



*Education Services for Overseas Students Act 2000*

**National Code of Practice for Providers of Education and Training to Overseas Students 2018**

I, Simon Birmingham, Minister for Education and Training, under subsection 33(1) of the *Education Services for Overseas Students Act 2000*, make the attached National Code of Practice for Providers of Education and Training to Overseas Students 2018.

Dated: 4 September 2017

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Simon Birmingham  
Minister for Education and Training

**1 NAME**

The National Code of Practice for Providers of Education and Training to Overseas Students 2018 may be cited as the *National Code 2018*.

**2 REPEAL**

The National Code 2018 repeals and replaces the *National Code of Practice for Providers of Education and Training to Overseas Students 2017* (F2017L00403) (National Code 2017).

**3 COMMENCEMENT**

The National Code 2018 commences on 1 January 2018.

**4 AUTHORITY**

The National Code 2018 is made under subsection 33(1) of the *Education Services for Overseas Students Act 2000*.

**5 SAVINGS AND TRANSITIONAL**

Applications for registration or renewal of registration submitted by providers on or before 31 December 2017 will be assessed under the National Code 2017 (F2017L00403).

Applications for registration or renewal of registration submitted by providers on or from 1 January 2018 will be assessed under the National Code 2018.

Currently registered providers must be compliant with the National Code 2018 from its commencement on 1 January 2018.

For enforcement action undertaken by an ESOS agency on or before 31 December 2017, the National Code 2017 (F2017L00403) will apply.

For enforcement action undertaken by an ESOS agency on or after 1 January 2018, the National Code 2018 will apply.

For any student complaint or appeal initiated on or before 31 December 2017, the National Code 2017 (F2017L00403) will apply.

For any student complaint or appeal initiated on or after 1 January 2018, the National Code 2018 will apply.

# **National Code of Practice for Providers of Education and Training to Overseas Students 2018**

(National Code 2018)

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# Part A – The Education Services for Overseas Students Framework

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## 1 Promoting Australia’s international education industry

Australia offers a high-quality education experience to overseas students across all sectors, ranging from schools through to English language and foundation programs, to vocational education and training and higher education.

By providing a fair and accessible system that supports overseas students, Australia has gained an enviable reputation as a popular study destination. The Education Services for Overseas Students (ESOS) legislation is a robust framework that protects and enhances the experiences of overseas students in Australia.

International education can transform individuals, widening their intellectual horizons, opening them to new ideas and experiences, and extending their friendships. Their experiences, in turn, enrich Australian society and life.

The Australian Government acknowledges and values the contribution of overseas students who come to Australia from all over the world to study, live and work. The social and economic benefits of international education to individuals, institutions and the wider community, both in Australia and abroad, are well documented. In turn, Australia offers overseas students an enriching and high quality learning experience in a diverse cultural environment, helping to prepare them for a rewarding future. Australia’s natural assets, relaxed lifestyle and many tourist attractions make it one of the most appealing destinations in the world.

The benefits of international education and training depend on the quality of the courses and services provided to overseas students, and on public confidence in the integrity and quality of the international education sector.

The reputation and quality of Australia’s courses and international education services underpin long-term benefits for trade and foreign relations and are imperative to growth in trade in education services. The ESOS legislative framework is designed to uphold Australia’s high standards for, and commitment to, international education through a consistent national approach, and to support the integrity of the student visa system.

## 2 An overview of the ESOS legislative framework

The *Education Services for Overseas Students Act 2000* (ESOS Act) and related legislation are designed to protect the interests of overseas students coming to Australia on student visas. The legislation aims to protect and enhance Australia’s reputation for quality education, to provide tuition protection and support the integrity of the student visa program.

The ESOS legislative framework is complemented by the *Migration Act 1958* (Migration Act) and *Migration Regulations 1994* (Migration Regulations), the *Tertiary Education Quality and Standards Agency Act 2011* (TEQSA Act), the *National Vocational Education and Training*

*Regulator Act 2011* (NVETR Act), and state and territory legislation relevant to the education and training of overseas students.

### 3 The National Code, its purpose and objectives

Under the ESOS Act, the purpose of the *National Code of Practice for Providers of Education and Training to Overseas Students 2018* (National Code 2018) is to set nationally consistent standards and procedures for registered providers and for persons who deliver education services on behalf of registered providers. The National Code supports the effective administration of the ESOS legislative framework by the Commonwealth and state and territory governments.

The National Code 2018 comprises the following:

- Standard 1     *Marketing information and practices:*** This standard sets out that 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.
- Standard 2     *Recruitment of an overseas student:*** This standard sets out that 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.
- Standard 3     *Formalisation of enrolment and written agreements:*** This standard sets out that 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.
- Standard 4     *Education agents:*** This standard sets out that 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.
- Standard 5     *Younger overseas students:*** This standard sets out that 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.

- Standard 6** ***Overseas student support services:*** This standard sets out that 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.
- Standard 7** ***Overseas student transfers:*** This standard sets out that 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.
- Standard 8** ***Overseas student visa requirements:*** This standard sets out that 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. Standard 8 sets flexible provisions to allow online learning while maintaining appropriate standards for overseas students to comply with student visa conditions.
- Standard 9** ***Deferring, suspending or cancelling the overseas student's enrolment:*** This standard sets out that 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.
- Standard 10** ***Complaints and appeals:*** This standard sets out that 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.
- Standard 11** ***Additional registration requirements:*** This standard sets out that 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.

#### 4 Australia's international education quality assurance process

The ESOS legislative framework is administered by a number of agencies across the Commonwealth and states and territories. Their roles are outlined briefly below.

## ***Australian Government***

### ***Department of Education and Training***

The Commonwealth Department of Education and Training is responsible for:

- the overarching policy development and administration of the ESOS Act and its associated legislative framework, including the Tuition Protection Service (TPS) framework and the management of PRISMS
- administering ESOS-related charges for cost recovery
- final registration or renewal and compliance monitoring and enforcement decisions (including suspensions and cancellations) as the ESOS agency for schools.

### ***Tuition Protection Service***

The TPS is a placement and refund service to assist overseas students whose registered providers are unable to fully deliver their course of study. The TPS ensures overseas students can either:

- complete their studies in another course or with another registered provider or
- receive a refund of their unspent tuition fees.

### ***Department of Immigration and Border Protection***

The Department of Immigration and Border Protection (Immigration) is responsible for administration of the student visa program under the Migration Act and associated legislation. The ESOS framework also plays a role in ensuring registered providers uphold the integrity of Australia's student visa program through their ongoing contact with overseas students during their stay in Australia. **Under subsection 19(2) of the ESOS Act, registered providers are required to notify the Commonwealth when overseas students have breached their student visa conditions, such as by failing to maintain satisfactory course attendance or progress.** The National Code 2018 sets out the course attendance, progress and completion requirements for overseas students that registered providers must monitor and report on.

## ***Australia's quality assurance agencies***

The Tertiary Education Quality and Standards Agency (TEQSA) is Australia's independent national regulator of the higher education sector. Under the ESOS Act, TEQSA is the ESOS agency for providers or registered providers of higher education courses.

The Australian Skills Quality Authority (ASQA) is the national regulator for the vocational education and training sector and registered training organisations (RTOs) (within the meaning of the NVETR Act) in Australia. Under the ESOS Act, ASQA is the ESOS agency for providers or registered providers of vocational education courses.

Both ASQA and TEQSA have powers to register providers to deliver courses to overseas students, as well as to investigate and instigate enforcement action against registered providers for breaches of the ESOS Act and the National Code.

ASQA and TEQSA also have oversight responsibilities for English Language Intensive Courses



for Overseas Students (ELICOS) and foundation programs, except where these courses are delivered in the capacity of a school under the ESOS Act.

### ***State and territory governments***

For schools seeking to register to provide courses to overseas students, the state, territory and Commonwealth systems are linked through the ESOS framework. Under ESOS, the designated State authority (DSA) plays a role in ESOS related functions in state and territory jurisdictions for:

- school education and for ELICOS, foundation and non-award programs delivered by schools, and
- school education courses delivered by other registered providers.

The DSA makes recommendations to the Commonwealth Department of Education and Training to register a school as a registered provider, including any conditions on that registration. Some states and territories also have their own legislation relating to education services for overseas students within the relevant jurisdiction, and may use that legislation to take enforcement action against a registered provider where appropriate and necessary.

## **5 The effect of the National Code 2018**

The National Code 2018 sets standards to ensure education services meet the needs and expectations of overseas students who come to Australia, and satisfy the objectives of the ESOS Act.

The National Code complements the strong quality assurance frameworks used by government agencies to oversee the Australian education system.

ESOS agencies may use information given by providers for other purposes in assessing their registration or compliance under the ESOS Act.

The National Code has legal effect as expressly provided for by the ESOS Act. Therefore, breaches of the National Code by registered providers can result in actions being taken against a registered provider under Division 1A in Part 6 of the ESOS Act, including suspension or cancellation of registration.

# Part B – Standards for Providers of Education and Training to Overseas Students

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## *Standard 1*

### **Marketing information and practices**

- 1.1 The registered provider must ensure that the marketing and promotion of its courses and education services in connection with the recruitment of overseas students or intending overseas students, including through an education agent (in accordance with Standard 4), is not false or misleading, and is consistent with Australian Consumer Law.
- 1.2 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:
  - 1.2.1 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
  - 1.2.2 any work-based training a student is required to undertake as part of the course
  - 1.2.3 prerequisites—including English language proficiency—for entry to the course
  - 1.2.4 any other information relevant to the registered provider, its courses or outcomes associated with those courses.
- 1.3 The registered provider must not:
  - 1.3.1 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
  - 1.3.2 guarantee a successful education assessment outcome for the student or intending student.
- 1.4 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:
  - 1.4.1 providing or offering to provide a course to an overseas student
  - 1.4.2 inviting a student to undertake or apply for a course, or
  - 1.4.3 indicating it is able or willing to provide a course to overseas students.
- 1.5 The registered provider must not actively recruit a student where this conflicts with its obligations under Standard 7 (Overseas student transfers).

## *Standard 2*

### **Recruitment of an overseas student**

- 2.1 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:
- 2.1.1 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
  - 2.1.2 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
  - 2.1.3 course duration and holiday breaks
  - 2.1.4 the course qualification, award or other outcomes
  - 2.1.5 campus locations and facilities, equipment and learning resources available to students
  - 2.1.6 the details of any arrangements with another provider, person or business who will provide the course or part of the course
  - 2.1.7 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
  - 2.1.8 the grounds on which the overseas student's enrolment may be deferred, suspended or cancelled
  - 2.1.9 the ESOS framework, including official Australian Government material or links to this material online
  - 2.1.10 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 Standard 5)
  - 2.1.11 accommodation options and indicative costs of living in Australia.
- 2.2 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.
- 2.3 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.

- 2.4 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.
- 2.5 If the registered provider grants the overseas student RPL or course credit that reduces the overseas student's course length, the provider must:
  - 2.5.1 inform the student of the reduced course duration following granting of RPL and ensure the confirmation of enrolment (CoE) is issued only for the reduced duration of the course
  - 2.5.2 report any change in course duration in PRISMS if RPL or course credit is granted after the overseas student's visa is granted.

## Standard 3

### Formalisation of enrolment and written agreements

- 3.1 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.
- 3.2 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.
- 3.3 In addition to all requirements in the ESOS Act, the written agreement must, in plain English:
  - 3.3.1 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
  - 3.3.2 outline any prerequisites necessary to enter the course or courses, including English language requirements
  - 3.3.3 list any conditions imposed on the student's enrolment
  - 3.3.4 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)
  - 3.3.5 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
  - 3.3.6 set out the circumstances in which personal information about the student may be disclosed by the registered provider, the Commonwealth including the TPS, or state or territory agencies, in accordance with the *Privacy Act 1988*
  - 3.3.7 outline the registered provider's internal and external complaints and appeals processes, in accordance with Standard 10 (Complaints and appeals)
  - 3.3.8 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
  - 3.3.9 only use links to provide supplementary material.
- 3.4 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 fees and non-tuition fees in the case of student default and provider default:

- 3.4.1 amounts that may or may not be repaid to the overseas student (including any tuition and non-tuition fees collected by education agents on behalf of the registered provider)
  - 3.4.2 processes for claiming a refund
  - 3.4.3 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
  - 3.4.4 a plain English explanation of what happens in the event of a course not being delivered, including the role of the TPS
  - 3.4.5 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 student to take action under the *Australian Consumer Law* if the *Australian Consumer Law* applies”.
- 3.5 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:
- 3.5.1 the student’s current residential address, mobile number (if any) and email address (if any)
  - 3.5.2 who to contact in emergency situations
  - 3.5.3 any changes to those details, within 7 days of the change.
- 3.6 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.

## *Standard 4*

### **Education agents**

- 4.1 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.
  - 4.2 The written agreement must outline:
    - 4.2.1 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
    - 4.2.2 the registered provider's requirements of the agent in representing the registered provider as outlined in Standard 4.3
    - 4.2.3 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
    - 4.2.4 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 Standard 4.4
    - 4.2.5 the registered provider's grounds for termination of the registered provider's written agreement with the education agent, including providing for termination in the circumstances outlined in Standard 4.5
    - 4.2.6 the circumstances under which information about the education agent may be disclosed by the registered provider and the Commonwealth or state or territory agencies.
  - 4.3 A registered provider must require its education agent to:
    - 4.3.1 declare in writing and take reasonable steps to avoid conflicts of interests with its duties as an education agent of the registered provider
    - 4.3.2 observe appropriate levels of confidentiality and transparency in their dealings with overseas students or intending overseas students
    - 4.3.3 act honestly and in good faith, and in the best interests of the student
    - 4.3.4 have appropriate knowledge and understanding of the international education system in Australia, including the Australian International Education and Training Agent Code of Ethics.
  - 4.4 Where the registered provider becomes aware that, or has reason to believe, the education agent or an employee or subcontractor of that education agent has not complied with the education agent's responsibilities under standards 4.2 and 4.3, the registered provider must take immediate corrective action.
  - 4.5 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
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relationship with the education agent, or require the education agent to terminate its relationship with the employee or subcontractor who engaged in those practices.

