

# IMMIGRATION NEWS

(Volume 53)

Two Year Study Requirement Update

Released 1st November 2007



**Dear Students**

**Welcome to the latest edition of IMMIGRATION NEWS which is a service brought to you by Australian Immigration Law Services.**

**In this edition we will cover the new policy guidelines released on the 1<sup>st</sup> of November 2007 regarding the 2 Year Study requirement. Most of the information provided below comes directly from Procedural Advice Manual (PAM's) which is effectively DIAC's official policy document.**

**These guidelines came into effect on the 31<sup>st</sup> October 2007 so those of you who took my advice to lodge your PR applications before then (if you could) will not be affected by these rules.**

## **ABOUT REGULATION 1.15F**

### **1 PURPOSE**

Regulation [1.15F](#) is the law which prescribes the definition of the [2 year study requirement](#).

DIAC uses this definition in order to determine whether a student (or non student) who has for a [General Skilled Migration visa](#) (GSM visa) satisfies the laws for that GSM visa and in allocating points under the [Schedule 6B](#) general points test:

[Part 6B.6](#) Australian Educational Qualifications

[Part 6B.9](#) Study in regional Australia or a low-population growth metropolitan area qualifications

[Part 6B.10](#) Partner skill qualifications

### **2 TWO ELEMENTS TO THE REQUIREMENT**

The two year study requirement has two equally important and related elements.

The first is that students have completed at least 2 academic years study in Australia,

giving them the benefit of having completed a significant amount of study at a local institution and being awarded a qualification.

The second component is that the 16 calendar month benchmark for the minimum period that students need to be physically in Australia while studying. According to DIAC this allows you an opportunity to develop a familiarity with Australian conditions and culture, thereby improving your settlement prospects and chances of securing skilled employment.

It's DIAC's theory that these elements support the broader policy objective of you retaining the skills learnt in Australia you can contribute positively to the Australian economy.

### **3 STUDY MUST HAVE RESULTED IN A DEGREE, DIPLOMA OR TRADE QUALIFICATION**

#### *3.1 What is a degree, diploma or trade qualification?*

Only study that has resulted in completion of a degree, diploma or trade qualification can be counted towards meeting the two year study requirement.

Note in particular that degree includes a bachelor and any higher degree and diploma includes associate and advanced diplomas.

This means a GSM applicant who has completed:

- a Certificate II in any discipline or
- a Certificate IV in a discipline other than a trade, for example a Certificate IV in Business Management or
- a Graduate Certificate

in Australia cannot use that study to meet the two year study requirement (The list above is illustrative, not exhaustive).

#### *3.2 Study not resulting in a degree, diploma or trade qualification cannot be considered*

Students who undertook an enabling course or bridging programs as a prerequisite to commencing their degree, diploma or trade qualification cannot count that course or program towards meeting the two year study requirement.

Additional subjects undertaken that do not contribute to the award of a degree, diploma or trade qualification also do not count towards meeting the two year study requirement.

#### *3.3 Changing courses*

If a student is enrolled in one course of study and after a semester changed courses, the original study counts only if it resulted in the award of a qualification.

For example, if they enrolled in a Bachelor of Nursing and after a semester changed and enrolled in a Bachelor of Science, but were given credit for their Nursing studies, that semester of study counts. If, however, they enrolled in a Bachelor of Nursing and after a semester changed and enrolled in a Bachelor of Commerce and no credit was given for the initial study, that semester of study does not count.

### *3.4 Changing institutions*

All study that meets the requirements in regulations and results in the award of a degree, diploma or trade qualification counts towards meeting the two year study requirement.

This means that if a student enrolled in a Certificate IV with one provider and after 6 months relocated and completed their Certificate IV with another provider, who gave them credit for their original 6 months of study, the study undertaken with both providers' counts towards meeting the two year study requirement. This has been a thoughtful and considerate change compared to the rule before the 1<sup>st</sup> September 2007 where you could not use that time if you did not finish the qualification.

## **4 MAY MEET REQUIREMENT AS A RESULT OF MORE THAN ONE COURSE**

The two year study requirement does not require students to have completed a single course of study of two years duration. They may use study undertaken to complete more than one degree, diploma or trade qualification to meet the 2 year study requirement.

In this instance, the courses of study need not have been undertaken within a 24 month period. It is possible to have a break between completing the first course and commencing the second. Technically you could have 10 years between one course and then come back to Australia and complete another course and then add the time together.

## **5 MUST HAVE BEEN A REGISTERED COURSE/S**

It is a requirement of the Education Services for Overseas Students (ESOS) Act 2000 that only registered providers can offer education services to persons in Australia on a Student visa. Accordingly, only study of a course registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) can be used to meet the two year study requirement (as Student visas are granted in respect of CRICOS-registered courses only).

A person who enrolls in a registered course that is subsequently deregistered during their course of study will need to make arrangements to change institutions to complete their degree, diploma or trade qualification with a registered provider. In this instance, all study that results in the award will count for GSM visa purposes - see [section 3.4](#)

## [Changing institutions.](#)

If a registered course is deregistered and the person continues with the course of study, this study will not meet the requirements of regulation [1.15F\(1\)\(a\)](#) and therefore does not count towards meeting the two year study requirement. The only exception is where a course is deregistered less than two months before the person was due to complete the course, in which case it may be unreasonable to expect them to change providers.

## 6 MINIMUM OF 16 CALENDAR MONTHS

While students can quite legitimately compress the amount of time taken to complete a course by enrolling in summer or winter semesters or by enrolling at more than 100% of a full-time load, the two year study requirement cannot be met in less than 16 calendar months. DIAC has in the past even used a couple of days short of being 16 months as an excuse to reject applications.

DIAC believes that you must have been physically present in Australia whilst undertaking your studies aims to ensure that have the opportunity to forge links with communities, prospective employers and to become more familiar generally, with living in Australia. Obviously being a few days short of 16 months would not make a difference either way to this notion but I guess they have to draw the line in the sand somewhere.

It is important to note that for the purposes of calculating length of study, if a student undertook two courses of study concurrently, the period of overlap can only be counted once. For example, if you had only one subject to complete their first qualification and that took 8 weeks, so you began studying towards their next qualification at the same, that 8 week period only counts for 8 weeks, not 16 weeks (ie 8 weeks towards one course and 8 weeks towards another).

## 7 TWO ACADEMIC YEARS

### *7.1 Period of actual study*

In considering whether a student has completed at least two academic years study, students need to be aware that the intention is that you have successfully completed the equivalent of 2 years study at 100% of the full-time load, without benefit from credits, recognition of prior learning (RPL) and/or recognition of work experience that would allow a reduction in the amount of study undertaken.

The first important consideration is referring to the standard duration of your course/s as registered on CRICOS.

In the simplest cases, where a person does not have any RPL:

- if they are using a single course to meet the two year study requirement, the course

must have a registered duration of at least 92 weeks or

- if they are using more than one course to meet the two year study requirement, the courses must have a total registered duration of at least 92 weeks.

### *7.2 RPL and university studies*

Where a student enrolled in a university course and received credit from earlier studies, you need compare the standard duration of the course registered on CRICOS and the number of credit points that were necessary to complete the full course, to determine how many credit points the applicant needed to successfully complete in two academic years in that course.

For example, if a student enrolled in a Bachelor course with a standard duration of 3 years that comprised 48 credit points, they would have completed two academic years study when they completed 32 credit points.

### *7.3 RPL and vocational education and training (VET)*

Where an applicant enrolled in a VET course and received credit from earlier studies, you need compare the standard duration of the course registered on CRICOS and the Confirmation of Enrolment to see how an institution considered the reduction in the amount of study would impact upon the duration of the enrolment.

### *7.4 Study load cannot be artificially extended*

As two years academic study is a measure of the amount of study successfully completed, not the length of time taken to complete the study, students cannot artificially extend their study.

For example, students who enrolled at less than 100% of a full-time load and, as a consequence, took 2 years to complete a course with a registered duration of 78 weeks, have not completed two academic years study. In this case you would have only completed only 1.5 years academic study. You may have extended the duration of your studies but not the amount of study undertaken.

Similarly, students who, as a result of RPL, fall one subject short of completing two academic years cannot fail a subject with the hope of counting the same subject twice. Only study successfully completed counts towards the two academic years study. In the same way that an educational institution does not give credit for failed subjects, they do not count for GSM visa purposes.

Recently students have read about my theory of calculating how many weeks of study they have completed by dividing the total CRICOS registered period by the amount of units in the course.

On the 31<sup>st</sup> of October 2007 the Skilled Migration Policy Section of the DIAC's

National Office released this e-mail in response to an enquiry about this theory.

*“Your are correct in your assumption that a program, or programmes, of study would be accepted if you have completed a total of at least 92 weeks because of credit for prior learning. For example, a student enrolled in a 104-week CRICOS Registered program of study comprising 16 units (6.5 weeks per unit) would now be eligible to claim one subject exemption in that course (ie. 15 units x 6.5 weeks = 97.5 weeks). However any further subject exemptions would result in that student falling below the 92 week workload required to meet the two year study requirement.” .....*

*H. Harcourt*

So there you have it. It's not written in their official policy document (probably because they didn't think of it when it was drafted) but the logic is sound and now confirmed by the policy unit directly.

## **8 QUALIFICATION MUST HAVE BEEN IN ENGLISH**

### *8.1 Evidence*

The evidence of having an Australian qualification itself can be accepted as evidence that the course was in English unless the qualification included foreign language courses/units. Anecdotal evidence suggests that some overseas students undertake one or two foreign language units in their first year and then drop the foreign language component in the second and third years of their qualification.

### *8.2 Foreign language units*

Under policy, if the foreign language component of the qualification is incidental to the award of the qualification, GSM applicants can be considered as meeting the requirement that all instruction was conducted in English. An instance of this is where an overseas student studies one/two foreign languages as first year subjects only. In this situation, the academic transcript would be required to determine that the applicant satisfies this requirement. An acceptable measure is that in the course of two academic years the applicant would have undertaken no more than 10% of their studies in a language other than English.

### *8.3 Interpreting & translating courses*

Currently, some overseas students undertake and complete advanced qualifications in Interpreting and Translating in Australia. To satisfy the requirements for the award of this qualification, students are required to undertake courses/units in which some instruction may be conducted in a language other than English.

In this situation, a student must submit evidence that the instruction in such courses/units was to acquire translating and/or interpreting skills rather than a

qualification in a language other than English. If it can be established that the qualification relates to the skills of translating and/or interpreting with English being a key aspect of the qualification, the applicant can be considered as satisfying this requirement.

In establishing whether a course is an advanced qualification in Interpreting and/or Translating, the following criteria should be applied:

- the minimum entrance requirement is an average IELTS score of 6.5, with a minimum of 6 in each of the four components of the test and
- the resulting qualification is at the NAATI Professional Level.

## **9 STUDY MUST HAVE BEEN LAWFULLY UNDERTAKEN IN AUSTRALIA**

### *9.1 Reg. 1.15F(1)(e)*

Study will only count towards the two year study requirement if it was:

- undertaken in Australia and
- undertaken while holding a visa with appropriate study rights.

### *9.2 Online study*

It is intended that study be undertaken on campus in Australia. While changes to the ESOS Act in July 2007 mean that overseas students can study up to 25% of their course online, students must have been physically present in Australia for study to count towards meeting the two year study requirement.

If a student took advantage of the ability to study online to return home or travel, that time will not be counted as it does not contribute to the two objectives of the two year study requirement.

### *9.3 Studying overseas*

Study undertaken at an overseas campus of an Australian educational institution also does not count. Although the applicant has the benefit of a local award, they did not have the advantage of being in Australia whilst studying.

Similarly study undertaken overseas as part of an exchange program does not count as during this period the applicant did not have the benefit of being in Australia and being exposed to local culture and societal norms.

However, if an applicant undertook some study overseas but nevertheless completed at least two academic years in no less than 16 calendar months while in Australia, they can still meet the two year study requirement. For example, an applicant who undertook three year, six semester Bachelor degree in the following pattern:

Semester 1	offshore	Semester 2	onshore
Semester 3	onshore	Semester 4	onshore
Semester 5	offshore	Semester 6	onshore

would have completed two academic years study in Australia.

#### *9.4 Visa must have allowed study*

Study undertaken in Australia will be considered towards meeting the two year study requirement only if, throughout the relevant period, the applicant held a visa that allowed them to study. If a student breached the conditions of their visa by studying when they had no study rights, or by studying in excess of the amount of study allowed, that study cannot be counted.

For example, if a Working Holiday ([417](#)) visa holder undertook a six month course, as their visa allows only four months study (condition [8548](#) applies to visas [417](#)), that six months could not be used to meet the two year study requirement.

#### **Next Seminar?**

I am sorry that we do not have time to respond to general e-mail questions but we do appreciate the feedback that many of you provide.

Our next Seminar is on the Friday the 9<sup>th</sup> November at UTS at 2.00 pm (as usual), Lecture Theatre 4.11. You can find this easily by entering the Tower building at street level and then it is to the left near the IT student support section. Level 4 is actually street level.

I am sorry that we do not have time to respond to general e-mail questions but we do appreciate the feedback that many of you provide. You may ask as many questions as you like during the seminar.

#### **Next Edition?**

In the next volume I will provide some interesting reading of the unfolding saga a Sydney International College of Business. We received a response from the manager and further discovered that both the government and the school seem to be keeping students in the dark about why the schools CRICOS registration was suspended.

Stay Tuned!

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