

## 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"><li>• Parts A, B and C of the 2007 National Code have been streamlined to:<ul style="list-style-type: none"><li>○ provide an overview of the ESOS framework</li><li>○ summarise the role of the National Code and its purpose</li><li>○ outline the quality assurance arrangements and roles of other relevant Commonwealth agencies</li></ul></li></ul>	Support	
<ul style="list-style-type: none"><li>• Some part C and D requirements in the 2007 National Code have been moved to Standard 11 as requirements for providers.</li><li>• The standards are now in part B.</li></ul>	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"> <li>Clarifies that providers must not engage in false or misleading marketing practices, consistent with Australian Consumer Law.</li> </ul>	Support	
<ul style="list-style-type: none"> <li>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.</li> </ul>	Support	1.3.4 which follows on from these provisions is extremely broad, stating that the provider must identify “any other information relevant to the registered provider, its courses or outcomes associated with those courses.” Either this section should be more specific about what it is intended to refer to or specificity should be provided through guidelines.
<ul style="list-style-type: none"> <li>Specific provisions prevent a provider from undertaking to or guaranteeing that it can secure a migration or successful education assessment outcome.</li> </ul>	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"> <li>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.</li> </ul>	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"> <li>Requires providers to give information about the policy and process for approving welfare and accommodation arrangements for students under 18 where relevant.</li> </ul>	Support	
<ul style="list-style-type: none"> <li>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.</li> </ul>	Support	
<ul style="list-style-type: none"> <li>Incorporates the requirements relating to course credit, previously in standard 12.</li> <li>Adds that course credit or recognition of prior learning (RPL) must preserve the integrity of the award to which it applies.</li> </ul>	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	

<p align="center"><b>PROPOSED AMENDMENTS</b></p>	<p align="center"><b>SUPPORT / Do NOT SUPPORT</b></p>	<p align="center"><b>COMMENTS</b> <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"> <li>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.</li> </ul>	<p>Support</p>	

## 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"> <li>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.</li> </ul>	Support	
<ul style="list-style-type: none"> <li>Clarifies the provider must ensure the agent has appropriate knowledge and understanding of the international education system in Australia, including the code of ethics.</li> </ul>	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"> <li>Providers enrolling students under 18 must meet any Australian, state or territory legislation or other regulatory requirements relating to child welfare and protection.</li> </ul>	Support	While ISCA supports this addition in principle, we are concerned at the inference that a registered provider may choose not to meet these regulatory requirements. It is unclear how the National Code can require something that is already an existing national and/or state regulatory requirement. Perhaps this could be worded instead as an acknowledgement that all providers are subject to existing child welfare and protection frameworks.

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"> <li>Requires providers to give information to students under 18 about who to contact in emergency situations.</li> </ul>	Support	
<ul style="list-style-type: none"> <li>Requires providers to give information on how a student under 18 can seek assistance and report any incident or allegation involving abuse.</li> </ul>		Schools enrol children from a wide range of countries / cultures and a range of age groups and for this reason a reference to “age and culturally appropriate” information (as in 6.1) would be appropriate.
<ul style="list-style-type: none"> <li>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.</li> </ul>	Support	The wording of 5.3.2 is a little unclear as 5.3.2.1 and 5.3.2.2 refer to the checking of accommodation however as these points come at the end of 5.3.2, it gets confused with the working with children clearances as well.
<ul style="list-style-type: none"> <li>Adults involved in or providing accommodation must have any Working with Children clearances (or equivalent) as required in a state or territory.</li> </ul>	Support	ISCA would prefer more clarity as to the meaning of ‘adults involved in...’ as this is quite broad and does not provide sufficient guidance for providers to ensure they meet their obligations. We would also not like to see this requirement resulting in any unforeseen restriction on students’ ability to have important school-age experiences such as staying with friends. This may need clarification in guidelines.
<ul style="list-style-type: none"> <li>Requires a policy and process for managing critical incidents, including in emergency situations and when welfare arrangements are disrupted.</li> </ul>	Support	A critical incident policy is required under Standard 6.8 so perhaps this point should reference that so that it is clear that schools do not require two separate critical incident policies; one solely dealing with accommodation issues. Rather, for schools, the critical incident policy must also cover these issues.
<ul style="list-style-type: none"> <li>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.</li> </ul>	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"> <li>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.</li> </ul>	Support	
<ul style="list-style-type: none"> <li>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.</li> </ul>	Support	
<ul style="list-style-type: none"> <li>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.</li> </ul>	Support	

### 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"> <li>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).</li> </ul>	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"> <li>Requires the provider to facilitate access to learning support services, including for different modes of study such as online or distance.</li> </ul>	Support	
<ul style="list-style-type: none"> <li>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.)</li> </ul>	Support	As noted previously, ISCA would like to clarify that schools do not need two separate critical incident policies, rather that the policy required under 6.8 has to include policies relevant to accommodation issues for younger students.
<ul style="list-style-type: none"> <li>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.</li> </ul>	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"> <li>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.</li> </ul>	Support	
<ul style="list-style-type: none"> <li>Transfer requests from the student must be in writing.</li> </ul>	Support	



<p align="center"><b>PROPOSED AMENDMENTS</b></p>	<p align="center"><b>SUPPORT / DO NOT SUPPORT</b></p>	<p align="center"><b>COMMENTS</b> <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"> <li>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.</li> </ul>	<p align="center">Support</p>	
<ul style="list-style-type: none"> <li>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.</li> </ul>	<p align="center">Support</p>	
<ul style="list-style-type: none"> <li>If a student requesting a transfer is under 18, written confirmation of agreement of a parent or legal guardian is required.</li> </ul>	<p align="center">Support</p>	
<ul style="list-style-type: none"> <li>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.</li> </ul>	<p align="center">Support</p>	
<ul style="list-style-type: none"> <li>If release is not to be granted, the provider must give to the student the reasons for refusal in writing.</li> </ul>	<p align="center">Support</p>	
<ul style="list-style-type: none"> <li>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.</li> </ul>	<p align="center">Support</p>	

## Standard 8 – Monitoring course progress and attendance

### Providers must monitor student progress

<b>PROPOSED AMENDMENTS</b>	<b>SUPPORT / DO NOT SUPPORT</b>	<b>COMMENTS</b> <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"><li>All providers must monitor students' progress, as satisfactory course progress is a student visa requirement. Some sectors require providers to also monitor attendance.</li></ul>	Support	
<ul style="list-style-type: none"><li>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.</li></ul>	Support	
<ul style="list-style-type: none"><li>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.</li></ul>	Support	

## Schools, ELICOS and foundation programs

<p style="text-align: center;"><b>PROPOSED AMENDMENTS</b></p>	<p style="text-align: center;"><b>SUPPORT / DO NOT SUPPORT</b></p>	<p style="text-align: center;"><b>COMMENTS</b></p> <p style="text-align: center;"><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"> <li>• 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.</li> </ul>		<p>ISCA would like clarification as to the meaning of 'state registration or approval framework'. Is this meant to encompass all the state and territory level school registration processes or does it include some other type of 'approval'?</p>
<ul style="list-style-type: none"> <li>• School, ELICOS and foundation program providers must have a documented policy and process for monitoring and recording students' attendance.</li> </ul>	<p style="text-align: center;">Support</p>	
<ul style="list-style-type: none"> <li>• 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.</li> </ul>	<p style="text-align: center;">Support</p>	

## VET programs

<p style="text-align: center;"><b>PROPOSED AMENDMENTS</b></p>	<p style="text-align: center;"><b>SUPPORT / DO NOT SUPPORT</b></p>	<p style="text-align: center;"><b>COMMENTS</b> <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"> <li>• 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.</li> </ul>	<p style="text-align: center;">Support</p>	
<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> </ul>	<p style="text-align: center;">Support</p>	

## Course duration and allowable extensions

<p style="text-align: center;"><b>PROPOSED AMENDMENTS</b></p>	<p style="text-align: center;"><b>SUPPORT / DO NOT SUPPORT</b></p>	<p style="text-align: center;"><b>COMMENTS</b> <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"> <li>• 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"> <li>○ compassionate and compelling circumstances apply</li> <li>○ the provider has implemented, or is implementing, an intervention strategy to assist the student to meet course progress (or attendance, if applicable) requirements</li> <li>○ there is an approved deferral or suspension of the student’s enrolment under standard 9.</li> </ul> </li> </ul>	<p style="text-align: center;">Support</p>	
<ul style="list-style-type: none"> <li>• If a student’s enrolment is extended, the provider must advise the student of any potential impacts on their visa.</li> </ul>	<p style="text-align: center;">Support</p>	<p>The provider may not be able to specify the potential impact on the student’s visa, they may only be able to advise that there may be an impact on the student’s visa and that the student should contact Immigration.</p>

## Reporting breaches of visa requirements

<p style="text-align: center;"><b>PROPOSED AMENDMENTS</b></p>	<p style="text-align: center;"><b>SUPPORT / DO NOT SUPPORT</b></p>	<p style="text-align: center;"><b>COMMENTS</b></p> <p style="text-align: center;"><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"> <li>• 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"> <li>○ that the provider intends to report them</li> <li>○ inform the student of the reasons</li> <li>○ advise the student they can appeal</li> <li>○ report the breach in PRISMS in accordance with s19(2) of the ESOS Act</li> </ul> </li> </ul>	<p style="text-align: center;">Support</p>	
<ul style="list-style-type: none"> <li>• 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</li> </ul>		<p>If a student can provide genuine evidence demonstrating compassionate or compelling circumstances, should the student also be required to successfully appeal the provider's decision through an internal complaints and appeals process? This could be 8.16.1 OR 8.16.2 rather than having to do both. This would be more in keeping with the current requirements which have 70% attendance as acceptable in exceptional circumstances.</p>

## 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"> <li>Online and distance learning are defined in the standard.</li> </ul>	Support	
<ul style="list-style-type: none"> <li>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.</li> </ul>	Support	
<ul style="list-style-type: none"> <li>Higher education and VET providers must not deliver more than one-third of a student's course online.</li> </ul>	Support	The wording of 8.18 is slightly confusing. Should it read "A registered provider must not deliver more than one-third of a higher education COURSE or VET course online...?"
<ul style="list-style-type: none"> <li>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.</li> </ul>		This is a very broad statement and at some point what is meant by 'reasonable steps' will need to be more closely defined, perhaps in guidelines. For example, if a student chooses to undertake a portion of a course online, in what way would the provider need to take 'reasonable steps' if the student believed they were disadvantaged by not being able 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"> <li>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.</li> </ul>	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"> <li>Assessment of an internal complaint or appeal must be finalised within 20 working days.</li> </ul>	Support	10.2.1 What is meant by the use of the word ‘agent’ in this context? May be confused with education agent.

### 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"> <li>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.</li> </ul>		



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"> <li>• 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"> <li>○ course content and duration</li> <li>○ number of overseas students enrolled within the limit approved by the ESOS agency</li> <li>○ arrangements with other education providers (partnerships).</li> </ul> </li> <li>• 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.</li> </ul>	Support	<p>11.1.1 ISCA is unclear as to the inclusion of information regarding holiday breaks and what form this information would take. If this involves actual dates then every provider would be updating this information for every course every year which would be a waste of time and energy. Course duration should be sufficient.</p> <p>11.2 As noted above, requiring the information outlined in 11.1.1 to be provided to the ESOS Agency would be a misuse of time and resources. Requiring reporting of any significant changes to provider operations, such as 11.1.2 and 11.1.3 is reasonable.</p>
<ul style="list-style-type: none"> <li>• 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"> <li>○ any other affiliated organisations registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS)</li> <li>○ any changes to high managerial agents or ownership of their organisation.</li> </ul> </li> </ul>	Support	
<ul style="list-style-type: none"> <li>• 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.</li> </ul>	Support	

## Other comments

Please list any other comments here:

Standard 5 – In addition to some new requirements, some of the additions to the standard are references to already existing regulatory frameworks or to other Standards. It is ISCA's view that this Standard could be further refined to make it more streamlined.

While ISCA has notionally supported a number of measures that relate to other sectors, we would defer to the greater knowledge of the providers and peak bodies for those sectors of education.