Guidelines.

School providers seeking registration on CRICOS should also be aware of their obligations in relation to the student visa program of the Australian Government Department of Home Affairs (DHA).

In December 2017, the Department of Immigration and Border Protection was subsumed by DHA. These Guidelines include references to both DHA and Immigration (reflecting the current

National Code 2018). The Guidelines provide details about:

- the legislative basis for approving NSW school providers to deliver courses to overseas students
- the responsibilities of NESA in relation to the approval of NSW school providers to deliver courses to overseas students
- the requirements for school providers delivering courses to overseas students
- NESA's procedures for approval of a school provider to deliver courses to overseas students
- procedures for refusal, amendment, suspension or cancellation of a school provider's approval
- procedures for appeal of certain decisions.

The NSW and Commonwealth legislation and guidelines, and these Guidelines are amended from time to time and approved school providers need to be aware that they must abide by the current legislation and amendments at all times.

1.1 Responsibilities of NESA for approval of schools to provide courses for overseas students

NESA is the DSA under the NSW and Commonwealth legislation and guidelines for approving school providers to deliver courses to overseas students in NSW. The authority of NESA is solely in relation to NSW government or non-government school providers of courses to overseas students as defined at section 3 of the *Education Act 1990* (the Education Act). NESA grants approval for a period of up to five years. In the case of a registered non-government school provider, approval is usually granted for a period of time corresponding with the school's registration period.

NESA is responsible for the oversight of compliance with the requirements set out in the NSW and Commonwealth legislation and guidelines. The activities of NESA, therefore, involve setting the regulatory and accountability requirements detailed in these Guidelines. These requirements represent the minimum standards to be met for a school provider to be granted approval to deliver courses to overseas students.

As the regulatory body, NESA needs to be assured that a school provider with approval to deliver courses to overseas students meets the requirements of the ESOS legislative framework. To assist in making recommendations to the NESA Registration and Accreditation Committee (the Committee) as to whether a school provider meets the requirements, NESA has specified the evidence required to be maintained by the school provider to demonstrate compliance with each of the requirements.

In meeting the requirements for approval, it is anticipated that the range of policies and procedures that a school provider has in place will vary and the content will reflect the context of the school.

The approval process involves dialogue between schools and NESA personnel including NESA inspectors (Inspectors). Inspectors have a legislated role to conduct compliance audits and ascertain whether or not the school provider complies with the requirements of the NSW

and Commonwealth legislation and guidelines.

In carrying out its responsibilities in relation to approval of school providers to deliver courses to overseas students, NESA is committed to complying with the *Privacy and Personal Information Protection Act 1998 (NSW)*. It is also mindful of confidential matters related to the business affairs of school providers. The Information Protection Principles detailed in sections 8 and 9 of the Privacy and Personal Information Protection Act set the privacy standards that NESA is required to follow when dealing with personal information. The NESA Privacy Management Plan describes how NESA complies with the Information Protection Principles in relation to personal information supplied by proposed school providers and by registered and accredited schools in complying with the requirements for approval. The Privacy Management Plan is available on the [NESA website](http://educationstandards.nsw.edu.au) (educationstandards.nsw.edu.au).

General information about the approval of school providers to deliver courses to overseas students is available on the [NESA website](http://educationstandards.nsw.edu.au) (educationstandards.nsw.edu.au). For specific inquiries about applications for approval of school providers to deliver courses to overseas students, NESA may be contacted on (02) 9367 8432 or by email to schoolrego@nesa.nsw.edu.au.

2 Legislative basis for approval of school providers to deliver courses to overseas students

The approval and registration of providers to deliver courses to overseas students involves both the state and territory governments and the Australian Government. The DSA makes a recommendation to Australian Government Department of Education that an approved provider for that state or territory be included on CRICOS.

The Australian Government Department of Education, is responsible for:

- administering the ESOS Act and associated instruments
- managing CRICOS
- managing and administering the Provider Registration and International Student Management System (PRISMS)
- supporting national consistency and policy development
- monitoring compliance with the ESOS Act and the standards in the National Code
- investigating and enforcing action for breaches of the ESOS Act and the standards in the National Code.

Information regarding the ESOS legislation is available on the [Australian Government website](http://internationaleducation.gov.au) (internationaleducation.gov.au).

State and territory governments are responsible for:

- domestic registration, accreditation and compliance systems
- approval of school providers for registration and re-registration on CRICOS
- monitoring compliance with the National Code and any adjunct standards
- enforcement action for breaches of state and territory legislation, particularly where legislation may relate to ESOS.

2.1 The Commonwealth legislative framework

The ESOS Act and its National Code, the ESOS Regulations and associated legislation, set out the legal framework governing delivery of education to overseas students studying in Australia on a student visa.

The legislative framework governs:

- which providers may be registered
- the CRICOS registration process
- the obligations of registered providers
- the standards registered providers must meet under the National Code and any adjunct standards
- tuition protection and consumer protection mechanisms
- enforcement and compliance powers

- charges providers pay to enrol overseas students.

Only education institutions registered under the ESOS Act and listed on CRICOS can enrol overseas students studying in Australia on a student visa. A registered provider has met the standards demanded by approving authorities at state/territory government level and the additional requirements of the ESOS Act and the National Code.

2.1.1 The ESOS Act

The objects of the ESOS Act are:

- to provide tuition assurance, and refunds, for overseas students for the course for which they have paid
- to protect and enhance Australia's reputation for quality education and training services
- to complement Australia's migration laws by ensuring providers collect and report information relevant to the administration of the law relating to student visas.

2.1.2 The ESOS Regulations

The ESOS Regulations support the implementation of the ESOS Act by setting out in detail requirements including:

- information that must be entered on the register about the registered provider
- obligations on registered providers regarding information about students and student records that must be kept
- penalties and infringement notices.

2.1.3 The National Code

The National Code is a legislative instrument established by the ESOS Act, providing for nationally consistent standards for the registration of providers and their courses. The objectives of the National Code are to:

- support the ESOS legislative framework
- establish and safeguard Australia's international reputation as a provider of high-quality education and training
- protect the interests of overseas students
- support registered providers in monitoring student compliance with student visa conditions and in reporting any student breaches to the Australian Government.

The National Code has two parts.

Part A includes a description of the role, purpose and objectives of the National Code in the ESOS legislative framework, the role of the regulators and the aspects of the National Code that apply to registration activities.

Part B provides 11 standards with which registered providers must comply.

The National Code is legally enforceable and breaches of the National Code by registered providers can result in sanctions being imposed on the registered provider's registration under the ESOS Act.

2.1.4 The ELICOS Standards

The Australian Government has set national standards for English Language Intensive Courses for Overseas Students (ELICOS) within Australia. The ELICOS Standards support the objectives of the Australian Government and state and territory governments for the ELICOS sector in the areas of:

- consumer protection and student wellbeing
- delivery of quality English language teaching
- protection of Australia's reputation as a provider of quality English language teaching to international students.

The ELICOS Standards outline sector-specific requirements to be met by those registered providers delivering ELICOS courses. These are in addition to National Code requirements.

2.2 NSW legislative framework

The Education Act provides the legislative framework for the approval of NSW school providers to deliver courses for overseas students.

Under Part 7A of the Education Act, NESAs are the designated authority for approving school providers to deliver courses for overseas students. NESAs' responsibility is limited to providers of courses for overseas students at NSW government schools and registered non-government schools as defined by section 3 of the Education Act. NESAs' responsibility for the approval of school providers in NSW commenced on 1 October 2010.

2.3 The role of NESAs in the approval process

NESA has authority, on application of a legal entity that is the proprietor of a school in NSW, to:

- approve the provision of courses to overseas students
- issue guidelines in relation to the approval to provide courses for overseas students
- advise the Minister on matters concerning the approval to provide courses for overseas students
- liaise with authorities and other bodies (both in NSW and elsewhere) in connection with the approval to provide courses for overseas students
- investigate and report on matters concerning the approval to provide courses for overseas students.

2.4 The role of Inspectors in the approval process

NESA may appoint Inspectors for the purposes of the Education Act.

The powers of Inspectors in relation to school providers of courses for overseas students are conferred under the Education Act.

For the purposes of conducting a compliance audit or ascertaining whether or not the provisions of the Education Act have been complied with, an Inspector may:

- a) enter the premises of a training organisation or person who provides courses for overseas students (including the premises at which any course provided by the training organisation or person is conducted), and
- b) inspect the premises, any documents found on the premises and the conduct of any courses at the premises, and
- c) remove, or make copies of, any such documents.

An Inspector may only exercise this authority during the ordinary operating hours of the premises concerned. The authority may not be exercised in any part of the premises that is used for residential purposes.

In exercising the powers conferred under the Education Act, an Inspector:

- a) must, if requested to do so by any person on the premises, produce his or her certificate of identification for inspection by that person
- b) must avoid, as far as practicable, doing anything that is likely to impede the conduct of any course at the premises.

Under the Education Act, a person must not assault, delay, obstruct, hinder or impede an Inspector in the exercise of the Inspector's functions under the Act.

2.5 The approval process

2.5.1 Classes of approval

A NSW school provider may be approved by NESAs for the following course levels:

- Primary school studies
- Junior secondary studies
- Senior secondary certificate of education
- Non-Australian Qualifications Framework (AQF) award.

Only courses that provide for delivery of the curriculum in accordance with the Education Act as relevant to the Years of schooling for which a school is registered will be considered for registration on CRICOS, apart from ELICOS courses for a school provider approved to deliver ELICOS.

In New South Wales the senior secondary certificate of education is the Higher School Certificate (HSC). School providers delivering a Years 11 and 12 course to overseas students must be accredited to deliver the senior secondary certificate of education, or be registered as a school providing education for children of a kind who are foreign nationals, or children of foreign nationals. School providers may be approved to deliver courses in addition to the HSC to overseas students in Years 11 and 12.

2.5.2 Initial approval

Under the Education Act, school providers seeking approval to deliver courses to overseas students in NSW must make application for initial approval in a form, and accompanied by a fee, determined by NESAs. Applications for initial approval are made not later than 31 March in

the year preceding the calendar year in which the school provider intends to commence delivery of the courses to overseas students. The information that must be provided in order to demonstrate that the school provider has the capacity to comply with the requirements for initial approval is detailed in section 5 of the Guidelines.

Applications for initial approval are referred to an Inspector who, after assessing the information provided by the applicant and a visit to the delivery site(s), prepares a report with a recommendation as to whether or not the school provider should be approved. Procedures followed in processing such applications are set out in section 7 of the Guidelines.

The Inspector's report and recommendation are considered by the Committee which makes a decision as to whether the school provider should be granted initial approval. The recommendation is then dealt with in accordance with the Education Act as outlined in section 7 of the Guidelines.

Under authority provided by the Education Act, NESAs may impose conditions on the approval including the period of the approval, the premises from which the courses are to be conducted, the maximum number of overseas students at any one time, and/or fee requirements in respect of the approval.

Upon approval of an application by the Committee, the Australian Government Department of Education is advised and a Certificate of Approval is issued to the provider.

While NESAs undertake to process applications within nine months, applicants must be aware that the granting of approval by NESAs is only the first stage of the process for registration on CRICOS. Following receipt of a recommendation for registration on CRICOS, the Australian Government Department of Education undertakes its own processes for endorsing the recommendation and registering the school provider on CRICOS. Consistent with the requirements of the ESOS legislation, school providers must not provide a course to overseas students, make an offer of enrolment to an overseas student or intending overseas student, invite an overseas student to apply, or promote themselves as willing to provide a course to overseas students until receipt of notification from the Australian Government Department of Education of its registration on CRICOS.

2.5.3 Renewal of approval

School providers seeking renewal of approval to deliver courses to overseas students must make application in a form, and accompanied by a fee, determined by NESAs. NESAs require that applications for renewal be submitted at least nine months before the existing approval is due to expire, or at a later date decided by NESAs and communicated to the provider in writing.

A school provider applying for renewal of approval must demonstrate:

- whether or not the school provider continues to satisfy the requirements for approval
- whether or not, since the school provider's approval was granted or last renewed, the school provider has complied with the conditions of the approval.

Under authority of the Education Act, NESAs may impose conditions on any renewal of approval including the period of the approval, the premises from which the courses are to be conducted, the maximum numbers of overseas students at any one time and/or fee

requirements in respect of the approval.

NESA has determined that the maximum period for which approval may be renewed is five years. For non-government school providers the expiry date of the approval usually corresponds to the expiry date of the school's registration and accreditation.

Where a school provider has no currently enrolled overseas students, and is therefore unable to demonstrate evidence of the implementation of the required policies and procedures, a renewal period of less than five years may be considered.

The Education Act makes provision for NESA to reduce the period of a school provider's approval if at any time before the expiry of the period of approval of the school provider the Committee is not satisfied that the school provider is complying with the requirements for approval outlined in section 3 of the Guidelines.

2.5.4 Refusal of approval

Under the Education Act, NESA may refuse an application for approval on the following grounds:

- that the applicant has not provided any further information that NESA requires in relation to the application
- that the applicant does not have the resources to competently provide the courses to which the approval relates
- that the applicant's financial arrangements or ethical standards do not warrant the approval of the applicant
- in the case of a course that includes any matter the subject of proprietary rights (such as copyright), that the applicant is not lawfully entitled to the benefit of those rights
- that the applicant or the applicant's resources do not comply with the requirements for approval.

2.5.5 Amendment, suspension or cancellation of approval

Under the Education Act, NESA may, on its own motion or on the application of any person, do any of the following in relation to an approved school provider:

- amend the approval so that it applies to different courses
- revoke or amend any condition to which the approval is subject
- impose additional conditions on the approval
- suspend or cancel the approval.

A suspension of approval may be lifted at any time by NESA. Before lifting the suspension, NESA requires the payment of a fee as determined by NESA.

NESA may not suspend or cancel approval except on one or more of the following grounds:

- the approved school provider requests the suspension or cancellation
- the approved school provider is no longer providing courses for overseas students
- the approved school provider has ceased to exist
- the approved school provider has failed to comply with the requirements for approval

- the approved school provider's financial arrangements or ethical standards are such that they would not warrant the approval of the school provider if it were now to apply for approval
- a reasonable doubt exists as to the approved school provider's financial capacity to continue to meet its contractual obligations to its overseas students, staff or other persons
- the approved school provider does not have the resources to competently provide the courses to which the approval relates
- the resources of the approved school provider do not comply with the approval guidelines
- in the case of a course that includes any matter the subject of proprietary rights (such as copyright) that the approved school provider is not lawfully entitled to the benefit of those rights
- the approved school provider has engaged in misleading or deceptive conduct in connection with the recruitment of intending overseas students
- the approved school provider has failed to comply with a requirement of the ESOS Act of the Australian Government, or of a regulation under that Act, in relation to the courses to which the approval relates
- the approved school provider has contravened the ESOS Act, the regulations or a condition to which the school provider's approval is subject.

2.5.6 Requirements relating to approval decisions of NESAs

The Education Act requires that before NESAs make a decision to refuse, amend, suspend or cancel approval (other than a decision to require a person to provide further information in relation to an application for approval or a decision to grant such an application unconditionally), NESAs must:

- cause written notice of the proposed decision to be given to the school provider concerned, and
- give the school provider a reasonable opportunity to make representations to NESAs in relation to the proposed decision.

This provision does not apply if NESAs are of the opinion that it is in the public interest for the decision to take effect immediately.

In making a decision, NESAs will have regard to the requirements identified in the Guidelines and any representations made in relation to the decision. Notice of the decision, together with reasons for the decision, must be given to the provider to which the decision relates.

2.5.7 Appeal of a decision

The Education Act provides for a review of decisions of NESAs by the NSW Civil and Administrative Tribunal (NCAT). A review may be requested of a decision to:

- refuse approval to provide courses for overseas students
- impose conditions on the approval to provide courses for overseas students
- amend an approval to provide courses for overseas students, or amend or revoke the

- conditions to which the approval is subject
- suspend or cancel an approval to provide courses for overseas students.

The process for the appeal of a decision of the Committee or the NESA Board is described in section 10 of the Guidelines.

2.6 Delivery of courses by providers not registered on CRICOS

It is an offence under the Education Act to falsely advertise or otherwise falsely represent that a person is, has been or will be approved by NESA to provide courses for overseas students.

3 Requirements for approved school providers

Approved school providers must meet the legislative requirements under:

- the Australian Government's *Education Services for Overseas Students (ESOS) Act 2000* (amended 2015) (ESOS Act) section 9
- *ESOS Regulations 2019*
- the *National Code of Practice for Providers of Education and Training to Overseas Students 2018* Part B (the National Code)
- the New South Wales *Education Act 1990* (Education Act).

These legislative requirements form the basis of approval to deliver courses to overseas students. School providers need to be aware that legislation is amended from time to time and that it is a school provider's responsibility to abide by the current legislation and amendments at all times. Updated legislation can be accessed via the Australian Government's [ComLaw website](http://www.comlaw.gov.au) (www.comlaw.gov.au).

This section of the Guidelines details the requirements that all school providers approved to deliver courses to overseas students must meet. It also details the evidence of compliance that school providers must maintain at all times during any period of approval. The wording of each requirement is taken from the relevant legislation and/or regulations as listed above. The following information provides an overview of the requirements for approval and the regulatory basis for each.

Requirement		Reference
3.1	PEO certification of compliance with the ESOS Act	ESOS Act
3.2	Fit and proper test	ESOS Act 7A
3.3	Australian residency	ESOS Act 11
3.4	Marketing information and practices	National Code Standard 1
3.5	Recruitment of an overseas student	National Code Standard 2
3.6	Formalisation of enrolment and written agreements	National Code Standard 3
3.7	Education agents	National Code Standard 4
3.8	Younger overseas students	National Code Standard 5
3.9	Overseas student support services	National Code Standard 6
3.10	Overseas student transfers	National Code Standard 7
3.11	Overseas student visa requirements	National Code Standard 8

Requirement		Reference
3.12	Deferring, suspending or cancelling the overseas student's enrolment	National Code Standard 9
3.13	Complaints and appeals	National Code Standard 10
3.14	Additional registration requirements including notifications to NESA	National Code Standard 11 Education Act
3.15	Application fees	Education Act

3.1 PEO certification of compliance with the ESOS Act

A school provider must be compliant with the requirements of the ESOS Act. This includes, but is not limited to, the obligations of registered providers as detailed in:

- 21A of the ESOS Act relating to education agents
- Part 3 of the ESOS Act relating to reporting to the Secretary
- Part 5 Division 2 of the ESOS Act relating to provider and student default.

Evidence of compliance

The Principal Executive Officer (PEO) of an approved school provider must certify that the provider has in place policies and procedures to ensure that the provider is compliant with requirements of the ESOS Act.

3.2 Fit and proper test

A school provider, its associates and high managerial agents must be fit and proper to be registered to deliver programs to overseas students unless exempt under the ESOS Act, for example, a school provider that is administered by a state education authority.

Registration on CRICOS is for the delivery of a particular course or courses in NSW. A school provider wishing to provide courses in any other state or territory must seek registration for each course in each state or territory where it will be delivered.

In the event of a change of ownership of the registered school provider, NESA approval of the school provider ceases. The new entity may seek its own CRICOS registration by application to NESA for initial approval.

Evidence of compliance

A school provider must have in place for the current approval period, a statutory declaration by the PEO of the provider declaring whether the school provider, or an associate¹ of the school provider, or a high managerial agent² of a school provider who has been, is, or who will be involved in the business of delivering programs to overseas students:

- has been convicted of a criminal offence
- has ever had its CRICOS registration cancelled or suspended under the ESOS Act
- has ever been issued with an Immigration Minister's suspension certificate
- has ever had conditions imposed on its registration under the ESOS Act
- has been bankrupt
- has ever been disqualified from managing a corporation under the *Corporations Act 2001* (Corporations Act)
- has been involved in the business of provision of courses by another provider covered by any of the points above.

The declaration must have regard to any matters specified by the Minister in a legislative instrument made under section 7A(2)(ga) of the ESOS Act.

Records

A school provider must maintain a copy of the signed statutory declaration by the PEO for the current period of approval.

3.3 Australian residency

The school provider must be a resident of Australia. Under section 5 of the ESOS Act 'resident' means a company or unincorporated body that carries on business in Australia and that has its central management and control in Australia.

Evidence of compliance

A school provider must have evidence of complying with section 3.3 of the Guidelines including:

- a certificate of Incorporation as a Company, ASIC registration certificate, or evidence that the legal entity of the provider is of a kind approved by the Minister for Education to be the proprietor of a non-government school, or that the provider is administered by a state education authority
- the address of the school provider's place of business, postal address and contact details
- contact details for all premises at which the school provider is delivering courses to overseas students.

¹ Section 6 of the ESOS Act provides the meaning of associate for the purposes of the requirement.

² Section 5 of the ESOS Act defines a high managerial agent of a provider as an employee, agent or officer of the provider with duties of such responsibility that his or her conduct may fairly be assumed to represent the provider in relation to the business of providing courses. Teachers who deliver courses would not come typically within the scope of the definition but a deputy principal or department head may be considered a high managerial agent of the provider.

3.4 Marketing information and practices

Registered providers must uphold the integrity and reputation of Australia's education industry by ensuring the marketing of their courses and services is not false or misleading. (*National Code Standard 1*)

3.4.1 The registered provider must ensure that the marketing and promotion of its courses and services in connection with the recruitment of overseas students or intending overseas students, including through an education agent (in accordance with National Code Standard 4), is not false or misleading, and consistent with Australian Consumer Law.

3.4.2 The registered provider must, in seeking to enter into written agreements with overseas students or intending overseas students, not provide any false or misleading information on:

- its association with any other persons or organisations the registered provider has arrangements with for the delivery of the course in which the student intends to enrol or may apply to enrol
- any work-based training a student is required to undertake as part of the course
- prerequisites - including English language proficiency - for entry to the course
- any other information relevant to the registered provider, its course or outcomes associated with those courses.

3.4.3 The registered provider must not:

- claim to commit to secure for, or on the student or intending student's behalf, a migration outcome from undertaking any course offered by the registered provider
- guarantee a successful education assessment outcome for the student or intending student.

3.4.4 The registered provider must include its CRICOS registered name and registration number in any written or online material that it disseminates or makes publicly available for the purposes of:

- providing or offering to provide a course to an overseas student
- inviting a student to undertake or apply for a course, or
- indicating it is able or willing to provide a course to overseas students.

3.4.5 The registered provider must not actively recruit a student where this clearly conflicts with its obligations under National Code Standard 7 (Overseas student transfers).

Evidence of compliance

Records

A school provider must have evidence of complying with section 3.4 of the Guidelines by maintaining records of marketing and other material used in relation to overseas students. The marketing material may include the school's website, prospectus, application forms and overseas student handbooks or information packages.

3.5 Recruitment of an overseas student

Registered providers must recruit responsibly by ensuring students are appropriately qualified for the course for which they seek enrolment, including having the necessary English language proficiency, educational qualifications and work experience. Students must have sufficient information to enable them to make informed decisions about studying with their chosen registered provider in Australia. (*National Code Standard 2*)

3.5.1 Prior to accepting an overseas student or intending overseas student for enrolment in a course, the registered provider must make comprehensive, current and plain English information available to the overseas student or intending overseas student on:

- the requirements for an overseas student's acceptance into a course, including the minimum level of English language proficiency, educational qualifications or work experience required, and course credit if applicable
- the CRICOS course code, course content, modes of study for the course including compulsory online and/or work-based training, placements, other community-based learning and collaborative research training arrangements, and assessment methods
- course duration and holiday breaks
- the course qualification, award or other outcomes
- campus locations and facilities, equipment and learning resources available to students
- the details of any arrangements with another provider, person or business who will provide the course or part of the course
- indicative tuition and non-tuition fees, including advice on the potential for changes to fees over the duration of a course, and the registered provider's cancellation and refund policies
- the grounds on which the overseas student's enrolment may be deferred, suspended or cancelled
- the ESOS framework, including official Australian Government material or links to this material online
- where relevant, the policy and process the registered provider has in place for approving the accommodation, support and general welfare arrangements for younger overseas students (in accordance with National Code Standard 5)
- accommodation options and indicative costs of living in Australia.

3.5.2 The registered provider must have and implement a documented policy and process for assessing whether the overseas student's English language proficiency, educational qualifications or work experience is sufficient to enable them to enter the course.

3.5.3 The registered provider must have and implement a documented policy and process for assessing and recording recognition of prior learning (RPL), and granting and recording course credit, if it intends to assess RPL or grant course credit. The decision to assess prior learning or grant course credit must preserve the integrity of the award to which it applies and comply with requirements of the underpinning

educational framework of the course.

3.5.4 If the registered provider grants RPL or course credit to an overseas student, the registered provider must give a written record of the decision to the overseas student to accept, and retain the written record of acceptance for two years after the overseas student ceases to be an accepted student.

3.5.5 If the registered provider grants the overseas student RPL or course credit that reduces the overseas student's course length, the provider must:

- inform the student of the reduced course duration following granting of RPL and ensure the confirmation of enrolment (CoE) is issued for the reduced duration of the course
- report any change in course duration in PRISMS if RPL or course credit is granted after the overseas student's visa is granted.

Evidence of compliance

Policies and procedures

A school provider must have evidence of complying with section 3.5 of the Guidelines by having and implementing:

- a cancellation and refund policy
- a documented policy and procedures to assess whether the student's English language proficiency is sufficient to enable them to undertake the course
- a documented policy and procedures, if applicable, for assessing, granting and recording recognition of prior learning or course credit.

Records

A school provider must maintain records of:

- information, consistent with 3.5.1 of the Guidelines, that has been made available to overseas students and intending overseas students
- for each overseas student enrolled:
 - the basis of the school provider's assessment of the student's English language proficiency in relation to the course being undertaken
 - the school provider's assessment of, and decision in relation to, any application for RPL or course credit, where applicable.

3.6 Formalisation of enrolment and written agreements

Registered providers must formalise their enrolment of overseas students through written agreements with overseas students. The written agreements protect the rights and set out the responsibilities of each party, as well as the courses and related education services to be provided, tuition and non-tuition fees payable, and refund policies. (*National Code Standard 3*)

3.6.1 The registered provider must enter into a written agreement with the overseas student or intending overseas student, signed or otherwise accepted by the student, concurrently with or prior to accepting payment of tuition fees or non-tuition fees. A

written agreement may take any form provided it meets the requirements of the ESOS Act and the National Code.

3.6.2 If the overseas student or intending overseas student is under 18 years of age, the written agreement with the overseas student or intending overseas student must be signed or otherwise accepted by the student's parent or legal guardian.

3.6.3 In addition to all requirements in the ESOS Act, the written agreement must, in plain English:

- clearly outline the course or courses in which the student is to be enrolled, the expected course start date, the location(s) at which the course will be delivered, the offered modes of study for the course, including compulsory online and/or work-based training, placements, and/or other community-based learning and/or collaborative research training arrangements
- outline any prerequisites necessary to enter the course or courses, including English language requirements
- list any conditions imposed on the student's enrolment
- list all tuition fees payable by the student for the course, the periods to which those tuition fees relate and payment options (including, if permitted under the ESOS Act, that the student may choose to pay more than 50 per cent of their tuition fees before their course commences)
- provide details of any non-tuition fees the student may incur, including as a result of having their study outcomes reassessed, deferral of study, fees for late payment of tuition fees, or other circumstances in which additional fees may apply
- set out the circumstances in which personal information about the student may be disclosed by the registered provider, the Commonwealth including the TPS, or the state or territory agencies, in accordance with the *Privacy Act 1988*
- outline the registered provider's internal and external complaints and appeals processes, in accordance with National Code Standard 10 (Complaints and appeals)
- state that the student is responsible for keeping a copy of the written agreement as supplied by the registered provider, and receipts of any payments of tuition fees or non-tuition fees.

3.6.4 The registered provider must include in the written agreement the following information, which is to be consistent with the requirements of the ESOS Act, in relation to refunds of tuition and non-tuition fees in the case of student and provider default:

- amounts that may or may not be repaid to the overseas student (including any tuition fees and non-tuition fees collected by education agents on behalf of the registered provider)
- processes for claiming a refund
- the specified person(s), other than the overseas student, who can receive a refund in respect of the overseas student identified in the written agreement, consistent with the ESOS Act
- a plain English explanation of what happens in the event of a course not being

delivered, including the role of the Tuition protection Service (TPS)

- a statement that "This written agreement, and the right to make complaints and seek appeals of decisions and action under various processes, does not affect the rights of the overseas student to take action under the *Australian Consumer Law*, if the *Australian Consumer Law* applies".

3.6.5 The registered provider must include in the written agreement a requirement that the overseas student or intending overseas student, while in Australia and studying with that provider, must notify the registered provider of his or her contact details including:

- the student's current residential address, mobile number (if any) and email address (if any)
- who to contact in emergency situations
- any changes to those details, within 7 days of the change.

3.6.6 The registered provider must retain records of all written agreements as well as receipts of payments made by students under the written agreement for at least 2 years after the person ceases to be an accepted student.

Evidence of compliance

Records

A school provider must maintain records, for each overseas student enrolled, of:

- a signed written agreement with the overseas student, and parent or legal guardian, if the student is under 18 years of age, consistent with 3.6.3 to 3.6.5 of the Guidelines
- the student's current residential address, mobile number (if any), email address (if any) and emergency contacts.

3.7 Education agents

Registered providers must ensure that their education agents act ethically, honestly and in the best interests of overseas students as well as uphold the reputation of Australia's international education sector. (*National Code Standard 4*)

3.7.1 The registered provider must enter into a written agreement with each education agent it engages to formally represent it and enter and maintain the education agent's details in PRISMS.

3.7.2 The written agreement must outline:

- the responsibilities of the registered provider including that the registered provider is responsible at all times for compliance with the ESOS Act and National Code 2018
- the registered provider's requirements of the education agent in representing the registered provider as outlined in section 3.7.3 of the Guidelines
- the registered provider's processes for monitoring the activities of the education agent in representing the provider, and ensuring the education agent is giving students accurate and up-to-date information on the registered provider's services
- the corrective action that may be taken by the registered provider if the education

agent does not comply with its obligations under the written agreement including providing for corrective action outlined in section 3.7.4 of the Guidelines

- the registered provider's grounds for the termination of the registered provider's written agreement with the education agent, including providing for termination in the circumstances outlined in section 3.7.5 of the Guidelines
- the circumstances under which information about the education agent may be disclosed by the registered provider and the Commonwealth Government or state or territory agencies.

3.7.3 A registered provider must require its education agent to:

- declare in writing and take reasonable steps to avoid conflicts of interests with its duties as an education agent of the registered provider
- observe appropriate levels of confidentiality and transparency in their dealings with overseas students or intending overseas students
- act honestly and in good faith, and in the best interests of the student
- have appropriate knowledge and understanding of the international education system in Australia, including the Australian International Education and Training Agent Code of Ethics.

3.7.4 Where the registered provider becomes aware, or has reason to believe, that the education agent or an employee or subcontractor of the education agent has not complied with the education agent's responsibilities under sections 3.7.2 and 3.7.3 of the Guidelines, the registered provider must take immediate corrective action.

3.7.5 Where the registered provider becomes aware, or has reason to believe, that the education agent or an employee or subcontractor of the education agent is engaging in false or misleading recruitment practices, the registered provider must immediately terminate its relationship with the education agent, or require the education agent to terminate its relationship with the employee or subcontractor who engaged in those practices.

3.7.6 The registered provider must not accept students from an education agent if it knows or reasonably suspects the education agent to be:

- providing migration advice, unless that education agent is authorised to do so under the Migration Act
- engaged in, or to have previously engaged in, dishonest recruitment practices, including the deliberate attempt to recruit a student where this clearly conflicts with the obligations of registered providers under National Code Standard 7 (Overseas student transfers)
- facilitating the enrolment of a student who the education agent believes will not comply with the conditions of his or her visa
- using PRISMS to create CoEs for other than bona fide students.

Evidence of compliance

Procedures

A school provider must have evidence of complying with section 3.7 of the Guidelines including documented procedures for monitoring the activities of each education agent

formally engaged by the school provider.

Records

A school provider must maintain, for each education agent formally engaged by the provider:

- a copy of the signed current written agreement with the education agent consistent with 3.7.2 and 3.7.4 of the Guidelines
- records of the monitoring activities undertaken by the school provider
- evidence of any immediate corrective or preventative action taken by the provider in response to a reasonable suspicion of inappropriate actions by the education agent, or employee or subcontractor of the education agent.

3.8 Younger overseas students

Registered providers of overseas students aged under 18 must meet legislative or other regulatory requirements relating to child welfare and protection. Registered providers of overseas students aged under 18 must provide the students with emergency contact information and information about how to report actual or alleged abuse. Where the registered provider has taken on responsibility for the approval of welfare arrangements for a student who is under 18 years of age (for the purposes of the Migration Regulations), the registered provider must ensure the arrangements for the younger students are suitable, ongoing and appropriately managed until the student turns 18 years of age. (*National Code Standard 5*)

3.8.1 Where the registered provider enrolls a student who is under 18 years of age, it must meet the Commonwealth, state or territory legislation or other regulatory requirements relating to child welfare and protection appropriate to the jurisdiction(s) in which it operates.

3.8.2 Registered providers must ensure students under 18 years of age are given age-and-culturally-appropriate information on:

- who to contact in emergency situations, including contact numbers of a nominated staff member and/or service provider to the registered provider
- seeking assistance and reporting any incident or allegation involving actual or alleged sexual, physical or other abuse.

3.8.3 Where the registered provider takes on responsibility under the Migration Regulations for approving the accommodation, support and general welfare arrangements (but not including guardianship, which is a legal relationship not able to be created or entered into by a registered provider) for a student who is under 18 years of age, the registered provider must:

- nominate the dates for which the registered provider accepts responsibility for approving the student's accommodation, support and general welfare arrangements and advise Immigration, which is responsible for administering the Migration Regulations, of the dates in the form required by that department
- ensure any adults involved in or providing accommodation and welfare arrangements to the student have all working with children clearances (or

equivalent) appropriate to the jurisdiction(s) in which the registered provider operates

- have and implement documented processes for verifying that the student's accommodation is appropriate to the student's age and needs:
 - prior to the accommodation being approved
 - at least every six months thereafter
- include as part of their policy and processes for critical incidents under National Code Standard 6 (Overseas student support services), a process for managing emergency situations and when welfare arrangements are disrupted for students under 18 years of age
- maintain up-to-date records of the student's contact details as outlined in section 3.6.5 of the Guidelines, including the contact details of the student's parent(s), legal guardian or any adult responsible for the student's welfare
- advise Immigration in the form required by that department:
 - as soon as practicable if the student will be cared for by a parent or nominated relative approved by Immigration and a Confirmation of Appropriate Accommodation and Welfare (CAAW) is no longer required
 - within 24 hours if the registered provider is no longer able to approve the student's welfare arrangements
- have documented policies and processes for selecting, screening and monitoring any third parties engaged by the registered provider to organise and assess welfare and accommodation arrangements.

3.8.4 If the registered provider is no longer able to approve the welfare arrangements of a student, the registered provider must make all reasonable efforts to ensure that the student's parents or legal guardians are notified immediately.

3.8.5 If the registered provider is unable to contact a student and has concerns for the student's welfare, the registered provider must make all reasonable efforts to locate the student, including notifying the police and any other relevant Commonwealth, state or territory agencies as soon as practicable.

3.8.6 Where National Code Standard 5.3 applies and the registered provider suspends or cancels the enrolment of the overseas student, the registered provider must continue to approve the welfare arrangements for that student until any of the following applies:

- the student has alternative welfare arrangements approved by another registered provider
- care of the students by a parent or nominated relative is approved by Immigration
- the student leaves Australia
- the registered provider has notified Immigration under National Code Standard 5.3.6 it is no longer able to approve the student's welfare arrangements or under National Code Standard 5.5 that it has taken the required action after not being able to contact the student.

3.8.7 If the registered provider enrolls a student under 18 years of age who has welfare arrangements approved by another registered provider, the receiving registered

provider must:

- negotiate the transfer date for welfare arrangements with the releasing registered provider to ensure there is no gap
- inform the student of their visa obligation to maintain their current welfare arrangements until the transfer date, or have alternate welfare arrangements approved or return to their home country until the new approved welfare arrangements take effect.

The evidence of compliance for this requirement follows and is organised into the following three sections:

- A Overarching evidence of compliance where a school provider enrolls students under 18 years of age, regardless of who approves the welfare and accommodation*
- B Evidence of compliance where welfare and accommodation is approved by the school provider - Confirmation of Appropriate Accommodation / Welfare Arrangements (CAAW) letter issued by the school provider*
- C Evidence of compliance where welfare and accommodation is approved by DHA - no CAAW letter is issued by the school provider*

All school providers would be expected to maintain 'Evidence of compliance A'. The need to maintain 'Evidence of compliance B' and/or 'Evidence of compliance C' will depend on the Younger overseas students policy of individual school providers.

Evidence of compliance A - For school providers enrolling students under 18 years of age

Policies and procedures A

The school provider must have evidence of complying with section 3.8 of the Guidelines by having and implementing policies and procedures that:

- clearly describe its arrangements for the accommodation, support and general welfare arrangements for overseas students under 18 years of age, including whether or not the school provider accepts overseas students who will not be living with a parent or DHA approved relative
- comply with 3.8.5 of the Guidelines where the school provider is unable to contact an overseas student and has concerns for the student's welfare
- comply with 3.8.7 of the Guidelines where the school provider enrolls an overseas student who, at the time of enrolment, had welfare arrangements approved by another registered provider.

Records A

The school provider must maintain:

- up-to-date records of the living arrangements for each enrolled overseas student under 18 years of age, including the contact details of the student's parent(s), legal guardian

- or any adult responsible for the student's welfare
- records of the information provided to overseas students consistent with 3.8.2 of the Guidelines
- where applicable, records of complying with 3.8.5 of the Guidelines where the school provider is unable to contact an overseas student and has concerns for the student's welfare
- where applicable, records of complying with 3.8.7 of the Guidelines where the school provider enrolls an overseas student who, at the time of enrolment, had welfare arrangements approved by another registered provider.

Evidence of compliance B - Where welfare and accommodation is approved by the school provider - Confirmation of Appropriate Accommodation / Welfare Arrangements (CAAW) letter issued

School providers who approve the accommodation, support and general welfare arrangements for an overseas student who has not turned 18 years of age must ensure that arrangements approved by the provider meet the provider's legislative obligations in relation to child protection.

A number of Acts relate to child protection in New South Wales:

- *Children and Young Persons (Care and Protection) Act 1998 (NSW)*
- *Child Protection (Working with Children) Act 2012*
- *Children's Guardian Act 2019.*

Policies and procedures B

The school provider must have evidence of complying with section 3.8 of the Guidelines by having and implementing policies and procedures for:

- verifying that the overseas student's accommodation is appropriate to the student's age and needs:
 - prior to the accommodation being approved
 - at least every six months thereafter
- ensuring any adults involved in or providing accommodation and welfare arrangements to the overseas student have a working with children check clearance in line with the *Child Protection (Working with Children) Act 2012*
- selecting, screening and monitoring any third parties engaged by the school provider to organise and assess welfare and accommodation arrangements
- managing critical incidents, including in emergency situations and when welfare arrangements are disrupted
- notifying the overseas student's parents or legal guardian immediately if the school provider is no longer able to approve the welfare arrangements of an overseas student
- advising DHA of any changes to the overseas student's welfare and accommodation arrangements as described in 3.8.3 of the Guidelines.

Records B

The school provider must maintain:

- for each enrolled overseas student:
 - a copy of the CAAW letter issued that identifies the dates for which the school provider accepts responsibility for approving the overseas student's accommodation, support and general welfare arrangements
 - records of the verification of the approved accommodation and welfare arrangements consistent with section 3.8.3 of the Guidelines
 - where applicable, records of the implementation of the critical incident policy and procedures consistent with section 3.8.3 of the Guidelines
 - where applicable, records of contact with DHA in relation to any change to the welfare and accommodation arrangements as described in section 3.8.3 of the Guidelines
- records of a working with children check clearance for any adult involved in or providing accommodation and welfare arrangements to overseas students
- where applicable, records of the selection, screening and monitoring of any third parties engaged by the school provider to organise and assess welfare and accommodation arrangements
- where applicable, records of the school provider notifying the overseas student's parents or legal guardian immediately if the provider is no longer able to approve the welfare arrangements of an overseas student.

Evidence of compliance C - Where welfare and accommodation approved by the DHA - no CAAW letter issued by the school provider

Policies and procedures C

The school provider must have evidence of complying with section 3.8 of the Guidelines by having and implementing a policy and procedure for:

- monitoring the living arrangements of overseas students living with a parent or DHA approved relative
- responding to concerns about the accommodation or welfare of an overseas student under 18 years of age raised through the school provider's monitoring or any other credible source of information.

Records C

The school provider must maintain records of the activities undertaken in monitoring the living arrangements of each overseas student living with a parent or DHA approved relative.

3.9 Overseas student support services

Registered providers must assist overseas students to adjust to study and life in Australia and have appropriate orientation programs that help overseas students to access the information and services they require. (*National Code Standard 6*)

- 3.9.1** The registered provider must support the overseas student in adjusting to study and life in Australia by giving the overseas student information on or access to an age and culturally appropriate orientation program that provides information about:
- support services available to assist students to help them adjust to study and life in Australia
 - English language and study assistance programs
 - any relevant legal services
 - emergency and health services
 - the registered provider's facilities and resources
 - complaints and appeals process as outlined in National Code Standard 10 (Complaints and appeals)
 - requirements for course attendance and progress, as appropriate
 - the support services available to assist students with general or personal circumstances that are adversely affecting their education in Australia
 - services students can access for information on their employment rights and conditions, and how to resolve workplace issues, such as through the FairWork Ombudsman.
- 3.9.2** The registered provider must give relevant information or provide referrals as appropriate to overseas students who request assistance in relation to the services and programs set out in National Code Standard 6.1, at no additional cost to the overseas student.
- 3.9.3** The registered provider must offer reasonable support to overseas students to enable them to achieve expected learning outcomes regardless of the overseas student's place of study or the mode of study of the course, at no additional cost to the overseas student.
- 3.9.4** The registered provider must facilitate access to learning support services consistent with the requirements of the course, mode of study and the learning needs of overseas student cohorts, including having and implementing documented processes for supporting and maintaining contact with overseas students undertaking online or distance units of study.
- 3.9.5** The registered provider must designate a member or members of its staff to be the official point of contact for students. The student contact officer or officers must have access to up-to-date details of the registered provider's support services.
- 3.9.6** The registered provider must have sufficient student support personnel to meet the needs of the overseas students enrolled with the registered provider.
- 3.9.7** The registered provider must ensure its staff members who interact directly with overseas students are aware of the registered provider's obligations under the ESOS

framework and the potential implications for overseas students arising from the exercise of these obligations.

3.9.8 The registered provider must have and implement a documented policy and process for managing critical incidents that could affect the overseas student's ability to undertake or complete a course, such as but not limited to incidents that may cause physical or psychological harm. The registered provider must maintain a written record of any critical incident and remedial action taken for at least two years after the overseas student ceases to be an accepted student.

3.9.9 The registered provider must:

- take all reasonable steps to provide a safe environment on campus and advise overseas students and staff on actions they can take to enhance their personal security and safety
- provide information to overseas students about how to seek assistance for and report an incident that significantly impact on their wellbeing, including critical incidents
- provide overseas students with or refer them to (including electronically) general information on safety and awareness relevant to life in Australia.

Evidence of compliance

Policies and procedures

The school provider must have evidence of complying with section 3.9 of the Guidelines:

- by having and implementing a documented policy and procedures for managing critical incidents consistent with section 3.9.8 of the Guidelines
- including information about support services made available to overseas students consistent with 3.9 of the Guidelines.

Records

The school provider must maintain:

- records that identify the designated staff member(s) consistent with sections 3.9.5 and 3.9.6 of the Guidelines
- copies of the orientation program conducted for overseas students that is consistent with section 3.9.1 of the Guidelines
- where applicable, records of any critical incident affecting an overseas student and the actions taken by the school provider.

3.10 Overseas student transfers

Registered providers must not knowingly enrol an overseas student wishing to transfer from another registered provider's course prior to the student completing six months of his or her principal course (or for the school sector, until after the first six months of the first registered school sector course), except in certain circumstances. (*National Code Standard 7*)

3.10.1 Registered providers must not knowingly enrol an overseas student seeking to transfer from another registered provider's course prior to the overseas student completing six months of his or her principal course **(or for the school sector, until after the first six months of the first registered school sector course)**, except where any of the following apply:

- the releasing registered provider, or the course in which the overseas student is enrolled, has ceased to be registered
- the releasing registered provider has had a sanction imposed on its registration by the ESOS agency that prevents the overseas student from continuing his or her course at that registered provider
- the releasing registered provider has agreed to the overseas student's release and recorded the date of effect and reason for release in PRISMS
- any government sponsor of the overseas student considers the change to be in the overseas student's best interests and has provided written support for the change.

3.10.2 For the purpose of National Code Standard 7.1.3, the registered provider must have and implement a documented policy and process for assessing overseas student transfer requests prior to the student completing six months of their principal course (or for the school sector, until after the first six months of the first registered school sector course). The policy must be made available to staff and overseas students, and outline:

- the steps for an overseas student to lodge a written request to transfer, including that they must provide a valid enrolment offer from another registered provider
- circumstances in which the registered provider will grant the transfer request because the transfer is in the overseas student's best interests, including but not limited to where the registered provider has assessed that:
 - the overseas student will be reported because they are unable to achieve satisfactory course progress at the level they are studying, even after engaging with that registered provider's intervention strategy to assist the overseas student in accordance with National Code Standard 8 (Overseas student visa requirements)
 - there is evidence of compassionate or compelling circumstances
 - the registered provider fails to deliver the course as outlined in the written agreement
 - there is evidence that the overseas student's reasonable expectations about their current course are not being met
 - there is evidence that the overseas student was misled by the registered

provider or an education or migration agent regarding the registered provider or its course and the course is therefore unsuitable to their needs and/or study objectives

- an appeal (internal or external) on another matter results in a decision or recommendation to release the overseas student.
- the circumstances which the registered provider considers as reasonable grounds to refuse the transfer
- a reasonable timeframe for assessing and replying to the overseas student's transfer request having regard to the restriction period.

3.10.3 If the overseas student is under 18 years of age:

- the registered provider must have written confirmation the overseas student's parent or legal guardian supports the transfer
- where the overseas student is not being cared for in Australia by a parent or suitable nominated relative, the receiving provider must confirm it accepts responsibility for approving the student's accommodation, support and general welfare arrangements in accordance with National Code Standard 5 (Younger overseas students).

3.10.4 If a release is granted, it must be at no cost to the overseas student and the releasing registered provider must advise the overseas student to contact Immigration to seek advice on whether a new student visa is required.

3.10.5 If the registered provider intends to refuse the transfer request, they must inform the overseas student in writing of:

- the reasons for the refusal
- the overseas student's right to access the provider's complaints process, in accordance with National Code Standard 10 (Complaints and appeals), within 20 working days.

3.10.6 The registered provider must not finalise the overseas student's refusal status in PRISMS until the appeal finds in favour of the registered provider, or the overseas student has chosen not to access the complaints and appeals processes within the 20 working day period, or the overseas student withdraws from the process.

3.10.7 The registered provider must maintain records of all requests from overseas students for a release and the assessment of, and decision regarding, the request for two years after the overseas student ceases to be an accepted student.

Evidence of compliance

Policies and procedures

The school provider must have evidence of complying with section 3.10 of the Guidelines by having and implementing a policy and procedures in relation to student transfers that includes:

- the procedure for not knowingly enrolling an overseas student seeking to transfer from another registered school provider's course prior to the student completing the first six months of the first registered school sector course

- the procedure by which an enrolled overseas student makes a request to transfer to another registered provider
- the procedure by which the provider assesses an overseas student request to transfer including:
 - the supporting documentation the student needs to provide with the request
 - the circumstances under which a transfer request would be refused
- how the student is informed of the decision.

Records

The school provider must maintain records, where applicable, of:

- a request from an enrolled overseas student to transfer to another registered provider
- the approval, or otherwise, of the overseas student's parent or legal guardian in relation to the transfer
- the decision in relation to a transfer request and the subsequent communication of this decision to the overseas student and, if the student is under 18 years of age, the student's parent(s) or legal guardian
- the change to the overseas student's enrolment in PRISMS.

3.11 Overseas student visa requirements

Registered providers must safeguard the integrity of Australia's migration laws by supporting overseas students to complete their course within the required duration and fulfil their visa requirements for course attendance and course progress. National Code Standard 8 sets flexible provisions to allow online learning while maintaining appropriate standards for overseas students to comply with student visa conditions. (National Code Standard 8)

Monitoring overseas student progress, attendance and course duration

- 3.11.1** The registered provider must monitor overseas students' course progress and, where applicable, attendance for each course in which the overseas student is enrolled.
- 3.11.2** The expected duration of study specified in the overseas student's CoE must not exceed the CRICOS registered duration.
- 3.11.3** The registered provider must monitor the progress of each overseas student to ensure the overseas student is in a position to complete the course within the expected duration specified on the overseas student's CoE.
- 3.11.4** The registered provider must have and implement documented policies and processes to identify, notify and assist an overseas student at risk of not meeting course progress or attendance requirements where there is evidence from the overseas student's assessment tasks, participation in tuition activities or other indicators of academic progress that the overseas student is at risk of not meeting those requirements.
- 3.11.5** The registered provider must clearly outline and inform the overseas student before they commence the course of the requirements to achieve satisfactory course progress and, where applicable, attendance in each study period.

Schools, ELICOS and Foundation Programs: course progress and attendance requirements

- 3.11.6** The registered provider of a school, ELICOS or Foundation Program course must have and implement a documented policy and process for monitoring and recording attendance of the overseas student, specifying:
- requirements for achieving satisfactory attendance for the course which at a minimum must be 80 per cent - or higher if specified under state or territory legislation or other regulatory requirements - of the scheduled contact hours
 - the method for working out minimum attendance under this standard
 - processes for recording course attendance
 - details of the registered provider's intervention strategy to identify, notify and assist overseas students who have been absent for more than five consecutive days without approval, or who are at risk of not meeting attendance requirements before the student's attendance drops below 80 per cent
 - processes for determining the point at which the overseas student has failed to meet satisfactory course attendance.
- 3.11.7** The registered provider must have and implement a documented policy and process for monitoring and recording course progress for the overseas student, specifying:
- requirements for achieving satisfactory course progress for the course
 - processes for recording and assessing course progress
 - details of the registered provider's intervention strategy to identify, notify and assist students at risk of not meeting course progress requirements in sufficient time for those students to achieve satisfactory course progress.
 - processes for determining the point at which the student has failed to meet satisfactory course progress.

Reporting unsatisfactory course progress or unsatisfactory course attendance

- 3.11.8** Where the registered provider has assessed the overseas student as not meeting course progress or attendance requirements, the registered provider must give the student a written notice as soon as practicable which:
- notifies the overseas student that the registered provider intends to report the overseas student for unsatisfactory course progress or unsatisfactory course attendance
 - informs the overseas student of the reasons for the intention to report
 - advises the overseas student of their right to access the registered provider's complaints and appeals process, in accordance with National Code Standard 10 (Complaints and appeals), within 20 working days.
- 3.11.9** The registered provider must only report unsatisfactory course progress or unsatisfactory course attendance in PRISMS in accordance with section 19(2) of the ESOS Act if:
- the internal and external complaints processes have been completed and the decision or recommendation supports the registered provider, or
 - the overseas student has chosen not to access the internal complaints and

- appeals process within the 20 working day period, or
- the overseas student has chosen not to access the external complaints and appeals process, or
- the overseas student withdraws from the internal or external appeals processes by notifying the registered provider in writing.

3.11.10 The registered provider may decide not to report the overseas student for breaching the attendance requirements if the overseas student is still attending at least 70 per cent of the scheduled course contact hours and, for school, ELICOS and Foundation Program courses, the overseas student provides genuine evidence demonstrating that compassionate or compelling circumstances apply.

Allowable extensions of course duration

3.11.11 The registered provider must not extend the duration of the overseas student's enrolment if the overseas student is unable to complete the course within the expected duration, unless:

- there are compassionate or compelling circumstances, as assessed by the registered provider on the basis of demonstrable evidence, or
- the registered provider has implemented, or is in the process of implementing, an intervention strategy for the overseas student because the overseas student is at risk of not meeting course progress requirements, or
- an approved deferral or suspension of the student's enrolment has occurred under National Code Standard 9 (Deferring, suspending or cancelling the overseas student's enrolment).

3.11.12 If the registered provider extends the duration of the student's enrolment, the provider must advise the student to contact Immigration to seek advice on any potential impacts on their visa, including the need to obtain a new visa.

Modes of delivery

Note: The National Code provides the following definitions:

Online learning is study where the teacher and student primarily communicate through digital media, technology-based tools and IT networks and does not require the student to attend scheduled classes or maintain contact hours

Distance learning is any learning that takes place off campus and does not require an overseas student on a student visa to physically attend tuition for the course on campus at the provider's registered location

3.11.13 A registered provider must not deliver a course exclusively by online or distance learning to an overseas student.

3.11.14 A registered provider must ensure that in each compulsory study period for a course, the overseas student is studying at least one unit that is not by distance or online learning, unless the student is completing the last unit of their course.

3.11.15 For school, ELICOS or Foundation Programs, any online or distance learning must be in addition to minimum face to face teaching requirements approved by the

relevant designated State authority or ESOS agency as part of the registration of the course, if applicable.

3.11.16 The registered provider must take all reasonable steps to support overseas students who may be disadvantaged by:

- additional costs or other requirements, including for overseas students with special needs, from undertaking online or distance learning
- inability to access the resources and community offered by the education institution, or opportunities for engaging with other overseas students while undertaking online or distance learning.

Evidence of compliance

Policies and procedures

A school provider must have evidence of complying with section 3.11 of the Guidelines by having and implementing policies and procedures in relation to:

- course progress and attendance, consistent with sections 3.11.1 to 3.11.7 of the Guidelines
- reporting unsatisfactory course progress or unsatisfactory attendance, consistent with sections 3.11.8 to 3.11.10 of the Guidelines
- allowable extensions of course duration, consistent with sections 3.11.11 and 3.11.12 of the Guidelines
- modes of delivery, consistent with sections 3.11.13 to 3.11.16 of the Guidelines.

Records

A school provider must maintain, for each overseas student enrolled:

- an assessment of the overseas student's course progress for each study period, and where applicable, records of the intervention strategies undertaken where an overseas student was assessed as not making satisfactory course progress
- a record of the overseas student's attendance rate for each study period, and where applicable, records of the intervention strategies undertaken where the school provider identified concerns with the student's attendance rate
- if applicable, records of an extension of an overseas student's course duration
- if applicable, records of reporting unsatisfactory course progress or unsatisfactory attendance to DHA.

3.12 Deferring, suspending or cancelling the overseas student's enrolment

Registered providers must appropriately manage the enrolment of their overseas students and ensure all necessary information about enrolments has been provided to the relevant government department by maintaining updated information in the Provider Registration and International Student Management System (PRISMS) database. (*National Code Standard 9*)

- 3.12.1** A registered provider must have and implement a documented process for assessing, approving and recording a deferment of the commencement of study or suspension of study requested by an overseas student, including maintaining a record of any decisions.
- 3.12.2** A registered provider may defer or suspend the enrolment of a student if it believes there are compassionate or compelling circumstances.
- 3.12.3** A registered provider may suspend or cancel a student's enrolment including, but not limited to, on the basis of:
- misbehaviour by the student
 - the student's failure to pay an amount he or she was required to pay the registered provider to undertake or continue the course as stated in the written agreement
 - a breach of course progress or attendance requirements by the overseas student, which must occur in accordance with National Code Standard 8 (Overseas student visa requirements).
- 3.12.4** If the registered provider initiates a suspension or cancellation of the overseas student's enrolment, before imposing a suspension or cancellation the registered provider must:
- inform the overseas student of that intention and the reasons for doing so, in writing
 - advise the overseas student of their right to appeal through the registered provider's internal complaints and appeals process, in accordance with National Code Standard 10 (Complaints and appeals), within 20 working days.
- 3.12.5** When there is any deferral, suspension or cancellation action taken under this standard, the registered provider must:
- inform the overseas student of the need to seek advice from Immigration on the potential impact on his or her student visa
 - report the change to the overseas student's enrolment under section 19 of the ESOS Act.
- 3.12.6** The suspension or cancellation of the overseas student's enrolment under National Code Standard 9.3 cannot take effect until the internal appeals process is completed, unless the student's health or wellbeing, or the wellbeing of others, is likely to be at risk.

Evidence of compliance

Policies and procedures

A school provider must have evidence of complying with section 3.12 of the Guidelines by having and implementing policies and procedures for:

- assessing, approving and recording a deferment of the commencement of study, a suspension of study or the cancellation of overseas student enrolment that are consistent with the intent of section 3.12 of the Guidelines
- informing parents of overseas students under 18 years of age of any identified risk of cancellation of student enrolment.

Records

A school provider must maintain, for each overseas student enrolled, where applicable:

- any request for deferment or suspension of enrolment
- evidence of how any such request has been assessed by the school provider and how the overseas student was informed in writing of the outcome of the request
- any action taken by the school provider with regard to deferring, suspending or cancelling the overseas student's enrolment including evidence of the written advice given to the overseas student and parent including that the student has 20 working days in which to appeal a decision
- any complaint or appeal made by the overseas student and written evidence of the overseas student being notified of the outcome of the process
- evidence of notification to the Australian Government Department of Education through PRISMS of any change to the enrolment status of the overseas student.

3.13 Complaints and appeals

Registered providers must ensure their overseas students have the right to natural justice protected through access to professional, timely, inexpensive and documented complaints handling and appeals processes. (*National Code Standard 10*)

3.13.1 The registered provider must have and implement a documented internal complaints handling and appeals process, and provide the overseas student with comprehensive, free and easily accessible information about that process and policy.

3.13.2 The registered provider's internal complaints handling and appeals process must:

- include a process for the overseas student to lodge a formal complaint or appeal if a matter cannot be resolved informally
- include that the registered provider will respond to any complaint or appeal the overseas student makes regarding his or her dealings with the registered provider, the registered provider's education agents or any related party the registered provider has an arrangement with to deliver the overseas student's course or related services
- commence assessment of the complaint or appeal within 10 working days of it being made in accordance with the registered provider's complaints handling and appeals policy, and finalise the outcome as soon as practicable

- ensure the overseas student is given an opportunity to formally present his or her case at minimal or no cost and be accompanied and assisted by a support person at any relevant meetings
- conduct the assessment of the complaint or appeal in a professional, fair and transparent manner
- ensure the overseas student is given a written statement of the outcome of the internal appeal, including detailed reasons for the outcome
- keep a written record of the complaint or appeal including a statement of the outcome and reasons for the outcome.

3.13.3 If the overseas student is not successful in the registered provider's internal complaints handling and appeals process, the registered provider must advise the overseas student within 10 working days of concluding the internal review of the overseas student's right to access an external complaints handling and appeals process at minimal or no cost. The registered provider must give the overseas student the contact details of the appropriate complaints handling and external appeals body.

3.13.4 If the internal or any external complaints handling or appeal process results in a decision or recommendation in favour of the overseas student, the registered provider must immediately implement the decision or recommendation and/or take the preventative or corrective action required by the decision, and advise the student of that action.

Evidence of compliance

Policies and procedures

A school provider must have evidence of complying with section 3.13 of the Guidelines including:

- policies and procedures for handling complaints and appeals with processes for internal review and independent external review that are consistent with sections 3.13.1 to 3.13.4 of the Guidelines
- a statement in the policies and procedures of the school provider's obligation to maintain the enrolment of an overseas student whilst a complaint and/or appeal is considered
- evidence that the policies and procedures are communicated to staff and overseas students
- access to an independent external body for the provision of dispute resolution. Where the independent external body accessed is other than the Overseas Student Ombudsman, a written agreement with the independent external body.

Records

A school provider must maintain, for each overseas student enrolled, where applicable:

- a record of any complaint made to the provider and the nature of the complaint
- the written notification of the outcome of the complaint and appeal, if relevant, that were provided to the overseas student
- a record of the corrective or preventative action taken by the school provider where the

outcome of a complaint was decided in the overseas student's favour.

3.14 Additional registration requirements including notifications to NESAs

Registered providers must continue to meet the requirements for CRICOS registration and ensure the ESOS agency for the registered provider approves, and has up-to-date information on, specific aspects of the registered provider's operations and any registered courses. (*National Code Standard 11*)

3.14.1 In applying to register a full-time course at a location, a provider must seek approval from the ESOS agency, including through the relevant designated State authority if the provider is a school, for the following:

- the course duration, including holiday breaks
- modes of study, including online, distance or work-based training
- number of overseas students enrolled at the provider, within the limit or maximum number approved by the ESOS agency for each location
- arrangements with other education providers, including partners, in delivering a course or courses to overseas students.

3.14.2 In seeking approval under section 3.14.1 of the Guidelines, the school provider must demonstrate any matter requested by the ESOS agency, including through the designated State authority if the provider is a school, which may include but are not limited to the following:

- the expected duration of the course does not exceed the time required to complete the course on the basis of full-time study, - for VET courses, this is a minimum of 20 scheduled course contact hours per week unless specified by an accrediting authority
- the expected duration of the course includes any holiday periods or any work-based training
- any work-based training to be undertaken as part of the course is necessary for the student to gain the qualification and there are appropriate arrangements for supervision and assessment of students
- the course is not to be delivered entirely by online or distance learning
- the provider and any partner they engage to deliver a course or courses to overseas students has adequate staff and education resources, including facilities, equipment, learning and library resources and premises as are needed to deliver the course to the overseas students enrolled with the provider
- the maximum number of overseas students proposed by the provider for the location reflects the appropriateness of the staff, resources and facilities for the delivery of the course.

3.14.3 The registered provider must submit to its ESOS agency for approval, including through the relevant designated State authority if the provider is a school, information on any proposed changes to the provider's registration for a course as outlined in section 3.14.1 of the Guidelines at least 30 days prior to the time at which those

changes are proposed to take effect.

3.14.4 School providers with approval to deliver courses to overseas students must notify NESA in writing via RANGS Online:

- when the school provider, or an associate of the provider, or a high managerial agent of a provider who has been, is, or will be involved in the business of delivering programs to overseas students:
 - has been convicted of an offence
 - has been convicted of an offence under the ESOS Act at any time during the past five years
 - has ever had its CRICOS registration cancelled or suspended under the ESOS Act
 - has ever been issued with an Immigration Minister's suspension certificate
 - has ever had conditions imposed on its registration under the ESOS Act
 - has been bankrupt
 - has ever been disqualified from managing a corporation under the Corporations Act
 - has been involved in the business of provision of course by another provider that was subject to any of the points above.
- of any change in the name or address of the school provider at least one month before such a change is to take effect
- of any intention to relocate premises (including the head office or principal place of business) at least three months before the relocation
- of any change in the school name and/or name of a delivery site at least one month before such a change is to take place
- of any prospective changes to the ownership of the registered provider as soon as practicable before the change is to take effect
- of any change to the details of courses approved including changes to course duration and course cost at least one month before such a change is to take place
- to request the cancellation or suspension of the school provider's approval and registration to deliver courses to overseas students, at least three months before the cancellation or suspension
- to request to amend the school provider's existing scope of approval (refer to 7.3.3 for timeframes).

Evidence of compliance

A school provider must certify that it has adequate staffing and education resources to deliver its registered courses to overseas students, consistent with section 3.14.2 of the Guidelines.

A school provider must have evidence of complying with section 3.14 of the Guidelines by having documented procedures to make the notifications identified in section 3.14 of the Guidelines.

In relation to these notifications NESAs will:

- acknowledge receipt of the relevant notification
- arrange for a NESA Officer to:
 - examine the submitted return (notification) and any other submitted documentation
 - contact the school provider to identify whether further evidence of compliance is required and whether a visit to the school provider will be undertaken
 - examine any evidence of compliance and, where applicable, visit the school provider and examine any further evidence of compliance
 - where applicable, write an inspection report and make recommendations, forward the inspection report to the school provider's principal executive officer (PEO) for signature and feedback, and submit the report to the Committee. This process may take up to six weeks
- where applicable, forward the relevant certificate(s) to the school provider
- where applicable, ensure that the Australian Government Department of Education is informed.

3.15 Application fees

An application for approval to provide courses for overseas students must be in such form, and be accompanied by such fee, as determined by NESA.

To maintain approval to provide courses for overseas students a school provider must make payment of fees, within the period specified on the invoice, as determined by NESA and published on the NESA website.

In the case of an application for initial approval to deliver courses to overseas students, payment of the relevant fee is required prior to NESA assessing the application.

The school provider must also ensure payment of any fee charged by any other authority, within the period specified on the invoice, such as the Australian Government Department of Education for approval or registration to deliver course to students from overseas.

4 Requirements for approved school providers delivering English Language Intensive Courses for Overseas Students (ELICOS)

In addition to meeting all requirements for approval as a school provider, identified in section 3 of these Guidelines, approved school providers who deliver ELICOS must meet the requirements of the Australian Government's ELICOS Standards. This section of the Guidelines details the requirements and evidence of compliance that school providers of ELICOS must maintain at all times during a period of approval.

For the purpose of the ELICOS Standards, an ELICOS course is a course of education or training that is:

- solely or predominantly of English language instruction; and
- provided, or intended to be provided, to an overseas student as defined in section 5 of the ESOS Act.

Courses which do not fall within the definition of ELICOS include, but are not limited to:

- English language programs provided exclusively to non-student visa holders
- 'English as an additional language' programs or support services provided within the school sector as part of a school curriculum; and
- Foundation programs.

A school provider of ELICOS may choose to be accredited by the National ELT Accreditation Scheme (NEAS). However, NEAS accreditation is not a requirement of NESAs for approval. In considering whether the ELICOS Standards have been met, NESAs will have regard to whether or not a school provider has evidence of current NEAS accreditation. For school providers without NEAS accreditation, NESAs has an arrangement with NEAS to assess aspects of the school provider's compliance, at a cost to the school provider.

Requirement		Reference
4.1.1	Mandatory requirements for course applications	ELICOS Standard C1
4.1.2	Scheduled course contact hours	ELICOS Standard P1
4.1.3	Needs of younger ELICOS students	ELICOS Standard P2
4.1.4	Teaching ELICOS	ELICOS Standard P3
4.1.5	Assessment of ELICOS students	ELICOS Standard P4
4.1.6	ELICOS educational resources	ELICOS Standard P5

Requirement		Reference
4.1.7	ELICOS specialist staff	ELICOS Standard P6
4.1.8	ELICOS premises	ELICOS Standard P7
4.1.9	Business management	ELICOS Standard P8

The wording of each requirement is taken from the ELICOS Standards. The following information provides an overview of NESA requirements for approval to deliver ELICOS.

4.1 ELICOS course and provider requirements

4.1.1 Mandatory requirements for course applications

Providers address the information requirements of the ESOS agency to demonstrate that their proposed courses meet the required standards. (*ELICOS Standard C1*)

Section 4.1.1 of the Guidelines sets out the minimum information and evidence to be provided with an application for approval to provide ELICOS. The procedures for submission of applications and documentation are outlined in section 7.1 of the Guidelines.

An application from a school provider to provide ELICOS must be fit for purpose and must include the following information:

- a) course name
- b) course proponent
- c) copyright information
- d) course duration (expressed in weeks)
- e) course purpose
- f) relationship with other course(s)
- g) details of any articulation arrangements
- h) profile of target learner group, including arrangements to meet the learning needs of students of different age groups and learning capabilities
- i) course outcomes expressed in learner oriented terms
- j) course entry requirements
- k) strategy for monitoring student learning progress
- l) strategy for assessing achievement of learning outcomes including policies and procedures, materials and resources
- m) samples of certification of completion and partial completion that set out the CRICOS course name, levels of achievement or proficiency, course duration, date of completion, name and contact details of the registered ELICOS provider, and name and title of the signatory
- n) modes and methods of course delivery
- o) course structure demonstrating that it meets the minimum requirement of 20 hours face-to-face scheduled course contact per week, as well as any other study

- requirements and any scheduled breaks
- p) course syllabus that provides a statement of the purpose and objectives of the course, expected learning outcomes, subjects, structure and assessment of learning and progress
 - q) strategy for ongoing course evaluation and review
 - r) experience and qualifications of course teachers
 - s) key and supplementary teaching resources
 - t) maximum course fee.

Evidence of compliance

An application for approval to provide ELICOS must include information in relation to all aspects of section 4.1.1 of the Guidelines.

4.1.2 Scheduled course contact hours

Written agreements between registered ELICOS providers and students must provide accurate information to students on scheduled course contact hours for the ELICOS course. (ELICOS Standard P1)

An ELICOS course must have a minimum of 20 hours face-to-face scheduled course contact per week.

Written agreements between registered ELICOS providers and students must specify:

- a minimum of 20 face-to-face scheduled course contact hours for the course
- any other scheduled course contact hours required by the course.

Evidence of compliance

A school provider of ELICOS must have evidence of complying with section 4.1.2 of the Guidelines.

The written agreement between a school provider and overseas student, as required by section 3.6 of the Guidelines, must identify the scheduled course contact hours for the ELICOS course in which the student is to be enrolled in accordance with section 4.1.2 of the Guidelines.

4.1.3 Needs of younger ELICOS students

Where a registered ELICOS provider enrolls students under the age of 18, the operations of the provider are appropriate for the age, maturity and English language proficiency of the students. (ELICOS Standard P2)

The provider's arrangements for students under 18 must comply with the National Code.

Facilities and operations for any mixed-age student cohorts must be designed to meet the needs of students of different ages, maturity and levels of English language proficiency.

Students must have access to services, learning opportunities, facilities and equipment that address their English language learning needs.

Course materials and tutoring must be tailored to meet student learning requirements, taking

into account the different levels of age and maturity.

Evidence of compliance

Policies and procedures

If the school provider of ELICOS enrolls students under 18 years of age, the school provider must have evidence of complying with section 4.1.3 of the Guidelines including:

- documented policies and procedures to assess that the operations of the school provider are appropriate for the age, maturity and English language proficiency of students
- a documented procedure to assess the facilities accessed and used by mixed-age student cohorts to ensure they are appropriate for the enrolment of younger students.

4.1.4 Teaching ELICOS

Policies and procedures for teaching provide students with optimal opportunities for achieving successful outcomes. (ELICOS Standard P3)

The provider must have policies and procedures in place to ensure that:

- students are placed in a class appropriate to their current language proficiency level, learning goals and learning needs and consistent with their written agreement
- where a special need is identified for a student, arrangements are put in place to address the needs and support the student to learn effectively
- teacher-to-student ratios do not exceed 1:18 per class
- students are informed of the outcomes to be achieved from the course and, for each learning block, the learning outcomes for that block.

Planning policies and procedures must enable teachers to:

- customise teaching to student needs
- access resources required for delivery of the course
- research course content and developments in English language teaching to meet student needs.

Providers must maintain records of teaching delivery for a reasonable period in accordance with the ESOS Act and ensure:

- retention and accessibility of records, including electronically
- learning outcomes are documented
- effective review, revision and delivery of courses.

Providers must continually improve delivery of courses by:

- making adjustments based on analysis of feedback from students and other stakeholders as appropriate
- monitoring appropriateness of delivery for student groups
- regularly evaluating learning outcomes achieved.

Evidence of compliance

Policies and procedures

A school provider of ELICOS must have evidence of complying with section 4.1.4 of the Guidelines by having and implementing policies and procedures consistent with section 4.1.4 of the Guidelines.

Records

A school provider must maintain:

- a list of the resources available for the delivery of each ELICOS course
- records of class sizes and teacher-student ratios for each ELICOS course delivered, for each year of the approval period
- records, maintained by teaching staff, of delivery of each course identifying the learning outcomes achieved in each course, evidence of reviewing and revising of each course, evidence of monitoring the appropriateness of delivery for overseas student groups and evidence of regular evaluation of the learning outcomes achieved by overseas students
- records of overseas student feedback and, where appropriate, the adjustments made to the delivery of courses as a result of the feedback
- for each overseas student enrolled during each period of approval, records in the student's file of:
 - assessment of the student's language proficiency level, learning goals and learning needs
 - where relevant, assessing the student's special learning needs and the arrangements in place to address the needs
 - informing the student of the outcomes to be achieved from the course and each learning block, prior to commencement of the course
 - the learning outcomes achieved in each course.

4.1.5 Assessment of ELICOS students

Policies and procedures for the assessment of students provide them with optimal opportunities for achieving successful outcomes from their courses. (*ELICOS Standard P4*)

Providers must clearly outline assessment policies and procedures, which must provide for:

- formative and summative assessment
- clear identification of assessment outcomes as they relate to progress through the course
- assessment that is valid, reliable, fair, flexible and clearly referenced to criteria, and
 - includes appropriate oversight or moderation of assessment outcomes
 - in the case of ELICOS courses which are provided under a direct entry arrangement to a tertiary education course, formal measures must be in place to ensure that assessment outcomes are comparable to other criteria used for admission to the tertiary education course of study, or for admission to other similar courses of study.

- clear and regular reporting on assessment outcomes and progress through the course to the student and their parent or guardian, where the student is under the age of 18.

The registered ELICOS provider must, upon completion (or partial completion) of study, issue each student with a document that:

- indicates the CRICOS course name, registered ELICOS provider and contact details, dates of study, course duration, levels of achievement or proficiency, authorised signature and name of signatory
- includes, or is accompanied by, a plain English explanation of the terms used in awarding grades at all levels.

Providers must undertake processes for continual improvement of student assessment by:

- making adjustments based on collection and analysis of feedback from students and other stakeholders as appropriate
- monitoring appropriateness of assessment for student groups
- regularly evaluating course outcomes achieved.

Evidence of compliance

Policies and procedures

A school provider of ELICOS must have evidence of complying with section 4.1.5 of the Guidelines by having and implementing policies and procedures consistent with section 4.1.5 of the Guidelines.

Records

A school provider must maintain, for each overseas student enrolled during the current period of approval, records in the overseas student's file of:

- regular course reports to students and their parent/guardian, where the student is under 18 years of age, of their assessment outcomes and progress throughout the course
- a copy of the document issued to overseas students at the completion or partial completion of study, that includes the CRICOS course name, registered ELICOS provider and contact details, dates of study, course duration, levels of achievement or proficiency.

4.1.6 ELICOS educational resources

Registered ELICOS providers maintain a supply of sufficient educational resources that are aimed at achieving course objectives, encourage diversity in learning activities and teaching methodologies, and are appropriately organised and regularly reviewed. (ELICOS Standard P5)

The registered ELICOS provider must demonstrate access to educational resources that:

- are sufficient to provide for each student at every stage of their course, as appropriate
- are appropriate for the type and level of course offered
- include access to a range of multimedia, as appropriate
- enable varied learning activities and teaching methodologies

- are developed for classroom and individual student use and address specific student needs and course learning outcomes
- reflect new developments in Teachers of English to Speakers of Other Languages (TESOL) theory and practice and changes in course offerings and student profiles.

The registered ELICOS provider has educational facilities with sufficient equipment and support resources for the number of enrolled students, including:

- educational and computer technology that support:
 - classroom teaching and learning activities;
 - independent student practice, study and research; and
 - teacher study, research and preparation.
- material that is catalogued and presented for easy access, where the registered provider makes material available for access or independent study,
- equipment and resources to facilitate independent study (for example, study areas or wi-fi access).

The registered ELICOS provider must give teachers access to reference resources that reflect contemporary knowledge of the theory and practice of TESOL in its own facilities or through easily accessible jointly managed facilities.

Evidence of compliance

Records

A school provider must maintain a description of its educational resources that are consistent with section 4.1.6 of the Guidelines.

4.1.7 ELICOS specialist staff

Registered ELICOS providers must employ suitably qualified specialist staff and provide them with ongoing opportunities for professional development. (*ELICOS Standard P6*)

Academic leadership of ELICOS

The registered ELICOS provider has an academic management system that ensures:

- clear organisation-wide academic leadership of ELICOS
- a coordinated and effective approach to developing, implementing and reviewing curricula
- management of educational resources
- provision of guidance to teaching staff.

Senior academic leadership staff must hold a degree, suitable postgraduate TESOL qualification/s, and appropriate educational management and TESOL teaching experience or equivalent.

Senior academic leadership staff must maintain an up-to-date knowledge of significant developments in TESOL theory and practice.

Teaching staff

ELICOS teachers must have the following:

- a degree or diploma of at least three years full-time or equivalent (teaching or other)
- a suitable TESOL qualification or qualification that contains TESOL as a method
- appropriate TESOL teaching experience or are formally mentored by a senior staff member with this experience.

Where the registered ELICOS provider offers courses of preparation for entry to Australian state or territory secondary schools, an appropriate percentage of the TESOL teachers must be registered to teach in the Australian state or territory primary or secondary system as determined by state or territory legislation or policy.

Teachers of students of 12 years old or less must hold a TESOL qualification and a recognised primary teaching qualification.

The registered provider must verify the qualifications of all its teachers.

The registered provider:

- must implement policies and procedures for the induction and ongoing professional development of its teaching staff
- must implement a program of professional development each year.

Counselling staff

A registered ELICOS provider must:

- employ or contract a person or persons with formal qualifications in counselling and/or relevant experience who is able to advise and provide counselling to students in an intercultural context about:
 - academic and future progress advice
 - welfare matters.
- ensure that the counselling services are available and accessible by students at suitable times.

Evidence of compliance

Records

A school provider must maintain:

- details, including the qualifications and experience, of all part-time and full-time teaching and counselling staff
- copies of qualifications used to determine the suitability of each staff member it has employed including senior academic leadership staff, teaching staff and counselling staff
- a copy of the induction program implemented for teaching staff during the current period of approval
- records of the professional development program implemented each year in the period of approval.

4.1.8 ELICOS premises

The premises of registered ELICOS providers offer teaching and learning environments that are appropriately designed and equipped to support the range of English language courses and student support services offered. (ELICOS Standard P7)

The registered ELICOS provider's premises must comply with all relevant legislation and regulations.

The registered ELICOS provider must ensure that students are safe and have access to facilities that support their education, including where:

- the provider utilises areas within their facility for ELICOS classes that may also be used for other purposes
- facilities are accessed by people not associated with the provider's operations.

The registered ELICOS provider must designate areas of its premises sufficient in size to support quality delivery of its ELICOS courses, including:

- rooms and equipment that are fit for purpose and proportionate or appropriate to the number of students and course syllabus
- teacher staffrooms
- student recreation areas
- private study areas or areas for related activities, such as a library or resource centre
- storage areas
- offices for the management of the ELICOS provider and for the confidential counselling of students.

Evidence of compliance

A school provider of ELICOS must have evidence of complying with section 4.1.8 of the Guidelines including:

- written evidence that all the premises of the school provider of ELICOS complies with all relevant legislation and regulations
- procedures to assess and monitor the current standard and state of repair of the provider's ELICOS premises and buildings, making reference to current and relevant building requirements
- details of annual fire safety assessments which comply with relevant legislation and regulations
- documented policies and procedures that provide for the welfare and safety of overseas students with specific reference to ensuring overseas student safety where the provider accesses or uses areas that may also be used for purposes other than for delivery of ELICOS courses, and where facilities are accessed by people not associated with the provider's operations
- details of the premises and floor space available that comply with section 4.1.8 of the Guidelines.

4.1.9 Business management

**The operations of the provider are supported by effective management actions.
(ELICOS Standard P8)**

A registered provider must:

- comply with relevant Commonwealth, state or territory legislation and other regulatory requirements that are relevant to its operations
- ensure that its staff, students and other clients are fully informed of all regulatory requirements where they affect their duties or participation in ELICOS education.

A registered provider must hold public liability insurance throughout its registration period.

A registered provider must:

- have its accounts prepared to Australian Accounting and Auditing Standards, at least annually
- provide the certificate of accounts to the ESOS agency on request
- provide a full audit report of its financial accounts from a qualified and independent auditor, if the ESOS agency reasonably deems this necessary
- provide other business management documents as requested by the ESOS agency, if reasonably deemed necessary.

A registered provider must have management systems that are responsive to the needs of students, staff and stakeholders and the environment in which the provider operates, including:

- a systematic and continuous improvement approach to managing its operations
- management of records to ensure their accuracy and integrity.

Evidence of compliance

A school provider of ELICOS must have evidence of complying with section 4.1.9 of the Guidelines including:

- written evidence that the school provider of ELICOS complies with relevant Commonwealth and NSW legislation and other regulatory requirements that are relevant to its management and business operations
- documented procedures to ensure that staff, students and other clients are fully informed of the relevant Commonwealth and NSW legislation and other regulatory requirements where they affect their duties or participation in ELICOS education with the provider
- a copy of the school provider's public liability insurance held throughout the current period of approval
- copies of accounts prepared to Australian Accounting and Auditing Standards, at least annually
- where requested by NESA, a copy of the certificate of accounts
- where requested by NESA, details of a full audit report of its financial accounts from a qualified and independent auditor
- where requested by NESA, business management documents

- procedures to ensure that the provider's management systems are responsive to the needs of overseas students, staff and stakeholders and the environment in which the provider operates, consistent with section 4.1.9 of the Guidelines.

4.1.10 Application fees

An application for approval to provide ELICOS must be in such form, and be accompanied by such fee, as determined by the NESA.

To maintain approval to provide ELICOS a school provider must make payment of fees, within the period specified on the invoice, as determined by NESA and published on the NESA website.

In the case of an application for initial approval to deliver ELICOS to overseas students, payment of the relevant fee is required prior to NESA assessing the application.

The school provider must also ensure payment of any fee charged by any other authority, within the period specified on the invoice, such as the Australian Government Department of Education, for registration to deliver courses to students from overseas.

For a school provider to be invoiced at the NESA NEAS accredited fee rate, the school provider must provide to NESA annually, evidence of NEAS accreditation.

5 Initial approval to provide courses to overseas students

Initial approval applies to proposed school providers seeking to deliver courses to overseas students for the first time.

5.1 Requirements for initial school provider approval

Proposed school providers seeking initial approval to deliver courses for overseas students must meet the requirements of the Australian Government's ESOS Act and the Education Act before they can be registered on CRICOS and commence delivery of courses.

It may not be possible for a proposed school provider to provide evidence of compliance with all sections of the legislation prior to commencing delivery of courses. It is expected, however, that the applicant will provide evidence of policies and procedures that will ensure compliance of the school provider with the legislative requirements should the application be successful and the applicant is registered on CRICOS. If the application for initial approval is successful, the new school provider is required to meet all the requirements detailed in section 3 of the Guidelines and must, throughout its period of initial approval, maintain evidence of compliance with these requirements.

Typically, initial approval to deliver courses to overseas students is for a period of 12 months.

Based on the requirements described in section 3 of the Guidelines, the following evidence of capacity to comply is required for proposed school providers to be considered for initial approval.

Any difference in the description of the requirements for initial approval in this section and those described in section 3 is only intended to take account of the fact that compliance with some requirements cannot be demonstrated until the school provider commences delivery of courses for overseas students. On commencing delivery, the requirements in section 3 of the Guidelines apply.

5.1.1 PEO certification of compliance with ESOS Act

Evidence of capacity to comply

The Principal Executive Officer (PEO) of the proposed school provider must certify that the provider has in place policies and procedures to ensure that the proposed school provider is compliant with requirements of the ESOS Act, including, but not limited to:

- 21A of the ESOS Act relating to education agents
- Part 3 of the ESOS Act relating to reporting to the Secretary
- Part 5 Division 2 of the ESOS Act relating to provider and student defaults.

5.1.2 Fit and proper test

Evidence of capacity to comply

The proposed school provider must have in place a statutory declaration by the Principal Executive Officer (PEO) of the provider declaring whether the provider, or an associate³ of the provider, or a high managerial agent⁴ of a provider who has been, is, or who will be involved in the business of delivering programs to overseas students:

- has been convicted of a criminal offence
- has ever had its CRICOS registration cancelled or suspended under the ESOS Act
- has ever been issued with an Immigration Minister's suspension certificate
- has ever had conditions imposed on its registration under the ESOS Act
- has been bankrupt
- has ever been disqualified from managing a corporation under the *Corporations Act 2001* (Corporations Act)
- has been involved in the business of provision of courses by another provider covered by any of the points above.

5.1.3 Australian Residency

Evidence of capacity to comply

The proposed school provider must have evidence of complying with section 3.3 of the Guidelines including:

- a certificate of Incorporation as a Company, ASIC registration certificate, or evidence that the legal entity of the provider is of a kind approved by the Minister for Education to be the proprietor of a non-government school, or that the provider is administered by a state education authority
- the address of the proposed school provider's place of business, postal address and contact details
- contact details for all premises at which the proposed school provider intends delivering courses to overseas students.

5.1.4 Marketing information and practices

Evidence of capacity to comply

The proposed school provider must have evidence of the capacity to comply with section 3.4 of the Guidelines including proposed marketing and other materials for students which are consistent with sections 3.4.1 and 3.4.2 of the Guidelines and identify a place for the proposed school provider's name and CRICOS number should the proposed school provider be approved. The marketing information may include the school provider's proposed website, prospectus, application forms and overseas student handbooks or information packages.

³ refer to footnote 1 on page 18

⁴ refer to footnote 2 on page 18

5.1.5 Recruitment of an overseas student

Evidence of capacity to comply

The proposed school provider must have evidence of the capacity to comply with section 3.5 of the Guidelines including:

- proposed enrolment and course structure information that are consistent with section 3.5.1 of the Guidelines to be made available to intending overseas students, such as:
 - information to be available on the proposed school provider’s website
 - a proposed provider’s prospectus or course brochures
 - overseas student handbooks
 - enrolment and application forms
 - notifications to students of course offers
- procedures to assess whether the overseas student’s qualifications, experiences and English language proficiency are appropriate for the course for which enrolment is sought.

5.1.6 Formalisation of enrolment and written agreements

Evidence of capacity to comply

The proposed school provider must have evidence of the capacity to comply with section 3.6 of the Guidelines including:

- the proposed written agreement to be signed by each enrolled overseas student and parent if the overseas student is under 18 years of age, identifying the mandatory written agreement components consistent with sections 3.6.3 to 3.6.5 of the Guidelines
- a proposed procedure to confirm in writing and update every six months, overseas student contact details including address, mobile phone number and email address
- a proposed procedure for maintaining records, for each overseas student enrolled during a period of approval, in the overseas student’s file of the written agreement with the overseas student, signed or otherwise accepted by that overseas student (or the student’s parent or legal guardian if the student is under 18 years of age) consistent with 3.6 of the Guidelines.

5.1.7 Education agents

Evidence of capacity to comply

The proposed school provider must have evidence of the capacity to comply with section 3.7 of the Guidelines including:

- the proposed written agreement with each agent to be engaged by the provider consistent with sections 3.7.2, 3.7.4 and 3.7.5 of the Guidelines
- the responsibilities of the education agent and the proposed school provider consistent with section 3.7.3 of the Guidelines
- procedures for the proposed school provider to monitor the activities of the education agent, including where corrective action may be required
- procedures for ensuring that up-to-date and accurate information will be provided to each agent used by the proposed school provider.

5.1.8 Younger overseas students

Evidence of capacity to comply

If the proposed school provider intends to enrol overseas students under 18 years of age

If the proposed school provider intends to enrol overseas students under 18 years of age the proposed school provider must have evidence of the capacity to comply with section 3.8 of the Guidelines (Evidence of compliance A) including:

- clearly describing its proposed arrangements for the accommodation, support and general welfare arrangements for overseas students under 18 years of age, including whether or not the proposed school provider intends to accept overseas students who will not be living with a parent or DHA approved relative
- maintaining up-to-date records of the living arrangements of all overseas students under 18 years of age
- having proposed policies and procedures that:
 - will comply with 3.8.5 of the Guidelines where the school provider is unable to contact an overseas student and has concerns for the student's welfare
 - will comply with 3.8.7 of the Guidelines where the school provider enrolls an overseas student who, at the time of enrolment, had welfare arrangements approved by another provider.

If the proposed school provider intends to enrol overseas students where welfare and accommodation is to be approved by the school provider

If the proposed school provider intends to enrol overseas students under 18 years of age where the welfare and accommodation is to be approved by the school provider, the proposed school provider must have evidence of the capacity to comply with section 3.8 of the Guidelines (Evidence of compliance B) including proposed policies and procedures for:

- verifying that the overseas student's accommodation is appropriate to the student's age and needs
- ensuring any adults involved in or providing accommodation and welfare arrangements to the overseas student have a working with children check clearance
- selecting, screening and monitoring any third parties engaged by the school provider to organise and assess welfare and accommodation arrangements
- managing critical incidents, including in emergency situations and where welfare arrangements are disrupted
- notifying the overseas student's parents or legal guardian immediately if the school provider is no longer able to approve the welfare arrangements of the overseas student
- advising DHA of any changes to the overseas student's welfare and accommodation arrangements as described in section 3.8.3 of the Guidelines.

If the proposed school provider intends to enrol overseas students where welfare and accommodation is to be approved by DHA

If the proposed school provider intends to enrol overseas students under 18 years of age where the welfare and accommodation is to be approved by DHA, the proposed school provider must have evidence of the capacity to comply with section 3.8 of the Guidelines

(Evidence of compliance C) including proposed policies and procedures for:

- monitoring the living arrangements of overseas students living with a parent or DHA approved relative
- responding to concerns about the accommodation or welfare of an overseas student under 18 years of age raised through the school provider's monitoring or any other credible source of information.

5.1.9 Overseas student support services

Evidence of capacity to comply

The proposed school provider must have evidence of the capacity to comply with section 3.9 of the Guidelines including proposed policies and procedures for the provision of support and other information to overseas students consistent with 3.9 of the Guidelines.

5.1.10 Overseas student transfers

Evidence of capacity to comply

The proposed school provider must have evidence of the capacity to comply with section 3.10 of the Guidelines including proposed policies and procedures related to overseas student transfer consistent with 3.10 of the Guidelines.

5.1.11 Overseas student visa requirements

Evidence of capacity to comply

The proposed school provider must have evidence of the capacity to comply with section 3.11 of the Guidelines including proposed policies and procedures in relation to:

- course progress and attendance, consistent with sections 3.11.1 to 3.11.7 of the Guidelines
- reporting unsatisfactory course progress or unsatisfactory attendance, consistent with sections 3.11.8 and 3.11.10 of the Guidelines
- allowable extensions of course duration, consistent with sections 3.11.11 and 3.11.12 of the Guidelines
- modes of delivery, consistent with 3.11.13 to 3.11.16 of the Guidelines.

5.1.12 Deferring, suspending or cancelling the student's enrolment

Evidence of capacity to comply

The proposed school provider must have evidence of the capacity to comply with section 3.12 of the Guidelines including proposed policies and procedures for:

- assessing, approving and recording a deferment of the commencement of study, a suspension of study or the cancellation of overseas student enrolment that are consistent with the intent of 3.12 of the Guidelines
- informing parents of overseas students under 18 years of age of any identified risk of cancellation of student enrolment.

5.1.13 Complaints and appeals

Evidence of compliance

A proposed school provider must have evidence of the capacity to comply with section 3.13 of the Guidelines including proposed policies and procedures for:

- handling complaints and appeals with procedures for internal review and independent external review that are consistent with 3.13 of the Guidelines
- maintaining the enrolment of an overseas student whilst a complaint and/or appeal is considered
- providing access to an independent external body for the provision of dispute resolution. Where the independent external body accessed is other than the Overseas Student Ombudsman, a written agreement with the independent external body must be in place.

5.1.14 Additional registration requirements including notifications to NESA

Evidence of compliance

A proposed school provider must have evidence of complying with section 3.14 of the Guidelines including documented procedures for notifying NESA of matters identified in 3.14 of the Guidelines.

5.1.15 Application fees

For initial approval to provide courses for overseas students a proposed school provider must make payment of fees, within the period specified on the invoice, as determined by NESA and published on the NESA website.

Payment of the relevant fee is required prior to NESA assessing the application.

6 Initial approval to provide English Language Intensive Courses for Overseas Students (ELICOS)

Where a school provider or proposed school provider seeks approval to deliver ELICOS for the first time, the requirements of the ELICOS standards must be met.

An applicant seeking initial approval to deliver ELICOS must have current school provider approval to deliver school courses, or submit an application for initial school provider approval concurrently with the application to deliver ELICOS.

Payment of the relevant fee is required prior to NESA assessing the application.

For the purpose of the ELICOS Standards, an ELICOS course is a course of education or training that is:

- solely or predominantly of English language instruction; and
- provided, or intended to be provided, to an overseas student as defined in section 5 of the ESOS Act.

Courses which do not fall within the definition of ELICOS include, but are not limited to:

- English language programs provided exclusively to non-student visa holders
- 'English as an additional language' programs or support services provided within the school sector as part of a school curriculum; and
- Foundation programs.

Based on the requirements described in section 4 of the Guidelines, the following evidence of a capacity to comply is required for a school provider or proposed school provider to be considered for initial approval to deliver ELICOS courses.

Any difference in the requirements described in this section and those described in sections 3 and 4 of the Guidelines is only intended to take account of the fact that compliance with some requirements cannot be demonstrated until the school provider commences delivery of courses for overseas students. On commencing delivery, the requirements in sections 3 and 4 of the Guidelines apply.

In considering whether the Australian Government's ELICOS standards have been met, NESA will have regard to whether or not a school provider has accreditation from National ELT Accreditation Scheme (NEAS Australia).

6.1 ELICOS course and provider requirements

6.1.1 Mandatory requirements for course applications

Evidence of compliance

An application for initial approval to provide ELICOS must include information in relation to all aspects of section 4.1.1 of the Guidelines.

6.1.2 Scheduled course contact hours

Evidence of capacity to comply

A school provider seeking initial approval to deliver ELICOS must have evidence of the capacity to comply with section 4.1.2 of the Guidelines.

The written agreement between a school provider and an overseas student, as required by section 3.6 of the Guidelines, must identify the scheduled course contact hours for the ELICOS course in which the overseas student is to be enrolled in accordance with section 4.1.2 of the Guidelines.

6.1.3 Needs of younger ELICOS students

Evidence of capacity to comply

If the school provider seeking initial approval to deliver ELICOS intends to enrol students under 18 years of age, the provider must have evidence of the capacity to comply with section 4.1.3 of the Guidelines including:

- documented policies and procedures to assess that the operations of the provider are appropriate for the age, maturity and English language proficiency of students
- a documented procedure to assess the proposed facilities to be accessed and used by mixed-age student cohorts to ensure they are appropriate for the enrolment of younger students.

6.1.4 Teaching ELICOS

Evidence of capacity to comply

A school provider seeking initial approval to deliver ELICOS must have evidence of the capacity to comply with section 4.1.4 of the Guidelines including documented policies and procedures in relation to teaching ELICOS, consistent with section 4.1.4 of the Guidelines.

6.1.5 Assessment of ELICOS students

Evidence of capacity to comply

A school provider seeking initial approval to deliver ELICOS must have evidence of the capacity to comply with section 4.1.5 of the Guidelines including documented policies and procedures in relation to assessment of ELICOS students, consistent with section 4.1.5 of the Guidelines.

6.1.6 ELICOS educational resources

Evidence of capacity to comply

A school provider seeking initial approval to deliver ELICOS must have evidence of the capacity to comply with section 4.1.6 of the Guidelines including documented policies and procedures in relation to ELICOS educational resources, consistent with section 4.1.6 of the Guidelines.

6.1.7 ELICOS specialist staff

Evidence of capacity to comply

A school provider seeking initial approval to deliver ELICOS must have evidence of the capacity to comply with section 4.1.7 of the Guidelines including documented policies and procedures in relation to ELICOS specialist staff, consistent with section 4.1.7 of the Guidelines.

6.1.8 ELICOS premises

Evidence of capacity to comply

A school provider seeking initial approval to deliver ELICOS must have evidence of the capacity to comply with section 4.1.8 of the Guidelines including:

- written evidence that all the proposed premises of the school provider of ELICOS will comply with all relevant legislation and regulations
- policies to assess and monitor the current standard and state of repair of the proposed ELICOS provider's premises and buildings, making reference to current and relevant building requirements
- confirmation that an annual fire safety assessment will be conducted and will comply with relevant legislation and regulations
- documented policies and procedures that will provide for the welfare and safety of students with specific reference to ensuring student safety where the proposed provider accesses or uses areas that may also be used for purposes other than for delivery of ELICOS courses, and where proposed facilities will be accessed by people not associated with the proposed school provider's operations
- details of the proposed premises and floor space available that comply with section 4.1.8 of the Guidelines.

6.1.9 Business management

Evidence of capacity to comply

A school provider seeking initial approval to deliver ELICOS must have evidence of the capacity to comply with section 4.1.9 of the Guidelines including documented policies and procedures, and relevant confirmation from the school provider, in relation to business management, consistent with section 4.1.9 of the Guidelines.

6.1.10 Application fees

For initial approval to provide ELICOS, a school provider must make payment of fees, within the period specified on the invoice, as determined by NESAS and published on the NESAS website.

For a school provider to be invoiced at the NESAS NEAS accredited fee rate, the school provider must provide evidence of NEAS accreditation.

Payment of the relevant fee is required prior to NESAS assessing the application.

7 Procedures for approval of a school provider to deliver courses to overseas students

The following information provides details about the procedures involved in:

- applying for initial approval for a proposed school provider to deliver courses to overseas students
- applying for renewal of approval for a school provider to deliver courses to overseas students
- applying for initial approval for a school provider to deliver ELICOS
- applying for renewal of approval for a school provider to deliver ELICOS
- applying to amend school provider approval to deliver courses to overseas students including adding a course, cancelling a course, increasing or decreasing overseas student capacity or additions to or changes in sites
- providing a return (notification) to NESAs.

7.1 Submission of applications and documentation

School providers applying for initial/renewal/amendment of approval need to submit the appropriate application form(s) via the NESAs online facility, [RANGS Online](https://regos.nesa.nsw.edu.au) (regos.nesa.nsw.edu.au).

Applications consist of the appropriate electronic form (eForm) and attached documentation relevant to the application. For support in accessing and using RANGS Online, school providers can contact the School Registration and Accreditation Directorate on telephone 02 9367 8432.

School providers seeking approval to deliver courses to overseas students, are required to pay, within the period specified on the invoice, a fee:

- for initial approval
- annually
- for an application for amendment.

For applications for initial or amendment of approval, payment is required prior to NESAs assessing the application.

Fees can be paid by electronic means or cheque. A schedule of fees, details about payment and the NESAs fee refund policy are available on the [NESAs website](https://www.nesa.nsw.edu.au) (educationstandards.nsw.edu.au).

7.2 Overview of NESA processes

The process undertaken by NESA for initial/renewal of approval to deliver courses to overseas students and initial/renewal of approval to provide ELICOS includes:

- receipt of application and fee
- consideration of the submitted application and supporting documentation
- an inspection by at least one Inspector
- compilation of a report with recommendations based on the application, documentation and inspection
- submission to and consideration of the recommendations by the Committee
- decision to grant approval by the Committee
- submission of the decision to approve the application to the CEO of NESA for certification
- notification of the outcome of the application to the school provider and, where the application is approved, issuing of relevant certificate(s)
- ensuring that the Australian Government Department of Education is advised of the approval.

(Note: All references in the Guidelines to the Committee making recommendations to the CEO of NESA concerning approval are based on the Committee exercising the NESA delegation on approval matters within prevailing NESA policies. The process of review of decisions or recommendations made by the Committee is described in section 7 of the Guidelines.)

The NESA process for amending approval by adding a course, withdrawing a course, increasing or decreasing student capacity or adding or changing delivery sites includes:

- receipt of notification and fee
- consideration of the submitted application and supporting documentation
- where necessary, an inspection by a NESA officer
- compilation of a report with recommendations based on the application, documentation and inspection
- submission to and consideration of the recommendations by the Committee
- decision to grant the amendment by the Committee
- submission of a decision to approve the amendment to the CEO of NESA for certification
- notification of the outcome of the application to the school and, where the application is approved, issuing of certificate(s), if relevant
- ensuring that the Australian Government Department of Education is advised of the amendment to the approval.

7.3 Procedures

7.3.1 Application for initial approval of a proposed school provider to deliver courses to overseas students and/or initial approval of a school provider to deliver ELICOS

A proposed school provider applying for initial approval must submit to NESAs an *Application for Initial Approval (CRICOS)* not later than 31 March preceding the calendar year in which the proprietor wishes to commence operating as a school provider. NESAs may consider an application for initial approval made after 31 March if the application is from an established government or registered non-government school provider and the application is within the scope of the school's current registration and accreditation. Typically, the maximum period for initial approval to deliver courses to overseas students is 12 months.

A registered non-government school applying for initial approval to provide ELICOS must:

- have current approval to deliver courses to overseas students; or
- concurrently apply for initial approval to deliver courses to overseas students.

An existing or prospective school provider applying for initial approval to deliver ELICOS must submit to NESAs an *Application for Initial Approval as an ELICOS provider* not later than 31 March preceding the calendar year in which the proprietor wishes to commence delivering ELICOS. NESAs may consider an application for initial approval to deliver ELICOS made after 31 March if the application is from an established government or registered non-government school provider and the application is within the scope of the school's current registration and accreditation. Typically, the maximum period for initial approval to provide ELICOS is 12 months.

NESAs will:

- acknowledge receipt of the application and fee
- arrange for an Inspector to:
 - examine the submitted application and documentation stipulated in the application form
 - contact the proprietor of the school provider to identify the evidence of a capacity to comply that the school will need to make available during the visit
 - visit the site and examine any evidence of compliance requested by the Inspector
 - write an inspection report and make recommendations
 - forward the inspection report to the proprietor and PEO for comment
- submit the inspection report, advice and recommendation and the comments from the proprietor and principal (where provided) to the Committee for a decision regarding approval. This final process may take up to six weeks.
- submit the decision to grant approval to the CEO of NESAs for certification
- forward the relevant certificate(s) if the application is approved
- ensure that the Australian Government Department of Education is advised of the approval.

Where following an inspection, concern regarding the applicant's capacity to comply is identified, a letter identifying the concern will be sent to the applicant. The letter will contain the deadline for evidence of capacity to comply to be provided to NESAs.

On receipt of the additional information an Inspector will finalise the inspection report. A copy of the inspection report is provided to the proprietor and PEO.

7.3.2 Application for renewal of approval of a school provider to deliver courses to overseas students and, if applicable, renewal of approval of a school provider to provide ELICOS

The following procedure applies to school providers applying for renewal of approval to deliver courses to overseas students.

The maximum period for approval to deliver courses to overseas students is five years.

A school provider applying for renewal of approval to deliver courses to overseas students must submit to NESAs an *Application for Renewal of Approval (CRICOS)* and, if applicable, an *Application for Renewal of Approval to deliver ELICOS* not later than 31 March in the calendar year in which the current approval to deliver courses to overseas students is due to expire.

NESA will:

- acknowledge receipt of the application and fee
- arrange for an Inspector to:
 - examine the submitted application and documentation stipulated in the application form
 - contact the proprietor of the school provider to identify the evidence of compliance that will need to be available during the visit
 - visit the site and examine any evidence of compliance requested by the Inspector
 - write an inspection report and make recommendations
 - forward the inspection report to the proprietor and PEO for comment
 - submit the inspection report, advice and recommendation and the comments from the proprietor and principal (where provided) to the Committee for a decision regarding approval. This process may take up to six weeks
- submit the decision to the CEO of NESAs for certification
- forward the relevant certificate(s) if the application is successful
- ensure that the Australian Government Department of Education is advised of the approval.

Where, following an inspection, concern regarding compliance is identified, a letter identifying the concern will be sent to the applicant. The letter will contain the deadline for evidence of compliance to be provided to NESAs.

On receipt of the additional information an Inspector will finalise the inspection report. A copy of the inspection report is provided to the proprietor and PEO for signature.

7.3.3 Application to amend the scope of approval of a school provider to deliver courses to overseas students

The following procedure applies to applications from approved school providers to amend the scope of approval of a school to deliver courses to overseas students including:

- adding a course
- withdrawing a course
- increasing overseas student capacity
- decreasing overseas student capacity

- re-distributing approved overseas student capacity across approved delivery sites
- adding or removing a delivery site.

A school provider applying to amend the scope of approval to deliver courses to overseas students may submit to NESAs an *Application to Amend Approval (CRICOS)*. Applications to amend approval relating to adding or removing delivery sites must be submitted at least three months before implementing an amendment. For all other amendments, the form must be submitted at least one month before implementing an amendment.

NESA will:

- acknowledge receipt of the application and fee
- arrange for a NESA officer to:
 - examine the submitted application and documentation stipulated in the application form
 - where a site audit is required, visit the school and examine any evidence of compliance requested by the NESA officer
 - write a report and make recommendations with specific conditions, if relevant
 - submit the report and recommendation to the Committee
- submit the decision to the CEO of NESAs for certification
- forward the relevant certificate(s) if the application is successful
- ensure that the Australian Government Department of Education is notified of the amendment to approval.

8 Requirements of a school system provider

This section of the Guidelines relates to NESA monitoring of approved 'school system providers'.

A 'school system provider' is an entity that has been approved to deliver courses to overseas students enrolled at schools owned and operated by the entity or for which the entity is the recognised school authority for the purpose of the relevant legislation. This is the case for the NSW Department of Education which is the approved school provider for government schools in NSW. It may also apply, depending on the scope of operation, where the approved school provider is the approved authority of a system of non-government schools pursuant to section 42 of the Education Act, to monitor the compliance of its member schools with the requirements of the Education Act for registration and accreditation.

Within this section, the term 'member school' refers to a school that is owned and operated by a school system provider. Member schools that are included in the school system provider's scope of approval to deliver courses to overseas students are referred to as 'school delivery sites'.

A school system provider that has been approved and registered to deliver courses to overseas students may enrol overseas students at one or more of its school delivery sites.

The NESA Guidelines provide information about the regulatory framework and requirements for school providers delivering courses to overseas students. This section of the Guidelines details the requirements for school system providers.

8.1 Requirements of school system providers

An approved school system provider must provide assurance that the school system provider will continue to meet the requirements for approval as specified in the NESA Guidelines at all times and at all school delivery sites.

The school system provider must describe in writing the manner in which the compliance of its school delivery sites will be monitored. The description must include documented procedures for:

- monitoring the compliance of each delivery site in relation to the requirements for approval under the Guidelines during the school system provider's period of approval
- maintaining evidence of compliance, as specified in the Guidelines, for each delivery site
- monitoring a new delivery site; that is, a school that is new to delivering courses to overseas students
- responding to concerns identified in relation to the compliance of a school delivery site with the requirements for approval under the Guidelines
- handling complaints and grievances raised by students, parents or key stakeholders about the school system provider and/or a school delivery site or sites
- maintaining evidence that the school system provider has implemented its procedures for monitoring the compliance of its school delivery sites.

NESA approval of a school system provider's monitoring procedures requires that the school system provider monitor its school delivery sites in the manner which has been approved by NESA. If the school system provider proposes to change the manner in which the compliance of its school delivery sites is monitored, the school system provider must seek NESA approval nine months prior to implementing the proposed change.

8.2 Monitoring school system providers

NESA will monitor annually the monitoring procedures of a school system provider and a report on the monitoring will be provided to the NESA School Registration Committee.

Wherever feasible, NESA monitoring of a school system provider that is also a registration system will align and integrate with NESA annual monitoring of the registration system.

In accordance with the NESA Guidelines, Inspectors will assess the compliance of a school system provider with all requirements for approval when an application for renewal of approval is made.

Assessment of the compliance of a school system provider may also occur if concerns are raised that the school system provider and/or one of its school delivery sites may not be complying with the requirements for approval.

9 Refusal, amendment, suspension or cancellation of approval

The Education Act makes provision for refusal of an application for approval, amending or revoking a condition to which the approval is subject, imposing additional conditions on the approval, suspending an approval or cancelling an approval for a school provider to deliver courses to overseas students.

NESA, on its own motion or on application for approval, may:

- refuse an application for initial approval
- refuse an application for renewal of approval
- amend an approval so that it applies to different courses
- amend or revoke any condition to which an approval is subject
- impose additional conditions on an approval
- suspend an approval
- cancel an approval.

9.1 Process leading to refusal, amendment, suspension or cancellation of approval

Inspectors consider any documentation provided by the school provider and observations at an inspection visit in order to form opinions about the provider's compliance with the requirements relating to approval. When it is an Inspector's judgement that a new or established school provider has been unable to demonstrate compliance with the requirements, the Inspector will discuss these concerns with the provider and PEO and provide an opportunity for the school provider to submit further evidence of compliance.

If, following consideration of any further evidence of compliance the school provider provides, the Inspector has formed the judgement that the school provider does not comply with requirements for approval, the Inspector will prepare a report that includes advice that the application for initial approval or renewal of approval of the school provider be refused, amended, suspended or cancelled.

If the Inspector advises refusal, amendment, suspension or cancellation of the approval of the school provider, the provider and PEO of the school provider will be given written notice detailing those requirements with which, in the opinion of the Inspector, the school provider does not comply. The provider and PEO will be given the opportunity to make written comment to the Committee regarding the Inspector's advice.

If, following consideration of the Inspector's report and advice and the comments of the provider and PEO, the Committee is satisfied that the requirements of the ESOS Act and regulations in relation to approval are not being complied with, the Committee will notify the school provider and PEO that it intends to recommend the refusal, amendment and suspension of the application for initial, or renewal of, approval of the school provider, or to recommend approval be cancelled.

The proprietor and principal (or equivalent) of the school may make an appeal against the recommendation of the Committee (refer to section 7 of the Guidelines).

If the appeal is unsuccessful, written notice of the recommendation or decision to refuse, amend, suspend or cancel approval will be given to the school provider and PEO. Where it is recommended that the approval of a school provider be cancelled or the renewal of approval be refused, Australian Government Department of Education will be advised.

10 Appeals for review of certain decisions

An applicant may request an internal review where the Committee, under delegation from NESA, has decided that approval of a school provider to deliver courses to overseas students be refused, amended, suspended or cancelled.

The outcome of an internal review is determined by the NESA Board. The review process is undertaken by NESA officers not involved in the initial assessment of the school provider's application for approval. The documentation considered by the review includes that previously submitted by the school provider and/or PEO and any additional documentation that the applicant wishes to have considered, the Committee decision and reasons for the decision and the internal review report prepared by another Inspector not associated with the original inspection report.

If the internal review supports the original decision, a person who is aggrieved by any of the following decisions of NESA may apply to the Tribunal for a review of the decision:

- to refuse to grant approval under Part 7A of the *Education Act 1990*, or
- to impose conditions on, amend, suspend or cancel such an approval.

The appeal process involves the following steps:

- NESA gives the school provider and/or PEO written notice of a decision
- the school provider or applicant has 28 days in which to lodge an appeal in writing with the Registrar, NSW Civil and Administrative Tribunal
- the Tribunal contacts the school provider and/or PEO to arrange a date on which the appeal will be heard
- the Tribunal considers the appeal and makes a decision pursuant to the *Administrative Decisions Review Act 1997*.

11 Glossary

Agent	See Education Agent.
Australian Government Department of Education	The Australian Government Department of Education administers the ESOS Act, manages CRICOS and PRISMS and monitors compliance with the ESOS Act and the Standards in the National Code.
Cancellation of enrolment	Enrolment may be cancelled by the student or by the registered provider. The provider notifies the Australian Government Department of Education through PRISMS that it wishes to permanently cancel the student's enrolment. Once this process is complete, the student's CoE status will be listed as 'cancelled'.
Compassionate or compelling circumstances	Circumstance beyond the control of the student which affects the student's course progress or wellbeing.
Compulsory study period	A compulsory study period is one in which the student must enrol unless granted a deferment or suspension from enrolment or leave of absence under National Code Standard 9 (Deferring, suspending or cancelling the student's enrolment). A compulsory study period does not include periods in which the student can elect to undertake additional studies. See also 'Study period'.
Confirmation of Enrolment (CoE)	A document, provided electronically, that the registered provider issues to intending overseas students and which must accompany their application for a student visa. It confirms the overseas student's eligibility to enrol in the particular course of the registered provider.
Course	A course of education or training as defined in the ESOS Act.
Course-related fees	Includes tuition fees as defined by section 7 of the ESOS Act and all applicable non-tuition fees including all optional fees or charges.

Course credit	Exemption from enrolment in a particular part of the course as a result of previous study, experience or recognition of a competency currently held. Includes academic credit and recognition of prior learning or experience
CRICOS	Courses for Overseas Students (CRICOS) is the register prescribed under section 10 of the ESOS Act.
Deferment of enrolment	Before the commencement of study, a student may request a temporary deferment of his or her enrolment on the grounds of compassionate or compelling circumstances. If the request is granted, the provider notifies the Australian Government Department of Education via PRISMS of the deferment of enrolment.
Designated State Authority	As defined by section 5 of the ESOS Act, means a person responsible under the law of a state for approving providers to provide courses to overseas students in that state.
Distance learning	Study in which the teacher and overseas student are separated in time or space throughout the duration of the unit of study (including online learning), but does not include study where the student is resident in his or her home country or another country offshore and does not hold a student visa. Distance learning differs from online learning in that the study may be undertaken through written correspondence and exchange of hard copy materials.
Duration of study	The time required for an overseas student to complete an approved course of study as specified in their Confirmation of Enrolment (CoE).
Education agent	A formally appointed person or organisation (in or outside Australia) who represents or acts on behalf of the provider, including by having the capacity to create a legal relationship (such as an agreement that binds the parties) between the provider and a student.
ESOS agency	The ESOS agency for the school sector is the Australian Government Department of Education.

Enrolment	Where the student has been issued with a CoE to confirm acceptance by the registered provider and is occupying a place in the CRICOS registered course for which the student was accepted and is progressing towards the completion of the course requirements. The period of enrolment includes scheduled breaks between study periods.
Formalisation of enrolment	Written agreement between registered provider and student (or parent or legal guardian if the student is under 18 years of age) which sets out the obligations and rights of both the registered provider and the student.
High managerial agent	An employee, agent or officer of the provider with duties of such responsibility that their conduct may fairly be assumed to represent the provider in relation to the provision of courses (ESOS Act 5).
International student	See Overseas student.
Migration Act	The Migration Act 1958 reinforces the obligations of overseas students studying in Australia under their student visas.
Migration agent	A person registered as a migration agent as per section 286 of the Migration Act 1958.
National Code 2018	The National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2018.
Overseas student	A person (whether within or outside Australia) who holds a student visa as defined by the ESOS Act, but does not include students of a kind prescribed in the ESOS Regulations.
Principal course of study	The main course of study to be undertaken by an overseas student where a student visa has been issued for multiple courses of study. This is typically the last course in a package of courses.

PRISMS	The Provider Registration and International Student Management System (PRISMS) is the system used to process information given to the Secretary of the Australian Government Department of Education by registered providers.
RANGS Online	Website for making online applications and notifications to NESAs using a secure account login.
Registered provider	A higher education provider, VET provider, approved school provider, ELICOS provider or Foundation Course provider that has been registered on CRICOS by the Australian Government to deliver a specified course(s) at a specified location(s) to overseas students.
Scheduled course contact hours	The hours for which students enrolled in a course are scheduled to attend classes, course-related information sessions, supervised study sessions, mandatory and supervised work-based training and examinations.
School provider	A NSW government school or registered non-government school approved by NESAs, the Designated State Authority, to deliver courses to overseas students in NSW.
School system provider	An entity that has been approved to deliver courses to overseas students enrolled at schools owned and operated by the entity or for which the entity is the recognised school authority for the purpose of the relevant legislation.
Study period	A discrete period of study within a course, namely term, semester, trimester, short course of similar or lesser duration, or as otherwise defined by the registered provider.

Suspension of enrolment	To suspend enrolment means to temporarily put studies on hold. Providers do this by notifying the Australian Government Department of Education via PRISMS of the suspension of enrolment. A student may request a temporary suspension to his or her enrolment on the grounds of compassionate or compelling circumstances. Providers may suspend an enrolment due to disciplinary reasons.
Transfer (between registered providers)	Students may seek to transfer from one registered provider to another. Registered providers may not enrol transferring students until after the first six months of the first registered school sector course except under conditions indicated in 3.10 of the Guidelines.
Tuition Protection Service (TPS)	A system introduced in 2012 to ensure that overseas students receive the course they have paid for. If a provider is unable to meet its teaching obligations to a student (for any reason whatever) one of the other providers in the scheme may take over teaching the student or the student may be reimbursed for any tuition fees already paid. Providers must pay Tuition Protection Service levies each calendar year.
Unit	A discrete component of study within a course; the term includes 'subject' and 'module'.

12 Acronyms and abbreviations

AQF	Australian Qualifications Framework
CoE	Confirmation of Enrolment
CRICOS	Commonwealth Register of Institutions and Courses for Overseas Students
DHA	Department of Home Affairs (subsumed Department of Immigration and Border Protection in December 2017)
ELICOS	English Language Intensive Courses for Overseas Students
ESOS Act	<i>Education Services for Overseas Students Act 2000</i>
NEAS	National ELT (English Language Teaching) Accreditation Scheme
NESA	NSW Education Standards Authority
PRISMS	Provider Registration and International Students Management System
RTO	Registered Training Organisation
The Secretary	The Secretary of the Australian Government Department of Education.
TESOL	Teachers of English to Speakers of Other Languages
TPS	Tuition Protection Service
VET	Vocational Education and Training