

EXPLANATORY STATEMENT

National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students (the National Code 2007)

Issued by authority of the Minister for Education, Science and Training

Subject: National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students (the National Code 2007)

Authority

Subsection 33 (1) of the *Education Services for the Overseas Students Act 2000* (ESOS Act) provides that the Minister may make a National Code by legislative instrument.

Purpose and operation

The National Code established in 2001 under the ESOS Act is revoked and the National Code 2007 commences 1 July 2007. The ESOS Act regulates the delivery of international education and training services for overseas students studying in Australia on a student visa. The National Code 2007 further prescribes obligations on providers registered to offer training services to overseas students.

The ESOS Act required an independent evaluation to be undertaken within three years of its coming into effect. The Minister for Education Science and Training requested the Department of Education, Science and Training engage a consultant to conduct the evaluation. The evaluation report, released by Dr Nelson on 10 June 2005, outlined 41 recommendations that largely focused on improving the National Code 2001 through greater clarity and consistency.

The National Code 2007 balances Australian Government interests in consumer protection, quality of education, and migration policy, with the need to minimise the regulatory burden on governments and providers. It has an increased focus on providing greater clarity and flexibility for education providers. The National Code 2007 will enhance Australia's world class reputation and commitment to high quality education services for overseas students.

The regulatory impact of the revisions to the National Code has been assessed in a Regulatory Impact Statement which is included in this Explanatory Statement.

Consultation with other government agencies

State and territory governments have been extensively involved in the development of the National Code 2007 through the National Code Action Group (ANCAG) established by the Australian Education Systems Officials' Committee (AESOC). They are broadly supportive of the National Code 2007. DEST will continue to work with state and territory governments to support greater national consistency within the ESOS regulatory environment.

There has also been close consultation with the Department of Immigration and Citizenship (DIAC). DIAC is pursuing a number of complementary policy changes which will be implemented in the *Migration Regulations 1994*.

Consultation with industry

The development of the National Code 2007 has involved extensive consultation with the international education industry through peak bodies. DEST has maintained regular contact with peak bodies through roundtable discussions, bilateral meetings and the provision of draft sections of the National Code for comment. Peak bodies are generally supportive of the National Code 2007. In particular they value the clarity that the standards will provide to their members and the greater flexibility and discretion that have been introduced.

Details of the National Code

The National Code 2007 is largely a clarification of the requirements under the National Code 2001.

It outlines the roles and responsibilities for both regulatory authorities and providers offering education services to overseas students studying on a student visa.

There are four parts:

- a framework
- an outline of Government roles and responsibilities
- requirements pertaining to registration on Commonwealth Register of Institutions and Courses (CRICOS)
- standards outlining the obligations on registered providers in delivering education and training to overseas students.

The following summary briefly outlines requirements imposed on providers and indicates where provider obligations have been altered by the requirements of the National Code 2007.

Part A: Framework

Part A contains the objectives of the National Code 2007 and explains the underpinning principles and guidelines. The context, structure and application of the instrument are covered by the framework.

Part B: Roles and responsibilities

Part B outlines the roles and responsibilities of the Australian and state and territory governments in administering the National Code 2007. The Australian Government has the overarching responsibility for protecting the reputation of Australia's education and training industry, supporting the capacity of the international education industry to provide quality education and training services, and maintaining the integrity of the student visa programme. State and territory governments have responsibility for the regulation of education in their jurisdictions.

Part C: Registration on CRICOS

Part C outlines the registration of providers and courses on CRICOS. It provides a general description of the registration process under the ESOS legislative framework and specifies the minimum requirements that apply to the registration process. The details of registration on CRICOS are outlined as follows:

Registration on CRICOS

In this section the conditions under which a provider may be registered on CRICOS are outlined. A minor amendment requires providers to advise the designated authority of any change of ownership or management prior to the change rather than within 14 days after it has occurred.

Application for registration

Providers are required to submit applications for registration and re-registration in a form to be determined by their designated authority. This section specifies the minimum information to be included on registration forms. There are minor changes to the amount of detail required from providers with the requirements set out more specifically than previously.

Course Duration

The registration of a course on CRICOS must include the expected duration of the course. This section outlines the requirements as they apply to the range of courses delivered by providers. This paragraph clarifies that holiday and work-based training periods are to be included within the course duration. Providers must also ensure that proposed changes to the registered course duration are approved by the designated authority prior to the changes being made.

Work-based training

To be approved as a component of a CRICOS registered course, work-based training must be essential to the qualification and the provider must have in place appropriate arrangements for the supervision and assessment of students. This is a clarification of the previous requirements.

Mode and place of study

A provision has been introduced to allow for the registration on CRICOS of courses with an online or distance component, conditional on requirements under Standard 9 being met. The proportion of online or distance education must not exceed 25 percent of the student's total course.

Arrangements with other providers

Where arrangements exist between providers for the provision of courses, only one provider is to be registered on CRICOS and that provider is responsible under the ESOS Act for breaches of the National Code 2007. Proposed changes to the arrangements with other providers must be approved by the designated authority prior to the changes being implemented. There is no substantial change to previous requirements.

Inspection of premises

This provision clarifies that sites of work-based training may now be included in inspections. There is no substantial change to previous requirements.

Maximum number of students

Under this requirement, the maximum number of students is proposed by the provider and approved by the registering authority. This is unchanged from the previous requirement. However, flexibility for providers has been increased by the removal of limits on the number of hours a provider's premises may be used for education and training and the number of teaching shifts conducted.

Part D: Standards for registered providers

Introduction

Part D outlines the standards with which registered providers must comply. The obligations outlined in the standards need to be met at the point of CRICOS registration and throughout the CRICOS registration period.

Standard 1 – Marketing information and practices

This Standard requires providers to ensure that their marketing is accurate and ethical and that all marketing information identifies the provider and its CRICOS provider number. This is largely unchanged from the previous obligations, although minor changes include:

- expanded circumstances for which providing misleading information could be considered a breach; and
- a new provision (1.3) prohibits providers from actively recruiting students where this clearly conflicts with their obligations under Standard 7 (Transfer between registered providers).

Standard 2 – Student engagement before enrolment

This Standard refers to the next phase in the recruitment of students and further clarifies current requirements by outlining the information to be provided to students. Overall requirements have not changed substantially.

Standard 3 – Formalisation of enrolment

This Standard regulates the final part in the enrolment of an overseas student. Previously, it was a matter for providers to determine whether to enter into agreements with accepted students. Under this Standard providers are required to enter into written agreements with each student which include:

- details of fees and refund policies; and
- the circumstances under which the provider may share relevant student information with other agencies.

Standard 4 – Education agents

This Standard regulates the relationship between providers and education agents and holds providers accountable for these relationships. It articulates minimum standards expected from this relationship and clearly outlines the provider's obligations in the event of an agent acting inappropriately. The Standard expands on previous obligations by requiring providers to have in place:

- written agreements with all education agents they engage to formally represent the provider; and
- processes for monitoring the agent's activities, including where corrective action should be undertaken.

Standard 5 – Younger overseas students

This Standard gives providers some flexibility in determining the period for which they plan to accept responsibility for approving welfare arrangements for students under 18 and also ensures that adequate arrangements are in place for the care of under 18 students for the entire time they are studying in Australia. Where the registered provider has taken on responsibility under Migration Regulation 8532 and Public Interest Criterion (PIC) 4012A for approving the accommodation, support and general welfare arrangements for a student who has not yet turned 18, the registered provider must nominate the beginning and end dates of the period of their responsibility for approving the student's welfare. DIAC is making consequential amendments

to the *Migration Regulations 1994* to provide for a minimum time period. Under these amendments the provider's responsibility will cover (as a minimum) the period of the Confirmation of Enrolment (CoE) and a period of seven days after the end of the course. .

Notification of approval is made via a Confirmation of Appropriate Accommodation and Welfare (CAAW) letter available when the student CoE is approved in the Provider Registration and International Students Management System (PRISMS). DIAC will not grant a visa if the student cannot verify that adequate welfare arrangements are in place. Additionally, providers must have documented procedures for monitoring the suitability of the student's accommodation, support and general welfare arrangements.

Standard 6 – Student support services

This Standard specifies the support services that must be provided to overseas students to enable them to adjust to study and life in Australia. The Standard clarifies previous requirements by describing in more detail the information and services to be provided to students.

A new provision requires providers to demonstrate that they have a critical incident policy in place to guide and assist staff and students in responding appropriately to incidents that are likely to cause trauma to individuals and/or affect the campus or institution as a whole. The policy should establish basic procedures and reporting systems to cover the range of critical incidents which may occur.

Standard 7 – Transfer between registered providers

This is a new standard which shifts the restriction on students changing providers from a student visa condition to a provider managed process. DIAC will make complementary amendments to the *Migration Regulations 1994* to remove the change of provider restriction. The provisions in the National Code 2007:

- allow students to change providers after the first six months of their principal course of study, rather than 12 months as stipulated in the previous student visa conditions; and
- require providers to manage the process for releasing students and also ensure they are not knowingly enrolling students within the exclusionary period.

Standard 8 – Complaints and appeals

This Standard requires that registered providers' complaints and appeals processes are independent, easily and immediately accessible, and inexpensive for overseas students. The Standard clarifies:

- the need for overseas students to have timely access to both internal and external complaints and appeals processes;
- the obligation on the provider to maintain the student's enrolment while the complaints and appeals process is ongoing;
- the provider's responsibility to immediately advise the student and implement any decision in the event of any favourable outcome through the internal or external appeals and complaints handling process; and
- that the timing of the process must take into consideration the length of the student's visa.

The Standard clarifies the current requirements and provides more detail as to minimum requirements. As is currently the case, providers with appropriate processes established under existing quality assurance frameworks such as Australian Quality Training Framework (AQTF) , and the Higher Education Protocols are able to continue to use these processes provided they meet the minimum requirements.

Standard 9 – Completion within expected duration

This Standard focuses on students progressing satisfactorily through their course, rather than requiring them to maintain a specific workload as is the case with the National Code 2001. This has enhanced the flexibility available to both the provider and students. Changes to the current requirements are as follows:

- providers are required to monitor students' progress to ensure that students can complete their course within the expected timeframe;
- the duration of a student's study may be extended in limited circumstances. Providers need to document the reasons for the variation and report via PRISMS as was the case under previous requirements;
- an online/distance learning component of up to 25 percent of a student's total course is now allowed. Under the National Code 2001 overseas students could not be enrolled in online units or distance education. This has increased the flexibility of delivery modes available to providers.

Standard 10 – Monitoring course progress

This Standard requires the provider to monitor the course progress of overseas students and notify the Secretary through PRISMS of students who have failed to achieve satisfactory course progress. The provider may only report the student if the student has been notified and given the opportunity to access an appeals process. Satisfactory progress can be determined by providers against their own policies and procedures. Expectations on providers are more clearly defined in that:

- student progress must be assessed at the end of each study period, defined as any period identified by the registered provider as long as that period does not exceed six months;
- the student must be notified in writing of the provider's intention to report and given 20 working days in which to access the providers complaints and appeals process; and
- providers must be proactive in counselling students at risk of failing to achieve satisfactory course progress requirements, and must implement an early intervention strategy for at risk students.

Standard 11 – Monitoring attendance

This Standard requires registered providers to systematically monitor students' compliance with student visa conditions relating to attendance. Requirements for monitoring attendance are more flexible than under the National Code 2001 and apply to schools, English Language Courses and non-award courses, i.e. courses for which there is no formal award. Providers of higher education courses are not required by the National code 2007 to monitor attendance and providers of vocational and technical education (VTE) courses may elect to monitor course progress with the DEST and DIAC approved course progress policy, rather than monitor attendance. Requirements under this Standard are that:

- providers must have, and implement, appropriate documented attendance policies and procedures for each course, specifying requirements for achieving satisfactory attendance, which at a minimum require overseas students to attend at least 80 percent of the scheduled course hours;
- providers must be proactive in contacting and counselling students who have been absent for more than five consecutive days without approval or where the student is at risk of not attending for at least 80 percent of course contact hours;
- where the registered provider has assessed the student as not achieving satisfactory attendance, the registered provider must notify the student in writing of their intention to report the student. The written notice must inform the student that he or she is able to access the registered provider's complaints and appeals process and that the student has 20 working days in which to do so; and

- providers of VTE and non-award courses who choose to monitor attendance may decide not to report the students for breaching the 80 percent if there is documentary evidence demonstrating that compassionate or compelling circumstances apply, the decision is consistent with the provider's documented attendance policies and procedures, and the student is attending at least 70 percent of the course contact hours for which the student is enrolled. A complementary change to the *Migration Regulations 1994* (Reg 8202) will state that the student must continue to satisfy their provider's course progress and attendance requirements.

Standard 12 – Course credit

This Standard largely reflects the requirements of the National Code 2001 and requires providers to have documented procedures for granting course credit. A copy of the record of credit is to be signed by the student and kept on the student's file.

Standard 13 – Deferral, suspension or cancellation of study during enrolment

This Standard has broadened the range of situations in which a provider can defer or suspend a student's studies. Providers may only enable students to defer or temporarily suspend their studies, including granting a leave of absence, during the course through formal agreement in certain limited circumstances. Providers must have in place documented procedures for assessing, approving and recording a deferral or suspension of study. Providers may:

- grant a deferral of commencement of studies and suspension of studies for students who request such a change to their enrolment status on the grounds of compassionate or compelling circumstances; and
- temporarily suspend or cancel the enrolment of a student due to misbehaviour of the student.

This is a clarification of the previous requirement. The new component gives providers flexibility to manage student misbehaviour.

Standard 14 – Staff capability, educational resources and premises

The aim of this Standard is to ensure providers have suitable staff, educational resources and premises for providing education services to overseas students. The Standard requires that:

- the staff of registered providers are suitably qualified or experienced in relation to the functions they perform for students;
- the educational resources of registered providers support the delivery of courses to students;
- the premises of registered providers, including the floor space available for each student, support students to achieve their course outcomes; and
- the provider notifies the designated authority and the students enrolled with the provider of any intention to relocate premises at least 20 working days before the relocation.

Suitability of staffing, educational resources and provider premises will be determined in accordance with applicable quality assurance frameworks. Where no quality framework applies providers will need to demonstrate documentation and implementation of appropriate policies and procedures to ensure this Standard is met. Overall the Standard removes some prescription and allows the quality frameworks under which the provider is accredited to be taken into account in meeting this Standard.

Standard 15 – Changes to registered providers' ownership or management

This Standard reflects the previous requirement for providers to report any change in ownership or management. Minor amendments require:

- the reporting of prospective changes of ownership or management prior to the event; and
- new owners and high managerial agents must undergo the fit and proper person test as per Section 9(6) of the ESOS Act.