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

- 4.6.1 providing migration advice, unless that education agent is authorised to do so under the Migration Act
- 4.6.2 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 Standard 7 (Overseas student transfers)
- 4.6.3 facilitating the enrolment of a student who the education agent believes will not comply with the conditions of his or her visa
- 4.6.4 using PRISMS to create CoEs for other than bona fide students.



## Standard 5

### Younger overseas students

- 5.1 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.
- 5.2 Registered providers must ensure students under 18 years of age are given age-and culturally-appropriate information on:
  - 5.2.1 who to contact in emergency situations, including contact numbers of a nominated staff member and/or service provider to the registered provider
  - 5.2.2 seeking assistance and reporting any incident or allegation involving actual or alleged sexual, physical or other abuse.
- 5.3 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:
  - 5.3.1 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
  - 5.3.2 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
  - 5.3.3 have and implement documented processes for verifying that the student's accommodation is appropriate to the student's age and needs:
    - 5.3.3.1 prior to the accommodation being approved
    - 5.3.3.2 at least every six months thereafter.
  - 5.3.4 include as part of their policy and processes for critical incidents under 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
  - 5.3.5 maintain up-to-date records of the student's contact details as outlined in Standard 3.5, including the contact details of the student's parent(s), legal guardian or any adult responsible for the student's welfare
  - 5.3.6 advise Immigration in the form required by that department:
    - 5.3.6.1 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

- 5.3.6.2 within 24 hours if the registered provider is no longer able to approve the student's welfare arrangements
  - 5.3.7 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.
- 5.4 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.
- 5.5 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.
- 5.6 Where 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:
  - 5.6.1 the student has alternative welfare arrangements approved by another registered provider
  - 5.6.2 care of the student by a parent or nominated relative is approved by Immigration
  - 5.6.3 the student leaves Australia
  - 5.6.4 the registered provider has notified Immigration under Standard 5.3.6 that it is no longer able to approve the student's welfare arrangements or under Standard 5.5 that it has taken the required action after not being able to contact the student.
- 5.7 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:
  - 5.7.1 negotiate the transfer date for welfare arrangements with the releasing registered provider to ensure there is no gap
  - 5.7.2 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.

## *Standard 6*

### **Overseas student support services**

- 6.1 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:
  - 6.1.1 support services available to assist overseas students to help them adjust to study and life in Australia
  - 6.1.2 English language and study assistance programs
  - 6.1.3 any relevant legal services
  - 6.1.4 emergency and health services
  - 6.1.5 the registered provider's facilities and resources
  - 6.1.6 complaints and appeals processes as outlined in Standard 10 (Complaints and appeals)
  - 6.1.7 requirements for course attendance and progress, as appropriate
  - 6.1.8 the support services available to assist students with general or personal circumstances that are adversely affecting their education in Australia
  - 6.1.9 services students can access for information on their employment rights and conditions, and how to resolve workplace issues, such as through the Fair Work Ombudsman.
- 6.2 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 Standard 6.1, at no additional cost to the overseas student.
- 6.3 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.
- 6.4 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.
- 6.5 The registered provider must designate a member or members of its staff to be the official point of contact for overseas students. The student contact officer or officers must have access to up-to-date details of the registered provider's support services.
- 6.6 The registered provider must have sufficient student support personnel to meet the needs of the overseas students enrolled with the registered provider.
- 6.7 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.

- 6.8 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 by the registered provider for at least two years after the overseas student ceases to be an accepted student.
- 6.9 The registered provider must:
- 6.9.1 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
  - 6.9.2 provide information to overseas students about how to seek assistance for and report an incident that significantly impacts on their wellbeing, including critical incidents
  - 6.9.3 provide overseas students with or refer them to (including electronically) general information on safety and awareness relevant to life in Australia.

## Standard 7

### Overseas student transfers

- 7.1 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:
- 7.1.1 the releasing registered provider, or the course in which the overseas student is enrolled, has ceased to be registered
  - 7.1.2 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
  - 7.1.3 the releasing registered provider has agreed to the overseas student's release and recorded the date of effect and reason for release in PRISMS
  - 7.1.4 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.
- 7.2 For the purposes of 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 overseas 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:
- 7.2.1 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
  - 7.2.2 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:
    - 7.2.2.1 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 Standard 8 (Overseas student visa requirements)
    - 7.2.2.2 there is evidence of compassionate **or** compelling circumstances
    - 7.2.2.3 the registered provider fails to deliver the course as outlined in the written agreement
    - 7.2.2.4 there is evidence that the overseas student's reasonable expectations about their current course are not being met
    - 7.2.2.5 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

- 7.2.2.6 an appeal (internal or external) on another matter results in a decision or recommendation to release the overseas student.
  - 7.2.3 the circumstances which the registered provider considers as reasonable grounds to refuse the transfer
  - 7.2.4 a reasonable timeframe for assessing and replying to the overseas student's transfer request having regard to the restriction period.
- 7.3 If the overseas student is under 18 years of age:
  - 7.3.1 the registered provider must have written confirmation the overseas student's parent or legal guardian supports the transfer
  - 7.3.2 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 Standard 5 (Younger overseas students).
- 7.4 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.
- 7.5 If the registered provider intends to refuse the transfer request, they must inform the overseas student in writing of:
  - 7.5.1 the reasons for the refusal
  - 7.5.2 the overseas student's right to access the provider's complaints and appeals process, in accordance with Standard 10 (Complaints and appeals), within 20 working days.
- 7.6 The registered provider must not finalise the 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.
- 7.7 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.

## Standard 8

### Overseas student visa requirements

#### *Monitoring overseas student progress, attendance and course duration*

- 8.1 The registered provider must monitor overseas students' course progress and, where applicable, attendance for each course in which the overseas student is enrolled.
- 8.2 The expected duration of study specified in the overseas student's CoE must not exceed the CRICOS registered duration.
- 8.3 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.
- 8.4 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.
- 8.5 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*

- 8.6 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:
  - 8.6.1 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
  - 8.6.2 the method for working out minimum attendance under this standard
  - 8.6.3 processes for recording course attendance
  - 8.6.4 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 overseas student's attendance drops below 80 per cent
  - 8.6.5 processes for determining the point at which the overseas student has failed to meet satisfactory course attendance.
- 8.7 The registered provider must have and implement a documented policy and process for monitoring and recording course progress for the overseas student, specifying:
  - 8.7.1 requirements for achieving satisfactory course progress for the course
  - 8.7.2 processes for recording and assessing course progress

- 8.7.3 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
- 8.7.4 processes for determining the point at which the student has failed to meet satisfactory course progress.

**Higher education: course progress requirements**

- 8.8 The registered provider of a higher education course must have and implement a documented policy and process for monitoring and recording course progress for the overseas student, specifying:
  - 8.8.1 requirements for achieving satisfactory course progress, including policies that promote and uphold the academic integrity of the registered course, and processes to address misconduct and allegations of misconduct
  - 8.8.2 processes for recording and assessing course progress requirements
  - 8.8.3 processes to identify overseas students at risk of unsatisfactory course progress
  - 8.8.4 details of the registered provider's intervention strategy to assist overseas students at risk of not meeting course progress requirements in sufficient time for those overseas students to achieve satisfactory course progress
  - 8.8.5 processes for determining the point at which the overseas student has failed to meet satisfactory course progress.

**Vocational education and training (VET): course progress and attendance requirements**

- 8.9 The registered provider of a VET course as defined in the NVETR Act must have and implement a documented policy and process for assessing course progress that includes:
  - 8.9.1 requirements for achieving satisfactory course progress, including policies that promote and uphold the academic integrity of the registered course and meet the training package or accredited course requirements where applicable, and processes to address misconduct and allegations of misconduct
  - 8.9.2 processes for recording and assessing course progress requirements
  - 8.9.3 processes to identify overseas students at risk of unsatisfactory course progress
  - 8.9.4 details of the registered provider's intervention strategy to assist overseas students at risk of not meeting course progress requirements in sufficient time for those overseas students to achieve satisfactory course progress
  - 8.9.5 processes for determining the point at which the overseas student has failed to meet satisfactory course progress.
- 8.10 The registered provider must have and implement a documented policy and process for **monitoring the attendance** of overseas students if the requirement to implement and maintain minimum attendance requirements for overseas students is set as a condition of the provider's registration by an ESOS agency.
- 8.11 If an ESOS agency requires a VET provider to monitor overseas student attendance as a condition of registration, **the minimum requirement for attendance is 80 per cent of the scheduled contact hours for the course.**



- 8.12 If an ESOS agency requires a VET provider to monitor overseas student attendance, the registered provider must have and implement a documented policy and process for monitoring and recording attendance of the overseas student, specifying:
- 8.12.1 the method for working out minimum attendance under this standard
  - 8.12.2 processes for recording course attendance
  - 8.12.3 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 overseas student's attendance drops below 80 per cent
  - 8.12.4 processes for determining the point at which the overseas student has failed to meet satisfactory course attendance.

*Reporting unsatisfactory course progress or unsatisfactory course attendance*

- 8.13 Where the registered provider has assessed the overseas student as not meeting course progress or attendance requirements, the registered provider must give the overseas student a written notice as soon as practicable which:
- 8.13.1 notifies the overseas student that the registered provider intends to report the overseas student for unsatisfactory course progress or unsatisfactory course attendance
  - 8.13.2 informs the overseas student of the reasons for the intention to report
  - 8.13.3 advises the overseas student of their right to access the registered provider's complaints and appeals process, in accordance with Standard 10 (Complaints and appeals), within 20 working days.
- 8.14 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:
- 8.14.1 the internal and external complaints processes have been completed and the decision or recommendation supports the registered provider, or
  - 8.14.2 the overseas student has chosen not to access the internal complaints and appeals process within the 20 working day period, or
  - 8.14.3 the overseas student has chosen not to access the external complaints and appeals process, or
  - 8.14.4 the overseas student withdraws from the internal or external appeals processes by notifying the registered provider in writing.
- 8.15 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:
- 8.15.1 for school, ELICOS and Foundation Program courses, the overseas student provides genuine evidence demonstrating that compassionate or compelling circumstances apply; or
  - 8.15.2 for VET courses, the student is maintaining satisfactory course progress.

### *Allowable extensions of course duration*

- 8.16 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:
- 8.16.1 there are compassionate or compelling circumstances, as assessed by the registered provider on the basis of demonstrable evidence, or
  - 8.16.2 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
  - 8.16.3 an approved deferral or suspension of the overseas student's enrolment has occurred under Standard 9 (Deferring, suspending or cancelling the overseas student's enrolment).
- 8.17 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:** *Online learning is study where the teacher and overseas student primarily communicate through digital media, technology-based tools and IT networks and does not require the overseas student to attend scheduled classes or maintain contact hours. For the purposes of the ESOS framework, online learning does not include the provision of online lectures, tuition or other resources that supplement scheduled classes or contact hours. Distance learning is any learning that an overseas student undertakes off campus and does not require an overseas student on a student visa to physically attend regular tuition for the course on campus at the provider's registered location.*

- 8.18 A registered provider must not deliver a course exclusively by online or distance learning to an overseas student.
- 8.19 A registered provider must not deliver more than one-third of the units (or equivalent) of a higher education or VET course by online or distance learning to an overseas student.
- 8.20 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.
- 8.21 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.
- 8.22 The registered provider must take all reasonable steps to support overseas students who may be disadvantaged by:
- 8.22.1 additional costs or other requirements, including for overseas students with special needs, from undertaking online or distance learning
  - 8.22.2 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.

## Standard 9

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

- 9.1 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.
- 9.2 A registered provider may defer or suspend the enrolment of a student if it believes there are **compassionate or compelling** circumstances.
- 9.3 A registered provider **may suspend or cancel a student's enrolment** including, but not limited to, **on the basis of:**
  - 9.3.1 misbehaviour by the student
  - 9.3.2 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
  - 9.3.3 **a breach of course progress or attendance requirements** by the overseas student, which must occur in accordance with Standard 8 (Overseas student visa requirements).
- 9.4 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:
  - 9.4.1 **inform the overseas student of that intention and the reasons for doing so, in writing**
  - 9.4.2 advise the overseas student of their right to **appeal through the provider's internal complaints and appeals process**, in accordance with Standard 10 (Complaints and appeals), **within 20 working days**.
- 9.5 When there is any deferral, suspension or cancellation action taken under this standard, the registered provider must:
  - 9.5.1 inform the overseas student of the need to seek advice from Immigration on the potential impact on his or her student visa
  - 9.5.2 report the change to the overseas student's enrolment under section 19 of the ESOS Act.
- 9.6 The suspension or cancellation of the overseas student's enrolment under Standard 9.3 **cannot take effect until** the internal appeals process is completed, unless **the overseas student's health or wellbeing, or the wellbeing of others, is likely to be at risk**.

## *Standard 10*

### **Complaints and appeals**

- 10.1 The registered provider must have and implement a documented internal complaints handling and appeals process and policy, and provide the overseas student with comprehensive, free and easily accessible information about that process and policy.
- 10.2 The registered provider's internal complaints handling and appeals process must:
  - 10.2.1 include a process for the overseas student to lodge a formal complaint or appeal if a matter cannot be resolved informally
  - 10.2.2 include that the 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
  - 10.2.3 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 process and policy, and finalise the outcome as soon as practicable
  - 10.2.4 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
  - 10.2.5 conduct the assessment of the complaint or appeal in a professional, fair and transparent manner
  - 10.2.6 ensure the overseas student is given a written statement of the outcome of the internal appeal, including detailed reasons for the outcome
  - 10.2.7 keep a written record of the complaint or appeal, including a statement of the outcome and reasons for the outcome.
- 10.3 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.
- 10.4 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 preventive or corrective action required by the decision, and advise the overseas student of that action.

## *Standard 11*

### **Additional registration requirements**

- 11.1 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:
  - 11.1.1 the course duration, including holiday breaks
  - 11.1.2 modes of study, including online, distance or work-based training
  - 11.1.3 number of overseas students enrolled at the provider, within the limit or maximum number approved by the ESOS agency for each location
  - 11.1.4 arrangements with other education providers, including partners, in delivering a course or courses to overseas students.
- 11.2 In seeking approval under 11.1, the provider must demonstrate any matters 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:
  - 11.2.1 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
  - 11.2.2 the expected duration of the course includes any holiday periods or any work-based training
  - 11.2.3 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 the supervision and assessment of students
  - 11.2.4 the course is not to be delivered entirely by online or distance learning
  - 11.2.5 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
  - 11.2.6 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.
- 11.3 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 standard 11.1 at least 30 days prior to the time at which those changes are proposed to take effect.
- 11.4 Registered providers who are self-accrediting must undertake an independent external audit during their period of CRICOS registration, within 18 months prior to renewal of that registration to inform the re-registration of the provider.

# Definitions

|                                  |  |
|----------------------------------|--|
| Accrediting authority            | Refers to the organisation designated by or under legislation of the Commonwealth or appropriate state or territory government to accredit persons or organisations to offer education or training services to Australian students.  |
| 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 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, which is issued by the registered provider 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                           | Has the meaning given in the ESOS Act.   |
| 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.   |
| Course progress                  | The measure of advancement within a course towards the completion of that course irrespective of whether course completion is identified through academic merit or skill based competencies.   |
| CRICOS                           | The Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) is the register prescribed under section 14A of the ESOS Act.   |
| Critical incident                | A traumatic event, or the threat of such (within or outside Australia), which causes extreme stress, fear or injury.   |
| Designated State authority (DSA) | Has the meaning given in the ESOS Act.   |
| Education agent                  | <p>A person or organisation (in or outside Australia) who recruits overseas students and refers them to education providers. In doing so, the education agent may provide education counselling to overseas students as well as marketing and promotion services to education providers.</p> <p>Education agent does not refer to an education institution with whom an Australian provider has an agreement for the provision of education (that is teaching activities).</p> |

|                            |  |
|----------------------------|--|
| 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.                 |
| ESOS agency                | Has the meaning given by section 6C of the ESOS Act.   |
| Intending overseas student | Has the meaning given in the ESOS Act.   |
| Marketing                  | Promotion of the provider and its courses and facilities to prospective overseas students and their parents or guardians, agents, international organisations and other interested parties such as alumni.   |
| Migration agent            | A person registered as a migration agent as per section 286 of the Migration Act 1958.   |
| Mode of study              | Includes attendance face-to-face in a classroom, supervised study on the registered provider's campus, distance learning, online learning and work-based learning.   |
| Overseas student           | Has the meaning given in the ESOS Act.   |
| Principal course of study  | The principal course of study refers to the main course of study to be undertaken by an overseas student where a student visa has been issued for multiple courses of study. The principal course of study would normally be the final course of study where the overseas student arrives in Australia with a student visa that covers multiple courses. |
| PRISMS                     | The Provider Registration and International Student Management System (PRISMS) is the system used to process information given to the Secretary of DET by registered providers.  |
| Provider                   | Has the meaning given in the ESOS Act.   |
| Provider default           | Where the registered provider fails to provide a course or ceases to provide a course to an overseas student within the meaning of section 46A of the ESOS Act.  |
| Recruitment                | The pre-enrolment processes of engaging and assisting overseas students (or parent or guardian if the overseas student is under 18) to apply for a place in a course with a provider leading up to the formal enrolment, including assistance with administrative issues and the issuing of a CoE for an application for a student visa.                 |
| Registered provider        | As defined in section 5 of the ESOS Act, the registered provider for a course for a location means a provider that is registered to provide the course at the location.  |

|                                |   |
|--------------------------------|---|
| Scheduled course contact hours | The hours for which students enrolled in the course are scheduled to attend classes, course-related information sessions, supervised study sessions, mandatory and supervised work-based training and examinations.   |
| Self-accrediting provider      | Self-accrediting institutions are established by or under relevant Commonwealth or state or territory government legislation with the authority to accredit their own courses.  |
| State                          | Has the meaning given in the ESOS Act.  |
| Student                        | Means an overseas student (or intending overseas student) as the context requires.  |
| Student contact officer        | Employee(s) of the registered provider deemed to have an appropriate level of skill, knowledge and expertise who is able to provide advice to overseas students on a range of matters.  |
| Student default                | Where an overseas student does not start a course or withdraws from a course as defined in section 47A(2) of the ESOS Act.  |
| Student visa                   | Has the meaning given in the ESOS Act.  |
| 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 as long as that period does not exceed six months. See also 'Compulsory study period'. |
| Tuition fees                   | Has the meaning given in the ESOS Act.  |
| Unit                           | A discrete component of study within a course; the term includes 'subject' and 'module'.  |



## EXPLANATORY STATEMENT

National Code of Practice for Providers of Education and Training to Overseas Students 2018

Issued by authority of the Minister for Education and Training

### **1 NAME**

This clause provides that the name of the instrument is the National Code of Practice for Providers of Education and Training to Overseas Students 2018 (National Code 2018).

### **2 REPEAL**

The National Code 2018 repeals and replaces the National Code of Practice for Providers of Education and Training to Overseas Students 2017(F2017L00403) (National Code 2017). The repeal of the National Code 2017 does not affect the validity of decisions made or actions taken under that National Code 2017. A decision made under that National Code 2017 is taken to continue to have effect as if it were made under the National Code 2018.

### **3 COMMENCEMENT**

This clause provides that the instrument commences on 1 January 2018.

### **4 AUTHORITY**

This clause provides that the National Code 2018 is made under subsection 33(1) of the *Education Services for Overseas Students Act 2000* (ESOS Act).

### **5 SAVINGS AND TRANSITIONAL**

This clause provides transitional and savings provisions consequential to the repeal and replacement of the National Code 2017 including to ensure the continuity of existing applications for registration, for enforcement actions initiated by ESOS agencies, and student complaints handling or appeal processes lodged under the terms of the predecessor National Code 2017.

This clause specifies the version of the National Code of Practice for Providers of Education and Training to Overseas Students which will apply to the above processes commenced or initiated on or before 31 December 2017, and on or after 1 January 2018. The clause provides that:

- Applications for registration or renewal of registration submitted by providers on or before 31 December 2017 will be assessed under the National Code 2017.
- Applications for registration or renewal of registration submitted by providers on or from 1 January 2018 will be assessed under the National Code 2018.
- For enforcement action undertaken by an ESOS agency on or before 31 December 2017, the National Code 2017 will apply.
- For enforcement action undertaken by an ESOS agency on or from 1 January 2018, the National Code 2018 will apply.
- For any student complaint or appeal initiated on or before 31 December 2017, the National Code 2017 will apply.
- For any student complaint or appeal initiated on or from 1 January 2018, the National Code 2018 will apply.

The clause also confirms that on and from 1 January 2018, all registered providers are expected to be compliant with the National Code 2018.

## **6 PURPOSE AND OPERATION**

The purpose of the National Code 2018 is to provide nationally consistent standards and procedures for registered providers and persons who deliver educational services on behalf of registered providers. The National Code 2018 is made by the Minister under section 33 of the ESOS Act. The ESOS Act regulates the delivery of international education and training services to overseas students studying in Australia on a student visa.

The Australian Government has overarching responsibility for protecting the reputation of Australia's high quality education and training sector, supporting the capacity of Australia's international education sector to provide high quality education and training services, and maintaining the integrity of Australia's student visa program.

The National Code 2018 balances the Australian Government's interests in consumer protection and the high quality of Australia's education and migration policy, with the need to minimise the regulatory burden on registered providers and persons who deliver educational services on behalf of registered providers, through eleven key standards.

Registered providers' compliance with the National Code 2018 is monitored by ESOS agencies which are the Tertiary Education Quality Standards Agency (TEQSA) for the higher education sector, the Australian Skills Quality Authority (ASQA) for the vocational education and training sector, and the Department of Education and Training (the department) for the schools sector. ESOS agencies must be satisfied that a provider or registered provider is complying or will comply with the National Code 2018 when making decisions on the registration or renewal of registration of providers.

### **Details of the National Code 2018**

The National Code 2018 sets nationally consistent standards and procedures for registered providers, and persons who deliver education services on behalf of registered providers

There are two parts:

- Part A – The Education Services For Overseas Students Framework
- Part B – Standards outlining the obligations on registered providers (and persons who deliver educational services on their behalf) in delivering education and training services to overseas students.

#### **Part A: Framework**

Part A sets out the objectives and purpose of the National Code 2018 and explains the underpinning legislative framework. The context, structure and application of the National Code 2018 are also covered by the Framework.

Part A also addresses the roles and responsibilities of the Australian and state and territory governments in administering the underpinning legislative framework. The Australian Government has the overarching responsibility for protecting the reputation of Australia's education and training sector, supporting the capacity of the international education sector to provide quality education and training services, and maintaining the integrity of the student visa

program. State and territory governments have responsibility for the regulation of education in their jurisdictions.

## **Part B: Standards for registered providers**

Part B outlines the Standards with which registered providers must comply. The obligations outlined in the Standards are summarised below.

### Standard 1 – Marketing information and practices

This Standard provides that registered providers must uphold the integrity and reputation of Australia's education sector by ensuring the marketing of courses by registered providers or persons acting on their behalf, is not false and misleading. The Standard also acknowledges the importance of the provision of accurate information at all stages of the recruitment process in order to enable students to make informed and appropriate decisions.

This Standard makes reference to the Australian Consumer Law which prohibits false or misleading claims about products or services and which may be applicable to overseas students in certain circumstances. This supports the broader object of the Standard to uphold the integrity and reputation of Australia's education sector and ensure registered providers and persons delivering educational services on behalf of registered providers adhere to ethical marketing practices.

### Standard 2 – Recruitment of an overseas student

This Standard outlines the information to be provided to students prior to accepting them for enrolment in a course including course content, duration and fees. The information must be comprehensive, up-to-date and in plain English, which acknowledges that English may not be the first language for some overseas students. The Standard recognises the role of registered providers to assist overseas students to make informed and appropriate study choices. This Standard requires registered providers to have and implement a documented policy and process for assessing students' English language proficiency, qualifications or experience to enter a course. It also requires providers to have a documented policy and process for assessing and recording recognition of prior learning and course credit where applicable. This ensures consistency and transparency amongst student admissions.

### Standard 3 – Formalisation of enrolment and written agreements

This Standard regulates the final part in the enrolment of an overseas student in which the enrolment is finalised through a written agreement. Registered providers are required to formalise their enrolments of students through written agreements which protect the rights of both students and registered providers and set out the responsibilities of each party, as well as the services to be provided, fees payable and refund policies. Students must have sufficient information in the written agreement to make an informed decision about their studies. Only supplementary materials should be provided through hyperlinks.

The Standard includes an additional requirement for students to provide registered providers with personal contact information. This ensures that registered providers are able to maintain accurate and up-to-date information about students to assist them in administering appropriate processes and procedures.

#### Standard 4 – Education agents

This Standard requires registered providers to meet certain standards when engaging an agent to represent them. Registered providers must require their agents to act ethically, honestly and in the best interests of students. The Standard clearly outlines the registered provider's obligations in the event of an agent acting dishonestly or unethically. This includes taking action where registered providers become aware or have a reason to believe that the agent, or an employee or subcontractor of that agent, has not complied with the agent's responsibilities.

#### Standard 5 – Younger overseas students

This Standard sets requirements for registered providers who enrol students under the age of 18, to ensure younger students maintain continuous welfare arrangements during their study in Australia. It acknowledges existing state and territory regulatory frameworks relating to child protection and requires registered providers to give all students aged under 18 information on who to contact in an emergency and how to report alleged incidents of abuse. This Standard also requires providers to verify that students' accommodation is appropriate to students' age and needs, prior to approving accommodation and every six months thereafter. Verification does not necessarily require a physical check of accommodation, although providers are expected to conduct an initial physical check as best practice. This is reflective of the Australian Government's whole of government approach to improving child protection and protecting against institutional abuse.

The Standard allows for registered providers to nominate dates they will take responsibility for approving under 18 year old students' welfare arrangements if students have no parent or suitable relative caring for them in Australia. The Standard requires registered providers who take responsibility for approving younger students' welfare arrangements to have processes for regularly verifying the appropriateness of the students' accommodation.

The Standard sets out that where a registered provider enrolls a younger overseas student who has welfare arrangement 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. This ensures younger overseas students have continuous welfare arrangements in place.

#### Standard 6 – Student support services

This Standard specifies the support services that must be provided by registered providers to overseas students to enable them to adjust to study and life in Australia. This Standard also requires providers to have and implement a documented policy and process for managing critical incidents that can affect students' ability to undertake or complete a course. This ensures that registered providers are able to effectively assist overseas students to adjust to study and life in Australia and have appropriate orientation programs that assist overseas students to access the information and services they require in order to optimise their study experience.

#### Standard 7 – Overseas student transfers

This Standard prohibits registered providers from knowingly enrolling overseas students 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. This includes where the releasing registered provider has decided to grant the student's transfer request in accordance with its transfer policy. Reasonable course transfer restrictions assist to ensure visa integrity and

reduce the poaching of overseas students by other agents once they arrive in Australia. Registered providers must have a policy to assess requests for transfer and this Standard sets the requirements for assessing overseas student transfer requests. It also prescribes the circumstances where a release should be granted.

The standard states that where registered providers intend to refuse an overseas student's request to transfer, they must allow the overseas student to access the registered provider's complaints and appeals process before finalising the refusal in the department's Provider Registration and International Students Management System (PRISMS). Changes to PRISMS will clarify that registered providers are not required to actively keep the overseas student enrolled while they are waiting to finalise the refusal of a transfer request.

#### Standard 8 – Overseas student visa requirements

This Standard requires registered providers to have clear processes and procedures for monitoring overseas students' course attendance and progress. This safeguards the integrity of Australia's migration laws by supporting overseas students to complete their course within the required duration and fulfil their visa requirements relating to satisfactory course attendance and course progress.

#### Standard 9 – Deferring, suspending or cancelling the student's enrolment

This Standard requires registered providers to have documented processes in place for assessing requests to defer or suspend the overseas student's enrolment. It also provides for registered providers to initiate suspension or cancellation of the overseas student's enrolment. This gives registered providers the ability to defer, suspend or cancel an overseas student's enrolment in limited circumstances where appropriate, and in a way that maintains visa integrity.

#### Standard 10 – Complaints and appeals

This Standard protects overseas students' rights to natural justice through access to a professional, timely, inexpensive and documented complaints and appeals process. This represents the Australian Government's commitment to ensuring overseas students have easy and timely access to both internal and external complaints and appeals processes, which is important for overseas students living and studying in an unfamiliar environment.

#### Standard 11 – Additional registration requirements

This Standard ensures that registered providers continue to meet the requirements for registration under the ESOS Act and ensure that ESOS agencies approve and hold up-to-date information on specific aspects of the registered provider's operations and courses. This assists ESOS agencies to monitor registered providers and take appropriate enforcement action where necessary.

### **Regulation impact assessment**

The amendments to the National Code 2018 are expected to reduce the regulatory burden on international education providers. A Regulation Impact Statement (RIS) has been completed and the Office of Best Practice Regulation reference number for this proposal is 20825.

## 5 CONSULTATION

### Consultation with other government agencies

The department conducted targeted consultation with peak bodies and state and territory governments in September 2016, to inform a draft revised National Code for broader consultation. This public consultation process occurred between February and March 2017, with submissions received from state and territory governments and the Commonwealth and state ombudsman offices.

The department has also consulted the Department of Immigration and Border Protection (DIBP), particularly in relation to parts of the National Code 2018 which may have an impact on student visa conditions. The department also sought views from the national regulators, the Australian Skills Quality Agency (ASQA) and the Tertiary Education Quality and Standards Agency (TEQSA), which supported the instrument.

Other government agencies have indicated broad support for the amendments to the National Code 2018.

### Consultation with industry

The department conducted targeted consultation with peak bodies and state and territory governments in September 2016, to inform a draft revised National Code for broader consultation. This public consultation process occurred between February and March 2017, and invited responses from all international education stakeholders, including education registered providers and peak bodies. Peak bodies consulted include: English Australia (EA), the Australian Council for Private Education and Training (ACPET), Australian Government Schools International (AGSI), the Council of Private Higher Education (COPHE), Independent Schools Council of Australia (ISCA), the International Education Association of Australia (IEAA), TAFE Directors Australia (TDA) and Universities Australia (UA).

The department also consulted extensively with peak bodies through roundtable discussions and meetings and the proposed amendments have attracted support from the majority of stakeholders which view the National Code 2018 as maintaining high industry standards for international education and for protecting Australia's reputation as a destination of choice for overseas students.

## **Statement of Compatibility with Human Rights**

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

National Code of Practice for Providers of Education and Training to Overseas Students 2018

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Overview of the Legislative Instrument**

The purpose of this instrument is to make the *National Code of Practice for Providers of Education and Training to Overseas Students 2018* (National Code 2018). The National Code is established under the *Education Services for Overseas Students Act 2000* (ESOS Act) which regulates the delivery of international education and training services for overseas students studying in Australia on a student visa.

The Australian Government has overarching responsibility for protecting the reputation of Australia's high quality education and training industry, supporting the capacity of Australia's international education industry to provide high quality education and training services and maintaining the integrity of the Australian student visa program.

The National Code 2018 balances the Australian Government's interests in consumer protection and the high quality of Australia's education and migration policy, with the need to minimise the regulatory burden on registered providers through eleven key standards.

Registered providers' compliance with the National Code 2018 is monitored by ESOS agencies which are the Tertiary Education Quality Standards Agency (TEQSA) for the higher education sector, the Australian Skills Quality Authority (ASQA) for the vocational education and training sector and the Department of Education and Training (the department) for the schools sector. In deciding the registration and re-registration of providers and courses on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS), ESOS agencies must be satisfied that a registered provider is complying or will comply with the National Code 2018.

The purpose and broad objectives of each of the Standards contained in the National Code 2018 are described in the Explanatory Statement.

### **Human rights implications**

This instrument engages the following human rights:

#### *Right to Education*

This instrument engages the right to education, contained in Article 13 of the *International Covenant on Economic, Social, and Cultural Rights* to the extent that it relates to the provision of education services to overseas students by education service providers registered under the ESOS Act.

The Australian Government has the overarching responsibility for protecting the reputation of Australia's education and training industry, supporting the capacity of the international education industry to provide quality education and training services to overseas students, and maintaining the integrity of the student visa program.

The measures contained in the National Code 2018 enhance the right to education by ensuring that registered providers comply with nationally consistent standards that ensure they deliver a high quality of education for overseas students. In particular, measures implemented by this instrument enhance the right to education by:

- supporting the ESOS Act framework, including the effective administration of that legislative framework by the Australian Government and state and territory governments
- establishing and safeguarding Australia's international reputation as a provider of high quality education and training by ensuring that education and training for overseas students meets nationally consistent standards, and
- ensuring the integrity of registered providers.

The instrument is compatible with the right to education.

### *Rights of the Child*

The instrument contains measures which maintain the protections for overseas students under the age of 18 by ensuring that a high standard of welfare is maintained with a particular focus on accommodation arrangements. The instrument ensures continuity in student welfare and accommodation arrangements where an overseas student transfers providers and during any other break in those arrangements.

The instrument establishes a clear link to state and territory frameworks relating to child protection. As per standard 5.1, where the registered provider enrolls a student who is under 18 years of age, it must meet the Australian, state or territory legislation or other regulatory requirements relating to child welfare and protection appropriate to the jurisdiction(s) in which they operate.

The instrument is compatible with the rights of the child.

### **Conclusion**

The instrument is compatible with human rights because it advances the protection of human rights.



# NATIONAL CODE OF PRACTICE FOR PROVIDERS OF EDUCATION AND TRAINING TO OVERSEAS STUDENTS

REGULATION IMPACT STATEMENT  
2017

# 1 The quality framework for international education services

## THE IMPORTANCE OF INTERNATIONAL EDUCATION QUALITY

The legislative framework governing education services to students in Australia on a student visa is set out in the *Education Services for Overseas Students (ESOS) Act 2000* and *National Code of Practice for Providers of Education and Training to Overseas Students 2017* (National Code). The framework protects students' financial investment, ensures high quality education services and supports students to adapt to life in Australia, while maintaining the integrity of Australia's student visa system.

As outlined in the *National Strategy for International Education 2025*, robust quality assurance is key to the international student experience and to Australia's reputation for quality education and training offerings. The National Code sets quality requirements for providers delivering education to international students and ensures Australia delivers on its commitment to offer international students an exceptional experience. It sets out appropriate processes for the administration and oversight of education providers registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS), and for persons who deliver education services on behalf of registered providers.

The objectives of the National Code 2017 include:

- a. supporting the effective administration of the framework by the Australian Government and state and territory governments
- b. establishing and safeguarding Australia's international reputation as a provider of high quality education and training by:
  - i. ensuring that education and training for overseas students meets nationally consistent standards, and
  - ii. ensuring the integrity of registered providers
- c. protecting the interests of overseas students by:
  - i. ensuring that appropriate consumer protection mechanisms exist
  - ii. ensuring that student welfare and support services for overseas students meet nationally consistent standards, and
  - iii. providing nationally consistent standards for dealing with student complaints and appeals
- d. supporting registered providers in monitoring student compliance with student visa conditions and in reporting any student breaches to the Australian Government.

## HISTORY OF INTERNATIONAL EDUCATION STANDARDS

The ESOS legislative framework is complemented by the *Migration Act 1958* (Migration Act) and *Migration Regulations 1994*, the *Tertiary Education Quality and Standards Agency Act 2011* (TEQSA Act), the *National Vocational Education and Training Regulator Act 2011* (NVETR Act), as well as relevant state and territory legislation. A 2007 update to the National Code replaced the original 2001 version, and took effect on 1 July that year. It was to be reviewed periodically.

The 2007 National Code reflected an environment of regulation largely by state and territory government agencies. While states and territories continue to be designated State authorities (DSAs) under the ESOS Act as amended in 2015, since 2012 responsibility for regulation of vocational education and training (VET) providers has largely rested with the Australian Skills Quality Authority (ASQA). In 2012 the Tertiary Education Quality and Standards Agency (TEQSA) was established as national regulator of the higher education sector. The ESOS Act and National Code therefore now operate in tandem with a number of other quality assurance frameworks, including the Standards for Registered Training Organisations (RTO Standards), administered by ASQA and the Higher Education Standards Framework, administered by TEQSA. Since 2007 there have also been major changes to the way education courses are designed and delivered, particularly through technology.

While the Higher Education Standards Framework and the RTO Standards quality assure the provision of education in the higher education and VET sectors respectively, the National Code applies to the full range of education sectors and is focused on the additional support and services for, and rights and obligations of, international students in Australia on a student visa.

The National Code guides DSAs and ESOS agencies in protecting international students as consumers while they are in Australia, addressing their unique needs and supporting visa integrity.

In December 2015 the *Education Services for Overseas Students Amendment (Streamlining Regulation) Bill* was enacted. The bill created ESOS agencies, including TEQSA and ASQA, who have direct responsibility for providers' registration and monitoring providers' compliance (among other changes included in the Bill).

Administrative updates were made to the National Code in April 2017 which adopted terminology consistent with terms used in the ESOS Act, as amended in 2015. The update aligned the registration process under the ESOS Act, which took effect on 1 July 2017. The substantive content of the preceding National Code 2007 was unchanged.

However, for some time the international education sector has been calling for the National Code to be substantially updated. The National Code provides a strong foundation ensuring the sector is regulated effectively. From ongoing consultation it is clear that, while the international education sector highly values the National Code and the protections and support it offers to international students, a number of issues need to be addressed to increase its effectiveness and relevance. For this reason, the Government has been working with the sector to identify ways in which the National Code could better reflect the evolving and highly competitive international education environment.

## 2 What are the problems to be solved?

There are a number areas that could be improved in the National Code which have come to light in recent years:

- **Better supporting students** to succeed in their studies by:
  - addressing the particular vulnerabilities international students face in terms of safety and welfare
  - improving the information provided to international students before and at the time of enrolment
  - reflecting modernised methods of educational delivery.
- **Improving regulatory requirements** by:
  - reducing regulatory burden that has come to light since the National Code was last substantially revised;
  - removing duplicative and confusing legislative arrangements.

### SUPPORTING STUDENTS TO SUCCEED IN THEIR STUDIES

#### *PROTECTING STUDENTS AGED UNDER 18*

Providers may approve the accommodation and welfare arrangements for students aged under 18 (where the student is not staying with parents or another suitable nominated relative).

Requirements relating to the provision of appropriate welfare and accommodation arrangements for students aged under 18 no longer fit, given that this aspect of the international education sector has changed markedly in recent years, with increasing numbers of minors enrolling in school study. This needs to be recognised in the National Code by specifically requiring providers who take responsibility for the general welfare of a minor to undertake ongoing verification of the suitability of students' accommodation and welfare arrangements, which does not currently occur. Improving benchmarks and clarifying requirements for welfare arrangements for these students is imperative to the continued protection of these students and assuring Australia's reputation as a safe destination for international students.

Feedback from designated state authorities (DSAs) and school peak bodies (Australian Government Schools International [AGSI] and the Independent Schools Council of Australia [ISCA]) has strongly indicated existing requirements do not provide sufficient clarity at the national level to ensure providers confirm underage students are safe in their accommodation and have appropriate welfare arrangements in place for the duration of their study (or until they turn 18). To ensure the National Code remains an example of best practice legislation, these provisions could be expanded to include processes for providers to verify the appropriateness of accommodation and welfare arrangements for under 18 students.

#### *ADDRESSING THE INFORMATION NEEDS OF INTERNATIONAL STUDENTS*

International students are a different consumer group to domestic students, and more vulnerable due to their lack of local knowledge of the education market and reliance on advice offshore to make a decision.

Clear and accurate pre-enrolment information on available providers and courses, as well as effective written agreements between the provider and the student, are essential regulatory mechanisms for protecting students and assuring the reputational integrity of Australia's international education industry. Potential improvements in the way information is conveyed to international students includes providing key information so that students are fully informed at every step of the recruitment process.

Students often undertake paid work while in Australia, and may not be clear on their work rights and obligations while on a student visa. They may not be aware of where to seek help if they experience exploitation, such as underpayment of wages, poor working conditions and instances of abuse. Amending the National Code so that providers offer key information would be an effective first step in addressing this problem and would better reflect the contemporary issues facing international students.

#### *CHANGING METHODS OF EDUCATIONAL DELIVERY*

The international education context has changed significantly since the last comprehensive update of the National Code in 2007. Since that time, Australia's international education environment has evolved at a rapid pace. The current National Code reflects a less technologically driven education sector with different global economic and competitive conditions, and imposes limits on online learning which do not reflect contemporary pedagogical approaches to innovative and flexible course delivery.

#### IMPROVING REGULATORY REQUIREMENTS

##### *REDUCING REGULATORY BURDEN*

Transfer requirements could be improved by including more detailed guidance for providers when assessing transfer requests from students. The National Code also contains restrictions on student transfers, which necessitate significant investment in terms of applications, assessment, paperwork and following up.

##### *REMOVING DUPLICATIVE AND CONFUSING LEGISLATIVE ARRANGEMENTS*

Current provisions relating to course progress and attendance which are highly complex and require supplementary guidelines outside of the ESOS legislative framework. These requirements do not allow regulators to adopt an enforceable, risk-based approach to provider compliance and delivery.

### 3 Why is Government action needed?

#### STRONG SECTOR SUPPORT FOR CONTINUED GOVERNMENT INTERVENTION

International education is Australia's third largest export, behind iron ore and coal. In the 2007 calendar year, 451,477 international student enrolments and associated education services contributed approximately \$11 billion to the economy. In 2016, there were 712,884 enrolments, with education services contributing \$21.8 billion and supporting more than 130,000 jobs.

The international education market is not self-regulating. It requires government intervention to ensure appropriate standards are maintained for the benefit of international students and our global reputation.

The National Code is a set of nationally consistent standards that governs the protection of all student visa holders and delivery of courses to those students. It acts in tandem with, and as a complement to, legislated standards for the quality assurance of the higher education, vocational education and training, school, intensive English Language, and foundation program standards. The National Code is highly valued by the international education sector and international students.

At its most effective and efficient, the National Code ensures Australia has optimal settings to allow relevant regulators – including TEQSA, ASQA, and the Department of Education and Training – to address unsustainable, unscrupulous or unacceptable practices in the international education sector.

Consultation on proposed reforms to the ESOS framework throughout 2016 and 2017 found overwhelming support across all stakeholder groups for the continuation of enforceable, legislated arrangements – such as those provided for under the National Code – to promote stability and integrity in the international education sector.

#### NO FEASIBLE ALTERNATIVES TO GOVERNMENT ACTION

Alternatives to regulation, such as a voluntary code of ethics, may cover some aspects of the regulation incorporated in the National Code. However, the National Code supports the ESOS Act in the critical areas of consumer protection, student welfare and visa integrity and no alternatives to government action have been demonstrated in these areas.

A self-regulated code of ethics would not have sufficient authority to support the ESOS Act. Any shortfall in a voluntary code could have serious impacts on the reputation and economic success of the industry. Further, a code of ethics or other non-legislative option would not provide an enforcement capability to regulators: the use of legal enforcements is imperative to managing high-risk providers. While the international education market has industry bodies that promote good business practice, their capacity is limited given that this is an international (cross-border) industry involving high amounts of capital.

## 4 Policy options: overview

This overview of policy options addresses only those proposed changes which will have a regulatory impact on the international education sector. Therefore, not all National Code standards are represented below. An overview of all proposed changes to the National Code, including those both with and without a regulatory impact, can be found at [Appendix A](#).

### OPTION 1 – STATUS QUO

One policy option is to retain the National Code in its current form, without any amendment. The National Code as it currently stands provides a solid foundation of pedagogical, linguistic, welfare and other supports and protections to students who have travelled from overseas to study here. It recognises the international education sector is not self-regulating and international students face specific issues, particularly related to the context in which they are recruited and enrolled, which are not resolvable by market forces alone.

#### *INFORMATION IMBALANCES: MARKETING PRACTICES, STUDENT ENROLMENT AND WRITTEN AGREEMENTS (STANDARDS 1 TO 3)*

Under the current National Code, providers must meet certain requirements in promoting their courses to current and prospective international students. This recognises that international students are a different consumer group to domestic students, and ensures they are able to make informed choices about studying in Australia.

Standard 1 of the National Code states that providers must undertake marketing in a professional manner and must not give misleading information to prospective students on the provider and its offerings. This includes:

- claims of association between providers
- employment and migration outcomes associated with a course
- possible automatic acceptance into another course
- claims of association with other providers
- the provider's registration on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS)
- any other claims relating to the provider.

Under Standard 2, a provider must give a student specific information on the course or courses in which the student may enrol prior to accepting the student, including:

- course requirements, pre-requisites and content
- campus locations, facilities and equipment
- information on arrangements with any other providers
- indicative course fees and the potential for fees to change



- a description of the ESOS framework, including grounds for deferring, suspending or cancelling a student's enrolment and
- information on life in Australia, including the cost of living and accommodation options.

Standard 3 provides for formalisation of enrolment and specifies that a written agreement must be signed between the provider and student. The written agreement must:

- identify the courses in which the student is to be enrolled, any conditions on his or her enrolment, and an itemised list of course fees
- provide information in relation on refunds, including information on the process for gaining a refund under the ESOS Act in the case of student or provider default
- set out the circumstances in which personal information about the student may be shared between the provider and Australian Government agencies.

These requirements provide an adequate foundation for the ethical recruitment of prospective international students, particularly with regard to information to be provided to students, fees and refund processes.

#### *ARRANGEMENTS FOR UNDERAGE STUDENTS (STANDARD 5)*

Visa condition 8532, contained in the *Migration Regulations 1994*, states that if a student visa holder has not turned 18 years of age, he or she must stay in Australia with a parent, a suitable nominated relative, or in accommodation and welfare arrangements that are formally approved by the provider by issuing a Confirmation of Appropriate Accommodation and Welfare (CAAW) letter. If these conditions are not met, an underage student is not eligible for a student visa and cannot continue to hold a student visa.

The National Code contains provisions that reflect and support visa condition 8532. Currently the National Code states that if a provider has taken on responsibility for an underage student and issued a CAAW letter, the provider must:

- advise the Department of Immigration and Border Protection (DIBP) that it accepts responsibility for the student;
- set out the dates for which it assumes responsibility for a student (in the Provider Registration and International Student Management System, or PRISMS); and
- have documented processes for checking suitability of the student's accommodation, support and general welfare arrangements (with no minimum requirements).

Generally, providers continue to be responsible for the welfare of the student, even if the student's enrolment is suspended or cancelled; until other suitable arrangements are made for the student; or until the student returns home.

#### STUDENT SUPPORT SERVICES (STANDARD 6)

The National Code currently places requirements on providers to support students to adjust to life in Australia and succeed at their study. Providers must offer an age- and culturally-appropriate orientation program that gives information about available student support, legal, emergency and health services; facilities and resources; complaints and appeals process; and student visa conditions relating to course progress and/or attendance (as applicable to the student).

Providers must also have a documented critical incident policy, and must have a designated member (or members) of staff to be the official point of contact for students. Providers must ensure that staff members who interact directly with students are aware of the registered provider's obligations under the ESOS framework.

#### STUDENT TRANSFERS (STANDARD 7)

Currently, a student is not permitted to transfer providers until he or she has completed the first six months of the principal course, except in certain limited circumstances. The principal course is the final course in a "package" of courses included on the student's visa, usually the highest qualification. Data from PRISMS, which collects information on provider and student details and compliance with the ESOS legislation and visa requirements, shows that at the time of visa grant, students in packaged courses need to study for an average of approximately 500 days before being eligible to transfer without needing a release letter.

If the student wishes to transfer to another provider prior to completing six months of the principal course, the student must request a letter of release from the provider.

The provider must assess the application for transfer based on its implemented policy and procedure, which is available to staff and students, and either:

- grant a letter of release (if the request for transfer is successful); or
- inform the student, and provide written reasons, if the request is refused.

Exceptions to the need for a student to request a transfer are:

- in the case of provider default;
- where the provider has had a sanction imposed on its registration that prevents the student from continuing his or her course; or
- a home government sponsor of the student considers the change to be in the student's best interest and has provided written support for that change.

The intention of the current transfer requirements is to assist students to adjust to their course and the Australian lifestyle, before making any decisions about changing providers.

The requirements also ensure students are committed to studying the course for which their visa was granted rather than moving immediately once they arrive onshore. The transfer requirements assist with some concerns in the sector about education agents or providers who 'poach' students from their current providers shortly after they arrive in Australia, and before they have had time to become fully orientated with their studies.

#### *ATTENDANCE MONITORING (STANDARD 8)*

Currently, about one-third of VET providers are required to monitor student attendance under the National Code. The remainder have implemented the DEEWR-DIAC Course Progress Policy (the DDCPP). DEEWR refers to the former Department of Education, Employment and Workplace Relations; DIAC refers to the former Department of Immigration and Citizenship.

Providers that have implemented the DDCPP do not need to monitor attendance, but still need to monitor course progress under that policy, and under the National Code.

VET providers who have not implemented the DDCPP are required to identify the process for contacting and counselling students who have been absent for more than five consecutive days without approval or who are at risk of not attending for at least 80 per cent of the scheduled course contact hours.

Where the registered provider assesses a student as not achieving satisfactory attendance for a course, the provider must notify the student in writing of its intention to report the student for not achieving satisfactory attendance.

A student may access internal and external appeals on this matter. Based on Overseas Students Ombudsman data, in 2015-16 there were approximately 266 external appeals processes, and approximately 354 internal appeals on attendance related matters.

A provider may decide not to report the student for breaching the 80 per cent attendance requirement where the registered provider confirms that the student is attending at least 70 per cent of the scheduled course contact hours, and is maintaining satisfactory course progress.

## OPTION 2 – RISK FOCUSED, MINIMAL REGULATION

As for Option 1, this overview addresses only those proposed changes which will have a regulatory impact on the international education sector. Not all National Code standards are represented below. An overview of all proposed changes to the National Code, including those both with and without a regulatory impact, can be found at [Appendix A](#).

Under this option key changes to the National Code would:

- address information imbalances for students
- address areas of risk, especially with regard to welfare arrangements for students under 18 years of age
- include student support service requirements which target specific areas of student need which have come to light since the National Code was last substantially revised
- reduce the administrative burden in relation to the process for assessing student transfers
- streamline course attendance requirements.
- minimise regulatory overlaps between the National Code and other legislation and standards.

### *ADDRESSING INFORMATION IMBALANCES: MARKETING PRACTICES, STUDENT ENROLMENT AND WRITTEN AGREEMENTS (STANDARDS 1 TO 3)*

Under this option, requirements relating to marketing and enrolment practices and written agreements would expand on the basic information currently required under Standards 1 to 3 of the National Code (Marketing information and practices; Enrolment of an overseas student; and Formalisation of enrolment and written agreements).

Broadly, amendments would clarify marketing and enrolment requirements for providers to ensure they do not engage in false or misleading behaviour. Information gaps in current written agreement requirements would be addressed by requiring providers to include advice on government and provider consumer protection processes, provisions to protect students in the case of provider default, complaints and appeals processes, arrangements providers maintain with other institutions to deliver a course, and work-based learning opportunities. The majority of this information is expected to be provided at the course level.

Written agreements do not currently include a provision on who is to be credited with any refund of fees, meaning that fees can be diverted to an education agent or other third party. Option 2 would seek to rectify this by including a provision that refunds cannot be credited to an agent acting as an intermediary in the transaction.

New provisions would require providers to clarify how the fees students pay correspond to the education services they receive, and course prerequisites, English language requirements, campus locations, facilities and equipment, and any additional fees students may need to pay. These requirements would align with Australian Consumer Law to ensure prospective students receive accurate and full information, in plain English, prior to enrolling in a course **and** in the written agreement that the student and provider must agree at the time of enrolment.

#### *ARRANGEMENTS FOR UNDERAGE STUDENTS (STANDARD 5)*

Standard 5 sets out the administrative process for providers approving accommodation and welfare arrangements for students aged under 18. They reflect the Migration Regulations and place minimum requirements under which a provider may approve accommodation, support and general welfare arrangements for these students.

Standard 5 would reiterate that welfare arrangements must be appropriate and maintained at all times, until the student turns 18. It proposes a clearer requirement on the frequency of review of those arrangements (twice yearly) and requires providers to have a policy and process for such reviews. Providers with approved welfare arrangements would be required to give the student information on who to contact in emergency situations; and how to report alleged abuse to the appropriate authorities.

Providers would also notify the student's parents or nominated relative immediately if they are no longer able to approve welfare arrangements for the student (i.e., in the case of provider default). In addition, if the provider is unable to contact a student and has concerns for the student's welfare, the provider must make all reasonable efforts to locate the student including notifying the police and any other relevant Commonwealth, state or territory agencies.

#### *STUDENT SUPPORT SERVICES (STANDARD 6)*

Proposed changes to Standard 6 would require providers to have and implement documented processes for supporting and maintaining contact with students undertaking online units of study.

Providers would also be required to provide additional information in their orientation program for all international students, including

- information on English language and study assistance programs;
- the support services available if a student's personal or other circumstances are adversely affecting their education in Australia; and
- services students can access for information on their employment rights and conditions, and how to resolve workplace issues (such as through the Fair Work Ombudsman).

### *STUDENT TRANSFERS (STANDARD 7)*

Option 2 would remove the restriction on transfers which currently requires that in most circumstances, a student who has not completed the first six months of his or her principal course must produce a release letter from their original provider in order to transfer to a different provider.

Students would therefore be able to enrol in an alternative provider without needing to seek permission from the original provider. Proposed changes to Standard 3 provisions would allow providers to charge students a cancellation fee in accordance with the written agreement between the provider and student. In this way providers could recoup the costs associated with recruiting the student, and associated administrative costs.

### *ATTENDANCE MONITORING (STANDARD 8)*

Changes under Option 2 would remove unnecessary complexities in the way student attendance is monitored. Option 2 would remove the requirement for providers to monitor attendance for students enrolled in VET courses, unless it is imposed as a condition of registration by the ESOS agency. Only those providers with a condition to monitor attendance on their registration would be required to do so, at a minimum setting of 70 per cent attendance for each student.

VET providers that are required to monitor attendance would need to have and implement a documented policy and process for monitoring and recording student attendance. The policy would specify details of the registered provider's strategy to identify, notify and assist 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.

