

Submission on proposed changes to the National Code of Practice for Providers of Education and Training to Overseas Students 2007

Overview

PROPOSED AMENDMENTS	SUPPORT / DO NOT SUPPORT	COMMENTS <i>Please provide a comment if you do not support a proposed amendment, and suggest alternative wording if appropriate.</i>
<ul style="list-style-type: none">• Parts A, B and C of the 2007 National Code have been streamlined to:<ul style="list-style-type: none">○ provide an overview of the ESOS framework○ summarise the role of the National Code and its purpose○ outline the quality assurance arrangements and roles of other relevant Commonwealth agencies	Support	
<ul style="list-style-type: none">• Some part C and D requirements in the 2007 National Code have been moved to Standard 11 as requirements for providers.• The standards are now in part B.	Support	

Standard 1 – Marketing information and practices

PROPOSED AMENDMENTS	SUPPORT / DO NOT SUPPORT	COMMENTS <i>Please provide a comment if you do not support a proposed amendment, and suggest alternative wording if appropriate.</i>
<ul style="list-style-type: none"> Clarifies that providers must not engage in false or misleading marketing practices, consistent with Australian Consumer Law. 	Support	
<ul style="list-style-type: none"> Marketing material must accurately identify the provider’s association with any other providers, work-based or work-integrated learning opportunities, and prerequisites including English language. 	Support	
<ul style="list-style-type: none"> Specific provisions prevent a provider from undertaking to or guaranteeing that it can secure a migration or successful education assessment outcome. 	Support	

Standard 2 – Enrolment of an overseas student

PROPOSED AMENDMENTS	SUPPORT / DO NOT SUPPORT	COMMENTS <i>Please provide a comment if you do not support a proposed amendment, and suggest alternative wording if appropriate.</i>
<ul style="list-style-type: none"> Clarifies that a provider must inform a student before they enrol about: course content, modes of study (including online and/or work related learning placements) and assessment requirements. 	Support	
<ul style="list-style-type: none"> Requires providers to give information about the policy and process for approving welfare and accommodation arrangements for students under 18 where relevant. 	Support	

PROPOSED AMENDMENTS	SUPPORT / DO NOT SUPPORT	COMMENTS <i>Please provide a comment if you do not support a proposed amendment, and suggest alternative wording if appropriate.</i>
<ul style="list-style-type: none"> Requires registered providers to have and implement a documented policy and process for assessing English language proficiency, educational qualifications and work experience are sufficient to undertake the course. 	Support	
<ul style="list-style-type: none"> Incorporates the requirements relating to course credit, previously in standard 12. Adds that course credit or recognition of prior learning (RPL) must preserve the integrity of the award to which it applies. 	Support Support	

Standard 3 – Formalisation of enrolment and written agreements

PROPOSED AMENDMENTS	SUPPORT / DO NOT SUPPORT	COMMENTS <i>Please provide a comment if you do not support a proposed amendment, and suggest alternative wording if appropriate.</i>
Written agreements must include more detailed information about students' enrolment.	Support	
Providers must require students must keep their personal and contact information up to date.	Support	
<ul style="list-style-type: none"> The provider must retain records of the written agreement and receipts of payments by the student for at least 2 years after the person ceases to be an accepted student. 	Support	

Standard 4 – Education agents

PROPOSED AMENDMENTS	SUPPORT / DO NOT SUPPORT	COMMENTS <i>Please provide a comment if you do not support a proposed amendment, and suggest alternative wording if appropriate.</i>
<ul style="list-style-type: none"> Clarifies that providers must ensure the agent has up to date and accurate information, does not engage in false or misleading conduct, declares in writing and takes reasonable steps to avoid conflicts of interest, observes appropriate levels of confidentiality and transparency in dealing with students, and acts honestly and in good faith. 	Support	
<ul style="list-style-type: none"> Clarifies the provider must ensure the agent has appropriate knowledge and understanding of the international education system in Australia, including the code of ethics. 	Support	

Standard 5 – Younger students

PROPOSED AMENDMENTS	SUPPORT / DO NOT SUPPORT	COMMENTS <i>Please provide a comment if you do not support a proposed amendment, and suggest alternative wording if appropriate.</i>
<ul style="list-style-type: none"> Providers enrolling students under 18 must meet any Australian, state or territory legislation or other regulatory requirements relating to child welfare and protection. 	Support	
<ul style="list-style-type: none"> Requires providers to give information to students under 18 about who to contact in emergency situations. 	Support	

