

## **Regulation Impact Statement**

### **A. BACKGROUND**

The international education industry is an investment in Australia's international cooperation. It offers social, cultural, intellectual and economic benefits to both the nation and overseas students undertaking study in Australia. International student numbers continue to rise and the relationships developed with the student source countries and regions are of significant benefit to Australia. The international education industry creates jobs and produces revenue for businesses both within and outside the education sector. The international education industry is now Australia's fourth largest export earner. Australia is vigilant about maintaining its reputation as a safe, progressive and dynamic place to study.

#### **A.1 THE EXISTING REGULATORY FRAMEWORK**

The Australian Government regulates the international education industry through the *Education Services for Overseas Students (ESOS) Act 2000* (the *ESOS Act*) and imposes charges on providers of education and training to overseas students through the *ESOS Registration Charges Act 1997* (the *ESOS Charges Act*). The *ESOS Act* also supports the Australian Government's migration policies through its close relationship with the student visa program which is administered by the Department of Immigration and Citizenship (DIAC). The *ESOS* legislative framework complements domestic quality assurance frameworks that are administered by state and territory governments.

An education provider may only offer courses to overseas students if they are registered to do so under the *ESOS Act*. Under the Act, the designated authorities of the states and territories are responsible for recommending approved providers for registration. Providers will only be recommended for registration where they comply with the requirements of the National Code. The National Code is a disallowable instrument established under the *ESOS Act*.

The *ESOS Act* tightened the regulation of education and training services for overseas students studying in Australia on student visas following difficulties encountered in enforcing the previous legislation. The *ESOS Act* focuses on the protection and enhancement of Australia's international reputation and the need to ensure that overseas students receive the tuition for which they have paid. Section 176A of the *ESOS Act* requires that an independent evaluation of the Act be commenced within 3 years after receiving the royal assent.

#### **A.2 THE EVALUATION OF THE ESOS ACT**

In June 2005 the report of an independent evaluation of the *ESOS Act* was released. The evaluation considered the effectiveness and efficiency of the *ESOS* regulatory framework. It considered effectiveness in terms of the extent to which the following outcomes are achieved: assured quality,

appropriate consumer protection and support for Australia's migration policy. It considered efficiency in terms of the administration of the legislation and framework, including their financial and regulatory costs.

The evaluation found that the international education industry was broadly supportive of the National Code 2001, but also identified some areas where the effectiveness and efficiency of the National Code could be improved. These areas for improvement largely stemmed from a lack of clarity in existing requirements, an absence of flexibility in some areas and gaps in the consumer protection afforded to students under the National Code.

The evaluation report contained 41 recommendations, most of which related to the National Code. A taskforce within the Department of Education, Science and Training (DEST) was established to implement the recommendations agreed by the Minister.

The regulation taskforce identified features of existing regulation that should attract priority reform to minimise the burden on education providers and governments. Those of greatest relevance to the National Code were: overlapping and inconsistent regulatory requirements; excessive reporting or recording burdens; and variations in definitions and reporting requirements. These features were reflected in some of the concerns stakeholders held about the National Code.

Education providers and the states and territories expressed concern about the potential for changes to the National Code to increase their regulatory obligations and/or associated costs. The Australian Government is committed to avoiding the introduction of unnecessary regulation in the ESOS reforms, and to minimising the regulatory burden on all stakeholders.

The Australian Government recognises that regulation should not only be effective, but should also be the most efficient means for achieving relevant policy objectives. The ESOS Reforms Taskforce focussed on alleviating the compliance burden on business from Government regulation.

## **B. PROBLEM**

In 1994, the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA) endorsed a "National Code of Practice in the Provision of International Education and Training" (the MCEETYA Code) which was intended to form the basis of state and territory legislative, policy and administrative requirements for the approval of providers offering courses to overseas students and for industry sector codes of ethical practice.

Under this voluntary code, providers were expected to maintain high professional standards in the delivery of education and training services, maintain a learning environment conducive to an overseas student's success, and monitor and assess students' performance, course attendance and progress in registered courses of study.

The National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students (the National Code 2001) was made in 2001 after there was general agreement within the industry and also among Commonwealth, State and Territory agencies, that there were deficiencies with the existing regulatory framework and that there was

a strong case for changes to ensure that the framework promoted stability and integrity in the industry.

The industry was operating in the context of immigration fraud that had become more sophisticated with the development of a worldwide illegal immigration industry. Poor quality providers did not necessarily go out of business on the basis of consumer choice if they offered non-bona fide students the chance to evade visa obligations. Similarly, in the present climate, there are some providers who still attempt to gain a 'competitive advantage' by endeavouring to tailor education and training services to migration outcomes rather than education outcomes consistent with Australian Government policies.

Consumer dissatisfaction, whether with the quality of education services provided or the consumer protection mechanisms available to international students, such as the *Trade Practices Act 1974 (TPA)* has a significant effect on the industry. One of the key concerns is that remedies available under the TPA cannot be pursued within the time in which the student could legitimately remain in Australia on a visa. This consumer dissatisfaction is often communicated to the student's home country. This dissatisfaction influences other students in their choice of whether to study in a country other than Australia and impacts on Australia's bilateral relations with some of our source countries.

The majority of intending overseas students are located offshore when they purchase their education package. The Australian Government provides minimum standards for marketing materials and the recruitment process in general to ensure that intending students are in the best position to make an informed decision. It is imperative that specific dispute resolution and consumer protection mechanisms are in place for those instances where an overseas student believes that they have been misled into enrolling into a course of education or training. Under the ESOS legislation, their grievance will be addressed in a timely manner acknowledging the period of time the student may remain in Australia to pursue legal remedies.

The reputation of Australia's international education industry, currently a \$10.1 billion export industry, can only be maintained through the integrity of the student visa programme, and the quality assurance and consumer protection mechanisms offered under the ESOS legislative framework. In 2006 there were 383,818 student enrolments from approximately 318,000 students in Australia on student visas.

The independent evaluation of the ESOS Act found that the effectiveness of the ESOS regulatory framework in achieving its desired outcomes could be improved. It also found that some processes and requirements were inefficient and an unreasonable burden on providers. Ineffective or inefficient regulation is problematic when it results in a failure to achieve the required outcomes for the Australian Government or stakeholders in the international education industry.

Problems identified with the National Code 2001 included ambiguities in some requirements and a lack of consistency within the Code or in its interpretation by different stakeholders. Other problems arose because of insufficient minimum standards for the international education industry's current requirements. Stakeholders suggested that problems with the National Code 2001 caused inefficiencies in provider activity; could frustrate students and cause them undue concern, tarnishing their

experience in Australia; and failed to adequately protect the international education industry from unscrupulous providers or education agents.

Where proposed changes seek to address issues that the National Code 2001 did not adequately cover, these changes are designed to improve a regulatory regime already established by the ESOS Act 2000.

## **B.1 QUALITY ASSURANCE**

Consultations conducted during the course of the evaluation highlighted problems with the effectiveness of the ESOS legislation in assuring the quality of Australia's education and training services to international students. The evaluation identified a lack of clarity and specificity in the National Code. Inconsistencies in the interpretation and application of the National Code meant that there was a potential for providers to not operate in accordance with equal minimum requirements, and hence Australia could not guarantee a basic standard of education delivery to its international students. Providers are unsure of the details of their obligations in some instances, and have thus failed to develop processes or procedures that support compliance in their operations. When particular issues arise, they seek advice from different sources (i.e. DEST's ESOS Helpline, the relevant state authority, DIAC, international education peak bodies) and report receiving inconsistent responses. Such instances create a burden on providers' staff, and can delay the provision of accurate information to students.

## **B.2 CONSUMER PROTECTION**

### **B.2.1 Adequate arrangements for student welfare**

Consultation found concern over a lack of coverage in the National Code 2001 in the area of pastoral care for younger students. Inadequate arrangements for the welfare of younger students represent a statistically small but extremely serious threat to Australia's international education industry. An unfortunate event resulting from, or contributed to, by a regulatory weakness in this area could damage Australia's international reputation as a destination for education services, and negatively impact upon the country's \$10.1 billion international education industry. Instances have occurred in other countries where such an incident has attracted both media scrutiny and the attention of the student's home country. These occurrences have negatively influenced broader economic and bilateral relations.

### **B.2.2 Marketing and recruitment practices**

The evaluation also identified improvements which could be made to enhance the ability of the National Code to adequately protect students from unscrupulous marketing and recruitment by providers. International students are in a vulnerable position as consumers in that they usually purchase their education before they arrive in Australia. As such, their ability to pursue complaints is limited because they usually leave the country soon after their courses end. The provision of information to students as required by the National Code 2001 was at times inadequate due to the lack of clarity in the requirements and absence of clear minimum standards.

### **B.2.3 Complaints and Appeals mechanisms**

The evaluation found the National Code 2001 lacking in the area of grievance and dispute resolution which represents a risk to students' rights. The description of student support services in the National Code 2001 lacks detail and is incomplete, and the evaluation found a widespread view that problems encountered by international students are at least in part caused by a lack of awareness of their rights and obligations.

### **B.2.4 Education agents**

Education agents are recognised by the evaluation as typically the first 'face' of Australian education and training encountered by prospective overseas students and their parents. Providers have not been confident of their capacity to meet their current obligations under the National Code 2001, due to the ambiguous nature of its scope.

## **B.3 MIGRATION POLICY**

Two key findings emerged from the evaluation with respect to the effectiveness of the ESOS legislation in supporting migration policy:

1. There was universal agreement that the relevant National Code standards should be rewritten in terms that fit the realities of teaching, learning and assessment in each sector. In particular:
  - requirements are out of touch with currently accepted educational standards, for example in relation to competency-based learning, and place and modes of study;
  - the National Code 2001 is written as a 'one size fits all' set of requirements that fits uneasily with norms and practices of particular sectors; and
  - there is considerable confusion among governments and providers about the rules and their interpretation, especially in relation to 'full-time' study, 80 per cent minimum attendance, 'contact hours', 'satisfactory academic progress', and repeating units in the final semester.
2. A gulf exists between the education system which views student participation and progress as primarily matters of educational judgement, and the use of these measures by DIAC to monitor compliance with its visa program. Given the different goals and cultures, a tension is inevitable. This has been unnecessarily exacerbated by the lack of specificity in the National Code 2001.

The basic principle underlying full-time study for visa integrity purposes is that the international student is enrolled with a full-time study workload for the duration of their study. Full-time workload is interpreted differently by the sectors for domestic purposes. The evaluation report found that changing domestic norms and standards presents dilemmas for providers about both equity and manageability of full-time study (and the circumstances that may alter study load) when also catering to international students.

## **B.4 STATE/TERRITORY AND COMMONWEALTH ROLES AND RESPONSIBILITIES**

The evaluation found that there was confusion among providers about the respective roles and responsibilities of the Australian and state governments under the legislation.

## **C. OBJECTIVES**

The Government's proposed changes seek to improve the National Code 2001 by:

- clarifying provider obligations;
- providing greater flexibility;
- ensuring that consumer protection for international students is efficient, effective and world leading;
- ensuring appropriate welfare arrangements are in place for international students;
- supporting Australia's migration policy and ensuring the integrity of the student visa system;
- maintaining the reputation for the quality of the Australian international education system;
- minimising duplication or overlap of regulation; and
- increasing the consistency of application of the EOS framework.

## **D. OPTIONS**

Regulatory and non-regulatory measures were considered in relation to achieving the stated objectives above. These options are discussed below.

### **D.1 STATUS QUO**

No change would mean that the National Code 2001 would remain in place. This would mean that there would be no change to the costs for education providers, the Australian Government or state/territory governments. However as explained in Section B, the National Code 2001 was found to have significant shortcomings, which could be remedied to meet the objectives stated in Part C. Maintenance of the status quo was not an option supported by the international education industry or government.

### **D.2 SELF-REGULATION**

A self-regulatory model for the National Code 2007 would require significant changes to the ESOS Act and would have implications for other parts of the existing regulatory framework. The most likely scenario would have seen existing peak bodies take on a regulatory role for their sector, or collaborate and expand to create a sector-wide regulatory body. International education industry associations and peak bodies would regulate the behaviour of their members through by-laws, rules of ethical conduct and codes of practice. Such an arrangement could reduce regulatory and monitoring costs for the Australian Government and state/territory governments, though funds received by government would

also decrease as some registered provider payments would be directed to the self-regulatory body to fund its activities. It is possible that the cost implication of self-regulation on the international education industry would be neutral.

Concerns exist regarding self-regulation because the international education industry could become controlled by a small number of providers or industry associations who could promote an anti-competitive environment. In practice, it is questionable the extent to which industry associations would be desirous of taking on this role or have the necessary resources and skills to control unscrupulous providers who do not comply with by-laws and codes of conduct. The withdrawal of an Australian Government regulatory role would also undermine marketing efforts in some countries. The current ESOS regulatory framework is seen as world leading and is being copied by other countries. Self-regulation could diminish confidence in the international education industry and would be highly likely to be seen as a backwards step for the reputation of the industry in the global market place and by key governments.

As servicing overseas students involves international trade, immigration and foreign affairs issues which may not readily be coordinated and appropriately handled by international education industry groups, the international education industry would still require the Australian Government's involvement to support visa integrity. While self-regulatory arrangements could address some of the existing problems related to consumer protection and quality assurance faced by the international education industry, self-regulation would not address existing issues concerning the support of migration policy.

Publicity surrounding the perceived quality of education delivered to international students, and general interest in foreigners living, working and studying in Australia, means there is significant public interest in the proper activities of the registered providers. A failure of self-regulation could be perceived as the Government's responsibility. There would be pressure to intervene and/or inject funds in order to maintain Australia's international reputation.

The ESOS Evaluation (4.2 Effectiveness and efficiency of the ESOS legislation and framework) identified that the consultations showed overwhelming support, across all stakeholder groups, for the continuation of mandated and legislated, as opposed to voluntary, arrangements to promote stability and integrity of the international education export industry. There is also a strongly held view that the ESOS legislation and framework are major improvements over the situation that prevailed prior to their enactment and implementation. The industry has not sought self-regulation, nor does the Australian Government support it.

### **D.3 REGULATORY REVISION**

The ESOS evaluation found overwhelming support across all stakeholder groups for the continuation of mandated and legislated arrangements to promote stability and integrity in the education export industry. To address the problems identified above, the evaluation report proposed that the National Code be rewritten generally as a set of auditable standards. The report recommended that standards should be objective, unambiguous, internally consistent in their language, as self-contained as possible (that is,

not reliant for their interpretation on other material), and auditable. The National Code 2007 follows these recommendations. The National Code 2007 will be supported by an Explanatory Guide. This guide will include plain English notes, definitions, policy interpretations, Questions and Answers, compliance tips, and sector-specific scenarios where appropriate.

### **D.3.1 Structural improvements to the National Code**

The structure of the National Code 2007 has been reviewed to include a framework setting out its purpose; a description of the roles and responsibilities of the Australian Government and state and territory governments; a section outlining registration requirements and a set of standards for registered providers.

The framework for the National Code 2007 makes it easier for providers to understand their obligations. It consists of a brief introduction, a preamble, and a section relating to principles and guidelines which assist in its interpretation. The preamble includes information about the Code's purpose, how it was established, who it applies to, where it fits within the ESOS legislative framework, and how it is supported by state and territory legislation.

The bulk of the revisions to the National Code are found in Part D, the section that sets out the obligations on registered providers as standards. The standards detail the specific requirements registered providers must meet to comply with their obligations under the National Code. The standards with related content have been grouped together in order to make information easy to find and to avoid unnecessary duplication within standards. Each grouping of standards has an introduction to provide additional context. Each standard also includes an 'Outcome' statement in order to show the intent of the standard.

### **D.3.2 Flexibility & clarity**

The National Code 2007 increases flexibility in some standards, responding to providers' concerns that some of their obligations were burdensome. The addition of requirements for more detailed processes relating to the engagement of students (including written agreements between providers and their students and education agents) will prevent students being exploited by unscrupulous practices. However, procedures are not prescribed; providers maintain control over how they fulfil the standards' outcomes. Many providers are already engaged in this best practice, which will minimise the impact of these requirements in the National Code 2007.

The standard relating to younger overseas students addresses widespread misreading of providers' existing requirements under the National Code 2001, and the standard relating to overseas students as consumers includes a more comprehensive complaints and appeals requirement to ensure students have ready access to both internal and external grievance processes.

### **D.3.3 Visa Integrity**

The intent behind the standards relating to the student visa programme is to ensure only bona fide students are studying in Australia on a student visa, whilst providing greater flexibility for providers reporting student visa breaches. There is also recognition that judgements about course progress



are best made by the education provider, and the need to take account of teaching and learning methods have evolved in the different sectors.

#### **D.4 PROPOSED OPTION**

Regulatory revision is the option supported by governments and the international education sector. By clarifying provider obligations and strengthening consumer protection, the proposed changes to the National Code address previous problems and support the government's objectives outlined in Section C. By requiring registered providers to meet consistent, minimum standards in the provision of education services for overseas students, quality assurance can be achieved and the international education industry's reputation protected.

As a consequence of the strong support across all stakeholder groups for the ESOS framework, it was clear that the option of self-regulation was not preferred. It was also clear that stakeholders had concerns about the status quo being maintained. A RIS was not prepared for the revision of the National Code at the decision-making stage.

### **E. IMPACT ANALYSIS FOR OPTION OF SELF-REGULATION**

This impact analysis has been undertaken for the option of self-regulation.

The benefits of self regulation are difficult to determine as guidelines for self-regulation developed by an industry-led body may be more or less onerous than the regulatory framework implemented by government. More than likely any such scheme will also be based along sector specific lines. This may lead to dual sector organisations needing to comply with two or more industry regulation schemes. Furthermore, registration of the education provider with an accrediting body may be on a full-cost recovery basis. This would most likely involve a higher cost than that incurred by the fee structure payable to the Australian Government and designated authorities under the current system. A likely impact on the international education industry of a move away from government regulation would be the loss of capacity for Australian Education International (AEI) to promote Australian education in overseas markets.

The international education industry comprises several sectors, each with varying accreditation and regulatory requirements. Guidelines developed at a national level provide an effective mechanism for guaranteeing quality and ensuring consistency across the sectors. For industry to develop a regulatory framework to meet the needs of each of the sectors at a standard necessary to maintain the integrity of the industry would be time and resource intensive. These costs would, in all likelihood, be passed on to education providers and consequently to overseas students due to the full-cost recovery nature of the scheme.

In discussions with the peak bodies at the time of the revision of the National Code, it became clear that education providers in the ELICOS and school sectors value the regulations supporting their attendance and course progress policies. While these requirements do include reporting

obligations for the providers, they also give weight to the providers' policies established to maximise educational outcomes for the students.

In developing the National Code 2007, DEST consulted with all sectors of the international education industry. It cannot be guaranteed that a process for developing industry based standards would be equally consultative. Peak bodies represent a range of stakeholders and there are significant differences in size and influence due to varying memberships. Peak bodies represent members with differing needs and interests and do not always agree on major policy decisions. During the process of revising the National Code, Government consultation played a major role in establishing agreed policy positions on significant issues.

Under a system of industry self-regulation, there may be reduced barriers to entry to the industry for new providers, particularly for smaller providers, and reduced costs for ongoing compliance. As previously stated though, it cannot be assumed that the regulatory framework developed by industry would be less onerous. In developing the National Code 2007, DEST has been scrupulous in removing unnecessary barriers, introducing flexibility and minimising the compliance cost for providers. The complementary educative and compliance roles undertaken by the Australian and state and territory governments of both the ESOS legislation and student visa conditions supports overseas students and the sector and is more cost effective than the separate management of these functions.

Industry self-regulation would mean a reduction in costs to the Australian and state and territory governments from monitoring and enforcing compliance with the existing regulatory system. However, as the ESOS legislation and the Migration Regulations governing the integrity of the student visa programme are so closely intertwined, a move to industry self-regulation may increase the cost to the Department of Immigration and Citizenship to ensure the continued integrity of the student visa programme.

Overseas governments have expressed confidence in the ESOS provisions as they relate to dispute resolution processes. There is a potential risk to the industry if there is an increase in the number of consumer complaints or the time it takes for them to be resolved. This may have a negative impact on the reputation of the international education industry in some of our major markets.

Any perceived relaxation of the regulatory environment increases the risk of attracting non-bona fide providers to the industry. These providers pose a threat to the international education industry and the migration programme by offering non-bona fide students the chance to evade visa obligations. This would potentially impact on immigration fraud in Australia and may require stronger migration regulation to minimise this risk.

The international education export industry is an important industry, worth \$10.1b to Australia's economy and bringing with it social and cultural benefits to the community. Without our good reputation, Australia risks becoming less competitive in what is now a global international education industry. The feasibility of self-regulation is limited by complexities in developing a regulatory framework for such a diverse industry that also meets migration integrity requirements. Additionally, there has not been any expression of interest by the industry in pursuing self-regulation. As such, it is unlikely that it would be seen as a viable option.

## **F. IMPACT ANALYSIS FOR RECOMMENDED OPTION**

This impact analysis has been undertaken for the recommended option of regulatory revision.

### **F.1 AFFECTED GROUPS**

#### **F.1.1 Students**

International students will be positively impacted by the changes to the National Code in terms of their rights, the information and treatment they can expect to receive from providers and agents with whom they deal, and their interaction with DEST and DIAC. It is essential to ensure the integrity of the student visa programme by identifying and managing non bona fide students. The standards in the National Code 2007, supported by student visa conditions, provide mechanisms to ensure that overseas students who come to Australia to study fully participate in their educational experience.

Apart from the issue of visa integrity, there are a number of reasons for the retention and clarification of measures to ensure international students are monitored in their participation in their education programmes. These students are potentially vulnerable in an unfamiliar environment without the support of family and social networks. Students may also have insufficient language skills or knowledge to take action where their expectations have not been met. It is essential that providers support and monitor these students. Educational outcomes for individual students and the student cohort will be enhanced by compliance with the support and monitoring provisions of the National Code 2007.

Changes which have the most potential to positively impact students are:

- removal of the requirement to maintain fulltime enrolment. This is now managed through completion within expected duration (Standard 9);
- allowance for a 25 percent online component in a student's course (Standard 9);
- discretion for providers to elect not to report +attendance breaches, where other conditions such as satisfactory course progress are met (Standard 11);
- reduction of the change of provider restriction from 12 months to 6 months into the principal course (Standard 7); and
- provision for students to appeal decisions about attendance, course progress and transfer of providers through their provider's appeals processes rather than approaching DIAC for a final decision.

There is also the possibility that providers might pass on increased compliance costs to students.

#### **F.1.2 International education industry**

Registered providers are the primary group directly affected by the changes to the National Code. The National Code 2007 does not represent major change to the normal activities of providers; however it may require some adjustment to some existing procedures and processes. New providers

seeking to enter the market will have the benefit of clearer and more flexible requirements from the outset. There will be some cost to providers in the implementation phase of the National Code 2007. The extent to which providers are subject to increased cost will depend on the degree to which they were already implementing regulations that have been made mandatory. The increased regulations are examined in the impact section. The question of the degree to which the National Code 2007 will increase compliance costs has been a matter of concern to registered providers. For education agents, the revisions do not change their core business, but they will be required to cooperate with registered providers on some new procedures.

Peak bodies will be integral to the successful transition from the National Code 2001 to the National Code 2007. They may receive an increase in requests for information or assistance. This may impact on their activities, depending on how they choose to support their members. DEST is implementing a National Code Transition Support Program in which international education industry peak bodies will receive funding to develop projects to assist their members with the transition to the National Code 2007.

### **F.1.3 Governments**

State and territory governments have responsibilities under the ESOS legislative framework (through their designated authorities), and the changes to the National Code will impact upon their role in registration, monitoring, compliance and enforcement. While the activities undertaken by the state and territory governments will not alter significantly, a clarification of responsibilities between states and territories and the Australian Government will occur. The Australian Government is working with states and territories to put in place a shared regulatory relationship which reflects the most efficient and effective allocation of roles and responsibilities and allows both levels of government to make the best use of their available resources. The Australian Government is also supporting states and territories during the implementation phase of the National Code 2007.

The Australian Government will be similarly affected by a change in its shared responsibility for registration, monitoring, compliance and enforcement with the state and territory governments. The activities of DEST and DIAC will be impacted by revisions to the National Code that relate to: the Provider Registration and International Students Management System (PRISMS); the restriction on transferring between providers; the external appeals mechanism; and alterations to the standards relating to full-time study and course duration, and monitoring student progress and participation.

## **F.2 BENEFITS AND COSTS**

The changes to the National Code are a direct response to problems identified by industry stakeholders and practitioners. However, the proposed changes did not arise in response to a wayward international education industry. Rather, a review was mandated by the ESOS Act. The changes do not seek to significantly alter the regulation of the international education sector overall, nor are they part of any broader regulatory reform.

The table at Appendix A shows a breakdown of the benefits and costs resulting from the changes to the National Code, and briefly describes their impacts. Significant impacts are highlighted. It shows that students and providers receive most of the benefits from the revisions to the National Code.

### **F.2.1 Costs**

There will be some costs incurred to develop policies and procedures under the National Code 2007 and some new ongoing costs for those providers who do not already implement optional measures that have now been made mandatory. Where proposed changes seek to address issues that the National Code 2001 did not adequately cover, these changes are progressing a regulatory regime already established by the ESOS Act 2000.

While the costs to providers who are operating using good practice business models will be minor, providers not operating within these frameworks may incur extra costs, as the National Code 2007 requires them to meet minimum benchmarks. These changes are most likely to be in the documentation of procedures and in student appeals processes.

Changes to the National Code may result in some cost increases to peak bodies and international education industry representative organisations as they seek to support their members. These increases are expected to be offset by an Explanatory Guide to be prepared by DEST and made publicly available, which will assist in keeping costs to the international education industry to a minimum. DEST has also provided funding to international education industry peak bodies for National Code Transition Support Projects which will assist providers with the implementation of the National Code 2007.

Concerns have been raised that where providers' costs under the National Code 2007 may increase these additional costs could be passed on as increased fees and charges to students. Education providers are free to determine whether to risk their competitiveness and market share by passing on any increased costs, or whether to absorb the costs and benefit from a better regulated international education industry. Similarly, some peak bodies have expressed concern at a potential increase in time costs to students as a result of increased information transfer requirements and written agreements. These requirements generally take place before the student has commenced their course. DEST considers that the consumer benefits generated for students by these requirements, and the resultant benefits for the international education industry's reputation, outweigh the possibility of Australia being regarded less favourably by prospective students because of additional information assisting their decision-making and the formalising of the requirement to enter into written agreements.

### **F.2.2 Benefits**

The proposed changes to the National Code provide benefits for students and providers by amending existing regulations for clarity and ease of interpretation, or by including requirements where there were gaps.

It is anticipated that the removal of some content from the National Code 2001 and clearer proposed standards will assist not only registered providers, but also state and territory governments or their designated

authorities in their compliance activity. The Explanatory Guide will contain sector-specific examples of how the National Code 2007 will be applied.

Compliance and enforcement activity will increase in effectiveness as regulatory bodies will be able to take action quickly.

Students will have greater confidence in the international education industry because of changes which will provide them with more information, written agreements with their provider, enhanced consumer protection mechanisms, improved monitoring of their course progress, and early intervention mechanisms to assist them if they encounter difficulties. Students are valuable promoters of the international education industry. Improving their personal experience in Australia, assuring them a quality education, and protecting them from non-bona fide providers will impact positively upon the international education industry's reputation and competitiveness.

Under the previous legislation, concerns were expressed by governments of student source countries about the lack of consumer protection mechanisms in Australia's education industry. The National Code 2007 strengthens these mechanisms and addresses concerns expressed by other governments. Some governments in our source countries issue alerts reporting on issues involving failure to provide adequate consumer protection and care of students, misleading advertising and illegal recruitment activity, and unethical practices by agents. Governments and the public treat these warnings seriously and the effects can be considerable to the individual provider and to the reputation of a country's education sector.

Improvements in the national consistency of quality assurance through monitoring and compliance arrangements of the National Code 2007 will further enhance the reputation of Australian international education. Ensuring proper conduct in dealing with overseas students will work to counter any negative perceptions about Australian providers' behaviour towards their international students and benefit international relations. Counsellors in DEST's Offshore Network have reported increased interest from education recruitment agents in professional and ethical standards within education. Additionally, improved approval rates for student visa applications from education agents support the view that the ESOS regulatory framework has increased the appropriate marketing of Australian education overseas.

### **F.3 IMPACT SUMMARY**

While peak bodies and providers expressed concerns about potential costs as a result of a perceived increase in regulation, DEST is confident that improvements in clarity and flexibility in the National Code 2007 and its management of issues raised in the evaluation means the benefits far outweigh the costs of the proposed changes. DEST has worked with stakeholders to minimise costs where changes add requirements; however, some changes have been necessary to ensure compliance with current requirements under the existing ESOS framework. The National Code 2007 presents a balance between greater clarity and increased flexibility for providers, whilst also giving more autonomy to providers to determine appropriate compliance with the National Code, within clearly articulated boundaries.

Without our good reputation, Australia risks becoming less competitive in what is now a truly global international education industry. Failure to respond to limitations in the National Code 2001 would compromise the Australian international education industry and the economic and social benefits it generates for the Australian community.

### **F.3.1 Clause-by clause summary**

The following summary of the National Code 2007 outlines requirements imposed on providers and indicates where provider obligations have been altered by the requirements of the National Code 2007. Compliance costs to business of new requirements in the National Code 2007 have been assessed using the Business Cost Calculator. The added clarity, flexibility and provider discretion in the National Code 2007 provide benefits that balance these costs.

The Business Cost Calculator only provides an indication of the likely costs to business of the change. There is a wide spectrum of providers operating under the ESOS Act from very large to very small providers. Some have many overseas students and some only have one or two overseas students. It does not take into account that many providers, as a matter of good business practice, already have many of the policies and procedures in place that are will become mandatory under the National Code 2007. It also does not take into account the potential reduction in costs created through increased flexibility available from changes to the National Code.

#### **❖ Part A: Framework**

Part A provides the objectives of the National Code 2007 and explains its 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 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 applicable processes for registration of providers and courses on CRICOS. The section provides a general description of the registration process under the ESOS legislative framework and specifies the minimum requirements that apply to the registration process. These processes include the following components:

- 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 taking place 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. As is currently the case holiday and work-based training periods are to be incorporated in the course duration. Providers must also ensure that 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 must have in place appropriate arrangements for the supervision and assessment of students. This is a clarification of the previous requirements with no substantial change.

- 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% of the student's total course. This offers providers substantially more flexibility than the previous requirement for face-to-face teaching only.

- 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. 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 the previous requirement.

- 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, any limits on the number of hours a provider's premises may be used for education and training and the number of teaching shifts conducted have been removed for added flexibility for providers.

#### ❖ Part D: Standards for registered providers

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

At the time of preparation of this RIS there are 1250 education providers registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS). Of these, 223 are government providers and 1027 are non-government providers. The cost to business for each of the standards has been calculated using the total number of providers. This has been done even though many of the mandatory requirements in the National Code 2007 were optional under the National Code 2001 and compliance monitoring activity conducted by the Department to date suggests that the majority of providers have already implemented many of these requirements. This significantly negates the compliance cost to business of the revised National Code.

There are a wide range of education providers across multiple sectors that will be impacted by the revisions to the National Code. If a small provider is deemed to be a provider with less than 100 overseas students, a medium provider has 101 to 1000, and a large provider has more than 1000 overseas students; there are 1003 small, 196 medium and 51 large providers. An average has been used to determine the time required to complete specific compliance tasks. This was determined in discussions with staff experienced in the completion of these tasks within an educational setting.

- 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 prohibiting 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 and have, for the most part, been simplified.

- Standard 3 – Formalisation of enrolment

This Standard regulates the final part in the enrolment of an overseas student. Previously, providers could opt to enter into written agreements with overseas students. Many of the 1250 providers registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) are operating under good practice business frameworks and already have written agreements with accepted students. It is mandatory under the National Code 2007 to have a written agreement and a number of existing requirements have been consolidated into this Standard for inclusion in the written agreement including:

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

The compliance cost to business to implement the new requirements under Standard 3 have been calculated to include establishment of a template agreement to be used by providers with each of their overseas students. The cost also includes the administrative resources for adding course and fee information and finalising the agreement. The number of times this action will be taken by a provider was calculated by averaging the number of current enrolments of overseas students and the number of CRICOS registered providers. The cost to business to establish the agreement and resource it's operation for the first year has been determined by the Business Cost Calculator to be \$751.00 per provider, which equates to an aggregate cost to business of \$938,750.

On an ongoing basis, it is anticipated the compliance cost to business in following years would be approximately \$695.00 per provider per year, which equates to an aggregate cost to business of \$868,750 per year. This incorporates the administrative work in finalising written agreements with each overseas student.

- 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 providers they engage to formally represent the provider; and
- processes for monitoring the agent's activities, including where corrective action should be undertaken.

The compliance cost to business to implement the requirements under Standard 4 have been calculated to include establishment of a template agreement to be used by providers with each education agent they engage to formally represent them. The cost also includes the administrative resources for monitoring the agent's actions and determining whether any corrective action is required. The average cost to business to establish the

agreement and resource it's operation for the first year has been determined by the Business Cost Calculator to be \$122.50 per provider, which equates to an aggregate cost to business of \$153,125.

On an ongoing basis, it is anticipated the aggregate compliance cost to business in following years would be approximately \$70.00 per provider per year, which equates to an aggregate cost to business of \$87,500 per year. To determine this figure an assumption has been made that there would be an average of four education agents per provider, with whom the provider would have a formal agreement to recruit students on behalf of the provider. This incorporates the administrative work in monitoring the activities of education agents as per the contract provisions.

- Standard 5 – Younger overseas students

The Standard gives providers some flexibility in determining the period for which they accept responsibility for approving welfare arrangements for students under 18 years of age and also ensures that adequate arrangements are in place for their care while they are studying in Australia.

Where the registered provider has taken on responsibility, under Regulation 8532 and Public Interest Criterion 4012A of the Migration Regulations, for approving the accommodation, support and general welfare arrangements for a student who has not turned 18, the registered provider must nominate the beginning and end dates of the period of their responsibility for approving the student's welfare. The Department of Immigration and Citizenship (DIAC) is making complementary amendments to the Migration Regulations to specify that the minimum allowable period that a provider may nominate is the length of the enrolment plus a period of seven days following the proposed end date.

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 the 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.

Approval of welfare arrangements was previously automatically for the duration of the student's stay in Australia. This Standard has reduced the burden on providers by allowing them to accept responsibility for only the period with which they are comfortable.

- 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 is not a substantial change from the previous requirements, but clarifies them 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.

The compliance cost to business under Standard 6 is calculated on the new requirement to establish and implement a critical incident policy. The average cost to business to establish the policy has been determined by the Business Cost Calculator to be \$140.00 per provider, which equates to a one-off aggregate cost to business of \$175,000.

- Standard 7 – Transfer between registered providers

This is a new standard which shifts the current restriction of students changing providers from a student visa condition to a provider managed process. DIAC will make an amendment to the Migration Regulations removing the change of provider restriction. The provision in the National Code 2007:

- allows students to change education providers after the first six months of their principal course of study, rather than applying a 12 month restriction as was the case under the student visa condition outlined in Regulation 8206 of the Migration Regulations; and
- requires the provider to manage the process for releasing students and also ensure that they are not knowingly enrolling students within the exclusionary period.

The Australian Government believes it is important to balance both the students' right of choice and the need to ensure they are not misled into changing courses. To date, restricting the student's movement between courses has been managed as a student visa condition with the prospect of visa cancellation. This Standard more appropriately focuses attention on the provider. Instead of the student being penalised by a possible visa cancellation, the National Code will now require providers to not knowingly enrol a student within the first 6 months unless the student has a letter of release or in other limited circumstances. Other areas of the Code have also been strengthened to ensure that the marketing and recruitment activities of providers and their education agents do not mislead students or thwart the intent of Standard 7.

This Standard offers students increased flexibility with a reduction in the restricted period, which has changed from twelve months to six months. Students will no longer need to apply to DIAC and pay the associated processing fee for permission to transfer in the restricted period, unless there will be a change to their student visa subclass because they have enrolled in a course in a different education sector.

The compliance cost to business to implement the new requirements under Standard 7 has been calculated to include establishment of a policy to assess requests for transfer within the first six months of an overseas student's principal course. The cost also includes the administrative resources for assessing transfer requests and documenting the outcomes. The number of times this action will be taken by a provider was estimated

using data from PRISMS. The average cost to business to establish the policy and resource its operation for the first year has been determined by the Business Cost Calculator to be \$305.00 per provider, which equates to an aggregate cost to business of \$381,250.

On an ongoing basis, it is anticipated the compliance cost to business in following years would be approximately \$200.00 per provider per year, which equates to an aggregate cost to business of \$250,000 per year. This incorporates the administrative work in assessing transfer requests in line with the provider's documented policy.

- Standard 8 – Complaints and appeals

This Standard requires that registered providers' complaints and appeals processes are independent, easily and immediately accessible and inexpensive for the overseas student(s) involved. It clarifies existing requirements and should not result in additional costs for providers. The Standard clarifies:

- the need for overseas students to have immediate 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. To reduce the regulatory burden on providers, processes established under existing quality assurance frameworks such as Australian Quality Training Framework (AQTF) and the Higher Education Protocols are acceptable provided that they meet the minimum requirements of this Standard.

- Standard 9 – Completion within expected duration

This Standard which 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 improved the flexibility for both providers 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 would be the case under the existing requirements; and
  - an online/distance learning component of up to 25% of a student's total course is now allowed. This has increased the flexibility of delivery modes available to providers. Under the National Code 2001 overseas students could not be enrolled in online units or distance education and all courses registered on CRICOS could be registered only if the course was delivered entirely face-to-face.

DEST will develop a 'Distance Education and Online Learning' fact sheet to assist providers and designated authorities with the determination of an acceptable distance or online learning component within a course.

The compliance cost to business to implement the new requirements under Standard 9 have been calculated to include establishment of a policy to monitor the enrolment load and online component of a student's course to ensure they will complete within the expected duration and are not in breach of the 25% online limit. The cost also includes the administrative resources for monitoring this at regular intervals.

On average each education provider will go through the process of monitoring the student's progress and the online component of the course approximately 190 times per year (total enrolments / no. of providers). The average cost to business to establish the policy and resource its operation for the first year has been determined by the Business Cost Calculator to be \$751.00 per provider, which equates to an aggregate cost to business of \$938,750.

On an ongoing basis, it is anticipated the compliance cost to business in following years would be approximately \$695.00 per provider per year, which equates to an aggregate cost to business of \$868,750 per year. This incorporates the administrative work in monitoring progress towards completion within expected duration in line with the provider's documented policy for each overseas student of the provider.

- 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 of the intention 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:

- at a minimum, 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;
- 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;

- 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 for the breach. 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.

A complementary change to Regulation 8202 of the Migration Regulations will state that the student must continue to satisfy their education provider's attendance and course progress requirements.

- Standard 11 – Monitoring attendance

Requirements for monitoring attendance are more flexible under the National Code 2007 and apply to schools, English language and non-award courses. Providers of higher education courses are not required to monitor attendance. 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 of VTE courses who choose to monitor attendance, and providers of English language, schools and non-award courses, must assess attendance regularly to a minimum of 80% of course contact hours;
- for VTE or non-award courses, a provider may elect not to report a student for an attendance breach if there is documentary evidence demonstrating that the decision is consistent with its documented attendance policies and procedures, the student records indicate that the student is maintaining satisfactory course progress, and the student is attending at least 70% of the course contact hours for which they are enrolled;
- for English language and schools courses, a provider may elect not to report a student for an attendance breach if the student provides documentary evidence demonstrating that compassionate or compelling circumstances apply, the decision is consistent with its documented attendance policies and procedures, and the student is attending at least 70% of the course contact hours for which the student is enrolled; and
- 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 for the breach. 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.

A complementary change to Regulation 8202 of the Migration Regulations will state that the student must continue to satisfy their education provider's attendance and course progress requirements.

- Standard 12 – Course credit

This Standard largely reflects the requirements 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 – Deferment, 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, thereby providing increased flexibility for both providers and students. Providers may allow 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 deferment 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; or
- defer or temporarily suspend the enrolment of a student due to misbehaviour of the student.

- Standard 14 – Staff capability, educational resources and premises

There is no substantial change to the requirements under this Standard. The Standard ensures that providers have suitable staff, educational resources and premises for providing education services to overseas students. Suitability of staffing, educational resources and will be determined in accordance with applicable quality assurance frameworks. Where no quality framework applies providers must demonstrate appropriate policies and procedures for these requirements. 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. 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.

- Standard 15 – Changes to registered providers' ownership or management

This Standard reflects the current requirement for providers to report any change in ownership or management. It has been amended to include changes to the 'fit and proper' test and the addition of high managerial agents of the provider in the test. It requires that:

- prospective changes of ownership or management are reported to the designated authority prior to the event; and
- providers supply the designated authority with information on the new owners or high managerial agents so that the designated authority can consider whether the provider continues to be fit and proper to be registered in accordance with Section 9(6) of the ESOS Act.

The National Code 2001 required any change in ownership or management to be reported to the designated authority 14 days after the change had been made. This did not give the designated authority the opportunity to ensure that any concerns it had could be addressed before the change was made. Reporting of a change prior to the change being made enables the provider and designated authority to discuss any consequences of the change before it happens. The change in the timeframe for reporting should not add any additional burden to the provider and will ensure early identification of any potential issues.

The ESOS Act has been amended to provide that high managerial agents of a provider must also be considered by the designated authority when determining whether a provider is fit and proper to be registered under s.9 of the ESOS Act. The Evaluation also identified that there was widespread concern across all stakeholder groups at the once-off nature of the 'fit and proper' test, which was only applied at the point of registration. Once a provider had been registered there was no on-going obligation under the ESOS Act for providers to satisfy the relevant State authority that the provider continued to be 'fit and proper' for the purpose of registration. As a consequence of the amendments to the ESOS Act, the test must be applied at the point of registration and during the period of registration. Standard 15 of the National Code 2007 supports this change by requiring providers to provide the relevant information to the designated authority so that it can make this decision. While the provision of this information is an additional administrative task, in order to safeguard the reputation of the international education industry it is important to prevent persons with a history of non-compliance with the ESOS Act from taking up positions of influence with a provider. The Australian Government believes that the overall benefit of this requirement to the reputation of the international education industry outweighs the additional administrative cost.

The compliance cost to business to implement the new requirements under Standard 15 has been calculated to include establishment of a template to gather and assess relevant information on new owners, associates and high managerial agents. The cost also includes the administrative

resources to ensure ongoing compliance with the fit and proper test throughout the registration period.

On average each education provider will go through this process approximately 4 times per year. The average cost to business to establish the policy and resource its operation for the first year has been determined by the Business Cost Calculator to be \$116.20 per provider, which equates to an aggregate cost to business of \$145,250 per year.

On an ongoing basis, it is anticipated the compliance cost to business in following years would be approximately \$46.20.00 per provider per year, which equates to an aggregate cost to business of \$57,750. This incorporates the administrative work for providers to supply information from new owners, associates or high managerial agents as required.

The total net cost to business of the revision of the National Code for start-up and costs for the first year of operation is estimated at \$2,185.70 per provider, which equates to an aggregate cost to business of \$2,732,125. The total net cost to business for ongoing years is estimated at \$1,706.20 per provider per year; which equates to an aggregate cost to business of \$2,132,750 per year. It should be noted that these costs are average costs and will vary depending on the size of the provider and the extent to which some of the requirements are already being met through existing quality business practices.

## **G. CONSULTATION**

The consultation regime for the review of the ESOS Act has been an integral part of the overall evaluation. Information obtained during the consultation process has directly influenced the development of the National Code 2007. The main steps in the consultation process are at [Appendix B](#).

The National Code 2007 was developed in close consultation with DIAC, state and territory governments, peak bodies and other relevant international education industry organisations. The main groups involved in formal consultation on the drafting of the National Code 2007 are outlined at [Appendix C](#).

Peak bodies and other international education industry organisations were provided with three opportunities to formally comment on drafts of the National Code, as well as participate in both roundtable and bilateral meetings to discuss progress and issues arising from the proposed changes. Ongoing discussions with DIAC and peak bodies were also held. All concerns raised by peak bodies and government agencies were addressed in the consultation process and significant changes were made to the National Code 2007 as a consequence of their input to ensure its workability for the international education industry.

In addition to considering the general recommendations prepared in response to the initial evaluation's broad consultation, relevant stakeholders have also been consulted on specific parts of the proposed regulatory changes, to ascertain whether they will be operationally sound.

The main stakeholder bodies involved in the consultation process are outlined below.

## G.1 STUDENTS

Student views on the regulation of the international education industry relate mostly to the quality of the education services they receive, and their treatment as consumers. The National Liaison Committee for International Students in Australia (NLC) directly represents the interests of overseas students, and ISANA: International Education Association (ISANA) is a body of international education professionals that assists in identifying issues affecting overseas students. Both organisations made submissions to the original evaluation report, and were involved in consultations to revise the National Code 2007. There were also submissions made by individual students and student associations (including postgraduate and international groups).

Specific issues raised by student groups relate to the details of appeals processes, the process for reporting to DIAC students who have breached visa conditions of attendance or course progress, and specified staff to student ratios. During the consultation phase Standard 8 was clarified to ensure that appeals processes were clearly documented and at minimal or no cost to the student. Students must also to be given access to an external dispute resolution process to ensure that independent avenues of appeal are open to them. This is a necessity considering the time an overseas student may remain in Australia on a student visa to pursue other legal remedies.

All standards which may result in a student being reported to DIAC include the requirement that the provider informs the student of its intention to report and allows 20 working days for the student to access the appropriate appeals process. Providers are required to begin an appeals process within ten days of receiving a complaint and to complete appeals within a reasonable time frame, taking into account visa related time constraints.

Students also supported the increase in choice and flexibility introduced by Standard 7 which allows students to transfer from one education provider to another after the first six months of their principal course of study rather than the first twelve months.

Student groups would have liked staff to student teacher ratios to be prescribed in the National Code 2007. DEST did not consider this level of prescription to be desirable or feasible across the different sectors. Throughout the revision of the National Code 2007 DEST has attempted to reduce prescription and to recognise existing quality frameworks where appropriate in order to minimise duplication. However, many existing domestic quality assurance frameworks already prescribe staff to student ratios which consequently apply where overseas students are enrolled.

Students stand to benefit from improvements to quality assurance, consumer protection, and from the increased flexibility in the ways in which providers may manage enrolments. Students also stand to benefit from the discretion in reporting attendance breaches given to providers where compassionate and compelling circumstances exist and the student is maintaining satisfactory progress.

Students may have concerns about the possibility of providers passing any additional costs onto them. DEST is undertaking a comprehensive communication and education campaign to support the transition period

leading to the implementation of the National Code 2007. Shared policy development and the provision of templates and will minimise any costs incurred by new requirements.

## **G.2 REGISTERED PROVIDERS**

Input from registered providers is a valuable resource for DEST, and the contact generated through the PRISMS Helpline and the ESOS Mailbox and Helpline (an email and telephone service) has created a communication link that keeps the Department generally informed of ESOS-related issues from the provider's perspective. Providers made submissions to the ESOS Act evaluation, and have participated in the consultation process directly through attending information sessions and through an online feedback mechanism. They were also represented by their international education industry peak bodies.

Education providers registered on CRICOS vary in size and the type of education services they offer. Views on the proposed reforms differ, especially across sectors of the international education industry. While providers shared many concerns about student interests and the perception that the National Code 2007 may increase the regulatory burden, there were a wide range of views even on specific issues. Examples of this are satisfactory course progress and attendance monitoring. Issues such as these were managed through consultations with their industry peak bodies.

## **G.3 PEAK BODIES**

Most of the formal international education industry stakeholder input to the consultation process was from peak body organisations that represent registered provider members. [Appendix C](#) lists the peak bodies involved in the consultation process. Peak bodies made formal written submissions to the evaluation, the four public or industry consultation drafts of the National Code 2007, and communicated with the Australian Government more generally (including meetings with both the Minister and Departmental executive staff). Four peak bodies, the Australian Council for Private Education and Training (ACPET); the Australian Vice-Chancellors' Committee (AVCC); English Australia (EA); and TAFE Directors Australia (TDA), worked together to develop joint submissions in the later stages of the National Code revision.

The primary concern of peak bodies was the potential regulatory impost upon their members of changes to the National Code. The AVCC felt that the requirement to monitor attendance in the higher education sector would be a significant regulatory and administrative burden. Consultation with the sector resulted in an alternative approach which supports the standard's intention to ensure students are bona fide and progressing satisfactorily throughout the course. This approach requires providers to monitor course progress and implement an early intervention strategy where necessary.

Peak bodies argued for further sectoral specificity for attendance monitoring. This was to cater for the differing requirements of the range of courses and students represented across the sectors. Vocational and technical education providers preferred a more flexible approach whilst peak bodies representing providers of English language courses and schools campaigned strongly to retain the current more stringent

attendance requirements. The final standard addresses the concerns of each of the sectors and peak bodies have voiced their appreciation of both the process of consultation and the resulting standard.

All peak bodies expressed concerns about the initial proposed implementation date of 1 January 2007. This was addressed, with the Minister agreeing to a revised implementation date of 1 July 2007.

In relation to Standard 5, the peak bodies preferred for providers not to be responsible for approving arrangements for students under 18 for the entire period of their stay in Australia, which is currently the case. The preferred option was for providers to nominate the time for which they are prepared to take on such responsibilities. This option has been adopted in the National Code 2007.

A number of options were considered for Standard 7. Several peak bodies opposed any change to the current 12 month restriction on students transferring from one provider to another. The arguments put forward by peak bodies for retaining the 12 month restriction tended to focus on undesirable recruitment practices of providers and education agents, financial stability, as well as giving the student an opportunity to settle into a course. The change to 6 months reflects the recommendations of the independent evaluation into the ESOS Act. It also balances the students' right of choice with the need to ensure they are not misled into changing courses. Where students do wish to change their enrolment, provider autonomy has been supported and the administrative burden kept to a minimum by ensuring the students access to the provider's appeals process rather than establishing a separate government or industry body. This standard underwent further changes following industry consultation on the explanatory material for the National Code 2007. The standard was clarified to reflect industry understanding and better meet the policy objectives of the requirement.

Peak bodies felt that the standards dealing with staff capability, educational resources and provider premises were unnecessary as these requirements were covered by existing quality frameworks. However, concerns were raised by state and territory governments as not all providers are subject to a quality assurance framework. In response, the requirements were simplified and consolidated into a single standard (Standard 14). Industry expressed appreciation for the removal of unnecessary prescription and detail.

Peak bodies have agreed that the National Code 2007 introduces greater flexibility in many areas and the greater clarity will make compliance easier for providers.

#### **G.4 STATE/TERRITORY GOVERNMENTS**

State and territory governments were involved in the consultation process through a working group, the Australian Education Services Officials Committee's (AESOC) National Code Action Group (ANCAG). They also provided information on their domestic compliance processes to aid consideration of options for improved responsibility arrangements under the revised ESOS framework.

State and territory governments were generally concerned to ensure that any changes to their roles and responsibilities for administering the National Code 2007 did not result in a significant resource impost. An analysis of the resource implications shows that for most standards there are minimal financial implications for state and territory governments. Where there are new requirements, such as compulsory written agreements between providers and students, there will be initial resource implications for designated authorities but these will be minor. The cost of monitoring the added details of written agreements between provider and students and providers and migration agents and other minor changes will be offset by the reduction in duplication by the recognition of existing frameworks and the streamlining of compliance activities.

State and territory governments were also concerned to ensure that proposed changes would not create duplication of monitoring or auditing activities. DEST will support designated authorities in undertaking their registration functions by developing products and tools that assist designated authorities to assess and recommend registration applications in a streamlined and nationally consistent fashion. Under a national consistency forum DEST will develop documents including core text and DEST specific information about CRICOS and the ESOS framework to support designated authorities in the provision of information to providers and proformas to support designated authorities in their consideration of the standards of the National Code 2007.

The states and territories have promoted leveraging existing system efficiencies when considering improvements to the regulatory arrangements under the ESOS Act. This has been incorporated into the National Code 2007 wherever appropriate.

## **G.5 DEPARTMENT OF IMMIGRATION AND CITIZENSHIP**

The student visa, and its associated conditions, is a fundamental aspect of the ESOS legislative framework which is necessarily administered by DIAC. Student visa integrity is a consideration that impacts upon many of the National Code 2007 standards. Inter-departmental consultation between DEST and DIAC has been integral to protecting the integrity of the migration programme since the inception of the ESOS Act 2000 and its predecessor the 1991 Act. DIAC made formal submissions to the consultation process for the revision of the National Code 2007, and communicated regularly with DEST during its development.

DIAC have an interest in ensuring that students who come to Australia to study are engaged in appropriate study, and that they fulfil their obligations under the Migration Regulations. DIAC was willing to consider changes to the visa-related processes in the National Code 2001 to provide for greater provider flexibility and discretion, and to adjust the full-time enrolment and minimum attendance monitoring requirements as long as they could be assured that students were progressing satisfactorily.

DIAC also held the position that issues relating to satisfactory course progress or educational outcomes were best managed by DEST, while visa matters remain the responsibility of DIAC. Changes to the National Code 2007 ensure that student appeals relating to attendance, course progress and transfer of provider are managed by the provider's documented

appeals process. DIAC will introduce amendments to the Migration Regulations to support the changes.

Extensive consultation on welfare arrangements for students under the age of 18 has been undertaken to ensure the risk involved in the care of younger students is appropriately managed. DEST has worked closely with DIAC to ensure that requirements outlined in the National Code 2007 are workable for providers, comply with student visa requirements and adequately protect students.

## **H. CONCLUSION AND RECOMMENDED OPTION**

The Australian Government is committed to minimising and streamlining regulation wherever possible to support the quality and competitiveness of the international education industry. However, it is recognised that this must be balanced with effective and enforceable minimum requirements to protect our most valuable asset in the international education industry, international students. It is important that appropriate consumer protection measures and quality assurance mechanisms are in place so that international students obtain a high quality education experience in Australia, thus maintaining our good reputation.

The ESOS Act evaluation report and the broad support for its recommendations across sectors and stakeholder groups reflect dissatisfaction with some aspects of the National Code 2001. The problems vary in importance, scope and urgency, but there is little doubt that difficulties with the National Code 2001 hamper the efficiency and effectiveness of the international education sector.

DEST recognises the advantages of government engaging in a collaborative approach with industry, and the substantial engagement Australia's international education industry has had with the development of the National Code 2007. Concerns raised by the international education industry have been taken into account wherever possible in the National Code 2007. While strong and committed international education industry associations exist that can support the changes, they are not in a position to regulate the industry.

The changes to the National Code are recommended in conjunction with changes to the broader ESOS legislative framework – PRISMS, the Tuition Assurance Scheme review, necessary legislative amendments, and improved communication strategies – which have been assumed for the purpose of this regulation impact statement. The National Code 2007 addresses existing flaws and will impact positively upon Australia's valuable international education industry.

## **I. IMPLEMENTATION AND REVIEW**

The Minister for Education, Science and Training, the Hon. Julie Bishop, has given her approval for the National Code 2007 to be registered on the Federal Register of Legislative Instruments. The National Code 2007 has a proposed implementation date of 1 July 2007.

The implementation strategy developed for the National Code 2007 includes the Department working with various international education stakeholder groups to develop materials including explanatory guides for the Code. Prior to the implementation of the Code DEST will be conducting education activities, including information sessions, in order to prepare education providers for a smooth transition..

Education providers must comply with the National Code 2001 until 1 July 2007 but will then be required to implement, and demonstrate compliance with, the National Code 2007. DEST will give ongoing assistance including providing information and education services, as well as advice from compliance officers to assist in this process.

DEST has prepared an information sheet, available on the DEST website and circulated to industry bodies, outlining the differences between the 2001 and 2007 National Codes.

During 2003-04, DEST's monitoring and enforcement activity was increased to protect Australia's international reputation. A revised onshore Compliance and Enforcement Strategy was developed. The Strategy adopted a risk management approach to ensure DEST's compliance and enforcement effort was targeted towards providers of concern. Continuing this process, compliance with the National Code 2007 will be monitored by DEST in conjunction with state and territory governments under a shared responsibilities framework.

The Australian Government will periodically review the effectiveness of the National Code 2007 to ensure it is meeting its stated objectives of supporting the effective administration of the ESOS framework, safeguarding Australia's reputation as a provider of high quality education and training, protecting the interests of international students, and supporting registered providers in monitoring student compliance with the student visa programme. This ongoing review will be through existing stakeholder consultation forums.



## Appendix A

Table outlining the benefits and costs of changes to the National Code.  
Yellow highlighting indicates significant impact.

| Change to National Code   | Affected group | Benefit / Cost | Impact   | Start-up and first year cost per provider (est) | Annual ongoing cost per provider (est) |
|---|----------------|----------------|--|---|--|
| Clearer framework, with purpose and outcomes identified               | All            | Benefit        | More efficient and increased accuracy in the provision of information to students  |   |  |
| Changed to a set of standards   | All            | Benefit        | Clarity and easily auditable   |   |  |
| Improved marketing information & practices requirements               | Students       | Benefit        | Better informed students and stronger consumer protection  |   |  |
| Consolidation of requirements for the recruitment of students         | Providers      | Benefit        | Requirements are now in the one standard and are easier to locate;<br>Reduced prescription and removal of unnecessary requirements                               |   |  |
| Formalisation of enrolment requirements, including written agreements | Students       | Benefit        | Enhanced consumer protection   |   |  |
|   | Providers      | Cost           | Slight reduction in flexibility and some new requirements  | \$751.00  | \$695.00                               |
|   |                | Benefit        | Grouping of like requirements for ease of use and ensuring compliance  |   |  |
| Formalisation of business arrangements with education agents          | Providers      | Benefit        | Potential to significantly protect providers from unscrupulous agents  |   |  |
|   |                | Cost           | Where providers don't already have a written agreement with their education agents, minor cost and time investment will be required to formalise the arrangement | \$122.50  | \$70.00                                |
|   | Students       | Benefit        | Considerable consumer protection advantages  |   |  |
|   | Agents         | Benefit        | Enhanced reputation, protection of investment and assistance to be supplied by the education provider  |   |  |

|   |                                  |         |  |          |          |
|---|----------------------------------|---------|--|----------|----------|
| Clarity of responsibility arrangements for younger students | Students                         | Benefit | Improved awareness of how their situation and actions impact upon their visa   |          |          |
|   | Providers                        | Benefit | Reduced concern due to clarity of situation and ability to nominate dates for which they will approve welfare arrangements |          |          |
|   | DIAC                             | Benefit | Assists with visa integrity compliance   |          |          |
|   | International education industry | Benefit | Better reputation for student welfare provision thus greater marketability   |          |          |
| Improved student support                                    | Students                         | Benefit | Better initial and ongoing support   |          |          |
|   | Providers                        | Benefit | Greater clarity & increased flexibility  |          |          |
|   |                                  | Cost    | Critical incident policy will require development for some providers, but a once off cost only                             | \$140.00 | n/a      |
| Transfer of provider restriction                            | Students                         | Benefit | Potential greater consumer choice; Lessening of stigma associated with DIAC involvement                                    |          |          |
|   | Providers                        | Benefit | Greater autonomy and discretion  |          |          |
|   |                                  | Cost    | Some development of procedures to assess release requests; but a once off cost only  | \$305.00 | \$200.00 |
|   | DIAC                             | Benefit | No longer managing an education issue  |          |          |
|   | DEST                             | Benefit | Lessens risk of poaching by providers and strengthens enforcement options  |          |          |
| Clarification of grievance procedures                       | Students                         | Benefit | Enhanced consumer protection   |          |          |
|   | Providers                        | Cost    | More prescriptive requirements   |          |          |
|   | International education industry | Benefit | Improved reputation for student/consumer interest  |          |          |
| Removal of requirement for 'full-time study'                | Students                         | Benefit | Reduced cost associated with undertaking unnecessary subjects to maintain full-time load                                   |          |          |
|   |                                  | Benefit | Greater flexibility in managing workload over course duration  |          |          |
|   | Providers                        | Benefit | Greater flexibility in managing workload over course duration  |          |          |

|   |           |         |  |          |          |
|---|-----------|---------|--|----------|----------|
|   |           | Cost    | Possible increased monitoring to ensure completion within expected duration  | \$751.00 | \$695.00 |
|   | DIAC      | Benefit | Less enquiries relating to visa condition 8202   |          |          |
| Improved monitoring of course progress requirements                                       | Students  | Benefit | Improved education experience as a result of monitoring and early intervention strategy                                  |          |          |
|   |           | Benefit | Satisfactory course progress in a VTE course may mean no attendance requirement  |          |          |
|   | Providers | Benefit | Providers of VTE courses may elect not to monitor attendance with an approved course progress policy                     |          |          |
|   |           | Benefit | More flexibility in managing student participation   |          |          |
| Clarification of requirements relating to course credit and deferment/suspension of study | Providers | Benefit | More flexibility; ease of interpretation will aid consistency of application   |          |          |
| Amendments to requirements relating to staffing, premises, resources and management       | Students  | Benefit | Enhanced educational experience due to greater staff involvement with student; some strengthening of consumer protection |          |          |
|   | Providers | Benefit | Less regulation relating to staffing requirements and more flexibility around hours of operation                         |          |          |
|   |           | Cost    | Notification requirement relating to 'fit and proper person' test for new owners, associates and high managerial agents  | \$116.20 | \$46.20  |

## **Appendix B**

### **The main steps in the consultation process**

- Announcement of review of ESOS Act and invitation for submissions to an evaluation [59 received]
- A programme of stakeholder consultations undertaken around the period submissions were being accepted [over 50 separate consultations undertaken]
- Release of evaluation report
- Publication of DEST's response to the evaluation's recommendations
- Establishment of a working group under the Australian Education Systems Officials Committee (AESOC), made up of representatives from state and territory education departments
- Input on development of standards for National Code sought from the international education industry at information sessions held in all capital cities
- Formal consultations on initial draft of National Code 2007 (first tranche)
- Formal consultations on second tranche of National Code 2007
- Release of a industry consultation draft for public comment
- Information sessions held in all capital cities to highlight proposed changes to National Code and invite feedback [held to coincide with public comment period]
- Outsourced, online feedback mechanism and report
- Two Peak body roundtable meetings
- Release of a final draft of the National Code for comment.

## **Appendix C**

### **The main participants in the consultation process**

As state and territory governments recommend education providers and their courses for registration for the purposes of the ESOS Act and monitor compliance with the National Code 2001, the Department actively engaged with them on the development of the National Code 2007 through the Australian Education Systems Officials Committee (AESOC) National Code Action Group (ANCAG).

DEST also actively consulted with international education industry peak bodies on the revision of the National Code. These organisations included:

- Australian Vice-Chancellors' Committee (AVCC)
- Australian Council of Independent Vocational Colleges (ACIVC)
- Australian Council for Private Education and Training (ACPET)
- English Australia (EA)
- Independent Schools Council of Australia (ISCA)
- National Liaison Committee for International Students in Australia (NLC)
- Schools International Government Group (SIGG)
- TAFE Directors Australia (TDA)

In addition to these peak body organisations, ISANA: International Education Australia was also consulted, particularly for their experience in international student support and pastoral care.