### OPTION 3 – MORE NUANCED OPTION INCORPORATING STAKEHOLDER FEEDBACK

Under Option 3 most of the changes proposed under Option 2 would remain in the same form for all Standards, except for moderate changes to Standards 3, 5, 7 and 8. Differences in terms of regulatory impact are outlined below.

#### *ADDRESSING INFORMATION IMBALANCES: MARKETING PRACTICES, STUDENT ENROLMENT AND WRITTEN AGREEMENTS (STANDARDS 1 TO 3)*

Option 3 would require clear, comparable information to be provided to overseas students at each stage of the recruitment process. As for Option 2, key information, such as tuition fee amounts, the periods to which they relate and refund process would be required in full in the written agreement. However, Option 3 would clarify institutions should only use hyperlinks in written agreements to provide supplementary material. Key details of the contract would still be explicitly included in the written agreement.

#### *ARRANGEMENTS FOR UNDERAGE STUDENTS (STANDARD 5)*

Revisions to Standard 5 would introduce stronger requirements on providers in relation to the approval of welfare arrangements for students aged under 18.

Where a transfer takes place for a student aged under 18, Standard 5 would clarify that the relinquishing provider needs to take all reasonable steps to ensure that appropriate welfare and accommodation arrangements are in place prior to releasing the student. Both the releasing and the receiving providers would be required to negotiate the transfer date for welfare arrangements to ensure there is no gap in welfare arrangements, such as over a holiday break.

This option would require providers to have documented policies and processes for selecting, screening and monitoring any third parties engaged by the provider to organise and assess welfare and accommodation arrangements.

The National Code would explicitly state that adults involved with providing accommodation and welfare must have appropriate working with children clearances as required in that state or territory. This aligns the National Code with existing state and territory child protection frameworks. State and territory DSAs would be able to impose additional requirements under their regulatory frameworks.

#### *STUDENT TRANSFERS (STANDARD 7)*

Under Option 3, the restriction on transfer between providers would remain in place. Providers would be required to maintain a transfer policy and process to assess requests for transfers, but would no longer be required to provide transferring students with a letter of release. Release would instead be indicated by ticking a box in PRISMS.

The revised Standard 7 would include existing provisions which state a student can transfer providers in certain circumstances, such as in cases of provider default and where the student has support from a government sponsor. In addition, the provider's policy and process would need to allow for consideration of transfer where:

- there are compassionate or compelling circumstances as set out on the provider's policies
- the student can provide evidence that his or her reasonable expectations about their current course are not being met
- the student can provide evidence that he or she was misled by the provider or an education or migration agent regarding the provider or its course.

The National Code would specify, as is now the case, that if a provider refuses a transfer request, it would need to give the student, in writing, the reasons for rejecting the request. Students who are dissatisfied with the outcome of their request for transfer could continue to seek internal review by the education institution and, if not satisfied with the outcome of the internal review, contact their relevant external complaints body (the OSO for students at most private providers, and the relevant state or territory Ombudsman for students at public providers).

#### *ATTENDANCE MONITORING (STANDARD 8)*

Peak body representatives from the VET sector agreed that the minimum attendance requirement should remain at 80 per cent, rather than 70 per cent proposed under Option 2, in light of recent quality and compliance issues affecting certain VET providers.



## 5 Policy options: analysis of nett benefits (and costs)

This analysis is based on data extracted from PRISMS and other sources in 2016. The analysis was conducted following the release of the April 2016 National Code draft, on which Option 2 is based, to key peak bodies and national regulators.

### OPTION 2 – RISK FOCUSED, MINIMAL REGULATION

Under Option 2, the National Code would be revised to reflect the current operating environment for education institutions, and to keep pace with changing student needs. Option 2 of the National Code would:

- protect students in key risk areas, particularly in relation to welfare arrangements for students under 18 years of age
- expand on the information providers are currently required to give students to support to the transition to life in Australia and succeed in their studies
- reduce the administrative burden in relation to the process for assessing student transfers, and
- streamline course attendance requirements.

Some of these changes are anticipated to increase the administrative efforts providers will be required to undertake, particularly in terms of the additional protections and supports that would be offered to international students. This is seen as commensurate with the need to reduce risk across the sector for more vulnerable students, and to enhance the student experience in line with the goals of the *National Strategy for International Education 2025*.

Taken as a whole, the regulatory savings for Option 2 are approximately \$7.7 million.

*REGULATORY IMPACT: ADDRESSING INFORMATION IMBALANCES: MARKETING PRACTICES, STUDENT ENROLMENT AND WRITTEN AGREEMENTS (STANDARDS 1 TO 3)*

#### PROVIDERS

This proposal would result in a nett reduction in regulatory impost. The impact of a short-term, moderate increase in regulatory burden on providers would be outweighed in the longer term by the benefits of the changes to providers and students, resulting in an overall reduction in regulatory impost.

In the short-term, providers would need to undertake one-off administrative updates to written agreements, application forms and institutional marketing and policy documents. This would include detail on cancellation fees in the case of student transfer (to reflect proposed amendments to Standard 7), information about the Tuition Protection Service and complaints and appeals processes, and students' responsibilities.

Providers would also be required to include information specific to individual students, to the written agreement (for example, conditions on enrolment and the person who is to receive any refunded fees). The majority of this information would be at the course or provider level. Providers would be able to streamline the application process by combining the application form and written agreement into a single document.

Students would be allowed to agree to written agreements by conduct (for example by paying fees), which would ensure that students who do not sign their written agreement are still covered by its provisions. This means student enrolment documentation – such as an application form – could be adjusted to allow providers to incorporate written agreement material, streamlining administrative processes in the long-term.

### *Complaints and appeals*

Making pre-enrolment and written agreement requirements more explicit would assist students to make better choices. In the long term, the clarification of students' and providers' rights and obligations would result in an overall reduction in regulatory burden as it would forestall the emergence of disputes resulting in internal complaints and appeals to the provider. Rectifying areas of ambiguity would clarify students' and providers' rights and obligations at the outset and result in a significant reduction in disputes, complaints and appeals.

The Overseas Student Ombudsman (OSO) Annual Report (2015–16) states that it received 315 external complaints and appeals on private provider refund and fee issues. There is an approximate 57 per cent – 43 per cent split across public and private providers and it is assumed the total number of external complaints from public providers is around 417. Therefore, for all public and private providers, it is assumed that the total would be 732 (315 + 417).

The OSO has reported that it found in favour of the student in 31.6 per cent of cases (i.e., where the written agreement was non-compliant) since it began operations in April 2011 (76 complaints/appeals). Therefore, the reduction in external appeals is assumed to be approximately one-third of 732, or 244. The OSO has advised that it requires providers against whom a complaint or appeal is being made to provide certain documentation which is assumed to take one hour to provide.

Internal appeal is an initial stage in the appeals process, therefore it is estimated that the number of internal appeals conducted directly by providers would be in a range of 125 per cent to 133 per cent of the number of external appeals. Taking an average of 130 per cent, the total would be 317. Internal appeal is estimated to require a full working day for the provider to investigate, adjudicate and report on for each case.

## STUDENTS

Current requirements do not fully address information gaps which uniquely affect students arriving in Australia to study. Option 2 would address these imbalances by aligning Standards 1 to 3, so that students are recruited in an ethical manner, and provided with accurate and transparent information at every step of the recruitment process.

Requiring providers to offer information at key points will ensure students are effectively exposed to the information they need on their education options, rights and obligations. All current and prospective students will have access to timely, comparable information on the range of providers they are considering which will assist the student to make the right choice of course and provider, regardless of their location. Students will receive the information they need before they reach the point of signing a written contract with the provider.

New provisions will improve the student and provider experience by clarifying students' and providers' rights and obligations at the outset. They will also support regulators to undertake compliance action against providers engaging in unethical recruitment practices. Finally, they will ensure that students who neglect to sign their written agreement, but who intend to study with the provider, are still covered by its protections.

In the long term, they will reduce administrative costs to students, as provider responsibilities will be set out more clearly in written agreements and students will not need to seek clarification from providers and the government as to their rights and obligations on an ad hoc basis.

Preventing the emergence of 317 internal and 244 external complaints and appeals would avoid a significant investment in students' time in terms of preparation and process. This would be in the order of a full working days' input from a student, or a total of 561 days per year.

## GOVERNMENT

Similar to the above, state and Commonwealth Ombudsmen would benefit from a reduction in complaints and appeals across the sector. This proposal would reduce the regulatory burden on Government by approximately 244 days per year, as it would reduce the number of external appeals by approximately 244 cases per year, each of which is assumed to take Government a full working day to investigate and finalise.

## *REGULATORY IMPACT: ARRANGEMENTS FOR UNDERAGE STUDENTS (STANDARD 5)*

## PROVIDERS

Standard 5 sets out the administrative process relating to approval of accommodation and welfare arrangements. It does not currently contain any requirements relating to providers' obligations to ensure that arrangements remain suitable over time, and that children are safe and protected for the duration of the time they are studying away from their families.

Option 2 would require providers enrolling underage students, who had taken on responsibility for those students' welfare, to revise their policies to give effect to the new requirement that they verify the student's accommodation is appropriate to the student's age and physical needs at least twice yearly. While providers are already required to confirm the appropriateness of such arrangements, the National Code does not specifically require providers to undertake subsequent verification of ongoing arrangements. Including such a provision would address a key area of stakeholder concern with regard to maintaining appropriate welfare arrangements for younger students.

In addition, providers would need to confirm the student is supervised in homestay arrangements by an adult or adults who have appropriate clearances for working with children as required by the relevant state or territory regulatory body, and that welfare arrangements are maintained until the student turns 18.

Providers would be required to update processes for managing critical incidents for students aged under 18, to maintain accurate and up-to-date student records, and ensure appropriate reporting of alleged or actual child abuse.

These changes would reflect the shared responsibility of the Commonwealth and state and territory regulators for quality assuring education providers across the schools sector, and have been designed to complement, rather than duplicate, existing immigration law and state and territory child protection frameworks.

Based on feedback from AGSI and ISCA, a large number of providers already meet, or exceed, the proposed standards for checking arrangements at least twice yearly. Approximately 50 per cent of the 500 or so providers with these arrangements in place conduct a physical inspection of the student's accommodation arrangements twice yearly, with the remainder undertaking checks at least once yearly.

The introduction of these requirements would impose a moderate burden across the sector, with approximately 250 providers out of all 500 providers needing to undertake an additional check for each of their students every year. This could be undertaken on a "remote" basis, for example, a conversation with the student or email exchange with the accommodation provider, as the proposed amendments to the National Code do not stipulate that a site visit is necessary every time. Based on sector feedback, it is estimated that the average time would equate to one hour per student.

### STUDENTS

The safety of all international students, and particularly younger students, is of critical importance to the reputation of international education in Australia. Stronger regulation for the welfare of younger students demonstrates Australia's commitment to the well-being of students aged under 18, and is appropriate in meeting the needs of this vulnerable group.

In particular, CISA has indicated that the quality of student accommodation is an important issue for international students, which is recognised by the changes to strengthen checks of younger students' accommodation.

These changes would not have a regulatory impact on students.

#### GOVERNMENT

These changes would address a key area of stakeholder concern with regard to maintaining appropriate welfare arrangements for younger students and will ensure Standard 5 stands as a credible, national reassurance to parents and students of effective standards of protection.

These changes would not have a regulatory impact on Government on top of existing Commonwealth, state and territory frameworks.

#### *REGULATORY IMPACT: STUDENT SUPPORT SERVICES (STANDARD 6)*

#### PROVIDERS

Providers would need to design and implement new policies and procedures to support students succeed in their studies and transition to life in Australia. Updating the information providers give to students is expected to impose a minor, one-off cost on providers (anticipated to be one business day per provider). Much of the required information would be easily assessable either through the provider's own internal documentation, or through the Fair Work Ombudsman website (for information to be provided to students on their work rights and support).

This change would support proposed amendments to allow providers greater flexibility in the delivery of online learning, without jeopardising the quality of support they receive.

#### STUDENTS

These changes will increase students' awareness of their entitlements, and in particular their rights at work. Students will be better protected and will have an enhanced living and learning experience in Australia.

The Council of International Students Australia (CISA), the national peak international student representative organisation, has indicated that worker exploitation is a key issue for the international student cohort.

#### GOVERNMENT

Providing better support to students will increase their awareness of their employment rights and Australia's reputation as a destination of choice. The status of overseas students in Australian workplaces has become a significant issue in recent years after a number of high-profile media reports uncovered numerous instances of overseas student exploitation, from underpayment of wages to poor conditions and instances of abuse. On a national level this has resulted in the establishment of the Migrant Workers' Taskforce by the Minister for

Employment, Senator the Hon Michaelia Cash, in October 2016, which is using a whole of government approach to addressing the issue of migrant worker exploitation.

The FWO collects statistics on complaints on compliance and enforcement cases for international students. However, FWO has reported it does not anticipate a significant increase in student complaints based on its analysis of data trends.

#### *REGULATORY IMPACT: STUDENT TRANSFERS (STANDARD 7)*

##### PROVIDERS

Sectoral feedback from institutional administrators has strongly conveyed student transfer provisions under Standard 7 of the National Code impose a significant regulatory burden on providers by: implementing a transfer request policy; assessing individual requests for release; drafting release letters; and internal and external appeals processes. Based on feedback from university peak body Universities Australia, this can cost larger providers (such as universities) tens of thousands of dollars each year. There is little economy of scale as providers are required to assess each case individually.

Removing the requirement for students to request a release from their provider would give greater flexibility to students aged over 18 and protect their right to transfer providers freely as befitting their educational needs. The proposed changes would protect providers' financial investment in recruiting students. Providers would be able to charge a cancellation fee, which would also act as a disincentive to student transfers for frivolous reasons. It would also address a potential conflict of interest whereby providers making decisions on whether or not a student can transfer to another provider also have an incentive to maintain a student's enrolment (and fee-paying status).

Creating greater flexibility for students would result in a large regulatory saving to providers. Under the status quo, when students are successful in their request to transfer providers, their provider generates a release letter (approximately 35,000 across the sector per year, based on PRISMS data). For students whose requests are not successful, providers offer reasons in writing which are specific to the student's case and the provider's transfer policy; and give students information on internal and external appeals processes.

Removing this requirement for all but a very small number of enrolments would also drastically reduce the number of appeals cases, in the order of 99 per cent, as most students would be able to move without seeking permission from the provider. Only students aged under 18 would need to request permission to transfer: this is approximately 291 enrolments out of a total of 35,449, or 0.8 per cent. In this way, approximately 400 external appeals processes would be avoided. The Overseas Student Ombudsman (OSO) has advised that it requires providers against whom a complaint or appeal is being made to provide certain documentation which is deemed to take one hour to provide.

The OSO Annual Report (2015–16) states that it received 174 external complaints and appeals on student transfer issues. There is an approximate 57 per cent - 43 per cent split

across public and private providers and it is estimated the total number of external complaints from public providers is 230. For all public and private providers, it is calculated that the total number of complaints would be 404 (174 + 230).

In addition, it is estimated that the number of internal appeals conducted directly by providers as the first stage in the appeals process would be in a range of 125 per cent to 133 per cent of the number of external appeals (as not all appeal processes would reach the external appeal stage). Taking an average of 130 per cent, the total number of complaints would be 515. Internal appeals are estimated to require a full working day for the provider to investigate, adjudicate and report on for each case.

#### STUDENTS

PRISMS data shows that, at the time of visa grant, students in packaged courses need to study for an average of approximately 500 days before being eligible to transfer without requiring a release letter. This timespan far exceeds the time needed for students to settle in to study and life in Australia.

In requesting release from their provider, students are required to provide proof of an offer from an alternative provider. They also need to meet internal administrative requirements of the provider, as set out in the provider's policies and procedures. Students who are not successful in their application for transfer have the option of an internal or an external appeal if they are not satisfied with the outcome.

The reduction in internal and external appeals described above would reduce regulatory burden on the student. Assuming a student requires one business day to prepare for an internal or external appeal, Option 2 would result in a reduction of approximately 915 days administration for students, entailing approximately 515 internal appeals and 400 external appeals.

#### GOVERNMENT

Similarly to the above, state and Commonwealth ombudsmen would experience a reduction of complaints and appeals across the sector. This proposal would reduce the regulatory burden on Government by approximately 400 days per year, as it would reduce the number of external appeals by the same number, with each case estimated to take the Government a full working day to investigate.

#### *REGULATORY IMPACT: ONLINE STUDY (STANDARD 8)*

#### PROVIDERS

Based on a feedback from the national regulators (the Australian Skills Quality Authority, or ASQA; and the Tertiary Education Quality and Standards Agency, or TEQSA) on the delivery of online units to overseas students, requirements relating to providing better support for students undertaking online study would affect approximately 75 per cent of registered providers delivering education to international students.



This estimate takes into account the expected increase in online delivery permitted under this option. One-off changes under this standard are estimated to require providers to spend approximately one full business day updating and approving the requisite changes.

#### STUDENTS

Students would benefit from these changes through a more flexible, modern approach to course delivery. For example in the tertiary education sector (both higher education and vocational education and training), course delivery has evolved significantly over past decades and online education is no longer the “poor cousin” of face-to-face learning. Providers have developed sophisticated online study, and are rethinking their delivery of education by utilising digital media and online resources to add value to the student learning experience.

Quality assurance processes of the national regulators (TEQSA for the higher education sector and ASQA for the VET sector) would ensure that all courses, whether delivered in online or traditional formats, would continue to be of high quality.

#### GOVERNMENT

These changes would not have a regulatory impact on the government.

#### *REGULATORY IMPACT: ATTENDANCE MONITORING (STANDARD 8)*

#### PROVIDERS

National Code requirements for monitoring attendance under Standards 10 and 11 place a regulatory burden on providers which is not commensurate to the benefits of overall quality provision in the international education sector.

While the DEEWR-DIAC Course Progress Policy (DDCPP) was based on increasing the flexibility to VET providers, the inconsistency in having two requirements across the VET sector (one under DDCPP and one under the National Code), is not ideal as the DDCPP is external to the ESOS legislative framework.

Despite the proposed removal of the DDCPP, providers would still have to monitor course progress and ensure that, unless exceptional circumstances apply, students complete their study within the expected duration of their student visa. However, providers would not need to mark attendance for each of their VET students across all providers, unless they have a condition imposed on their registration.

This option would bring all VET providers in line with one another and reduce overall regulatory burden in the VET sector. It also provides an opportunity for regulators to enforce attendance monitoring requirements in a targeted way for providers for whom it is warranted, based on previous non-compliance. The number of businesses estimated to be affected is:



- the number of VET providers who have not implemented the DDCCP (169), minus
- the number of providers estimated to have attendance monitoring imposed as a condition of registration (26), estimated to be five per cent of the total number of VET providers [524]).

Across the 169 providers there are 43,837 students, or approximately 260 students per provider. The total number of VET providers whose regulatory burden would be reduced as a result of this change is approximately 143. The number of occurrences is the number of students per year at these 143 providers (approximately 259.75 multiplied by approximately 142.8, with a total of 37,093). Based on a saving for providers of 15 minutes per student, this would result in a total saving of 9273 hours per year, or 1236 working days.

#### *Counselling students, internal and external appeals*

Consequential to the amendment removing the requirement for providers to monitor attendance unless it is imposed as a condition of registration, most providers would no longer need to contact and counsel students at risk of not meeting attendance requirements, nor would students seek access to internal and external appeal processes.

The Overseas Student Ombudsman (OSO) Annual Report (2015–16) states that it received 115 external complaints and appeals on attendance monitoring issues. There is an approximate 57 per cent - 43 per cent split across public and private providers and it is assumed the total number of external complaints from students at public providers is 151. For all public and private providers, the total complaints would be 266 (115 + 151).

Removing the requirement for 95 per cent of VET providers to monitor attendance would also avoid approximately 95 per cent of external appeals processes, or approximately 252 of the 266 complaints. The OSO has advised that it requires providers against whom a complaint or appeal is being made to make available certain documentation which is assumed to take one hour to supply.

Internal appeal is an initial stage in the appeals process, therefore it is estimated that the number of internal appeals conducted directly by providers would be in a range of 125-133 per cent of the number of external appeals. Taking an average of 130 per cent, the total for appeals would be 328. It is estimated internal appeal processes would take one full working day for both the provider and the student.

#### STUDENTS

It is assumed that an external appeal would require a full working days' input from a student. These changes would result in a regulatory saving of approximately 580 working days for students, as both internal and external appeal cases require approximately a full working day.

#### GOVERNMENT

These changes would not have a regulatory impact on the Government.

### OPTION 3 – MORE NUANCED OPTION INCORPORATING STAKEHOLDER FEEDBACK

Analysis of this option is based on data extracted from the PRISMS and other sources in 2016. The analysis was conducted following the release of the April 2016 National Code draft to key peak bodies and national regulators. Option 3 builds on the April 2016 draft, identified in the previous section as Option 2.

Taken as a whole, the regulatory savings for Option 3 are approximately \$2.2 million.

#### *REGULATORY IMPACT: ADDRESSING INFORMATION ASYMMETRIES: WRITTEN AGREEMENTS (STANDARD 3)*

##### PROVIDERS

Feedback on the National Code has indicated that providers view the changes proposed under Option 2, relating to the provision of information in written agreements, are overly detailed and burdensome. Option 3 proposes a means to streamline these requirements for providers by allowing them to use hyperlinks for certain information to be included in the written agreement with students. This would make the provision of information more convenient for students and providers. It may also result in minor regulatory savings, but these are not anticipated to be significant.

##### STUDENTS

These requirements are more restrictive on students in comparison to option 2, however it ensure that students are provided with the information needed to make a well-informed decision on their course and provider.

##### GOVERNMENT

These provisions would ensure that the Government and national regulators have the information necessary to monitor provider compliance with requirements relating to the provision of information to students.

#### *REGULATORY IMPACT: ARRANGEMENTS FOR UNDERAGE STUDENTS (STANDARD 5)*

##### PROVIDERS

Feedback from stakeholders has indicated a desire to strengthen provisions targeted at protecting the welfare of students aged under 18 whose accommodation and welfare arrangements are approved by the provider. Currently, where a student transfers providers, neither the releasing provider nor the receiving provider is under any obligation to check the student's welfare arrangements. This creates a lack of continuity throughout this transition for many students.

Changes under Option 3 would require providers to ensure there is no gap in welfare arrangements if an under 18 student transfers. The providers concerned would need to negotiate a release date for the receiving provider to take on responsibility for the student. The receiving provider would not be able to enrol the student to commence on a date later than the end of the Confirmation of Enrolment for the releasing provider.

This would impose a moderate administrative burden on releasing and receiving providers. It is estimated that for each case of a student aged under 18 transferring, of which there are 291 per year, it would take a total of one hour for the providers to consult on an appropriate date for the student to transfer, and follow up in their administrative processes.

Under Option 3, providers would also be required to implement processes for selecting, screening and monitoring third parties. It is estimated that determining these processes and finalising them in policy would take approximately one business day per provider.

#### STUDENTS

This change would extend on Option 2 to protect the welfare of younger students while they are living in Australia, and would further demonstrate Australia's commitment to the welfare of this underage cohort.

These amendments would strengthen the current framework around the provision of accommodation and welfare to underage students, by providers and by the third parties they engage to deliver accommodation. The provisions would bolster and enhance protection mechanisms for children while they are living and studying in Australia.

These changes would not have a regulatory impact on students.

#### GOVERNMENT

These changes would provide further assurance, both domestically and internationally, of the priority Australia places on protecting minors from harm.

They would not have a regulatory impact on Government on top of existing Commonwealth, state and territory frameworks.

#### REGULATORY IMPACT: STUDENT TRANSFERS (STANDARD 7)

While the requirement to draft release letters has been removed under Option 3 and replaced with an automated PRISMS process, the requirement that providers assess requests for release according to their documented transfer policy would remain.

Maintaining the transfer restriction under this option responds to stakeholder concerns that lifting transfer restrictions could negatively affect visa integrity and send the wrong message to education agents that students can be easily induced to move to lower cost or to less reputable providers once they arrive in Australia.

These changes would reduce the time taken to process transfer requests and remove the need for written evidence of release while capturing a record of transfer approval. Providers would no longer need to draft letters of release and the overall regulatory burden would be reduced in the order of more than 2,300 working days per year (or 17,500 hours per year to draft approximately 35,000 letters, each taking half an hour).

### STUDENTS

In developing these amendments to Standard 7 the department consulted with CISA. CISA agreed continuing the restriction on transfers would benefit students by ensuring they have time to adjust to their education provider and to living in Australia. Students who are experiencing culture shock and settling into their new studies, in a language of which they are often not native speakers, may make quick decisions about changing providers. This option would neither increase nor decrease the regulatory burden on students compared with the status quo.

### GOVERNMENT

This would not have a regulatory impact on Government but systematising the method for release would allow Government to track student movement and ensure compliance with Standard 7.

### *REGULATORY IMPACT: ATTENDANCE MONITORING (STANDARD 8)*

### PROVIDERS

VET providers will no longer be required to counsel students at risk of not meeting minimum attendance requirements (unless attendance monitoring is imposed as a condition of registration). There were 1362 incidences of an intervention strategy being implemented across the 169 VET providers that monitor attendance in 2016-17.

The overall number of VET providers that would be required to monitor attendance as a condition of their registration would be limited (estimated at five per cent (26) of the total number of VET providers [524]). It is estimated that 95 per cent of counselling processes would no longer be necessary (1294 total). Assuming each process takes half a working day, the amount of time saved through this measure is approximately 647 working days.

This change would reduce regulatory burden while giving assurance that appropriate oversight of providers and support for students will remain in place.

### STUDENTS

These changes will ensure the National Code aligns with the reform of VET regulatory and funding frameworks made in recent years in order that students receive high quality education while they are in Australia.

### GOVERNMENT

These changes will ensure that changes to regulatory frameworks made to the VET sector in recent years are accounted for and supported in these changes.

## 6 What is our preferred option and why?

Option 3 builds on the streamlined and modernised version of the National Code proposed under Option 2. It incorporates peak body, provider and other stakeholder feedback received over a two-stage consultation process in 2016-17 to ensure that in reviewing the National Code, the Government does not create unintended consequences for the sector which could damage Australia's international reputation for quality education and impose unreasonable regulatory burden on providers. This is particularly pertinent considering the number of education sectors which come under the ESOS umbrella (VET, higher education, schools, foundation courses and ELICOS courses).

Option 3 addresses stakeholder feedback by:

- clarifying institutions may use hyperlinks in written agreements to provide supplementary material, with key details of the contract still to be explicitly included in the written agreement
- introducing stronger safeguards for students aged under 18 years by requiring providers to: regularly check on students' accommodation and welfare arrangements; have specific policies for selecting, screening and monitoring third party arrangements; provide information on who to contact in emergency situations and how to report actual or suspected abuse; have a specific critical incident policy for underage students; and ensuring there is no gap in welfare arrangements where an under 18 student transfers between providers
- reducing regulatory burden by automating the process for student transfers between providers, and providing clarity with regard to aspects of students' circumstances providers may consider in assessing applications for transfer
- introducing greater flexibility for students and providers with a slight increase in the allowable proportion of study undertaken online
- keeping minimum attendance requirements at 80 per cent, rather than 70 per cent, in light of recent quality and compliance issues affecting certain VET providers.

## 7 Consultation on options for change

### APPROACH

Consultation on the National Code grew out of stakeholder consultations on reform of the ESOS legislative framework in 2014 and 2015.

The department carefully engaged with stakeholders at the outset of the National Code review process to ensure broad support for proposed changes without jeopardising the quality and rigour of governmental regulatory processes, particularly with regard to areas of greater sensitivity or contention. This included numerous group workshops and one-on-one consultations with interested stakeholders on draft proposals throughout 2016 and 2017.

The Council of International Students of Australia (CISA) was included in workshops and one-on-one meetings, in acknowledgement of the impact that National Code changes may have on the student cohort and to capture the student perspective. As the national peak body, CISA is the most appropriate organisation to represent the interests of overseas students in Australia, and by extension, those of their parents and extended families in the home country.

In September 2016, the Minister approved a two-stage consultation process based on the draft National Code released in April 2016. The first stage, which took place from September 2016 to January 2017, included targeted discussions with key peak bodies and regulators. The second stage was broad online public consultation with a call for written submissions from all interested parties.

### FIRST STAGE CONSULTATION

First stage consultation included group workshops, face to face meetings and teleconferences on proposed amendments. Key stakeholders involved included:

- English Australia
- TAFE Directors Australia
- Council of Private and Higher Education
- Australian Council for Private Education and Training
- Council of International Students Australia
- Universities Australia
- Independent Schools Council Australia
- International Education Association of Australia
- The Tertiary Education Quality and Standards Agency (TEQSA)
- The Australian Skills Quality Authority (ASQA)
- state and territory regulators with responsibility for the regulation of the international schools sector
- the Department of Immigration and Border Protection (DIBP).

The department also convened an Under 18 Working Group, which included state and territory regulators, Australian Government Schools International, Independent Schools Council of Australia, English Australia, and the Department of Immigration and Border Protection, to refine arrangements relating to student visa holders aged under 18. This group will continue to operate beyond the National Code review and is a vehicle for discussion between the Commonwealth and state and territory governments on how best to support younger international students.

The key themes emerging in the first stage of consultation included the need for:

- Standards 1 - 3: More comprehensive, stronger consumer protection measures for students throughout the marketing, acceptance of enrolment and written agreement processes
- Standard 5: Stronger and clearer requirements for providers taking responsibility for approving arrangements for students under the age of 18 to ensure their welfare and protection
  - There was broad support for the provisions in this standard, however DSAs expressed concern that "gaps" in welfare arrangements created when an underage student transfers between providers could place minors in an unnecessarily risky position when studying in Australia.
  - Similarly, DSAs expressed concern that the outsourcing of accommodation of welfare arrangements to third parties created a false impression that providers would no longer be responsible for ensuring students have appropriate accommodation and welfare arrangements for the duration of their course.
- Standard 7: Revision of transfer of provider requirements to enhance consumer protections for students and reduce administrative burden for providers
  - All peak bodies advocated for retaining the restriction on student transfer until the student has completed the first six months of the principal course, including CISA. Peak bodies were concerned that removing the restriction would make it easier for unscrupulous providers and agents to convince students to move to a course which may be unsuitable in terms of level or content.
    - This has implications for maintaining visa integrity. Students' visa outcomes impact the original recruiting provider's risk rating, rather than any other provider the student transfers to. This means that if a student transfers providers and subsequently has his or her visa cancelled, it affects the original recruiting provider's risk rating. The risk rating is used by DIBP to determine evidentiary requirements for future students applying for a visa at that provider.

- Standard 8: Updating requirements for monitoring and reporting on course progress and attendance
  - Key peak bodies agreed that in order to help manage risk in the VET sector (for providers monitoring attendance as a condition of their registration), there should be stricter student attendance requirements.
- Standard 8: Increased flexibility and updating of requirements for the provision of online and distance education to student visa holders.

## SECOND STAGE CONSULTATION

Full public consultation and a call for submissions on proposed changes in took place February 2017 for four weeks as part of the second stage of consultation. The Overseas Students Ombudsman and the Fair Work Ombudsman were also consulted in the final stages of refining the draft.

Overall, the key stakeholder feedback from the public consultation process focused on:

- Standard 3: The level of detail required in information given to students in written agreements may be difficult for providers to provide and confusing for students to understand.
- Standard 5: Many providers interpreted this provision as a physical site visit of accommodation arrangements, and expressed concern that a visit every six months could be onerous. The draft National Code was amended to refer to “verifying” that the student’s accommodation is appropriate to the student’s age, which may include regular interviews with the student or homestay parents.
- Standard 7: Providers advocated for stronger monitoring of National Code requirements to ensure institutions could not enrol students who have not been released by their original provider. Some providers are concerned that listing circumstances where students should be granted a release will limit the provider’s discretion to refuse a transfer request and enable students to transfer more easily.
  - With the aim of facilitating greater compliance, the Government will revise the guidance that given to providers on assessing student transfer requests, once the revised National Code is in place.
- Standard 8: Providers requested further clarity regarding the definition of ‘online learning’. In particular, they suggested the definition restricts innovation as it did not take into account distant education and circumstances where asynchronous modes of delivery are used.
  - The Government incorporated stakeholder feedback on asynchronous modes of delivery and distance education to ensure greater clarity. The department aims to ensure this definition supports innovative delivery and supports student learning outcomes.



## **8. Evaluation of the effects of the preferred option**

The Government will continue to work closely with all stakeholders to monitor the effectiveness of the measures. Implementation should be reviewed within five years from the date of commencement of the changes to the TPS requirements. This review may occur as part of a broader review of the effectiveness, efficiency and appropriateness of the ESOS framework.

## Summary of proposed changes to the National Code

### Overview

- Parts A, B and C of the 2007 National Code have been streamlined to summarise the role of the National Code and its purpose, the role of the regulators to reflect the creation of the ESOS agency in the ESOS Act and the aspects of the National Code that apply to registration activities in Part A. Part B contains the standards. Registration requirements in part C have been included in standard 11 of the revised National Code draft.

### Standard 1 – Marketing information and practices

- Standard 1 retains the focus on marketing information and practices but has been amended to more specifically ensure providers do not engage in misleading or deceptive behaviour. This requirement extends to services provided through an education agent.
- It includes specific provisions preventing a provider from suggesting it can secure a migration or education assessment outcome.
- Standard 1 requires providers not to provide any false or misleading information on its courses, or outcomes associated with those courses. This is consistent with Australian Consumer Law. This includes information on the provider's association with any other providers, work-based or work-integrated learning opportunities, and prerequisites including English language in marketing material.

### Standard 2 – Recruitment of an overseas student

- Standard 2 continues to focus on the enrolment process and makes minimal changes to the 2007 version but more clearly lists what a provider must inform a student of before they enrol regarding course content, including online and work related learning.
- It incorporates the requirements relating to course credit, previously in standard 12.
- It includes a requirement to provide information about the process for approving welfare and accommodation arrangements for students under 18.
- The standard continues to require information on costs of living(?) and accommodation options to be given to the student.

### Standard 3 – Formalisation of enrolment and written agreements

- Standard 3 continues to focus on the formalisation of enrolment and written agreements. Its scope has been broadened to give providers and students more specific information about what should be in a written agreement. Previously requirements related mainly to student refunds.
- The new standard clarifies that a written agreement may take any form provided it meets the requirements of the ESOS Act and the National Code. Providers must now provide information in written agreements on:
  - course content, including online learning and work related learning
  - prerequisites
  - conditions on enrolment

- tuition fees payable, the period to which the tuition fees relate and options for payment (including that the student may choose to pay more than 50 per cent of their tuition fees before their course commences in accordance with the ESOS Act)
- any additional non-tuition fees associated with reassessment of study outcomes, deferral, late payment of fees etc.
- who receives the refund
- the Tuition Protection Service
- the student's responsibility to keep a copy of the written agreement and receipts
- set out the circumstances in which personal information about the student may be shared by government agencies
- outline the registered provider's internal and external complaints and appeals processes,
- state that the student is responsible for keeping a copy of the written agreement, and receipts of any payments of tuition fees or non-tuition fees
- only use electronic links in the written agreement to provide supplementary material.

#### **Standard 4 – Education agents**

- Standard 4 requires providers to enter into a written agreement with each education agent it engages to formally represent it, consistent with the current National Code.
- It now requires providers to enter and maintain the details of education agents with whom they have a written agreement in PRISMS.
- It ensures the agent has up to date and accurate information, does not engage in false or misleading conduct, declares and avoids conflicts of interest, observes appropriate levels of confidentiality and transparency in dealing with students, and acts honestly and in good faith.
- Standard 4 also makes explicit reference to the Australian International Education and Training Agent Code of Ethics.

#### **Standard 5 – Younger students**

- Standard 5 continues to define requirements of providers who are approving welfare arrangements for students under the age of 18 but clarifies how certain arrangements must be made, in particular to ensure there are no 'gaps' in welfare arrangements.
- Standard 5 clarifies providers who enrol students under the age of 18 must meet any Australian, state or territory legislation or other regulatory requirements relating to child welfare and protection appropriate to the jurisdiction(s) in which they operate.
- It clarifies that information given to students on who to contact in emergency situations, and in seeking assistance in the case of actual or alleged abuse, must be age and culturally appropriate.
- It requires providers to give information on how a student under 18 can report any incident or allegation involving actual or alleged sexual or physical abuse, in response to concerns raised by state regulators during consultations.
- It clarifies that, where a provider is no longer able to approve welfare arrangements, all reasonable steps must be taken to notify the student's parent or relative immediately.
- It requires providers to regularly verify that students' accommodation is appropriate to the student's age and physical needs.

- It also clarifies that providers must report to the Department of Immigration and Border Protection 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
  - the registered provider is no longer able to approve the student's welfare arrangements.

### **Standard 6 – Student support services**

- Standard 6 clarifies providers must offer reasonable support to students to enable them to achieve expected learning outcomes regardless of the student's mode of study, at no additional cost to the student.

### **Standard 7 – Student transfers**

- Standard 7 clarifies the provider must have a policy for assessing student transfer requests prior to the student completing six months of their principal course, and this policy must be made available to staff and students.
- It clarifies the student must provide a valid enrolment offer from another provider in lodging a request to transfer.
- If a transfer is to be refused, the standard requires providers to notify the student of their intention to refuse the request. The provider must not finalise the refusal in PRISMS until the student has been given an opportunity to access the complaints and appeals process, or the student withdraws from the process, or if the process finds in favour of the provider.
- The standard clarifies the provider **should grant** a transfer request where they have assessed that:
  - the student has been reported because they are unable to achieve satisfactory course progress at the level they are studying, even after engaging with the provider's intervention strategy
  - there are **compassionate or compelling** circumstances
  - an appeal (internal or external) on another matter results in a decision or recommendation to release the student.
- The standard requires providers to include in their transfer policy the circumstances which they consider as reasonable grounds to refuse the transfer, and a reasonable timeframe for assessing and replying to the student's transfer request having regard to the restricted period.

### **Standard 8 – Monitoring course progress and attendance**

#### ***General requirements***

- Standard 8 now relates to monitoring student progress and student visa requirements, previously in standards 9 to 13.
- All providers must ensure students comply with their visa conditions relating to course attendance, progress and completion. These vary according to the sector of education.
- Under the new standard, providers still cannot extend the duration of a student's enrolment **unless**:
  - there are **compassionate or compelling** circumstances, or

- the registered provider has implemented or is implementing an intervention strategy because the student is at risk of not meeting their visa conditions, or
- it is an approved deferral or suspension of the student's enrolment.
- If the duration of the student's enrolment is extended, the provider must advise the student of any potential impacts on their visa.

#### ***Monitoring attendance and/or course progress***

- Standard 8 continues to require providers to have processes for determining the point at which the student has failed to meet satisfactory course attendance or course progress.
- Higher education and VET providers must monitor course progress regularly and implement an intervention strategy to assist a student not making satisfactory course progress. **Higher education providers are not required to monitor attendance.**
- **School, ELICOS and foundation providers must monitor both course progress and attendance. The requirement for attendance is 80 per cent of the scheduled contact hours for the course.** These providers must also assist students through an intervention strategy if they are not making satisfactory course progress.
- **The requirement for attendance monitoring now only applies to VET providers if this is set as a condition of registration by the ESOS agency for the provider (if the provider is considered higher risk). The minimum attendance requirement, if imposed, is 80 per cent of the scheduled contact hours for the course.**

#### ***Reporting student visa breaches***

- The National Code continues to outline the process for dealing with students who do not meet course progress and (if applicable) attendance requirements, which are visa conditions.
- Under standard 8, providers must continue to report students who do not meet course progress and/or attendance requirements and ensure the student is notified of the impending report and has the right of appeal.
- However, a registered provider may decide not to report a student enrolled in a school, ELICOS and Foundation Program course if the student provides genuine evidence of compassionate or compelling circumstances.
- A provider may decide not to report a VET 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 the student is maintaining satisfactory course progress.
- The standard clarifies providers must only report a breach of course progress or attendance if the internal and external complaints processes have been completed and the breach has been upheld; or the student has chosen not to access the internal or external appeals process; or the student withdraws from the internal or external appeals process.

#### ***Online learning***

- Standard 8 maintains the existing provision that prevents exclusively distance learning for a student on a student visa.
- **Only one-third of a course may be undertaken online by higher education** and VET students on a student visa. As is the case now, providers must ensure that **students undertake at least one face to face unit in each compulsory study period.**
- The standard clarifies that **online learning does not include** the provision of online lectures, tuition or other resources that **supplement scheduled classes or contact hours.**

- It stipulates that a provider must ensure that in each compulsory study period for a course, the 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.

#### **Standard 9 – Deferring, suspending or cancelling the student’s enrolment**

- Standard 9 now relates to deferring, suspending or cancelling the student’s enrolment (previously standard 13).

#### **Standard 10 – Complaints and appeals**

- No policy changes.

#### **Standard 11 – Additional requirements**

- Standard 11 includes criteria the provider must demonstrate to the ESOS agency in applying to register a full-time course at a location, based on Part C of the current National Code.