

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. 	Partially Support	<p>With the proposed amendments of Standard 2, we firstly seek clarification on the change in 2.1 from the previous wording in the National Code, <i>‘prior to accepting...’</i> to the proposed amendment <i>‘prior to offering...enrolment in a course...’</i>. Does this mean that Standard 2.1 relates to prospective students who have not yet been made an offer?</p> <p>We support the provision of information outlined in 2.1, as necessary to the transaction between the student and the provider, however, we have reservations about Standard 2.1.2.</p> <p>For Standard 2.1.2, the proposed condition to inform students about course content, modes of study (including online and/or work related learning placements), and assessment requirements, raises some concerns, particularly around packaged program offers.</p> <p>Courses do not remain static and are subject to minor changes through mandatory reviews. When an offer is made well in advance, as is often the case for a packaged program, it is possible that the course will experience slight changes by the time a student arrives at the subsequent or principal course.</p> <p>With the proposed amendment, this could mean that for any minor change, we must re-issue offer letters. If so, this additional administrative requirement would be significant.</p> <p>We also request a definition of what the term <i>‘assessment requirements’</i> might entail and what level of detail would be</p>

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		<p>needed.</p> <p>In relation to Standard 2.1.3, we currently provide information about course duration but not holiday breaks as our packaged course offers might refer to courses 3-5 years in advance. Additionally, if a student has to repeat any units, they may be required to study in the winter or summer terms, which are normally designated holiday breaks. For these reasons, we suggest a change from <i>'course duration and holiday breaks'</i> to the term <i>'compulsory attendance periods'</i>.</p> <p>Similarly, in 2.1.8, we currently inform students of their rights in the Terms and Conditions. Is it sufficient to provide a link to the relevant policies on deferments, suspensions and cancellations, or are we required to provide details in the Letter of Offer?</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	
<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	

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.	Partially support	<p>The provision of clear and detailed information to a student about their enrolment is imperative and as such this amendment is generally acceptable to us if we are permitted to deliver some of this information via links to our website; however if this information is required to be on the Letter of Offer and/or Acceptance Form, we do not support this amendment.</p> <p>While we already outline the majority of this information, the level of detail requested in this proposed amendment is too prescriptive to include in a written agreement, (which comprises the Letter of Offer and Acceptance of Offer). Moreover, there are some concerns with the type of information suggested, which is highly likely to evolve as a student progresses through their course.</p> <p>The proposed condition in Standard 3.3.1, to include information about the offered modes of study, including potential and compulsory online and/or work related learning, placements, and/or other community-based learning and collaborative research training requirements, is of serious concern for the reasons already outlined in our response to Standard 2.1. It is not possible to guarantee that this information is not <i>subject to change</i>.</p> <p>In Standard 3.3.5, we currently list additional costs associated with the course, but not additional charges the student may incur because of having their study outcomes reassessed. To '<i>detail</i>' this information for '<i>other circumstances in which additional charges may apply</i>' is a big ask.</p>

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		As 3.3.7 is the only point that says ' <i>...provide a link to information on...</i> '. The inference is that everything else needs to be included on the letter. We seek clarification on whether the written agreement can refer students to links, noting that links are also likely to change in the future.
<ul style="list-style-type: none"> 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	<p>Swinburne is supportive of Standard 4.</p> <p>We do however seek clarification on 4.4.4, which requires our agents to have appropriate knowledge and understanding of the international education system in Australia, including the Code of Ethics for agents. While we can require them to understand the Code of Ethics, it will be difficult to enforce that they abide by this Code. Is there a further purpose to this amendment given that institutions are already liable for the actions of our agents?</p>

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	

<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 to students under 18 about who to contact in emergency situations. 	<p style="text-align: center;">Support</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>	
<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>	
<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>	
<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>	
<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>	
<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>	

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<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	While we support this amendment, we ask that it be more specific in outlining the details of the transfer of under 18 students from secondary schools to tertiary institutions to ensure there is no gap. For example, for VCE international students applying to a university via VTAC, there are currently no conditions about welfare attached to these offers. We would like to see assurances put in place for continuous welfare.
<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	

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	
<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 	Support	

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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.)		
<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	
<ul style="list-style-type: none"> Transfer requests from the student must be in writing. 	Support	
<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 	Support	

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refusal of the request.		
<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>We do not support this Standard as it currently sits. We believe it needs to be more rigorous in its phrasing.</p> <p>Point 7.2.2.1 should include reference to a genuine attempt.</p> <p>Point 7.2.2.2 states that <i>‘the student has grounds to seek to change course to gain access to broader support through services not offered by their current provider.’</i> We uphold that this is too broad a definition, which is open to wide-ranging interpretation.</p> <p>For example, support services could include family. Students could actively seek enrolment with higher rated education providers to obtain a visa, then use ‘family support’ as the basis of transfer to be released to a provider with whom they would not otherwise have been granted a visa.</p> <p>We seek clarification on the purpose of Point 7.2.2.2. Is it in fact to gain access to broader support or more specialised support? If the latter, we suggest rewording as <i>‘the student has grounds to seek to change course to gain access to specialised support services offered by a new provider, which are essential to the student’s wellbeing but are not currently offered by their current provider.’</i></p> <p>Also, we suggest the addition of the word ‘documented’ in both points below, as follows:</p> <p><i>7.2.2.4 The student can provide documented evidence that his or her reasonable expectations about their course are not been met.</i></p> <p><i>7.2.2.5 The student can provide documented evidence that he or she was misled by the provider or an education or migration agent regarding the provider or its course and the course is therefore unsuitable to their needs and/or study objects.</i></p>

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		We believe this is important, as we cannot accept hearsay, allegations or mere claims as evidence.
<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	
<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

<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"> • 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. 	<p style="text-align: center;">Support</p>	
<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. 	<p style="text-align: center;">Support</p>	
<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. 	<p style="text-align: center;">Support</p>	

VET programs

<p style="text-align: center;">PROPOSED AMENDMENTS</p>	<p style="text-align: center;">SUPPORT / DO NOT SUPPORT</p>	<p style="text-align: center;">COMMENTS</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"> • 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. 	<p style="text-align: center;">Support</p>	
<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. 	<p style="text-align: center;">Support</p>	

Course duration and allowable extensions

<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"> • 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. 	<p style="text-align: center;">Support</p>	
<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. 	<p style="text-align: center;">Support</p>	

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	<p>We suggest that the <i>'and'</i> that follows <i>contact hours</i> be replaced by <i>'or'</i>, because if the student has evidence of compassionate and compelling circumstances and is still attending at least 70% of the course hours, it would not be necessary for the student to appeal the decision.</p> <p>Similarly, we believe that the <i>'and'</i> that links 8.16.1 to 8.16.2 <i>'should be replaced by 'or'</i>.</p> <p>An insertion is required in point 8.15.4 after the words <i>'...has passed,'</i> along the lines of <i>'and if the student has not lodged an appeal'</i>.</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"> Online and distance learning are defined in the standard. 	Support	
<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. 	Do not support	<p>We do not support the removal of the condition that stated ‘<i>...providers must not enrol a student exclusively in distance or online learning in any compulsory study period.</i>’</p> <p>Its removal could allow the following situation to arise in light of point 8.18, which says that a registered provider must not deliver more than one-third of the units (or equivalent) of a higher education provider or VET course online.</p> <p>Example: Given up to one-third of the course can be done by online studies or distance learning, in a Bachelors degree that runs for 3 years, this means a student could potentially do a whole year (two semesters) off-campus. This tends <i>against</i> student engagement, and opens up the potential for more risky and fraudulent behaviour. Why would the student need to be in Australia?</p>
<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	
<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	

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	We would support an inclusion that allows for exceptional circumstances which may arise causing the assessment to take longer than 20 working days, but stating that the student must be informed of any delay and be given a revised date of the final assessment.

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 	Support	

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<p>amendments to the ESOS Act passed in December 2015.</p>		
<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. 	<p align="center">Support</p>	
<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. 	<p align="center">Support</p>	
<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. 	<p align="center">Support</p>	

Other comments

Please list any other comments here: