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Condition 8201(2) lists specific situations in which the holder of a visa to which 8201 is attached is in effect “exempt” from the “study limitation” condition as set out in 8201(1).

The 3 month study limitation applies in all other situations:

### Example:

For Student Guardians:

- Condition 8201 does not apply to Subclass 580 (Student Guardian) visa holders granted on or after 24 March 2012, or to Subclass 590 (Student Guardian) visa holders (see condition 8201(2) table item (1)). This means that such visa holders are permitted to undertake an ELICOS course of less than 20 hours a week.
- However, condition 8201 is breached if the Subclass 590 or Subclass 580 visa holder:
  - undertakes ELICOS studies for 20 or more hours a week for more than 3 months or
  - undertakes any other studies or training (irrespective of how many hours a week) for more than 3 months.

For more information, see PAM3: Sch2 Visa 590 - Student Guardian - Condition 8201 (Study limitations).

## Study or training

3 months study is equivalent to 13 weeks of studying, excluding holiday, vacations and orientation periods, but including:

- weekends
- public holidays
- study vacation periods prior to start of exam periods and
- exam periods (up until the student's last examination day). As exam timetables are not usually published till later in a semester, realistically students need to allow for the whole exam period when considering their visa options.

For those non-Student visa applicants to whom condition 8201 applies, because the length of proposed study is relevant in assessing any Schedule 2 “genuine intention” criteria, it is generally not appropriate for such persons to be granted non-Student visas in order to undertake more than 3 months study.

## More than 3 months study or training

Persons seeking longer-term entry to Australia for study should be advised to apply upfront for a Student visa. Among other reasons, this is because, if they enter Australia holding other than a Student visa there may be - in the form of specific Schedule 2 criteria - restrictions on their being granted a further visa in Australia to study.

## Distance learning

In regard to distance learning, the policy view is as follows:

- Minors accompanying their parents on an extended holiday in Australia and whose education needs are being met by distance learning or home-based schooling are not, for condition 8201(1) purposes, regarded as engaging in studies
- Adults continuing with online study at an institution located outside Australia are not regarded as engaging in studies
- Adults continuing with online study at an institution in Australia in other than a registered course (and therefore ineligible for a Student visa) are not regarded as engaging in study
- Adults enrolled in distance education with an institution in Australia are regarded as studying (and should be on a Student visa) if they are undertaking a registered course of 3 months or more.

## Young children attending school

If officers consider it appropriate, non-Student visa applicants to whom condition 8201 will apply are to give full details of any intention to attend kindergarten, pre-school, primary or secondary school in Australia, so that officers may establish whether the applicant:

- intends to comply with condition 8201 and, it follows
- satisfies any relevant “genuine intention” criterion (for the FA-600 Visitor visa, see GenGuideH - Visitor visas - Visa application and related procedures)

Provided officers are satisfied that attendance at a school in Australia would not be in breach of condition 8201, the applicant may be considered as satisfying any “genuineness” criterion. An applicant who intends to attend primary or secondary school for more than 3 months, however, should be considered not to satisfy that criterion and be advised to apply for a more appropriate visa.

There are no limits on dependants undertaking pre-compulsory schooling, such as pre-school (or kindergarten in some states), as this does not constitute ‘study’.

## “Rights of the child”

Australia is a signatory to the UN Convention on the Rights of Children, one of which is the right to an education. Home Affairs’ policy requirement that minors wishing to study in Australia apply for a Student visa does not contravene Australia’s obligations under the UN Convention; there is no obligation on Australia giving minors visiting Australia an entitlement to attend school during their stay. The minor is not being denied an education, they are merely being required to apply for the appropriate visa if they wish to study in Australia.

The onus is solely on the minor’s parent(s) (or legal guardian(s)) to enrol the minor at school while visiting Australia. It is not Home Affairs’ responsibility to ensure that minors visiting Australia are enrolled in an educational institution. However, if the minor is of school age and has spent excessive amounts of time in Australia without

studying, officers should carefully assess, for both the minor and their parent(s), any requests for further visas in the context of GTE.

#### 4.7.3.6. Condition 8202- Enrolment/course change (students)

##### About 8202

Condition [8202](#) (attendance and course progress) is mandatory for all student visas granted to primary applicants.

##### Condition 8202 and ESOS students

In general terms condition 8202 requires students to:

- be enrolled in a full time, registered course;
- achieve satisfactory course progress;
- achieve satisfactory course attendance; and
- maintain enrolment in a course at the same level or higher AQF level for which they obtained the visa: change from AQF 10 to 9 is permitted but change from an AQF course to a non-AQF course is **not** permitted.

##### Condition 8202 and non-ESOS students

Three categories of student must be enrolled in a full-time course of study or training:

- secondary exchange students
- students approved under a scholarship or an exchange scheme
- Foreign Affairs/ Defence students.

##### Breach of condition 8202 under ESOS

On 1 July 2012, section 19 of the ESOS Act was changed to require registered education providers to give particulars of any breach by an accepted student of a prescribed condition of a student visa as soon as practicable after the breach occurs, even if the student has ceased to be an accepted student of the provider (the condition prescribed under the [Education Services for Overseas Students Regulations 2001](#) is condition [8202](#)).

From that date, if an education provider certifies a student visa holder in accordance with section 19 of the ESOS Act as having failed to achieve satisfactory course progress or attendance, the student will be in breach of condition [8202](#) even if they have ceased to be an accepted student of the education provider prior to the certification.

##### Satisfying course requirements

If a student does not maintain studies during the academic year their visa may be subject to cancellation.

## **If the student falls ill**

Students who fall ill during semesters should apply to their education provider for permission to take leave from their course. If the student's leave is not approved and they are absent for more than 20% of the scheduled hours for their course they may be subject to visa cancellation procedures.

## **Students deferring or suspending their course**

Under standard 9 of the National Code, registered education providers may only enable students to defer or temporarily suspend their studies, including granting a leave of absence, during the course through formal agreement in certain limited circumstances. Students who fall ill and are expected to require leave from their studies for a significant period should apply to their education provider to defer their studies. If during this period of deferral the student continues to remain enrolled, they remain compliant with condition [8202](#).

As specified in regulations [2.43\(1C\)](#) and [2.43\(1D\)](#), a student visa may be subject to visa cancellation under section [116\(1\)\(fa\)](#) if the education provider has deferred/suspended the student's study for any of the following 4 reasons:

- the conduct of the student
- the student deferred or suspended their studies for reasons other than compassionate or compelling circumstances
- the compassionate or compelling circumstances which warranted the deferral/suspension of studies have ceased to exist
- the deferral/suspension was based on fraudulent evidence or document/s given to the education provider.

For policy and procedures, refer to [Visa cancellation instructions - General visa cancellation powers \(s109, s116, s128, s134B and s140\)](#) – in particular Cancellation of visas on specified grounds.

## **If the student needs to leave Australia for compassionate reasons**

Students who need to leave Australia for compassionate reasons during semesters should apply to their education provider for leave from their course.

If the deferral/suspension is approved, the education provider reports this approval via PRISMS to Home Affairs. If during this period of deferral the student continues to remain enrolled, they remain compliant with condition [8202](#).

Family members of students deferring or suspending studies for up to 6 months are permitted to stay in Australia during this period (once the deferral/suspension has been approved).

## **Research/study outside Australia**

Approved research/fieldwork outside Australia as part of a course is permissible, provided the primary applicant remains enrolled for the duration of the fieldwork/research.

Family unit members of the primary applicant can remain in Australia while the primary applicant is conducting research/fieldwork outside Australia.

### **Students on exchange programs in a third country**

Student visa holders in Australia are allowed to participate in an international exchange program provided:

- the study or training to be undertaken is an assessable part of the student's full-time course in Australia and has been approved as part of the registration process for the course; and
- the exchange is for no more than 12 months; and
- family members who are in Australia accompany the student if the exchange is for more than 6 months.

While on exchange, the student must maintain full-time study and comply with conditions imposed on their visa.

### **Attendance requirements under the National Code**

Condition [8202](#) requires students maintain satisfactory attendance. Under standard 8 of the National Code, education providers are required to monitor students' attendance where relevant:

Higher Education students' attendance is not required to be monitored.

ELICOS and Schools students are reported if their attendance falls below 80%, unless the provider determines that:

- the student's lack of attendance is due to compelling and compassionate circumstances and
- the student is attending at least 70% of the course

and this is set out in the provider's policies and procedures.

VET and non-award students are reported if their attendance falls below 80%, unless the provider has determined that:

- the student is maintaining satisfactory academic progress
- the student is attending at least 70% of their course

and this is set out in the provider's policies and procedures.

VET education institutions that implement the approved course progress policy are exempt from monitoring attendance.

Students may be taken to have satisfied the attendance requirements of condition [8202](#) if they have not been reported by their education provider for a breach of attendance requirements. The presence of student course variation 8 (SCV 8) on a student's PRISMS record is evidence of being in breach of attendance requirements. For the breach of condition [8202](#) to be relevant to assessing substantial non-

compliance, the breach of attendance would have to have occurred during the validity period of the last student visa held.

Displaced students (that is, students who are no longer enrolled in a course because the institution at which they were enrolled has ceased operations) are not required to provide evidence of attendance.

### Course progress

Condition [8202](#) requires that students achieve course progress that is certified by their education provider to be at least satisfactory. The absence of student course variation 10 (SCV 10) advice means the student visa holder is taken to be compliant with this condition.

The presence of SCV 10 on a student's PRISMS record is evidence of being in breach of attendance requirements. For the breach of condition [8202](#) to be relevant to assessing substantial non-compliance, the breach of attendance must have occurred during the visa period of the last student visa held.

Students applying for a further visa are not ordinarily required to provide transcripts of their academic results.

When assessing whether condition [8202](#) has been complied with, officers should not make their own judgments about a student's academic record or course progress.

### Student visa holders in Australia and permanent visa applications

If a student visa holder completes their course of study and applies in Australia for a permanent visa while they still hold their student visa, they are likely to be granted a [Bridging A visa](#) (BVA) in association with the application. The BVA, however, would not come into effect until the student visa ceases. Therefore, the applicant would remain subject to student visa conditions until such a time as their student visa ceases, or they are granted the permanent visa.

The following guidelines provide advice for officers in relation to dealing with students who remain on a student visa while awaiting an outcome of a migration application. The general principle is that:

- students who complete the full course of study for which they were granted a student visa will remain on a student visa
- visa cancellation and subsequent bridging visa applications should be considered for students who do not complete the full course of studies for which they were granted the visa.

The following 2 scenarios illustrate the policy approach:

**Scenario 1:** If the student finishes the principal course for which they were granted the visa as scheduled, or earlier than planned, and applies for a permanent visa:

- the student to be allowed to remain on student visa, even if not intending to undertake any further studies

- if an SCV is issued for early completion, the visa should not be cancelled.

**Scenario 2:** If the student does not attempt the principal course, but applies for a permanent visa after only completing a preliminary course, once the SCV brings the student to notice:

- if the student intends continuing studies, they can be allowed to remain on their student visa but
- if the student does not continue studies, the student visa may be cancelled because the student no longer continues to be a person who would satisfy the grant of a student visa (condition 8516) – refer to [Visa cancellation instructions - General visa cancellation powers \(s109, s116, s128, s134B and s140\)](#). In this instance, the student and dependants can apply for a Bridging E visa (BVE). For policy and procedure on granting work rights to BVE holders in such cases, refer to [Compliance and Case Resolution – Program visas - Bridging E visas](#).

### Changing courses - transferring to a lower AQF level or non-AQF course

Students must maintain enrolment in a course at the same level or higher AQF level for which they were granted the visa. Transferring to a lower AQF level course would result in a breach of condition [8202](#). However, a change from an AQF 10 to 9 course is permitted.

Note:

- For a list of AQF qualification types, refer to the Australian Qualifications Framework website.
- Although Years 11 and 12 do not have an AQF Level as such, they have a qualification type of Senior Secondary Certificate of Education.

If a student changes from an AQF course to a non-AQF course, this would also result in a breach of condition [8202](#).

A breach of condition [8202](#) may result in the student's visa being considered for cancellation.

If students intend to transfer to a lower AQF level course, they must apply for another student visa and must not commence the lower level course until they have been granted a new student visa.

### Examples

If a student transfers from the higher level Bachelor degree (AQF level 7) to a lower Certificate III (AQF level 3) course, this would result in a breach of condition [8202](#) and the student's visa may be considered for cancellation.

If a student transfers from Year 12 studies (recognised in the AQF as a Senior Secondary Certificate of Education qualification type) to a non-AQF course, such as a Foundation course, this would breach condition [8202](#) and the visa may be considered for cancellation.

Conversely, transferring from a non-AQF course to an AQF course would not result in a breach of condition [8202](#). For example, a non-award university student on a study abroad program would be permitted to transfer to a Bachelor's degree.

Changing from an AQF 10 to 9 is permitted – for example transferring from a higher AQF 10 (Doctoral Degree) to the lower AQF 9 (Masters Degree).

For more information about AQF levels, refer to the Australian Qualifications Framework website.

### **Changing course - varying a package or transferring to a package of courses**

If a student wants to amend the courses in their package of courses or wants to change to a package of courses without applying for a new student visa they must:

- have commenced studying in Australia; and
- remain enrolled in their principal course; and
- will commence their principal course before their visa expires; and
- continue meet the requirements of Condition 8202.

If the student has an extended course gap that may lead to their visa being cancelled, the student may choose to enrol in a short course to fill the gap. The course can be in any sector, for example, ELICOS or vocational education and training, or higher education.

### **Changing courses – transfer at same AQF level course**

If a Subclass [500](#) (Student) holder transfers between providers to a course at the same AQF level, this would not breach condition [8202](#). Limitation on transferring between CRICOS-registered providers apply however and is governed by Standard 7 of the National Code.

### **Completing a course early**

As a general rule, students are granted a visa for the duration of the course for which they have enrolled. If a student subsequently changes their course at the same level but of a shorter duration than that for which the visa was granted, the student should be counselled that:

- although they do not have to make a new visa application, when they have completed the shorter course they must, within 28 days, either:
  - leave Australia or
  - if they wish to enrol in a further course of study, notify Home Affairs and apply for a new student visa as required and
- if they do neither, Home Affairs might commence visa cancellation action.

Student visa holders who complete their principal course (for which the visa was granted) earlier than the date listed on the CoE will be in breach of visa condition [8202](#). The CoE will cease in PRISMS and the student visa holder will be unenrolled.

In these circumstances, the student is expected to either depart or apply for a new visa if they plan to stay in Australia.

Students who complete their principal course in the allocated time can remain in Australia for several months until their visa expires (generally 15 March of the following year). For this reason, Home Affairs considers students who complete their course (for which the visa was granted) earlier than planned are low-risk and are not using the student visa program to circumvent the migration program with the intent to work. Home Affairs would not consider visa cancellation for breaching visa condition [8202](#) within three months of early course completion. This is designed so that students who comply with their visa conditions are not penalised for finishing their course early, for reasons such as undertaking summer courses or Recognition of Prior Learning.

#### **4.7.3.7. Condition 8203 and 8204 - Iranian students and family members**

##### **Applicants to whom condition 8203 applies**

Condition [8203](#) states that the holder 'must not change ... course of study, or thesis or research topic, unless approval is given ... after an assessment from the competent Australian authorities'.

Condition [8203](#) is mandatory for all Iranian citizen students granted a student visa on the basis of enrolment in a higher education or postgraduate research course.

To comply with condition [8203](#) the visa holder cannot change their course of study, thesis or research topic until approval is provided.

##### **Applicants to whom condition 8204 applies**

Condition [8204](#) states that the holder 'must not undertake or change a course of study or research, or thesis or research topic for ... a graduate certificate, a graduate diploma, a masters degree or a doctorate ... or ... any ... prerequisite to a ... masters degree or a doctorate; unless **approval** is given by the Minister'.

Condition 8204 attaches by law to the visas of all Iranian citizens:

- students granted a Subclass [500](#) (Student) visa on the basis of enrolment in a course other than a higher education or postgraduate research course; and
- all family unit members who are Iranian citizens (irrespective of the citizenship of the student, or the type of course they are studying)

To comply with condition 8204 visa holders cannot undertake their course of study, thesis or research topic until approval is provided.

##### **How to request to change course if 8203/8204 applies**

A request by a student for approval to undertake or change a course of study, thesis or research topic in accordance with condition [8203/8204](#) requirements may be made either:

- as part of a new Subclass visa [500](#) application or
- by completing and submitting a form 1221 (Additional personal particulars information).

The student is not required to apply for a new visa if the proposed course is of the same duration as (or shorter than) the current course, unless the student is required to apply for a new visa to comply with condition 8202.

If the student does not require a new student visa application, they must:

- complete a form 1221
- mail it to [adelaide.studentcentre@homeaffairs.gov.au](mailto:adelaide.studentcentre@homeaffairs.gov.au) with the title “8203/8204 assessment.”

The student must not change the course until approval is granted.

### **Manual recording of 8203 and 8204 conditions**

Officers must ensure that either condition [8203](#) or [8204](#) is recorded for all applications meeting the criteria. ICSE will not automatically record the condition, but it will be attached by operation of law. It is essential that the condition is recorded in ICSE so that visa holders are aware (by notification, or checking VEVO) that condition [8203](#) or [8204](#) applies to them.

#### **4.7.3.8. Condition 8303- Not be disruptive**

Condition [8303](#) (must not become involved in disruptive activities) is discretionary for all student visa grants (as either a primary or secondary applicant). For policy, refer to [Sch8/8303 - Not become involved in disruptive activities](#).

#### **4.7.3.9. Condition 8501 – Maintain health insurance**

##### **About 8501**

Condition [8501](#) (maintain health insurance) is mandatory for all student visa grants (as either a primary or secondary applicant).

Students and family unit members must maintain adequate arrangements for health insurance during their period of intended stay in Australia by payment of the Overseas Student Health Cover).

For more information on other acceptable health arrangements for student visa holders, refer to [Health insurance](#). For details on condition [8501](#), refer to [Sch8/8501 - Maintain health insurance](#).

### **Student visa holders who have applied for a permanent visa in Australia**

Student visa holders who have applied for a permanent visa in Australia are issued with a Medicare card that is valid until a final decision is made on their application. If the applicant remains on a student visa while their permanent visa application is being processed they must continue to abide by the visa conditions attached to their

student visa. This includes maintaining health insurance. Applicants should be informed of this requirement.

#### **4.7.3.10. Condition 8516 - Continue to satisfy criteria for visa grant**

##### **About condition 8516**

Condition 8516 (continue to satisfy the primary or secondary criteria) is mandatory for all student visa grants (as either a primary or secondary applicant).

Condition 8516 requires the visa holder to continue to satisfy the primary or secondary criteria (as applicable) that permitted visa grant. When imposed on a visa granted to the student, it ensures that the student does not provide evidence to meet requirements at initial visa grant, only to change these arrangements after arrival in order to avoid visa requirements.

##### **Non-compliance with condition 8516**

A visa holder may be considered not to comply with this condition if there is evidence to support the person's inability to continue to satisfy criteria. This may be due to a significant change in circumstances, which may or may not be outside the control of the student and may include relationship breakdown, inability to access funds, or changes in enrolment shortly after arrival to avoid the requirement to provide English language requirements.

#### **4.7.3.11. Conditions 8517 and 8518 - Maintain education of school-age dependants**

##### **About conditions 8517 and 8518**

Visa conditions 8517 and 8518 require that adequate arrangements for education be maintained.

Condition 8517 (maintain adequate arrangements for education of school-age dependants) is mandatory for all student visas granted to primary applicants. It states that the holder must maintain adequate arrangements for the schooling of their school-age dependants who are in Australia for more than 3 months as holder of a student visa.

Condition 8518 (adequate arrangements for education are maintained) is mandatory for all student visas granted to secondary applicants who are under 18 at time of visa grant. It states that adequate arrangements must be maintained for the education of the holder while they are in Australia.

##### **Compliance with 8517/8518**

'**School-age dependant**' is defined in regulation 1.03 to as a member of the family unit who has turned 5, but has not turned 18.















- [Migration Act 1958](#)
- [Migration \(Visa Application\) Charge Act 1997](#)
- [Direction No. 69 – Assessing the Genuine Temporary Entrant Criterion for Student Visa and Student Guardian Visa Applications](#)

## **8. Consultation**

### **8.1. Internal consultation**

The following internal stakeholders were consulted in the development of this Procedural Instruction:

- Student Program Network
- Records Management Section
- International Education Policy Section
- Integrity and Professional Standards Branch

### **8.2. External consultation**

The following external stakeholders were consulted in the development of this Procedural Instruction:

- Nil