EXPLANATORY STATEMENT

Issued by the authority of the Assistant Minister for International Education

Education Services for Overseas Students Act 2000

National Code of Practice for Providers of Education and Training to Overseas Students Amendment (Overseas Student Transfers) Instrument 2026

AUTHORITY

Subsection 33(1) of the *Education Services for Overseas Students Act 2000* (the Act) provides that the Minister may make a national code by legislative instrument. Subsection 33(2) of the Act provides that the code is to be called the National Code of Practice for Providers of Education and Training to Overseas Students.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations, or by laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

The amendments to the *National Code of Practice for Providers of Education and Training to Overseas Students 2018* (the National Code) made by the *National Code of Practice for Providers of Education and Training to Overseas Students Amendment (Overseas Student Transfers) Instrument 2026* (the Amendment Instrument) rely on this provision.

PURPOSE AND OPERATION

The Amendment Instrument amends the National Code to modify the restriction period during which a registered provider must not knowingly enrol an overseas student who is seeking to transfer from a course with another registered provider.

The Amendment Instrument modifies the restriction period so that, from the commencement of the Amendment Instrument until 30 June 2027 (inclusive), registered providers are generally prohibited from enrolling overseas students seeking to transfer from another registered provider (the releasing provider) unless the student has completed at least 12 months of their principal course with the releasing provider.

From 1 July 2027, the restriction period reverts to the restriction period that was previously in the National Code before the amendments were made to the National Code by the Amendment Instrument (which required that the student complete at least 6 months of their principal course with the releasing provider).

The Amendment Instrument does not change the restriction period for overseas students transferring from an approved school provider.

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The amendments to modify the transfer restriction period have been made to reflect migration reforms that will seek to strengthen the integrity of the student visa program. The Amendment Instrument will support those reforms and the Government's broader commitment to integrity in the international education sector, by temporarily extending the period in which overseas students have to undertake study with their releasing provider before they are able to transfer to another provider.

The extension of the transfer restriction period to 12 months is a temporary measure only. It is intended to mitigate the known integrity and student welfare risks associated with rushed or non-genuine transfers that are expected to occur in response to migration reforms announced on 17 September 2026 by the Hon Tony Burke MP, Minister for Immigration and Citizenship. The relevant migration reform announced will create a stronger requirement for students to be granted a new student visa before they may transfer their studies to another international education provider, and is intended to take effect in mid-2027.

The extension of the transfer restriction period will not prevent genuine transfers from taking place where required, for example, where the registered provider deems the transfer to be in the overseas student's best interests, or where the releasing provider or the course in which the overseas student is enrolled, has ceased to be registered.

COMMENCEMENT

The Amendment Instrument commences the day after it is registered on the Federal Register of Legislation.

CONSULTATION

In making the Amendment Instrument, the Department of Education (department) consulted with the Tertiary Education Quality and Standards Agency as the national higher education regulator, the Australian Skills Quality Authority as the National VET Regulator, the Department of Home Affairs as the agency responsible for the upcoming migration reforms, and the Department of Employment and Workplace Relations.

All of the above agencies indicated no operational concerns with the Amendment Instrument and noted the extension was a reasonable short-term mechanism designed to complement imminent integrity-based changes to student visa settings.

The international education sector has been consulted on transfer settings previously. The Education Services for Overseas Students Review 2022 requested written submissions from the sector on a range of topics, including how transfers should operate under the Education Services for Overseas Students (ESOS) legislative framework. Many stakeholders advocated for the extension of the transfer restriction period to 12 months to address concerns related to visa integrity and poaching of students by other providers and unscrupulous education agents once students arrive onshore.

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The Senate Education and Employment Legislation Committee's inquiry into the Education Services for Overseas Students (Quality and Integrity) Bill 2024 provided stakeholders with the opportunity to provide written submissions and appear at four public hearings to voice their feedback on the measures in that Bill. A number of submissions advocated for the extension of the transfer restriction period to 12 months.

The Amendment Instrument is complementary to, and acts as a temporary transition to, the implementation of migration reforms in 2027. Details of the relevant migration changes were first made public on 17 September 2026 by the Hon Tony Burke MP, Minister for Immigration and Citizenship. Since that announcement, the Hon Julian Hill MP, Assistant Minister for International Education has consulted with members of the Council for International Education on 25 September 2026.

The department has prepared communication materials to address any sector concerns, including a public-facing factsheet to support providers and students through the temporary changes. Additional communications will be released as the transfer restriction period reverts to 6 months, and as the new migration reforms are implemented.

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STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

National Code of Practice for Providers of Education and Training to Overseas Students Amendment (Overseas Student Transfers) Instrument 2026

The *National Code of Practice for Providers of Education and Training to Overseas Students Amendment (Overseas Student Transfers) Instrument 2026* (the Amendment Instrument) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The Amendment Instrument amends the *National Code of Practice for Providers of Education and Training to Overseas Students 2018* (National Code) to modify the restriction period during which a registered provider must not knowingly enrol an overseas student who is seeking to transfer from a course with another registered provider.

The Amendment Instrument modifies the restriction period so that, from the commencement of the Amendment Instrument until 30 June 2027 (inclusive), registered providers are generally prohibited from enrolling overseas students seeking to transfer from another registered provider (the releasing provider) unless the student has completed at least 12 months of their principal course with the releasing provider. From 1 July 2027, the restriction period reverts to the restriction period that was previously in the National Code before the amendments were made to the National Code by the Amendment Instrument (which required that the student complete at least 6 months of their principal course with the releasing provider).

The Amendment Instrument does not change the restriction period for overseas students transferring from an approved school provider.

The amendments to modify the transfer restriction period have been made to reflect migration reforms that will seek to strengthen the integrity of the student visa program. The Amendment Instrument will support those reforms and the Government's broader commitment to integrity in the international education sector, by temporarily extending the period in which overseas students have to undertake study with their releasing provider before they are able to transfer to another provider.

The extension of the transfer restriction period to 12 months is a temporary measure only. It is intended to mitigate the known integrity and student welfare risks associated with rushed or non-genuine transfers that are expected to occur in response to migration reforms announced on 17 September 2026 by the Hon Tony Burke MP, Minister for Immigration and Citizenship. These reforms include requirements for students to be granted a new visa before they can transfer providers, and are intended to take effect in mid-2027.

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The extension of the transfer restriction period will not prevent genuine transfers from taking place where required, for example, where the government sponsor of the overseas student deems the transfer to be in the overseas student's best interests, or where the releasing provider or the course in which the overseas student is enrolled, has ceased to be registered.

Human rights implications

The Amendment Instrument engages the right to education in Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).

Right to education

Article 13 of the ICESCR recognises the important personal, societal, economic and intellectual benefits of education. Article 13 also provides that secondary education in all its different forms, including higher education, shall be made generally available and accessible to all by every appropriate means.

The Amendment Instrument temporarily extends the transfer restriction period in order to mitigate the known integrity and student welfare risks associated with rushed or non-genuine transfers that are expected to occur in response to migrations reforms announced on 17 September 2026. Integrity risks in the international education sector relating to student welfare include the labour exploitation of students by unscrupulous and non-genuine receiving providers, following the students' transfer to these providers. This measure supports the integrity of the international education sector, which supports the right to education.

The Amendment Instrument temporarily reduces flexibility for some overseas students with regard to transferring between registered providers. For providers that primarily recruit overseas students that are transferring from other providers, there may be a temporary delay in their recruitment pipeline.

To the extent that the Amendment Instrument limits the right to education because of the limitation of students' ability to make choices in relation to their education, that limitation is reasonable, necessary and proportionate to strengthen the integrity of Australia's international education sector. This is because the amendment made by the Amendment Instrument to extend the transfer restriction period is only temporary, and will not prevent students from transferring where those transfers are genuine (for example, where the government sponsor of the overseas student considers the transfer is in the student's best interests or where the releasing provider or the course in which the overseas student is enrolled has ceased to be registered). Students wanting to transfer providers within the transfer restriction period also have the option of departing Australia and applying for a new student visa from offshore.

The Government considers that the benefits of protecting students from exploitation and preserving the integrity of Australia's international education sector outweigh the limited,

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temporary impacts on some students' transfer choices and some providers' onshore recruitment strategies.

Conclusion

The Amendment Instrument is compatible with human rights because it supports human rights and to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

Assistant Minister for International Education, the Hon Julian Hill MP

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NATIONAL CODE OF PRACTICE FOR PROVIDERS OF EDUCATION AND TRAINING TO OVERSEAS STUDENTS AMENDMENT (OVERSEAS STUDENT TRANSFERS) INSTRUMENT 2026

EXPLANATION OF PROVISIONS

Section 1: Name

1. This provision specifies the name of the instrument as the *National Code of Practice for Providers of Education and Training to Overseas Students Amendment (Overseas Student Transfers) Instrument 2026* (the Amendment Instrument).

Section 2: Commencement

2. This section provides that the Amendment Instrument commences the day after it is registered on the Federal Register of Legislation.

Section 3: Authority

3. This section provides that the Amendment Instrument is made under subsection 33(1) of the *Education Services for Overseas Students Act 2000* (the Act).

Section 4: Schedules

4. This is a technical provision that explains that each instrument that is specified in a Schedule to the Amendment Instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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Schedule 1—Amendments

National Code of Practice for Providers of Education and Training to Overseas Students 2018

Item 1: Item 3 in Part A – The Education Services for Overseas Students Framework

1. Item 3 in Part A of the *National Code of Practice for Providers of Education and Training to Overseas Students 2018* (National Code) provides an overview of the Standards in the National Code.
2. This item amends item 3 in Part A to reflect the amendments made to Standard 7 by item 2 of this Schedule.

Item 2: Standard 7.1

3. This item repeals previous Standard 7.1 in the National Code and substitutes new Standards 7.1 and 7.1A.
4. Previous Standard 7.1 provided that a registered provider must not knowingly enrol an overseas student seeking to transfer from another registered provider unless the student had completed six months of his or her principal course or registered school sector course, unless an exception applied.
5. New Standard 7.1 provides that subject to Standard 7.1A, a registered provider (the ***receiving provider***) must not knowingly enrol an overseas student seeking to transfer from a course with another registered provider (the ***releasing provider***) unless:
    a. for receiving providers where the student's releasing provider is an approved school provider – the first six months of the student's first registered school sector course has passed;
    b. for all other receiving providers on or before 30 June 2027 – the student has completed at least twelve months of their principal course with the releasing provider; or
    c. for all other receiving providers on or after 1 July 2027 – the student has completed at least six months of their principal course with the releasing provider.
6. The effect of new Standard 7.1 is to temporarily extend the transfer restriction period for students where the releasing provider is not an approved school provider from the commencement of the Amendment Instrument until 1 July 2027. The receiving provider will be prevented from enrolling such students in the period from the commencement of the Amendment Instrument until 1 July 2027 until the student has completed at least twelve months of their principal course with the releasing provider. This temporary measure is intended to align with migration reforms that aim to strengthen student visa integrity .
7. New Standard 7.1 will change the transfer restriction period for students transferring from a non-school provider, depending on when the relevant student is seeking to transfer from their releasing provider. This amendment may result in a transfer restriction applying to certain students transferring from a non-school provider, even where no transfer restriction applied to the student immediately before the

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commencement of the Amendment Instrument. For example, if a student commenced their principal course more than six months, but less than 12 months, before the commencement of the Amendment Instrument, the student would become subject to the transfer restriction period on commencement of the Amendment Instrument. In these circumstances, the student may have been free to transfer for a period before commencement, but would again be subject to the transfer restriction, until they have completed a total of at least 12 months of their principal course. Once the student has completed 12 months of their principal course (assuming this occurs before 1 July 2027), the student can once again transfer without first requiring a release from their releasing provider.

8. The effect of new Standard 7.1 will also be that students who have completed between 6 and 12 months of their principal course will no longer be transfer restricted after 1 July 2027. This is because after 1 July 2027, the transfer restriction period reverts to 6 months.
9. For students that commenced their principal course 12 months or more before the Amendment Instrument commences, these students will not be affected by new Standard 7.1, as they have already completed more than 12 months of their principal course and therefore do not have the transfer restriction apply.
10. New Standard 7.1A provides for the circumstances in which Standard 7.1 does not apply and sets out the same exceptions that were in previous Standard 7.1.
11. New Standard 7.1A provides that overseas students can still transfer within the transfer restriction period if their releasing provider agrees to their release in accordance with Standard 7.1A.3 of the National Code. The releasing provider must continue to have regard to their internal policies under Standard 7.2, and their general obligations under Standard 7 when administering this part of the National Code.
12. Pursuant to Standard 7.1A, students can also still transfer within the transfer restriction period where:
    - the releasing registered provider, or the course in which the overseas student is enrolled, has ceased to be registered
    - the releasing registered provider has had a sanction imposed on its registration by the Education Services for Overseas Students (ESOS) agency that prevents the overseas student from continuing his or her course at that registered provider
    - any government sponsor of the overseas student considers the change to be in the overseas student's best interests and has provided written support for the change.

<u>Item 3: Standard 7.2</u>

13. This item makes consequential amendments to Standard 7.2 to reflect new Standards 7.1 and 7.1A inserted by item 2 of this Schedule.

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