PROPOSED AMENDMENTS	SUPPORT / DO NOT SUPPORT	COMMENTS <i>Please provide a comment if you do not support a proposed amendment, and suggest alternative wording if appropriate.</i>
<ul style="list-style-type: none"> Requires providers to give information on how a student under 18 can seek assistance and report any incident or allegation involving abuse. 	Support	
<ul style="list-style-type: none"> Providers with responsibility for a student's welfare must check initially and least every six months thereafter that the student's accommodation is appropriate to the student's age and needs. 	Do not support	While the principle of needing to ensure ongoing appropriateness of accommodation is supported, further consideration of the cost impost on providers of checking every six months, or acceptable ways to minimise costs, is requested.
<ul style="list-style-type: none"> Adults involved in or providing accommodation must have any Working with Children clearances (or equivalent) as required in a state or territory. 	Support	
<ul style="list-style-type: none"> Requires a policy and process for managing critical incidents, including in emergency situations and when welfare arrangements are disrupted. 	Support	
<ul style="list-style-type: none"> Where a provider is no longer able to approve welfare arrangements, all reasonable steps must be taken to notify the student's parent or legal guardian immediately. 	Support	
<ul style="list-style-type: none"> Providers must have documented processes for selecting, screening and monitoring any third parties engaged by the provider to organise and assess welfare and accommodation arrangements. 	Support	

PROPOSED AMENDMENTS	SUPPORT / DO NOT SUPPORT	COMMENTS <i>Please provide a comment if you do not support a proposed amendment, and suggest alternative wording if appropriate.</i>
<ul style="list-style-type: none"> If a provider enrolls a student under 18 who has welfare arrangements approved by another provider, the receiving provider must negotiate the transfer date for welfare arrangements to ensure there is no gap. 	Support	Suggest consideration also of the possibility of providing systems and processes to facilitate this, for example in PRISMS if appropriate.
<ul style="list-style-type: none"> The provider must advise the student of their visa obligation to maintain their current welfare arrangements until the transfer date or have alternative welfare arrangements approved or return to their home country until the new arrangements take effect. 	Do not support	<p>The importance of the student being given information and understanding visa obligations is acknowledged and supported.</p> <p>However concerns have been raised about whether the provider should give visa advice.</p> <p>Suggested alternative wording in bold -</p> <p><i>The provider must provide information on how to seek advice regarding their visa obligation to maintain their current welfare arrangements until the transfer date or have alternative welfare arrangements approved or return to their home country until the new arrangements take effect</i></p>

Standard 6 – Student support services

PROPOSED AMENDMENTS	SUPPORT / DO NOT SUPPORT	COMMENTS <i>Please provide a comment if you do not support a proposed amendment, and suggest alternative wording if appropriate.</i>
<ul style="list-style-type: none"> Requires providers to give information to students regarding a range of support services, including relating to English language, health, legal services, complaints and appeals avenues, and employment assistance (including resolving workplace issues). 	Support	

PROPOSED AMENDMENTS	SUPPORT / DO NOT SUPPORT	COMMENTS <i>Please provide a comment if you do not support a proposed amendment, and suggest alternative wording if appropriate.</i>
<ul style="list-style-type: none"> Requires the provider to facilitate access to learning support services, including for different modes of study such as online or distance. 	Support	
<ul style="list-style-type: none"> Clarifies that providers must have in place a documented policy and process to manage critical incidents that could affect a student undertaking or completing the course. (Note: standard 5 requires a critical incident policy and process more specific to the needs of students under 18.) 	Support	
<ul style="list-style-type: none"> Providers must take all reasonable steps to provide a safe environment on campus and give overseas students information about how to seek assistance for and report an incident that significantly impacts on their wellbeing. 	Support	

Standard 7 – Student transfers

PROPOSED AMENDMENTS	SUPPORT / DO NOT SUPPORT	COMMENTS <i>Please provide a comment if you do not support a proposed amendment, and suggest alternative wording if appropriate.</i>
<ul style="list-style-type: none"> Providers must not knowingly enrol a student wishing to transfer from another provider’s course prior to the student completing six months of their principal course, or for the school sector, until after the first six months of the first registered school sector course. 	Support	Additionally, as part of PRISMS redevelopment work, we suggest consideration of the need for a receiving provider to view date and reason if student has been <u>cancelled</u> within first six months. This will ensure the receiving provider is aware that a letter of release for <u>transfer</u> isn’t required.
<ul style="list-style-type: none"> Transfer requests from the student must be in writing. 	Support	

PROPOSED AMENDMENTS	SUPPORT / DO NOT SUPPORT	COMMENTS <i>Please provide a comment if you do not support a proposed amendment, and suggest alternative wording if appropriate.</i>
<ul style="list-style-type: none"> The provider must have and implement a documented policy and process for assessing student transfer requests, which must outline circumstances in which the provider will grant a transfer because it is in the student's best interests; and reasonable grounds for refusal of the request. 	Support	

<ul style="list-style-type: none"> The standard contains additional guidance for providers about circumstances in which they should grant a transfer because it is in the student’s best interests. 	<p>Do not support</p>	<p>Greater guidance on circumstances in which to grant transfer requests is valuable for providers.</p> <p>However the proposed list of possible circumstances risks providing too much guidance for students on how to exploit the transfer provision and therefore have the unintended consequence of encouraging course hopping.</p> <p>It is not clear if OSO complaints data indicates such a comprehensive list is warranted.</p> <p>In particular 7.2.2.1 and 7.2.2.2 are considered at high risk of exploitation if specifically listed, and more appropriately covered within the proposed words in 7.2.2– <i>Because the transfer is in the student’s best interests.</i></p> <p>Suggested alternative is marked in bold –</p> <p>7.2.2 <i>circumstances in which the provider will grant the transfer request because the transfer is in the student’s best interests , including but not limited to:</i></p> <p>(Delete 7.2.2.1, 7.2.2.2)</p> <p>7.2.2.3 the student can provide evidence that the provider has failed to deliver the course as outlined in the written agreement</p> <p>7.2.2.4 <i>the student can provide evidence that his or her reasonable expectations about their current course are not being met</i></p> <p>7.2.2.5 <i>the student can provide evidence that he or she was misled by the provider or an</i></p>
--	-----------------------	--

PROPOSED AMENDMENTS	SUPPORT / DO NOT SUPPORT	COMMENTS <i>Please provide a comment if you do not support a proposed amendment, and suggest alternative wording if appropriate.</i>
		<p><i>education or migration agent regarding the provider or its course and the course is therefore unsuitable to their needs and/or study objectives</i></p> <p><i>7.2.2.6 an appeal (internal or external) on another matter reasonably results in the student seeking a transfer.</i></p>
<ul style="list-style-type: none"> If a student requesting a transfer is under 18, written confirmation of agreement of a parent or legal guardian is required. 	Support	
<ul style="list-style-type: none"> Where a provider agrees to a student's release the date of effect and reason for release must be recorded in PRISMS and the provider must advise the student Immigration to seek advice on whether a new student visa is required. 	Support	The proposal to record dates and reasons for release in PRISMS and make them viewable by receiving provider will streamline current processes for letters of release and so is welcomed.
<ul style="list-style-type: none"> If release is not to be granted, the provider must give to the student the reasons for refusal in writing. 	Support	
<ul style="list-style-type: none"> The provider must maintain records of all requests for transfer, assessment and decision on the student's file for two years after the student ceases to be an accepted student. 	Support	

Standard 8 – Monitoring course progress and attendance

Providers must monitor student progress

PROPOSED AMENDMENTS	SUPPORT / DO NOT SUPPORT	COMMENTS <i>Please provide a comment if you do not support a proposed amendment, and suggest alternative wording if appropriate.</i>
<ul style="list-style-type: none"> All providers must monitor students' progress, as satisfactory course progress is a student visa requirement. Some sectors require providers to also monitor attendance. 	Support	
<ul style="list-style-type: none"> Providers must clearly outline and inform the student before they commence their course of the requirement to achieve satisfactory course progress in each study period. 	Support	
<ul style="list-style-type: none"> Providers must have documented policies and processes to identify, notify and assist a student at risk of not meeting course progress (or attendance requirements if applicable) where evidence from the student's assessment tasks, participation or other indicators of academic progress indicate the student is at risk of not meeting requirements. 	Support	

Schools, ELICOS and foundation programs

PROPOSED AMENDMENTS	SUPPORT / DO NOT SUPPORT	COMMENTS <i>Please provide a comment if you do not support a proposed amendment, and suggest alternative wording if appropriate.</i>
<ul style="list-style-type: none"> School, ELICOS and foundation programmes require both course progress and attendance monitoring. The requirement for attendance is 80% of the scheduled contact hours for the course, or higher if specified under state registration or approval frameworks. 	Support	
<ul style="list-style-type: none"> School, ELICOS and foundation program providers must have a documented policy and process for monitoring and recording students' attendance. 	Support	
<ul style="list-style-type: none"> Higher education providers must have and implement a documented policy and process for monitoring and recording course progress, specifying requirements for achieving satisfactory progress, the provider's processes and policies to uphold academic integrity, assessment of progress, identification of students at risk of not meeting requirements and details of the provider's intervention strategy. 	Support	

VET programs

PROPOSED AMENDMENTS	SUPPORT / DO NOT SUPPORT	COMMENTS <i>Please provide a comment if you do not support a proposed amendment, and suggest alternative wording if appropriate.</i>
<ul style="list-style-type: none"> VET providers must have and implement a documented policy and process for assessing course progress, specifying requirements for achieving satisfactory process and policies to uphold academic integrity, assessment of progress, identification of students at risk of not meeting requirements and details of the provider's intervention strategy. 	Support	
<ul style="list-style-type: none"> A VET provider must have and implement a documented policy and process for monitoring students' attendance if the ESOS agency requires that provider to monitor attendance as well as course progress. This requirement in the National Code replaces previous arrangements split between the National Code and Course Progress Guidelines that applied to VET. If the ESOS agency imposes attendance monitoring as a requirement for a VET provider, the minimum requirement for attendance is 80% of the scheduled contact hours for the course. If the VET provider is required to monitor attendance of students, the provider must have an intervention strategy for students at risk of not meeting attendance requirements. 	Support	

Course duration and allowable extensions

PROPOSED AMENDMENTS	SUPPORT / DO NOT SUPPORT	COMMENTS <i>Please provide a comment if you do not support a proposed amendment, and suggest alternative wording if appropriate.</i>
<ul style="list-style-type: none"> • Providers must continue to not extend the duration of a student’s enrolment if the student is unable to complete the course within the expected duration, unless: <ul style="list-style-type: none"> ○ compassionate and compelling circumstances apply ○ the provider has implemented, or is implementing, an intervention strategy to assist the student to meet course progress (or attendance, if applicable) requirements ○ there is an approved deferral or suspension of the student’s enrolment under standard 9. 	Support	
<ul style="list-style-type: none"> • If a student’s enrolment is extended, the provider must advise the student of any potential impacts on their visa. 	Do not support	<p>The importance of the student being given information and understanding visa obligations is acknowledged and supported.</p> <p>However concerns have been raised about whether the provider should give visa advice.</p> <p>Suggested alternative wording in bold –</p> <p><i>If the registered provider extends the duration of the student's enrolment, the provider must provide information on how to seek advice to the student of any potential impacts on their visa, including the need to contact Immigration to obtain a new visa.</i></p>

PROPOSED AMENDMENTS	SUPPORT / DO NOT SUPPORT	COMMENTS <i>Please provide a comment if you do not support a proposed amendment, and suggest alternative wording if appropriate.</i>

Reporting breaches of visa requirements

PROPOSED AMENDMENTS	SUPPORT / DO NOT SUPPORT	COMMENTS <i>Please provide a comment if you do not support a proposed amendment, and suggest alternative wording if appropriate.</i>
<ul style="list-style-type: none"> • Providers must continue to report students who do not meet course progress (attendance requirements if applicable) and notify the student: <ul style="list-style-type: none"> ○ that the provider intends to report them ○ inform the student of the reasons ○ advise the student they can appeal ○ report the breach in PRISMS in accordance with s19(2) of the ESOS Act 	Support	
<ul style="list-style-type: none"> • A provider may decide not to report a student for breaching attendance requirements if the student provides genuine evidence of compassionate or compelling circumstances, is still attending at least 70 per cent of course contact hours and appeals the decision successfully 	Support	

Online learning

<ul style="list-style-type: none"> • Online and distance learning are defined in the standard. 	<p>Do not support</p>	<p>The drafting in this section seems to be confusing concepts. Greater differentiation between online learning and distance learning will help clarify intention.</p> <p>We assume the objective is to limit distance learning (that is non-face-to-face learning, no matter how it is delivered, eg. by technology or even old fashioned paper based) NOT online learning (that is, learning assisted by technology which is increasingly used on campus in face-to-face situations)</p> <p>We suggest removing the term online learning as much as possible.</p> <p>Suggested alternative words are marked in bold -</p> <p>Note – Distance learning is any learning that a student undertakes off campus that does not require a student to physically attend regular tuition for the course on campus at the provider’s registered location.</p> <p>For the purposes of the ESOS framework, it is not intended that the provision of lectures, asynchronous tuition, resources or any other material by means of online technology be considered to be distance learning.</p> <p><i>A registered provider must not deliver a course exclusively by distance learning to a student on a student visa.</i></p> <p><i>A registered provider must not deliver more than one-third of the units (or equivalent) of a higher education provider or VET course by distance learning to an overseas student as defined in section 5 of the ESOS Act.</i></p>
---	-----------------------	--

		<p><i>For school, ELICOS or foundation programs, any distance learning components 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.</i></p> <p>8.1 <i>The registered provider must take all reasonable steps to support students who may be disadvantaged by:</i></p> <p>8.1.1 <i>additional costs or other requirements, including for students with special needs, from undertaking distance learning</i></p> <p>8.1.2 <i>inability to access the resources and community offered by the education institution, or opportunities for engaging with other students while undertaking d i s t a n c e l e a r n i n g.</i></p>
<ul style="list-style-type: none"> • The 2007 National Code requirement that providers must not enrol a student exclusively in distance or online learning in any compulsory study period has been removed. 		Included above
<ul style="list-style-type: none"> • Higher education and VET providers must not deliver more than one-third of a student’s course online. 		Included above
<ul style="list-style-type: none"> • Providers must take all reasonable steps to prevent students being disadvantaged by additional costs or requirements associated with online learning or by an inability to access the resources and community of the 		Included above

education institution, or opportunities to engage with other students.		
--	--	--

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

PROPOSED AMENDMENTS	SUPPORT / DO NOT SUPPORT	COMMENTS <i>Please provide a comment if you do not support a proposed amendment, and suggest alternative wording if appropriate.</i>
<ul style="list-style-type: none"> Standard 9 now relates to deferring, suspending or cancelling the student’s enrolment (previously standard 13). It clarifies the current requirements but makes no significant changes to policy from the 2007 version. 	Support	

Standard 10 – Complaints and appeals

PROPOSED AMENDMENTS	SUPPORT / DO NOT SUPPORT	COMMENTS <i>Please provide a comment if you do not support a proposed amendment, and suggest alternative wording if appropriate.</i>
<ul style="list-style-type: none"> Assessment of an internal complaint or appeal must be finalised within 20 working days. 	Support	

Standard 11 – Additional requirements

PROPOSED AMENDMENTS	SUPPORT / DO NOT SUPPORT	COMMENTS <i>Please provide a comment if you do not support a proposed amendment, and suggest alternative wording if appropriate.</i>
<ul style="list-style-type: none"> • Standard 11 creates new provisions for additional registration requirements, many of which were previously in Part C of the 2007 version of the National Code relating to 'registration authorities'. Registration authorities are replaced by ESOS agencies by amendments to the ESOS Act passed in December 2015. 	Support	
<ul style="list-style-type: none"> • Providers must seek approval from the ESOS agency, including through the relevant designated State authority if the provider is a school, for proposed: <ul style="list-style-type: none"> ○ course content and duration ○ number of overseas students enrolled within the limit approved by the ESOS agency ○ arrangements with other education providers (partnerships). • Providers must also seek approval from their ESOS agency for any proposed changes to the above during their period of registration under the ESOS Act. 	Support	
<ul style="list-style-type: none"> • Providers must advise their ESOS agency, including through the relevant designated State authority if the provider is a school, in writing of: <ul style="list-style-type: none"> ○ any other affiliated organisations registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) ○ any changes to high managerial agents or ownership of their organisation. 	Support	

PROPOSED AMENDMENTS	SUPPORT / DO NOT SUPPORT	COMMENTS <i>Please provide a comment if you do not support a proposed amendment, and suggest alternative wording if appropriate.</i>
<ul style="list-style-type: none"> Self-accrediting providers must undertake an independent external audit during their period of registration, at least within 18 months prior to renewal of registration, allowing the outcomes to be used for registration renewal. 	Support	

Other comments

Please list any other comments here: