

10 March 2017

Ms Karen Sandercock
Branch Manager, Policy and Systems Branch
Department of Education and Training
GPO Box 9880
CANBERRA ACT 2601

Dear Ms Sandercock

On behalf of Charles Sturt University (CSU) I am delighted to respond to the Department of Education and Training's consultation draft of a revised *National Code of Practice for Providers of Education and Training to Overseas Students 2007*.

Thank you for the opportunity to provide information and comment regarding this important area of the University's operations.

As you know, CSU is Australia's largest rural and regional university, with more than 39,000 students and approximately 2100 FTE staff. CSU is a unique multi-campus institution with campuses at Albury-Wodonga, Bathurst, Canberra, Dubbo, Goulburn, Manly, Orange, Parramatta, Port Macquarie and Wagga Wagga, as well as various study centres.

With a specific commitment to the development and sustainability of rural and regional Australia, our recently opened Port Macquarie campus is at the forefront of our work in the international education sector.

Offering a comprehensive suite of research and academic training programs that focus on addressing rural and regional labour market needs, growing regional economies, and preparing students for the jobs of the new economy through rural and regional Australia, we appreciate the timely nature of this consultation.

I would be delighted to provide the Department with further information that will assist its work on the National Code as required.

Yours sincerely



Professor Andrew Vann
Vice-Chancellor

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	No comment
<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	No comment

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	No comment
<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 with clarification	<p>This amendment requires further clarification. As many courses may have some component of optional work-based learning, this requirement could create increased complexity for international students to understand the requirements of the course before they engage fully with the study.</p> <p>It would be cumbersome and add little value to students if all marketing material was required to include this detail of information. Providers typically include this information on course web sites and prospectuses but would not include this level of detail on all marketing material.</p> <p>The extent of the declaration of relationship with other providers “involved in the delivery of the course” should be clarified. For example, CSU utilises a large number of organisations for work integrated learning placements but would not detail each of these individually in marketing material.</p> <p>Further, 1.3.4 is less clear in its intent to the current National Code 1.2b(v) which covers the same field. We would recommend that this wording be reconsidered.</p>
<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	No comment

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 with clarification	<p>Paragraph 2.1.2 can become easily overly complex due to student choices that may be available in regard to options for on-line study and work placements. It is recommended that only where there is compulsory on-line study and work placements that this should be included.</p> <p>Students may in some circumstances select different enrolment patterns to give different holiday breaks. While the standard usage could be included, this would be difficult to have accurate due to the impact of student choice.</p>
<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	No comment
<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	No comment
<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	No comment

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.	Do Not Support	<p>In the contract, which is the written agreement 3.3.1, it is likely to become overly burdensome on the student and highly legalistic as all options for study would have to be detailed. With English as a second language, any attempt to enforce or rely on these terms would not be effective.</p> <p>While the provision of links to all possible administrative fees (ie non-course fees) should be provided to the student, the intent to include such detail directly in the written agreement would be overly detailed and complex and therefore 3.3.5 could not be supported in its current form.</p> <p>The wording change in 3.4.5 from the current wording in 3.2d) is not seen as valuable and is not supported.</p>
Providers must require students to keep their personal and contact information up to date.	Do Not Support	We can request students, and remind students, to keep their details updated and provide easy processes for them to do so. It is not possible to place the obligation on the provider to ensure that students are providing their contacts, as this is an obligation that must be placed on the student as part of their Visa grant.
<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	No comment

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	No comment
<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 with clarification	However, Standard 4.4.4 refers to “the code of ethics for agents”. This code has yet to be formalised or endorsed by the sector and therefore should not be included until the code is a reality.

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	No comment
<ul style="list-style-type: none"> Requires providers to give information to students under 18 about who to contact in emergency situations. 	Support	No comment

<p style="text-align: center;">PROPOSED AMENDMENTS</p>	<p style="text-align: center;">SUPPORT / DO NOT SUPPORT</p>	<p style="text-align: center;">COMMENTS <i>Please provide a comment if you do not support a proposed amendment, and suggest alternative wording if appropriate.</i></p>
<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. 	<p style="text-align: center;">Support</p>	<p style="text-align: center;">No comment</p>
<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. 	<p style="text-align: center;">Support</p>	<p style="text-align: center;">No comment</p>
<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. 	<p style="text-align: center;">Support</p>	<p style="text-align: center;">No comment</p>
<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. 	<p style="text-align: center;">Support</p>	<p style="text-align: center;">No comment</p>
<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. 	<p style="text-align: center;">Support</p>	<p style="text-align: center;">No comment</p>
<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. 	<p style="text-align: center;">Support</p>	<p style="text-align: center;">No comment</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>
<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	No comment
<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. 	Support	No comment

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	No comment
<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	No comment

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 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	No comment
<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	No comment

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	No comment
<ul style="list-style-type: none"> Transfer requests from the student must be in writing. 	Support	No comment

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	Further guidance notes developed in conjunction with industry would significantly improve this proposal.
<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. 	Do Not Support	<p>7.2.2.2 is not supported. Without providing a baseline or standard of what is a reasonable expectation of "services offered by the provider", this clause has the potential to be used as a catch all trigger for release. This may have an added effect on regional universities with services compared to that of large metropolitan centres.</p> <p>There is insufficient definition around the term 'government sponsor' in 7.1.4 for this to be an effective principle. There needs to be 'sufficient' evidence or 'substantive' evidence in 7.2.2.4 and 7.2.2.5 and without that qualifier, these paragraphs would be very difficult for a provider to use.</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	No comment
<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	No comment

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 release is not to be granted, the provider must give to the student the reasons for refusal in writing. 	Support	No comment
<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	No comment

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	No comment
<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	No comment

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 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	No comment

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. 	Not applicable	
<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. 	Not applicable	
<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	No comment

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. 	Not applicable	
<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. 	Not applicable	

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	No comment
<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	Providers can advise students to confirm their status with DIBP, but we are not able to provide Visa advice without being registered migration agents. This item comes close to that line.

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	No comment
<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 	Do not support	Higher education providers do not record attendance so this provision is not workable for this sector.

Online learning

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"> Online and distance learning are defined in the standard. 	Support	<p>The “note” that has been provided in the standard is important however it still lacks clarity. The distinction between a unit, as opposed to a course, delivered online and a unit delivered via distance education seems redundant. A unit studied by distance learning can meet the exact definition of a unit studied online i.e. does not require a student to attend classes or maintain contact hours and does not require a student to physically attend regular tuition at the providers’ address.</p> <p>An entire course studied online is the same as an entire course studied by distance learning.</p> <p>It is recommended that more detailed discussion occurs with significant providers of online education to further clarify the distinction, if any, between distance and online.</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. 	Support	No comment
<ul style="list-style-type: none"> Higher education and VET providers must not deliver more than one-third of a student’s course online. 	Support	We would like to see this increased further to 50% to allow students access to the full number range of learning experiences.
<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 education institution, or opportunities to engage with other students. 	Support	No comment

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	No comment

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	No comment

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	No comment

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 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 depending upon the clarification.	The requirement that providers must “seek approval” for partnerships requires further clarification. Providers may be required to “notify” the agency but the agency should not hold “approving” rights for partnership arrangements.
<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	No comment
<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 depending upon the clarification.	<p>Does this impact or repeal s10 of the ESOS Act so that providers can have one cycle for re-registration? Currently there is a 5 year cycle in the ESOS Act and 7 year cycle in the TEQSA Act.</p> <p>Does this mean that we need only do the external audit with the previous 18 months before the TEQSA re-accreditation of provider, or the CRICOS re-accreditation of provider as we do not wish to be doing both in odd cycles as is currently the case.</p>

Other comments

Please list any other comments here: