



# Strengthening Australia's Protections for International Students

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

The Australian Government released the revised *National Code of Practice for Providers of Education and Training to Overseas Students 2018* (National Code 2018) to ensure strong international student protections, while minimising the regulatory burden on registered providers and persons who deliver educational services on behalf of registered providers.

The National Code 2018 is a legislative instrument made under the *Education Services for Overseas Students Act 2000* (ESOS Act) and sets nationally consistent standards that govern the protection of international students and delivery of courses to those students by providers registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS).

Education providers must comply with the National Code 2018 to maintain their registration to provide education services to international students.

The National Code 2018 commenced on 1 January 2018.

### Modernising the National Code

The National Code 2018 was streamlined to make it easier and simpler for regulators and registered providers to interpret. Part A summarises the purpose of the National Code, the role of the ESOS agencies and the aspects of the National Code that apply to registration activities. Part B contains details of Standards 1 to 11.

Below is a high-level summary of each of the Standards.

### Marketing information and practices (Standard 1)

Standard 1 includes direct reference to Australian Consumer Law. It continues to ensure registered providers are not giving international students false or misleading information about courses, or outcomes associated with those courses.

This includes information in marketing material on the registered provider's association with any other providers, work-based or work-integrated learning opportunities, and prerequisites including English language.

Standard 1 also prevents a registered provider from suggesting it can secure a migration or education assessment outcome for the international student.

### Recruitment of an overseas student (Standard 2)

Standard 2 ensures registered providers recruit responsibly by ensuring international students are appropriately qualified for a course, including having the necessary English language proficiency, educational qualifications and/or work experience.

Under Standard 2, registered providers must give more information to international students about course content before they are enrolled. This includes information about compulsory online and work-related learning.

Registered providers also need to give international students information on the costs of living in Australia and accommodation options. Where the international student is under 18, providers must also give information on the process for approving welfare and accommodation arrangements for international students.

### Formalisation of enrolment and written agreements (Standard 3)

Standard 3 gives registered providers and international students more detailed information about what should be in a written agreement. A written agreement may take any form, as long as it meets the requirements of the ESOS Act and the National Code 2018. Registered providers must include information in written agreements on:

- course content, including compulsory online learning and work-related training; **and**
- prerequisites necessary to enter the course or courses; **and**
- conditions imposed on the student's enrolment; **and**
- tuition fees payable, the time period to which the tuition fees relate, and options for payment (including that an international student may choose to pay more than 50 per cent of their tuition fees before their course commences in accordance with the ESOS Act); **and**
- circumstances where an international student's information will be shared.

Registered providers must only use electronic links in written agreements to provide supplementary materials. Registered providers will also need to keep records of the written agreements and payments that demonstrate an international student's acceptance of the agreement.

### Education agents (Standard 4)

Standard 4 clarifies the requirements for a written agreement between the registered provider and education agents. Registered providers will need to enter and maintain details of education agents with whom they have a written agreement in PRISMS.

Written agreements must outline registered providers' procedures for monitoring the agent and ensuring the agent has up-to-date information. Registered providers must ensure agents do not engage in false or misleading conduct, declare and avoid conflicts of interest, observe appropriate levels of confidentiality and transparency in dealing with international students, and act honestly and in good faith. Agents must also have good knowledge of the international education system, including the Australian International Education and Training Agent Code of Ethics.

Registered providers will still need to take immediate corrective action or terminate their relationship with an agent who engages in any unethical recruitment practices.

## Younger overseas students (Standard 5)

Standard 5 gives registered providers more guidance on the care and welfare of international students under the age of 18. Registered providers who enrol international students under the age of 18 must meet any Commonwealth, state or territory legislation, or other regulatory requirements relating to child welfare and protection appropriate to the jurisdiction(s) in which they operate.

This Standard also requires registered providers to give international students age and culturally appropriate information on who to contact in emergency situations and in seeking assistance in the case of actual or alleged abuse. Registered providers should deliver this in accordance with any state or territory requirements, particularly in a school context.

Standard 5 includes specific requirements for providers who take responsibility for a younger international student's welfare. Where this is the case, it requires registered providers to regularly check that an international student's accommodation is appropriate to the student's age and physical needs. As a matter of best practice, it is expected that at least one initial physical check will be undertaken.

Registered providers must also have processes to monitor any third parties engaged by the registered provider to organise and assess welfare and accommodation arrangements.

Registered providers will also need to ensure all adults involved in providing international student accommodation or welfare arrangements have working with children clearances appropriate to the jurisdiction in which they operate.

Under this Standard, registered providers that are no longer able to approve welfare arrangements must take all reasonable steps to immediately notify the international student's parent or relative.

Registered providers will need to report to the Department of Home Affairs through PRISMS if:

- the international student will be cared for by a parent or nominated relative approved by the Department of Home Affairs and a Confirmation of Appropriate Accommodation and Welfare (CAAW) is no longer required; **or**
- the registered provider is no longer able to approve an international student's welfare arrangements.

If the registered provider enrolls an international student under 18 years of age who has welfare arrangements approved by another registered provider, it is the responsibility of the receiving registered provider to negotiate with the releasing provider to ensure there are no welfare gaps. This may mean the receiving provider takes on welfare responsibilities earlier than anticipated or makes alternative arrangements for the international student.

## Overseas Student support services (Standard 6)

Standard 6 continues to focus on student support services. Registered providers must give international students information about support services to assist international students in adjusting to study and life in Australia. In particular, registered providers must provide information about services international students can access for information on their employment rights and conditions and how to resolve workplace issues, such as through the Fair Work Ombudsman. This must be done through the orientation program, and the international student must be given information or a referral if they seek assistance from the registered provider.

Registered providers must also offer reasonable support at no additional cost to international students to assist them to achieve expected learning outcomes, regardless of the international student's mode of study.

Standard 6 also clarifies that registered providers must have a documented policy and procedure to manage critical incidents that impact on an international student undertaking or completing a course. This includes incidents that may cause physical or psychological harm.

The registered provider must take all reasonable steps to provide a safe environment on campus and advise international students and staff on actions they can take to enhance personal security and safety.

The registered provider must also give general information to international students about safety and awareness of life in Australia, and how to seek assistance for and report an incident that impacts their wellbeing.

## Overseas Student transfers (Standard 7)

Standard 7 gives greater guidance for providers on when a transfer request should be granted. Registered providers are required to have a policy for assessing student transfer requests before an international student completes six months of their principal course.

For the schools sector, international students are restricted from transferring until they have completed the first 6 months of the first school course, not the principal course, unless the transfer reason meets an exception under Standard 7.

For all other sectors, international students are restricted from transferring until they have completed 6 months of the principal course. International students wishing to transfer during this period must meet an exception under Standard 7, for example by requesting a transfer from their provider.

Registered providers should grant a transfer request where they have assessed that:

- the international student will be reported because they are unable to achieve satisfactory course progress;
- there are compassionate or compelling circumstances;
- the registered provider is not able to deliver the course;
- there is evidence that current courses do not meet international student's expectations;
- there is evidence that the international student was misled by the registered provider or an education agent; or
- an appeal (internal or external) on another matter results in a decision or recommendation to release the international student.

As transfers are recorded in PRISMS, registered providers are not required to issue release letters.

If a transfer is to be refused, the Standard requires registered providers to notify an international student of their intention to refuse the request. The registered provider must not finalise the refusal in PRISMS until the international student has been given an opportunity to access the complaints and appeals process, the international student withdraws from the process, or if the process finds in favour of the registered provider.

A cancellation of a Confirmation of Enrolment (CoE) does not mean that the student has been released from the previous registered provider.

## Overseas Student visa requirements (Standard 8)

### *General Requirements*

Standard 8 requires registered providers to monitor international students' compliance with their visa conditions relating to course attendance, progress and completion according to the sector of education. It requires that the expected duration of study specified on an international students' CoE must not exceed the CRICOS registered duration.

Registered providers are also required to have policies and processes to identify, notify and assist international students at risk of not meeting course progress or attendance requirements based on evidence of their academic progress.

### *Monitoring course progress and attendance*

Standard 8 requires registered providers to have processes for determining the point at which an international student has failed to meet satisfactory course attendance or course progress.

Higher education providers must monitor course progress regularly, and are not required to monitor attendance.

School, ELICOS and foundation providers must monitor both course progress and attendance. The requirement for attendance is 80 per cent of the scheduled contact hours for the course, or higher where specified under state and territory legislation.

VET providers must monitor course progress and are not required to monitor attendance. VET providers will only have to monitor attendance if this is set as a condition of registration by the ESOS agency for the provider. The minimum attendance requirement, if imposed, is 80 per cent of the scheduled contact hours for the course.

*Reporting unsatisfactory course progress or course attendance*

Under Standard 8, registered providers must report international students who do not meet course progress and/or attendance requirements and ensure an international student is notified of the impending report and their right to appeal.

However, a registered provider may decide not to report an international student enrolled in a school, ELICOS and Foundation Program course, if the international student is still attending at least 70 per cent of contact hours and provides genuine evidence of compassionate or compelling circumstances.

A registered provider may decide not to report a VET student for breaching the attendance requirements if the international student is still attending at least 70 per cent of the scheduled course contact hours and the international student is maintaining satisfactory course progress.

Registered providers must only report a breach of course progress or attendance if the internal and external complaints processes have been completed and the breach has been upheld; or the international student has chosen not to access the internal or external appeals process; or the international student withdraws from the internal or external appeals process.

*Online learning*

Standard 8 prevents exclusive online or distance learning for an international student on a student visa.

Only one-third of a course may be undertaken online by higher education and VET students on a student visa.

For schools, ELICOS or Foundation programs, any online or distance learning must be in addition to the minimum required face-to-face teaching.

The Standard clarifies that online learning does not include the provision of online lectures, tuition or other resources that supplement scheduled classes or contact hours.

Standard 8 also requires registered providers to ensure that in each compulsory study period for a course, the international student is studying at least one unit that is not by distance or online learning, unless the international student is completing the last unit of their course.

To assist the sector in the current climate, the Department of Education, Skills and Employment (DESE), the Tertiary Education Quality and Standards Agency (TEQSA) and the Australian Skills Quality Authority (ASQA) as the regulatory agencies under the *Education Services for Overseas Students Act 2000* are committed to a flexible approach to regulating the sector, including supporting Australian education providers to deliver courses online to international students for the duration of the COVID-19 pandemic.

Providers should assure themselves that such arrangements maintain assessment and quality standards, and are appropriately documented. Not all qualifications are suited to online learning; this may include those with mandatory work placements.

TEQSA has also developed an Online learning good practice hub at:

<https://www.teqsa.gov.au/online-learning-good-practice> which could be useful for providers.

## **Deferring, suspending or cancelling the student's enrolment (Standard 9)**

Registered providers must have and implement a documented process for assessing, approving and recording deferment of the commencement of study or suspension requested by an international student, and maintain a record of any decisions. Registered providers are able to defer, suspend or cancel an international student's enrolment if there are compassionate or compelling circumstances.

Registered providers may suspend or cancel an international student's enrolment on the basis of misbehaviour by the international student, the international student's failure to pay an amount required to undertake or continue the course, or a breach of course progress or attendance requirements by the international student.

Standard 9 requires registered providers to inform international students of their intent to suspend or cancel an international student's enrolment and advise the international student of their right to appeal the decision through the registered provider's internal appeals process. The suspension or cancellation of an international student's enrolment cannot take effect until the internal appeals process is completed.

## **Complaints and appeals (Standard 10)**

Standard 10 outlines the requirements relating to complaints and appeals.

Registered providers must have an internal complaints and appeals policy and process that meet the requirements of Standard 10. International students must also be provided with comprehensive, free and easily accessible information regarding the policy and process.

If an international student is not successful in the registered provider's internal complaints and appeals process, the registered provider must advise the international student of their rights to access external complaints and appeals process at minimal or no cost within 10 working days of completing the internal review.

Registered providers must immediately implement the decision or recommendation and/or take the preventative or corrective action required by the outcomes of the external complaints or appeal process made in favour of the international student.

## **Additional requirements (Standard 11)**

Standard 11 incorporates requirements previously contained in Part C of the National Code 2017. It specifies that registered providers must seek approval from their ESOS agency regarding the course duration, modes of study, number of international students enrolled at the provider within the limit or maximum number, and arrangements with other education providers.

Standard 11 also includes criteria the registered provider must demonstrate to the ESOS agency in applying to register a full-time course at a location.

A registered provider must submit any proposed changes to the registration of courses to its ESOS agency for approval at least 30 days prior to the change commencement date.

Self-accrediting registered providers must undertake an independent external audit during their period of CRICOS registration, within 18 months prior to renewal of that registration, to inform the re-registration of the provider.

To read the National Code 2018 in more detail, please visit <https://www.legislation.gov.au/Details/F2017L01182>.