



Standard 1: Marketing information and practices

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

Overview

Standard 1 includes direct reference to Australian Consumer Law. It sets out that registered providers must uphold the integrity and reputation of Australia's education industry by ensuring the marketing of their courses and services is not false or misleading.

Registered providers **must**:

- ensure that the marketing and promotion of its courses and education services is not false or misleading; and
- include their Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) registered name and registration number in all written and online materials.

Registered providers **must not**:

- provide false or misleading information in relation to course requirements when seeking to enter into a written agreement;
- commit to securing migration or education assessment outcomes for overseas students; and
- recruit students if it conflicts with its obligations under Standard 7 (Overseas Student Transfers).

Key Requirements

Marketing and promotion

When recruiting overseas students, registered providers must ensure that the marketing and promotion of their courses and education services is not false or misleading and is consistent with Australian Consumer Law.

The Australian Consumer Law is existing legislation administered by the Australian Competition and Consumer Commission. It is the registered provider's responsibility to comply with the Australian Consumer Law.

When seeking to enter into written agreements with overseas students, registered providers must not give false or misleading information on:

- any work-based training an overseas student is required to undertake as part of the course;
- prerequisites for entry to the course (including English language); or
- any other information relevant to the registered provider and/or its courses and the outcomes associated with those courses.

Registered providers must not promise overseas students any possible migration outcomes from undertaking any courses, or guarantee successful education assessment outcomes for the overseas or intending overseas student.

Written or online material

Registered providers must include their CRICOS registered name and registration number in all written or online material that is distributed or made publicly available.

This includes all material used to:

- provide, or offer to provide, a course to an overseas student;
- invite overseas students to undertake or apply for a course; or
- indicate the registered provider is able or willing to provide a course to overseas students.

Recruitment of international students in conflict with Standard 7

Registered providers must not actively recruit international students where this conflicts with their obligations under Standard 7 (Overseas student transfers).

Registered providers are actively recruiting international students when an agent or representative of a particular registered provider speaks or writes directly to an international student and promotes a registered provider or course as superior to and/or cheaper than the registered provider or course in which the international student is currently enrolled, with the intention of encouraging the international student to transfer from their current provider.

If a registered provider is approached by an international student who wishes to transfer between registered providers, the registered provider should take reasonable steps to check whether a student is enrolled with another provider before completing the enrolment.

'Reasonable steps' could include the registered provider asking the international student if they are currently enrolled with another provider, checking an international student's visa and using Provider Registration and International Student Management System (PRISMS). International students under the age of 18 will need permission from a parent or a legal guardian to change registered providers. The registered provider should issue a letter of offer to the international student, for them to obtain a release from the registered provider the international student is currently studying with.

Disclaimer

The Department of Education and Training provides general information and assistance to registered providers and overseas students on the National Code and the *Education Services for Overseas Students Act 2000*.

However, such information or assistance should not be relied on as legal advice or as a substitute for legal advice. Overseas students and education providers should seek independent legal advice as appropriate.

The National Code fact sheets are designed to give registered providers practical guidance in day to day operations. Registered providers should note that compliance will be measured against the requirements of the National Code, not against the fact sheets.



Standard 2: Recruitment of an overseas student

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

Overview

Registered providers must recruit responsibly and ensure that overseas students are appropriately qualified for the course they are seeking to enrol in. Overseas students must have sufficient information to enable them to make informed decisions about studying with their chosen registered provider.

Registered providers must:

- make a range of current, comprehensive and plain English information available and easily accessible to assist students in making informed decisions, including on course details, tuition and non-tuition fees;
- ensure overseas students have sufficient English language proficiency, educational qualifications and/or work experience to enrol in the course; and
- have a policy and process for assessing and recording recognition of prior learning (RPL), if it intends to assess RPL or grant course credit.

Key Requirements

Information prior to accepting students

The registered provider must make information available that is comprehensive, current and in plain English to overseas students, or intending overseas students, before they are enrolled, including:

- the requirements for an overseas student to be accepted into a course, including English language proficiency, educational qualifications or work experience, and course credit if applicable to the course;

- the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) course code, course content, modes of study for the course, including any online and/or work-based training, placements, other community-based learning and collaborative research training arrangements, and assessment methods;
- course duration and holiday breaks, course qualification, award or other outcomes;
- campus locations and facilities, equipment and learning resources available to students;
- details of arrangements with another provider, person or business who will provide the course or part of the course;
- indicative tuition and non-tuition fees, including advice on the potential for changes to fees over the duration of a course and the registered provider's cancellation and refund policies;
- the grounds on which the overseas student's enrolment may be deferred, suspended or cancelled;
- the Education Services for Overseas Student (ESOS) framework (which is available on the [ESOS legislative framework page](#)), including official Australian Government material or links to materials online;
- the policy and process the registered provider has in place for approving the accommodation, support and general welfare arrangements for younger overseas students, where relevant; and
- accommodation options and indicative costs of living in Australia.

Registered providers should give as much information as possible about the above, which may be given to overseas students in print form or by referring the student to an electronic copy.

Registered providers must also have and implement a documented policy and process for assessing that the overseas student's English language proficiency, educational qualifications or work experience is sufficient to enter a course.

If there is no minimum English language proficiency required, for example in an ELICOS course, the provider does not need a process for assessing this. However registered providers should consider having literacy requirements in the international student's first language.

Recognition of Prior Learning (RPL)

If the registered provider intends to assess RPL or grant course credits, the registered provider must have and implement a documented policy and process for assessing and recording RPL, and granting and recording course credits.

Registered providers must ensure the decision to assess RPL or grant course credits maintains the integrity of the qualification and complies with the requirements of the educational framework of the course.

When granting RPL or course credits, registered providers will need to give a written record for the overseas student to accept, and retain the written record of acceptance for two years after the overseas student ceases to be an accepted student.

If the registered provider grants RPL or course credits which reduces the overseas student's course length, the registered provider must then inform the overseas student of the reduced course duration and issue a Confirmation of Enrolment (CoE) for the reduced duration of the course. The

registered provider will also need to report any change in course duration in Provider Registration and International Student Management System (PRISMS) if RPL or course credits are granted after the overseas student's visa is granted.

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Standard 3: Written Agreements

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

Overview

Obligations and rights of both registered providers and overseas students must be clearly set out in a formal written agreement between the two parties.

Registered providers must:

- have a written agreement with overseas students or intending overseas students they enrol, which may take any form, as long as it meets the requirements under the National Code and the *Education Services for Overseas Students Act 2000*;
- ensure the written agreement is signed or otherwise accepted by the overseas student, or if they are under 18 years of age, their parent or legal guardian;
- include information in the written agreement about course details, prerequisites and conditions on enrolment (if applicable), fees, refund and cancellation policies, and the provider's complaints and appeals processes; and
- advise overseas students of required information.

Key Requirements

Written agreement form

Registered providers must have a written agreement with each overseas student they accept for enrolment and it must be signed or otherwise accepted by the student, or if the overseas student is under 18 years of age, their parent or legal guardian.

Registered providers do not need to update any written agreements with overseas students entered into before 1 January 2018. Any new written agreements entered into with overseas students after 1 January 2018 should comply with the National Code 2018.

Overseas students may *otherwise accept* the written agreement by signing a form or indicating their acceptance online. If a registered provider chooses to recognise online acceptances, they will need to consider how to verify the authenticity of an online acceptance. While providers' systems for receiving online acceptances do not have to be approved by the Department of Education and Training prior to implementation, providers using such systems must be able to demonstrate that the student entered into the agreement with them.

Written agreements can take any form provided they meet the requirements of the ESOS Act and the National Code. This means that an application form or a letter of offer could be the basis for the written agreement once it is signed or accepted by an overseas student. This is particularly relevant for overseas students undertaking English Language Intensive Courses for Overseas Students, as some registered providers may not need to assess the overseas student's previous qualifications or issue a separate letter of offer.

Overseas students enrolled in a number of consecutive courses with the one provider do not need a separate written agreement for each course. If the terms of the agreement are the same for each course, the registered provider may have a single written agreement covering all the courses. If a registered provider and an overseas student enter into a single agreement for more than one course, all of the courses to which the agreement applies, and any conditions upon enrolment in each of the courses, must be clearly listed in the agreement. In addition, the agreement must include the tuition and non-tuition fees payable for each course the agreement covers.

What is included in a written agreement

In addition to the requirements under section 47B and 47D of the ESOS Act, the written agreement must **explicitly include** the key details listed under 3.3.1 to 3.3.8 of the National Code. This includes outlining the course or courses in which the student is to be enrolled, any prerequisites necessary to enter the course or courses, tuition and non-tuition fees, refund policies, and any conditions imposed on the student's enrolment. To manage the length of written agreements, supplementary material such as a course handbook can be included as a hyperlink.

Registered providers must outline tuition and non-tuition fees in written agreements. Tuition fees are defined in the ESOS Act as being directly related to the provision of the course. In listing tuition and non-tuition fees in the written agreement, registered providers should give students a clear guide to the range of fees they may incur throughout the course, to assist overseas students in budgeting for the payment of those fees. This also ensures registered providers are protected if a dispute arises over 'hidden' costs.

All written agreements must outline internal and external complaints and appeals processes, and contain a statement advising that the agreement does not affect the rights of an overseas student to take action under Australian Consumer Law, where applicable.

All written agreements need to outline a process for claiming a refund and any specified person(s) who can receive a refund (other than the overseas student). The written agreement should also provide an explanation of what happens in the event of a course not being delivered, including the role of Tuition Protection Service (TPS).

Written agreements must contain advice to overseas students that they are required to notify the registered provider of current contact details, any changes to contact details, and who to contact in an emergency, while in Australia and studying with that registered provider.

Written agreements must also set out the circumstances in which personal information may be disclosed, in accordance with the *Privacy Act 1988*.

Registered providers must retain records of all written agreements, as well as receipts of payment made under the written agreement, for at least two years after the overseas student ceases to be an accepted student. This is consistent with the record keeping requirements under section 21 of the ESOS Act and 3.04 of the *Education Services for Overseas Students Regulations 2001*.

Payment of fees

Registered providers must not accept tuition or non-tuition fees until the overseas student (or the parent or legal guardian if the overseas student is under the age of 18) has signed or otherwise accepted the agreement.

Registered providers may accept tuition or non-tuition fees at the same time as the overseas student signs or accepts the agreement. For example, if an overseas student sends a signed written agreement with an accompanying payment, or makes the payment in person to the registered provider with the signed agreement, this meets the requirements of the National Code and the ESOS Act.

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Standard 4: Education agents

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

Overview

Education agents are an important part of the international education sector in Australia. Registered providers must ensure that their education agents act ethically, honestly and in the best interest of overseas students and uphold the reputation of Australia's international education sector.

Registered providers must:

- have a written agreement with each education agent they engage with;
- enter and maintain education agent details in Provider Registration and International Student Management System (PRISMS);
- ensure education agents have appropriate knowledge and understanding of the Australian International Education and Training Agent Code of Ethics;
- ensure education agents act honestly and in good faith;
- take immediate corrective action, or terminate a relationship if an agent (or an employee or subcontractor) is not complying with the National Code; and
- not accept overseas students from an education agent if it knows or suspects that the education agent is engaging in unethical recruitment processes.

Key Requirements

Written agreements

Registered provider must have a written agreement with each education agent that formally represents their education services, and enter and maintain the education agent's details in PRISMS.

The written agreement must outline:

- the registered provider's responsibilities, including for compliance with the *Education Services for Overseas Students Act 2000* (ESOS Act) and National Code 2018;
- the requirements of the agent in representing the registered provider;
- the registered provider's processes for monitoring the education agent's activities and ensuring the education agent gives overseas students accurate and up-to-date information;
- the corrective actions that may be taken and the grounds for termination of the written agreement with the education agent; and
- the circumstances which information about the registered provider may be shared by the registered provider and Commonwealth or state and territory agencies.

Registered providers do not need to immediately update any written agreements with education agents entered into before 1 January 2018. Any new written agreements with education agents, or renewal of written agreements with education agents, after 1 January 2018 should comply with the National Code 2018. If there are any changes to these arrangements, the department would explore this further in 2018 and ensure providers have sufficient time to implement them.

Education agents

Registered providers must ensure the education agents they engage with act ethically, honestly and in the best interest of overseas students. This means that registered providers must ensure its education agents declare and take all reasonable steps to avoid conflicts of interest with its duties as an education agent of the registered provider. This provision is to ensure transparency in the education agent's activities.

Examples of conflicts of interest include, but are not limited to:

- when the agent charges services fees to both overseas students and registered providers for the same service;
- where an education agent has a financial interest in a private education provider; or
- where an employee of an education agent has a personal relationship with an employee of the education provider.

Registered providers must also ensure education agents observe appropriate levels of confidentiality and transparency in dealings with overseas students while acting honestly and in good faith.

Education agents must also have appropriate knowledge and understanding of the overseas education system in Australia, including the Australian International Education and Training Agent Code of Ethics. Registered providers should ensure any education agents they engage with, including offshore agents, have up-to-date and accurate marketing information.

The Australian International Education and Training Agent Code of Ethics is based on the [*London Statement*](#). These requirements ensure education agents adhere to and practice responsible business ethics, and that education agents understand their obligations to provide current, accurate and honest information to overseas students to help them make informed decisions about study in Australia.

Maintaining details in PRISMS

Registered providers must enter and maintain the details of education agents with whom they have a written agreement in PRISMS. A 'How To' guide for recording details in PRISMS is available at <https://prisms.education.gov.au/Information/ShowContent.ashx?Doc=How to Manage Agent Details.pdf>.

Immediate corrective actions

Registered providers must take immediate corrective action if they are aware that or believe the education agent or its employee or subcontractor, have not complied with the education agent's responsibilities under Standard 4. Corrective actions may include providing education agents with additional information or targeted training on expectations of the agent.

If a provider becomes aware, or has reason to believe that an education agent is engaging in false or misleading recruitment practices, they must immediately terminate their relationship with the agent.

If the false or misleading recruitment practices were engaged in by an employee or subcontractor of the education agent, the registered provider must require the education agent to terminate its relationship with those individuals.

Registered providers must not accept students from education agents if they believe the education agent is engaging in unethical recruitment practices. This includes education agents that provide migration advice to overseas students when they are not authorised to do so under the *Migration Act 1958*.

Registered providers must not accept overseas students from education agents that engage in, or have previously engaged in, dishonest recruitment practices. This includes education agents knowingly recruiting an overseas student in conflict with the registered providers' obligations under Standard 7 (Overseas Student Transfers).

Registered providers must not accept overseas students from education agents if they believe the education agent is creating Confirmation of Enrolments (CoEs) in PRISMS for non bona fide overseas students or facilitating the enrolment of overseas students while knowing that the overseas student will not comply with the conditions of their visa.

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Standard 5: Younger Overseas Students

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

Overview

The Australian Government is committed to ensuring the safety and wellbeing of younger overseas students.

This fact sheet contains information on:

- [Requirements for all registered providers](#)
- [Welfare arrangements approved by the Department of Home Affairs](#)
- [When a registered provider takes responsibility for the overseas student's welfare](#)
- [Acceptable welfare arrangements](#)
- [Monitoring welfare arrangements](#)
- [Transferring between registered providers](#)
- [Disruption to welfare arrangements](#)
- [Suspension or cancellation of enrolment](#)
- [Terminating a registered provider's responsibility for welfare arrangements](#)
- [After an overseas student turns 18](#)

All registered providers who enrol overseas students under the age of 18 must meet certain obligations. They must:

- meet Commonwealth, state or territory legal requirements relating to child welfare and protection; and
- give younger overseas students important age and culturally appropriate safety information, including what to do and who to contact in an emergency, and how to report any incident or allegation of sexual, physical or other abuse.

If an overseas student is under the age of 18, the student's welfare must be maintained for the duration of their stay in Australia as a student visa condition. To maintain welfare, overseas students can either:

- stay in Australia with a '**nominated guardian**' approved by the Department of Home Affairs, who can be the overseas student's parent, person who has legal custody, or an eligible relative who is aged over 21 and is of good character; **or**
- stay in accommodation, support and general welfare arrangements that have been approved by the overseas student's registered provider. In this case, the registered provider will issue a Confirmation of Appropriate Accommodation and Welfare (CAAW) letter.

Registered providers taking responsibility for the welfare of overseas students under the age of 18 must ensure that the overseas student is in living arrangements which are safe and adequately meet their needs. Registered providers must take all practical steps to ensure welfare is maintained at all times, regardless of the overseas student's study circumstances. They must also:

- ensure any adults involved in providing overseas student accommodation or welfare arrangements have Working with Children Checks (WWCC) appropriate to the jurisdiction in which the provider operates and the accommodation is situated;
- regularly verify that overseas student accommodation is appropriate to the student's age and physical needs;
- notify the police and any other relevant agencies as soon as practicable if unable to contact an overseas student and there are concerns for the overseas student's welfare;
- report through Provider Registration and International Student Management System (PRISMS) if the registered provider is no longer able to take responsibility for the overseas student's welfare;
- make all efforts to contact a younger overseas student's parent or legal custodian immediately if they can no longer approve the overseas student's welfare.

Key Requirements

Requirements for all registered providers

All registered providers enrolling overseas students under 18 must meet the relevant Commonwealth, state or territory legislation or other regulatory requirements relating to child welfare and protection appropriate to the jurisdiction in which the provider operates. This is irrespective of whether the provider is taking responsibility for the welfare arrangements or the Department of Home Affairs has approved a nominated guardian.

Requirements may include but are not limited to:

- WWCCs or Criminal Record Checks for staff and/or homestay providers;
- regulation around reporting of child abuse by teachers, counsellors or other support personnel;
- any additional state or territory regulatory requirements, for example 'Child Safe Standards'; and
- state or territory requirements regarding schools sector courses, such as minimum age or year level for enrolment of overseas students in homestay accommodation.

All registered providers must also give age and culturally appropriate information to overseas students under the age of 18, in accordance with any state and territory requirements, on:

- who to contact in emergency situations, including contact numbers of nominated staff members or service providers; and
- how to seek assistance and report any incidents involving sexual, physical or other abuse.

Welfare arrangements approved by the Department of Home Affairs

If an overseas student is under the age of 18, a parent, legal custodian, or an eligible relative can be nominated to take responsibility for the overseas student's accommodation, welfare and support in Australia. The parent, legal custodian or eligible relative must have an appropriate visa or have applied for a Student Guardian visa (subclass 590).

An eligible relative is:

- a parent, spouse, de facto partner, brother, sister, step-parent, step-brother, step-sister, grandparent, aunt, uncle, niece or nephew, or a step-grandparent, step-aunt, step-uncle, step-niece or step-nephew; **and**
- nominated by a parent of the applicant or a person who has custody of the applicant; **and**
- aged at least 21; **and**
- of good character, and show this by providing a police clearance from the countries in which they have lived for more than 12 months in the past 10 years after the age of 16; **and**
- an Australian citizen, permanent resident or be eligible to remain in Australia until the overseas student's visa expires or the overseas student turns 18 years of age (whichever happens first).

The Department of Home Affairs will assess the nominated arrangements according to the *Migration Regulations 1994* and, if approved, the parent, legal custodian or eligible relative will be the overseas student's '**nominated guardian**'. The registered provider is not involved and must not issue a CAAW letter.

The registered provider is not obliged to follow up where a nominated guardian has been approved by the Department of Home Affairs. However, the registered provider should contact the Department of Home Affairs and other local agencies if it becomes aware the overseas student is not being well looked after. State or territory requirements regarding overseas students' welfare may also require registered providers to meet with the nominated guardian prior to, or shortly after, course commencement.

When a registered provider takes responsibility for the overseas student's welfare

If a registered provider accepts responsibility for the welfare arrangements of an overseas student under the age of 18, a CAAW letter is created at the same time as a Confirmation of Enrolment (CoE). They must be created together as the details of the CoE appear in the CAAW and vice versa. A registered provider signs a CAAW to confirm they are placing an overseas student into, or are approving, arrangements they consider suitable. The Department of Home Affairs is not involved in this process.

Registered providers who create a CAAW letter are not taking over legal responsibility for the overseas student under the age of 18. **The parent or person who has custody of the overseas student is at all times legally responsible for the student.**

In the CAAW, registered providers must nominate the beginning and end dates of the period for which they are willing to accept responsibility for approving accommodation, support and welfare arrangements for an overseas student under the age of 18. These nominated dates must cover the length of the CoE plus seven days at the end, at a minimum. Please see the section below on *'Transferring between registered providers'* for more information on when an overseas student with CAAW arrangements transfers to another provider.

Some states and territories have a minimum year level or age for an overseas student to be enrolled on a CAAW in a school sector course. Registered providers of school sector courses need to ensure that they do not enrol an overseas student in a school sector course where the student will be below the relevant minimum year level or age at course commencement.

Visa condition 8532 requires overseas students under the age of 18 to maintain appropriate welfare arrangements for the duration of their stay in Australia. Therefore, this condition prevents overseas students under the age of 18 from entering Australia without appropriate welfare arrangements in place. If an overseas student wishes to arrive in Australia earlier than their CAAW commencement date, he or she must be accompanied by a nominated guardian approved by the Department of Home Affairs. If the overseas student is unaccompanied, the registered provider must agree to extend its approved care arrangements to cover the overseas student from the date of their arrival or the student must not travel to Australia until the CAAW commences.

Acceptable welfare arrangements

If a registered provider accepts responsibility for the welfare arrangements of an overseas student under the age of 18, the overseas student must stay in accommodation approved by the registered provider.

A registered provider should not approve an overseas student's parent, legal custodian or eligible relative (as defined in *'Welfare arrangements approved by the Department of Home Affairs'*) as the welfare arrangement on a CAAW. If an overseas student's parent, legal custodian or eligible relative wishes to care for them in Australia, they should apply to be the overseas student's nominated guardian through the Department of Home Affairs.

Registered providers can approve a person who is not an Australian citizen or permanent resident (including a family friend, or a family member that does not meet the definition of eligible relative) to care for the overseas student on a CAAW. However, the provider should ensure that the visa holder is:

- at least 21 years old; **and**
- of good character; **and**
- has an appropriate visa to remain in Australia until the overseas student's visa expires or the overseas student turns 18.

In approving accommodation arrangements for the overseas student, registered providers may wish to consult best practice guidelines around provision of accommodation and homestays such as those developed by [Australian Government Schools International](#).

Registered providers can use an accommodation agent or registered homestay service to assist in arranging accommodation for overseas students, but it is the registered provider's responsibility to ensure the accommodation meets the requirements of the National Code.

Where registered providers engage third parties to organise and assess welfare and accommodation arrangements, they must have documented policies and processes for selecting, screening and monitoring these third parties.

Registered providers should note that the CAAW responsibility they undertake **cannot be delegated to any other party** such as a homestay service. The registered provider retains the ultimate responsibility for approving and assuring welfare arrangements until the overseas student:

- is outside Australia; **or**
- turns 18; **or**
- transfers to another provider's CAAW; **or**
- enters the care of a nominated guardian approved by the Department of Home Affairs.

The registered provider must not state or imply, or permit any third parties to state or imply, that the third party has or shares responsibility for the overseas student's accommodation, support or general welfare.

Monitoring welfare arrangements

Registered providers who have issued a CAAW must have and implement processes for verifying that the overseas student's accommodation is appropriate to the overseas students' age and needs:

- prior to the accommodation being approved; **and**
- at least every six months thereafter.

Registered providers will conduct an initial physical site visit to verify the overseas student's accommodation, prior to the accommodation being approved. Registered providers should also have rigorous processes in place for subsequent verifications, which could include one or more of the following:

- a physical site visit;
- a student interview;
- a student survey;
- any other ways of confirming that the accommodation still meets the overseas student's needs.

Registered providers can use homestay services to assist in verifying the appropriateness of the overseas student's accommodation. However, the registered provider is ultimately responsible for the overseas student's welfare and must be satisfied that the processes are rigorous enough to ensure the overseas student is residing in appropriate accommodation. This should include some

form of reporting or documentation by the homestay provider to the registered provider after each verification.

In monitoring welfare arrangements, registered providers must take into account any relevant state and territory laws such as the Victorian Child Safe Standards.

Transferring between registered providers

If an overseas student who is under the age of 18 on a CAAW is transferring to another registered provider, the receiving registered provider must ensure there is no gap in welfare arrangements. In accepting the overseas student, the receiving provider must liaise with the first registered provider to ensure the overseas student has appropriate welfare in place at all times and issue a CAAW letter covering the transition from one accommodation arrangement to another.

Packaged courses and multiple registered providers

When an overseas student is undertaking a package of courses, or a course with multiple registered providers, the overseas student must have adequate welfare arrangements during any gap period between courses or providers.

Each registered provider can nominate the period for which it is responsible for welfare arrangements, which must be at least the length of the overseas student's CoE plus seven days at the end of that period. Registered providers can choose to take on additional welfare arrangements if they wish.

Ideally an overseas student's parent or legal custodian should be able to negotiate a common date when the first registered provider's approval will cease and the new registered provider will take responsibility for the welfare arrangements. These arrangements should be made and confirmed through the provision of CAAWs prior to the overseas student applying for a visa. Where there is a gap between the periods nominated by the registered providers or the registered providers cannot agree on providing welfare arrangements, the Department of Home Affairs will only issue a visa for the length of study where continuous welfare arrangements are in place. This is unless the overseas student's parent or legal custodian makes alternative welfare arrangements, such as nominating a guardian through the Department of Home Affairs.

If an overseas student wishes to return to their home country during a gap between courses, a registered provider may still issue a CAAW letter to cover the period the overseas student will be abroad. This arrangement will mean the overseas student does not need multiple visa applications and should benefit both the provider and the overseas student.

Registered providers that deliver courses as part of a package of courses, or who deliver a single course together through a partnership arrangement, should communicate with each other about sharing responsibility for approving accommodation, support and general welfare arrangements.

Disruption to welfare arrangements

Registered providers must activate their critical incident policy in emergency situations which may disrupt welfare arrangements without warning. This can be part of the registered provider's general critical incident policy under Standard 6 of the National Code. A critical incident policy should include:

- the action to be taken;
- any immediate welfare arrangements in an emergency;
- required follow-up by the registered provider;
- records of the incident to be kept for at least two years after the overseas student ceases to be an accepted student; and
- protocols for informing authorities such as the police, the Department of Home Affairs officials, the overseas student's parent or legal custodian, and other relevant authorities.

Suspension or cancellation of enrolment

Where a registered provider suspends or cancels the enrolment of an overseas student on a CAAW, the registered provider must continue to check the suitability of care arrangements until one of the following occurs:

- the overseas student has alternative welfare arrangements approved by another registered provider; **or**
- the overseas student has a nominated guardian approved by the Department of Home Affairs; **or**
- the overseas student leaves Australia; **or**
- the registered provider has notified the Department of Home Affairs through PRISMS that it is no longer able to approve the overseas student's welfare arrangements; **or**
- the registered provider has taken the required action under Standard 5.5 after not being able to contact the overseas student; **or**
- the overseas student turns 18.

Terminating a registered provider's responsibility for welfare arrangements

The registered provider's responsibility for welfare arrangements can only be terminated in two circumstances.

The first is if alternative welfare arrangements have been put in place. In this circumstance, the registered provider should confirm that the new welfare arrangements are formally in place before terminating the CAAW.

In the situation where an overseas student's parent, legal custodian, or eligible relative is planning to look after the overseas student for a short period, for example during a holiday, the provider may wish to continue their CAAW arrangements rather than terminate the CAAW.

The second circumstance where a registered provider may terminate a CAAW is where they can no longer take responsibility for the overseas student due to events, such as:

- the overseas student refusing their accommodation or leaving their accommodation without notice, even after the registered provider has exhausted all possible avenues of assisting the overseas student to maintain appropriate arrangements;
- the accommodation provider becoming unable to maintain arrangements;
- the overseas student's enrolment being suspended or cancelled;
- the overseas student going missing from their accommodation and cannot be found or contacted, even after the registered provider has implemented its critical incident policy.

In the above situations, the registered provider must report the overseas student within **24 hours** using the 'Non-Approval of Appropriate Accommodation/Welfare Arrangements' letter through PRISMS.

This report should be used as a **last resort**, as it may lead to cancellation of the overseas student's visa by the Department of Home Affairs for breaching visa condition 8532.

The registered provider must make all reasonable efforts to ensure the overseas student's parents or legal custodians are notified immediately if it can no longer take responsibility for the overseas student's welfare.

After an overseas student turns 18

A registered provider's CAAW responsibility for an overseas student under the age of 18 will cease when the overseas student turns 18. In addition, the requirements of Standard 5 will no longer apply at this point.

Registered providers of school sector courses enrolling overseas students who will turn 18 years of age during the final period of their course may choose to apply a condition on enrolment in the course, requiring the overseas student to continue to reside in provider approved accommodation until the completion of the course. However, this needs to be made clear in the overseas student's written agreement.

Disclaimer

The Department of Education and Training provides general information and assistance to registered providers and overseas students on the National Code and the *Education Services for Overseas Students Act 2000*.

However, such information or assistance should not be relied on as legal advice or as a substitute for legal advice. Overseas students and education providers should seek independent legal advice as appropriate.

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Standard 6: Student Support Services

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

Overview

Overseas students require certain support services as they are living and studying in an unfamiliar environment. Registered providers are responsible for providing access to certain services to ensure the mental and physical wellbeing of their overseas students.

Registered providers must:

- give overseas students information on, or access to, an orientation program about living and studying in Australia, including information about safety on campus and while living in Australia;
- offer reasonable support to overseas students, irrespective of their place or mode of study, at no additional cost to the overseas student;
- have a critical incident management policy; and
- ensure there are sufficient staff, in addition to academic staff, to support and advise overseas students who request assistance.

Key Requirements

Orientation programs

Orientation programs help familiarise overseas students with the registered provider's expectations, rules and facilities, and introduce the social and cultural norms which overseas students need to be aware of while in Australia.

Registered providers must give all overseas students access to an age and culturally appropriate orientation program. This includes making the program available to late arrivals or overseas students who begin at different entry points.

The orientation program must provide information about:

- support services available to assist overseas students to help them adjust to study and life in Australia;
- English language and study assistance programs;
- any relevant legal services;
- emergency and health services;
- the registered provider's facilities and resources;
- complaints and appeals processes;
- requirements for course attendance and progress, as appropriate;
- the support services available to assist overseas students with general or personal circumstances that are adversely affecting their education in Australia; and
- services overseas students can access for information on their employment rights and conditions, and how to resolve workplace issues, such as through the Fair Work Ombudsman.

Orientation programs should take into account the registered provider's local context.

Registered providers may wish to use verbal and written or electronic formats to deliver information, so that overseas students can both listen and take away material they can refer to at a later time.

Registered providers must also:

- take all reasonable steps to provide a safe environment on campus or premises, and advise overseas students and staff on actions they can take to enhance their personal security and safety;
- provide information to overseas students about how to seek assistance for, and report, an incident that significantly impacts on their wellbeing, including critical incidents; and
- provide overseas students with, or refer them to (including electronically), general information on safety and awareness relevant to life in Australia, such as beach safety or the etiquette and laws concerning smoking in Australia.

Access to support services

Registered providers must offer reasonable support to overseas students to enable them to achieve expected learning outcomes, irrespective of the overseas student's place of study or the mode of study of the course. There must be no additional cost to the overseas student for this support.

Registered providers must also facilitate access to learning support services consistent with the requirements of the course, mode of study and the learning needs of overseas students.

This includes having and implementing documented processes for supporting and maintaining contact with overseas students undertaking online or distance units of study.

Where an overseas student requests access to services and programs included in the orientation program, registered providers must give information or referrals at no additional cost to the overseas student.

Education providers must give overseas students access to a range of services, either by providing the service in-house or having an arrangement to refer overseas students to affordable externally provided services. Services may include:

- English and academic support services;
- tutoring support;
- study skills centres;
- counselling and mental health support;
- career services;
- housing and tenancy services;
- financial support services; and
- health and disability services.

Staff and support personnel

Registered providers must designate at least one member of staff to be the official point of contact for overseas students. The contact officer must have access to up-to-date details of the registered provider's support services. Registered providers could consider making access to the contact officer available 24 hours a day, seven days a week, but there is no obligation to do so under the National Code.

Registered providers must have sufficient student support personnel to meet the needs of the enrolled overseas students. In determining the sufficient level of staff, the registered provider may take into consideration the number of overseas students enrolled, the types of courses being offered and the likely needs of the overseas students. Registered providers may have additional support staff if they enrol students under the age of 18.

Registered providers must also ensure its staff members who interact directly with overseas students are aware of their obligations under the Education Services for Overseas Students (ESOS) framework and the potential implications for overseas students arising from the exercise of these obligations. This could include:

- incorporating information regarding the ESOS responsibilities of the registered provider and of staff who interact with overseas students in staff handbooks and induction training, or
- emails and discussions at staff meetings about the ESOS framework, such as how basic classroom administration such as keeping accurate attendance may have different ramifications for overseas students compared with domestic students.

Critical incident policy

The National Code defines a critical incident as 'a traumatic event, or the threat of such (within or outside Australia), which causes extreme stress, fear or injury'. This does not include serious academic misconduct.

Where a provider enrolls overseas students under the age of 18, the critical incident policy must also comply with the requirements under Standard 5 of the National Code.

Critical incidents are not limited to, but could include:

- missing students;
- severe verbal or psychological aggression;
- death, serious injury or any threat of these;
- natural disaster;
- issues such as domestic violence, physical, sexual or other abuse; and
- other non-life threatening events.

The policy must include procedures to follow in the event of a critical incident, and should include contact information for the police, the Department of Home Affairs, the overseas student's family, and any other relevant organisations that may be able to assist in such a situation, for example community organisations or phone counselling services. The policy must also include steps to immediately take action and resolve or address the critical incident. When writing policies, registered providers should consider the [Australian Privacy Principles](#) and also refer to state or territory legislation or other regulatory requirements, in relation to privacy principles, appropriate to the jurisdiction in which they operate.

Registered providers must have and implement a documented policy and process for managing critical incidents that could affect an overseas student's ability to undertake or complete a course, such as but not limited to incidents that may cause physical or psychological harm.

Registered providers must maintain a written record of any critical incident and remedial action taken by the registered provider for at least two years after the overseas student ceases to be an *accepted student* under the ESOS Act.

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The National Code fact sheets are designed to give registered providers practical guidance in day to day operations. Registered providers should note that compliance will be measured against the requirements of the National Code, not against the fact sheets.



Standard 7: Overseas Student Transfers

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

Overview

Registered providers must not knowingly enrol an overseas student wishing to transfer from another registered provider's course prior to the overseas student completing six months of their principal course of study, except in certain circumstances. For the school sector, a transfer cannot happen until after the first six months of the first registered school sector course.

As the principal course of study is generally the final course of study covered by the overseas student's visa, transfer requirements apply to all courses of study prior to the overseas student's principal course.

When considering a request from an overseas student seeking to transfer, registered providers must:

- have and implement a documented policy and process for assessing overseas student transfer requests during the restriction period;
- outline in their policy the circumstances where transfers will be granted or refused;
- record all transfer request outcomes in the Provider Registration International Student Management System (PRISMS), a 'How To' guide is available at <https://prisms.education.gov.au/Information/ShowContent.ashx?Doc=How To Manage Student Transfers in PRISMS.pdf>;
- not finalise a refusal to release the overseas student until the student has had an opportunity to access the complaints and appeals process; and
- ensure where the request concerns an overseas student under the age of 18, the overseas student's parent or legal guardian has provided support for the transfer in writing.

Key Requirements

When an overseas student requires a release to transfer

Generally, overseas students cannot transfer between registered providers prior to completing six calendar months of their **principal** course. There is one exception for school sector students (see 'Exception: school sector courses' below).

The principal course is the main course of study to be undertaken by an overseas student where the student visa has been issued for multiple courses, and is usually the final course of study. The first six months is calculated as six calendar months from the date an overseas student commences their principal course.

This means the transfer restriction applies to a student during all courses they undertake prior to the principal course.

For an overseas student to transfer before completing six months of their principal course, the overseas student must **either** obtain a release from their registered provider, **or** meet one of the following conditions:

- 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 ESOS agency that prevents the overseas student from continuing their course with 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. This usually applies where the overseas student's study in Australia is sponsored by the government of another country.

After completing six calendar months of the principal course, an overseas student can transfer without needing to meet one of these conditions.

Exception: school sector courses

Overseas students enrolled in school sector courses cannot transfer between registered providers prior to completing six calendar months of their first **school** course (as opposed to the principal course for all other overseas students). If they wish to transfer, they must obtain a release from their registered provider or meet one of the other conditions listed above.

If the overseas student has to complete a non-school sector course prior to their first school sector course, for example ELICOS, they are restricted from transferring during this course.

Overseas students can transfer without needing a release or meeting one of the above conditions after completing six calendar months of their first registered school course.

Policy and process for assessing overseas student transfer requests

The registered provider's policy for assessing an overseas student transfer request must be available to its staff and overseas students and outline:

- the steps for an overseas student to lodge a written request to transfer, including that the overseas student must have a letter of offer from another registered provider;
- the circumstances in which the registered provider will grant the transfer request because it is in the overseas student's best interests, including but not limited to, those listed in Standard 7.2.2.1 to 7.2.2.6 of the National Code;
- the circumstances which the registered provider considers to be reasonable grounds to refuse the transfer request; and
- a reasonable timeframe for assessing and replying to the overseas student's transfer request.

Registered providers have to assess the reasons provided by the overseas student, and any evidence submitted to support the transfer request, against their transfer policies.

Registered providers should specify what they consider as the student's best interest in their policies. Overseas students cannot make a general claim that a transfer will be in their best interests. Any request should be made with reference to the circumstances for granting a release outlined in the provider's transfer policy.

There are a range of circumstances detailed in the National Code where a transfer request should be granted because it is in the best interest of the overseas student. These circumstances should be included in the provider's transfer policy.

One such circumstance is where the overseas student will be reported because they are unable to achieve satisfactory course progress at the level they are studying, even after engaging with that registered provider's intervention strategy to assist overseas students. It is important to note the report on the overseas student's course progress should occur even if the transfer request is granted.

Registered providers still have discretion to refuse transfer requests from overseas students who are not genuinely engaging with an intervention strategy with the intention of failing and being released. If the overseas student subsequently intends to study at a lower Australian Qualifications Framework (AQF) level, they will need to apply for a new student visa.

Another circumstance where a transfer should be granted is where there is evidence of compassionate or compelling circumstances.

'Compassionate or compelling' circumstances are generally those beyond the control of the overseas student and which have an impact upon the overseas student's course progress or wellbeing. These could include, but are not limited to:

- serious illness or injury, where a medical certificate states that the overseas student was unable to attend classes
- bereavement of close family members such as parents or grandparents (where possible a death certificate should be provided)

- major political upheaval or natural disaster in the home country requiring emergency travel and this has impacted on the overseas student's studies; or
- a traumatic experience, which could include:
 - involvement in, or witnessing of a serious accident; or
 - witnessing or being the victim of a serious crime, and this has impacted on the overseas student (these cases should be supported by police or psychologists' reports)
- where the registered provider was unable to offer a pre-requisite unit, or the overseas student has failed a prerequisite unit and therefore faces a shortage of relevant units for which they are eligible to enrol.

These are only some examples of what may be considered compassionate or compelling circumstances.

Registered providers should outline what is considered compassionate or compelling circumstances in their own policies and use their professional judgement to assess each case on its individual merits. When determining whether compassionate or compelling circumstances exist, registered providers should consider documentary evidence provided to support the claim, and should keep copies of these documents in the overseas student's file. Other circumstances in which a transfer should be granted are:

- the registered provider fails to deliver the course as outlined in the written agreement;
- there is evidence that the overseas student's reasonable expectations about their current course are not being met (such as correspondence between the overseas student and the registered provider or marketing materials given to the overseas student prior to enrolment, and setting particular expectations about the course);
- there is evidence that the overseas student was misled by the registered provider or an education or migration agent regarding the registered provider or its course, and the course is therefore unsuitable to their needs and/or study objectives.
- an appeal (internal or external) on another matter results in a decision or recommendation to release the overseas student.

Transfers involving students under the age of 18

If the overseas student is under the age of 18, the registered provider must have written confirmation that the overseas student's parent or legal guardian supports the transfer. If the overseas student does not have a parent or legal guardian caring for them in Australia, the receiving provider must also confirm it accepts responsibility for the student's accommodation and welfare arrangements in accordance with Standard 5.

It is the responsibility of the receiving registered provider (under Standard 5) to ensure that there are no gaps in welfare arrangements. This may include agreeing to accept welfare responsibility at an earlier time.

Transfer requests and packaged courses

If a transfer will affect the start dates of any subsequent courses covered by the visa, the overseas student must be released from those courses, or gain the subsequent registered providers' agreement to delay the start of those courses.

Registered providers should advise overseas students that changes to their preliminary courses may have ramifications for their admission to their principal course, for example if a preliminary course is a prerequisite entry requirement to the principle course.

Once a transfer request decision has been made

Transfer request outcomes must be recorded in PRISMS (A 'How To' guide for recording transfer requests in PRISMS is available at

<https://prisms.education.gov.au/Information/ShowContent.ashx?Doc=How To Manage Student Transfers in PRISMS.pdf>). **As such, a hard copy release letter is not required from the releasing provider.**

Registered providers should still advise overseas students of the outcome of the transfer request. This can be done via email: a formal letter is not required. The registered provider must also encourage the overseas student to consider whether a change in enrolment breaches a visa condition. The student can refer to the Department of Home Affairs website at: <https://www.border.gov.au/Trav/Stud/More/Changing-courses>.

If a registered provider intends to refuse a release, it must not finalise the overseas student's refusal status in PRISMS until:

- any appeal against the refusal lodged by the overseas student is finalised and upholds the registered provider's decision not to release the student; or
- the overseas student did not access the registered provider's complaints and appeals processes within 20 working days of being notified of the refusal; or
- the overseas student withdraws their appeal against the refusal.

The registered provider must also notify the overseas student in writing the reason for refusing the transfer request and the overseas student's right to access the registered provider's internal complaints and appeals process (in accordance with Standard 10) within 20 working days.

All registered providers must maintain records of overseas student transfer requests for two years after the student ceases to an accepted student.

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Standard 8: Overseas student visa requirements

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

Overview

Overseas students must make satisfactory course progress and, where applicable, attendance as a condition of their student visa.

Registered providers must:

- monitor the overseas student's course progress and attendance according to the requirements of their sector
- identify and offer support to those at risk of not meeting course progress or attendance requirements
- only extend the duration of an overseas student's enrolment in certain circumstances and advise them of potential impacts on their student visa
- only deliver online learning in accordance with the online learning requirements for their sector.

Key Requirements

Monitoring course progress and attendance

Registered providers must inform overseas students before they begin a course about the requirements to achieve satisfactory course progress and attendance requirements, where applicable.

The expected duration of study specified on the overseas student's Confirmation of Enrolment (CoE) must not exceed the Commonwealth Register of Institutions and Courses for Overseas Students

(CRICOS) registered duration for the course. This means that registered providers will need to monitor the progress of overseas students to ensure they are able to complete the course within the expected duration specified on the CoE.

Registered providers must have documented policies and processes in place to identify, notify and assist overseas students who are at risk of not meeting course progress or attendance requirements. There should be evidence from the overseas student's assessment tasks, participation in tuition activities, or other indicators of academic progress, to indicate the overseas student is at risk of not satisfying these requirements.

Registered providers must also have processes in place to determine the point at which the overseas student has failed to meet satisfactory course attendance or course progress.

Course progress and attendance requirements

Schools, ELICOS and Foundation Programs

Registered providers of a school course, ELICOS or Foundation Program must have a documented policy and process for monitoring and recording both attendance and course progress for overseas students.

The minimum requirement for attendance is 80 per cent of the scheduled contact hours for the course, or higher if required under state or territory legislation. Registered providers may also choose to impose a higher attendance regulation through their attendance policies.

Registered providers must assist overseas students through an intervention strategy if they are not achieving satisfactory course progress. The intervention strategy should identify, notify and assist overseas students who have been absent for more than five consecutive days without approval, or who are at risk of not meeting attendance requirements before the overseas student's attendance drops below 80 per cent.

Registered providers should keep records of all contact and counselling made with overseas students who have been absent for more than five consecutive days or where the overseas student is at risk of not attending at least 80 per cent of the course contact hours.

The intent of contacting these overseas students is to find out why they have been absent and to see what support the registered provider may be able to offer the overseas student. For example, the overseas student's absence may not be due to medical reasons, but rather to homesickness or social issues – matters which may be addressed through the registered provider's student support services (see Standard 6).

Higher education

Registered providers of higher education courses must have a documented policy and process for monitoring and recording course progress for an overseas student.

Higher education providers must monitor course progress regularly and implement an intervention strategy to assist an overseas student not making satisfactory course progress. Registered providers are not required to monitor attendance for higher education courses.

Vocational education and training (VET)

Registered providers of VET courses must have a documented policy and process for monitoring and recording course progress for an overseas student.

By default, VET providers do not have to monitor attendance. However, they will have to monitor attendance if required as a condition of registration by the Education Services for Overseas Students (ESOS) agency. If an ESOS agency requires a VET provider to monitor attendance, it will notify the registered provider, and the minimum requirement for attendance is 80 per cent of the scheduled contact hours for the course.

Registered providers must assist overseas students through an intervention strategy if they are not achieving satisfactory course progress, and if applicable, attendance before the overseas student's attendance falls below 80 per cent.

Reporting overseas student visa holders

Registered providers must report overseas students who do not meet course progress or, if applicable, attendance requirements.

If the registered provider has assessed that the overseas student is not meeting course progress or attendance requirements in accordance with its policies, the registered provider must give the overseas student a written notice of its intention to report. The registered provider also needs to advise the overseas student of their right to access the registered provider's internal complaints and appeals process within 20 working days.

The registered provider must maintain the overseas student's enrolment by only reporting a breach of course progress or attendance in Provider Registration and International Student Management System (PRISMS) if:

- the internal and external complaints processes have been completed and the breach has been upheld;
- the overseas student has chosen not to access the internal complaints and appeals process within the 20 working day period;
- the overseas student has chosen not to access the external complaints and appeals process;
- or
- the overseas student withdraws from the internal or external appeals process by notifying the registered provider in writing.

There are limited circumstances where a registered provider may decide not to report an overseas student for falling below 80 per cent attendance:

- for school, ELICOS and foundation program providers: the overseas student is still attending at least 70% of the scheduled course contact hours and provides genuine evidence of compassionate or compelling circumstances; and
- for VET providers who are required to monitor attendance by the ESOS agency: the overseas student is still attending at least 70% of the scheduled course contact hours and is maintaining satisfactory course progress.

Extending course duration

The registered provider can only extend the overseas student's enrolment if:

- the registered provider has assessed that there are compassionate or compelling circumstances and there is evidence to support this assessment;
- the registered provider has implemented, or is in the process of implementing, an intervention strategy for the overseas student who is at risk of not meeting course progress requirements; or
- an approved deferral or suspension of the overseas student's enrolment has occurred.

If the registered provider extends the duration of an overseas student's enrolment and the student's visa will expire prior to completion of the course, the student will need to apply for a new Student visa (subclass 500) to complete their study. More information about the Student visa (subclass 500) is available on the Department of Home Affairs website (<https://www.homeaffairs.gov.au/Trav/Visa-1/500->).

'Compassionate or compelling' circumstances are generally those beyond the control of the overseas student and which have an impact upon the overseas student's course progress or wellbeing. These could include, but are not limited to:

- serious illness or injury, where a medical certificate states that the overseas student was unable to attend classes
- bereavement of close family members such as parents or grandparents (where possible a death certificate should be provided)
- major political upheaval or natural disaster in the home country requiring emergency travel and this has impacted on the overseas student's studies; or
- a traumatic experience, which could include:
 - involvement in, or witnessing of a serious accident; or
 - witnessing or being the victim of a serious crime, and this has impacted on the overseas student (these cases should be supported by police or psychologists' reports)
- where the registered provider was unable to offer a pre-requisite unit, or the overseas student has failed a prerequisite unit and therefore faces a shortage of relevant units for which they are eligible to enrol.

These are only some examples of what may be considered compassionate or compelling circumstances.

Registered providers should outline what is considered compassionate or compelling circumstances in their own policies and use their professional judgement to assess each case on its individual merits. When determining whether compassionate or compelling circumstances exist, registered providers should consider documentary evidence provided to support the claim, and should keep copies of these documents in the overseas student's file.

Online learning

Registered providers may offer overseas students up to one-third of their course online.

If online or distance learning is offered, the registered provider must ensure that the overseas student is studying at least one unit that is face-to-face in each study period. The only exception is if the overseas student is completing the last unit of their course that is only available online.

School, ELICOS or foundation program providers must only deliver online or distance learning in addition to the minimum face-to-face teaching requirements. This must be approved as part of the registration of the course by the relevant designated State authority or ESOS agency.

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Standard 9: Deferring, suspending or cancelling the overseas student's enrolment

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

Overview

An overseas student's enrolment can be deferred, suspended or cancelled. This may be initiated by either the overseas student for compassionate and compelling circumstances, or the registered provider for an overseas student's breach of visa conditions, failure to pay fees, misbehaviour, or other condition listed in a registered provider's policy.

Registered providers must manage the enrolment of overseas students and maintain up-to-date enrolment information in the Provider Registration and International Student Management System (PRISMS) database.

Registered providers must:

- have a documented process for assessing, approving and recording a deferment, suspension or cancellation of study
- notify the overseas student in writing of the intention to suspend or cancel their enrolment
- tell the overseas student to seek advice from the Department of Home Affairs on the potential impact on their visa if enrolment has been deferred, suspended or cancelled
- not let a suspension or cancellation take effect until the overseas student has been given a chance to complete an internal appeals process, unless their health or wellbeing, or the wellbeing of others, is likely to be at risk.

Key Requirements

Deferral, suspension or cancellation

Registered providers must maintain a record of any decisions to defer or suspend an overseas student's enrolment. Registered providers that defer or suspend an overseas student's enrolment must notify the Department of Education and Training through PRISMS.

The Department of Home Affairs is notified of a student whose course has been deferred, suspended or cancelled through PRISMS. An international student's visa would not be cancelled if the deferral is for compassionate or compelling reasons. If a registered provider defers or suspends a student's studies for compassionate or compelling reasons, the registered provider should ensure the student visa holder has a valid CoE in PRISMS with a start date that reflects the student's intended date of return to studies. There is no maximum period for a deferral under compassionate or compelling reasons, but the deferral must be assessed in accordance with the registered providers' policies and procedures.

An international student's visa may be cancelled if the deferral or suspension:

- is due to the conduct of the student
- is for reasons other than compassionate or compelling circumstances
- the compassionate or compelling circumstances which warranted the deferral or suspension of studies cease to exist
- is based on fraudulent evidence or documents given to the registered provider.

Effect on Confirmation of Enrolment (CoE)

Registered providers must tell overseas students that deferring, suspending or cancelling their enrolment on any grounds may affect their student visa.

Under this standard of the National Code, there are three possible outcomes for an overseas student's CoE:

1. The registered provider notifies the Department of Education and Training through PRISMS that they are deferring or suspending an overseas student's enrolment for a period **without affecting the end date of the CoE**. There will be no change to the CoE on PRISMS – the overseas student will still be listed as studying. However, the notice of deferment or suspension will be recorded in PRISMS.
2. The registered provider notifies the Department of Education and Training through PRISMS that they are deferring or suspending an overseas student's enrolment for a period which **will affect the end date of the CoE**. PRISMS will cancel the original CoE and immediately offer the registered provider the opportunity to create a new CoE with a more appropriate end date. If the registered provider does not know when the overseas student will return, it can choose not to create a new CoE at that point, but to wait until the overseas student has notified the registered provider of the intended date of return before creating a new CoE.

3. The registered provider notifies the Department of Education and Training through PRISMS that it wishes to **permanently cancel (terminate)** the overseas student's enrolment. Once this process is complete, the overseas student's CoE status will be listed as 'cancelled'. If the overseas student is under the age of 18, the cancellation of a CoE does not cancel a Confirmation of Appropriate Accommodation and Welfare (CAAW), and the registered provider is still responsible for welfare arrangements until one of the conditions of Standard 5.6 are met.

Regardless of the reason, if an overseas student's enrolment is deferred or suspended the period of suspension of enrolment (as entered in PRISMS) should not be included in attendance monitoring calculations.

Student-initiated deferrals, suspensions or cancellations of their enrolment

Registered providers are able to defer or suspend the enrolment of an overseas student if there are compassionate or compelling circumstances. Registered providers must assess the deferral of commencement of study or suspension of study for the overseas student in accordance with the registered provider's documented procedures for assessing and approving changes to enrolment.

'Compassionate or compelling' circumstances are generally those beyond the control of the overseas student and which have an impact upon the overseas student's course progress or wellbeing. These could include, but are not limited to:

- serious illness or injury, where a medical certificate states that the overseas student was unable to attend classes;
- bereavement of close family members such as parents or grandparents (where possible a death certificate should be provided);
- major political upheaval or natural disaster in the home country requiring emergency travel and this has impacted on the overseas student's studies;
- a traumatic experience, which could include:
 - involvement in, or witnessing of a serious accident; or
 - witnessing or being the victim of a serious crime, and this has impacted on the overseas student (these cases should be supported by police or psychologists' reports)
- where the registered provider was unable to offer a pre-requisite unit, or the overseas student has failed a prerequisite unit and therefore faces a shortage of relevant units for which they are eligible to enrol.

These are only some examples of what may be considered compassionate or compelling circumstances.

Registered providers should outline what is considered compassionate or compelling circumstances in their own policies and use their professional judgement to assess each case on its individual merits. When determining whether compassionate or compelling circumstances exist, registered providers should consider documentary evidence provided to support the claim, and should keep copies of these documents in the overseas student's file.

Provider-initiated deferrals, suspensions or cancellations of enrolment

Registered providers may suspend or cancel an overseas student's enrolment on the basis of, but not limited to:

- misbehaviour by the overseas student;
- the overseas student's failure to pay the required amount to undertake or continue the course as stated in the written agreement; or
- a breach of course progress or attendance requirements by the overseas student.

For any deferral, suspension or cancellation of enrolment initiated by the registered provider, the overseas student must be given a notice of intention to report and 20 working days to access the registered provider's internal complaints and appeals process. This applies even if an overseas student's misbehaviour is grounds for immediate expulsion, unless the overseas student's health or wellbeing, or the wellbeing of others, is likely to be at risk (as outlined below).

Generally, a registered provider may proceed with the deferral, suspension, or cancellation after the internal complaints handling and appeals process has been completed – for example, in cases of misbehaviour and non-payment. The only time a registered provider needs to wait for both the internal and external complaints handling and appeals processes to be completed is for course progress and/or attendance breaches.

The overseas student does not have to be given the opportunity to appeal a provider-initiated deferral, suspension or cancellation of enrolment when the overseas student's health or wellbeing, or the wellbeing of others, is likely to be at risk. The registered provider must keep evidence to support this.

This may include, but is not limited to when the overseas student:

- refuses to maintain approved care arrangements, if they are under 18 years of age;
- is missing;
- has medical concerns, severe depression or psychological issues which lead the provider to fear for the overseas student's wellbeing;
- has engaged or threatens to engage in behaviour that is reasonably believed to endanger the overseas student or others; or
- is at risk of committing a criminal offence.

Disclaimer

The Department of Education and Training provides general information and assistance to registered providers and overseas students on the National Code and the *Education Services for Overseas Students Act 2000*.

However, such information or assistance should not be relied on as legal advice or as a substitute for legal advice. Overseas students and education providers should seek independent legal advice as appropriate.

Standard 9: Deferring, suspending or cancels the overseas student's enrolment

The National Code fact sheets are designed to give registered providers practical guidance in day to day operations. Registered providers should note that compliance will be measured against the requirements of the National Code, not against the fact sheets.



Standard 10: Complaints and appeals

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

Overview

Registered providers need to have an internal complaints handling and appeals process in place. Professional, timely, inexpensive and documented complaints handling and appeals processes ensure that grievances between overseas students and registered providers can be heard and addressed.

Registered providers must:

- have and implement a documented internal complaints handling and appeals policy and process;
- advise an overseas student within 10 working days of their right to access an external appeals process and provide contact details, if the overseas student is not satisfied with the outcome of the internal complaints and appeals process; and
- immediately implement any decision or recommendation in favour of the overseas student through the internal or external appeals process.

Key Requirements

Internal complaints and appeals processes

Registered providers must give overseas students information about the registered provider's policy and process for the internal complaints handling and appeals process that is comprehensive, free and easily accessible.

Registered providers' internal complaints and appeals must:

- have a process for overseas students to lodge a formal complaint or appeal if a matter cannot be resolved informally;
- respond to any complaint or appeal an overseas student makes about the registered provider or any agent or related party the registered provider engages;
- begin assessing a complaint or appeal within 10 working days of the overseas student lodging it, and finalise the outcome as soon as practicable;
- conduct the assessment of the complaint or appeal in a professional, fair and transparent manner;
- ensure the overseas student has an opportunity to present their case at minimal or no cost, and be accompanied and assisted by a support person if necessary; and
- give the overseas student a written statement of the outcome of the appeal, including the reasons for the outcome, and keep a written record of complaints or appeals on the overseas student's file.

If the overseas student's appeal relates to a decision to cancel the student's enrolment, the provider must wait for the internal complaints process to be completed before they can proceed.

However, the registered provider must not report the overseas student through Provider Registration and International Student Management System (PRISMS) for unsatisfactory course progress or attendance until the overseas student has accessed the internal and external complaints handling and appeals process, and the decision or recommendation supports the registered provider (see Standard 8).

If the overseas student is not successful in the registered provider's internal complaints handling and appeals process, the registered provider must advise the overseas student of their right to access an external complaints handling and appeals process at minimal or no cost. This advice must be given to the overseas student within 10 working days of the completion of the internal complaints handling and appeals process.

External complaints and appeals processes

The registered provider must give overseas students the contact details of the appropriate external complaints handling and appeals body.

For most registered providers, the appropriate external complaints body will be:

- state and territory offices of the Ombudsman, for public providers
- the Overseas Student Ombudsman (OSO), for private providers (except for issues of broader educational quality)

Private providers need to make specific arrangements for independent review of complaints about issues not covered by the Australian Competition and Consumer Commission (ACCC) or the OSO.

Registered providers should make clear to overseas students that in most cases, the purpose of the external appeals process is to consider whether the registered provider has followed its policies and procedures, rather than make a decision in place of the institution.

For example, if an overseas student appeals against his or her subject results and goes through the registered provider's internal appeals process, the external appeals process would look at the way in which the internal appeal was conducted; it would not make a determination as to what the subject result should be.

A registered provider must only report an overseas student for unsatisfactory course progress or attendance in PRISMS after:

- the internal and external complaints processes have been completed and the breach has been upheld;
- the overseas student has chosen not to access the internal complaints and appeals process within the 20 working day period;
- the overseas student has chosen not to access the external complaints and appeals process; or
- the overseas student withdraws from the internal or external appeals process, by notifying the registered provider in writing.

When an external appeals process has been completed, the registered provider must immediately implement the decision or recommendations and/or take the preventative or corrective action required by the outcomes of the external complaints handling or appeals process, and notify the overseas student of the outcome.

Further complaints and appeals

If an overseas student is not satisfied with the outcome of either the registered provider's internal appeals process or the following external appeals process, they can access multiple external appeals. However, the registered provider does not have to assist the overseas student with finding further appropriate appeals processes.

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Standard 11: Additional registration requirements

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

Overview

Registered providers must meet the requirements for Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) registration. Only full-time courses can be registered on CRICOS. Registered providers must also ensure the ESOS agency approves and has up-to-date information on specific aspects of the registered provider's operations and any registered courses.

Registered providers must:

- seek approval from the ESOS agency or designated State authority to register only a full-time course;
- submit any proposed changes to the registration of courses to its ESOS agency for approval at least 30 days prior to the date the changes will commence; and
- undertake an independent external audit during their period of CRICOS registration to inform their re-registration, if they are a self-accrediting registered provider.

Key Requirements

Full-time course registration

Registered providers must seek approval from the ESOS agency, or designated State authority for registered school providers, for:

- the course content (but not for higher education courses, which are approved at time of accreditation or by providers with self-accrediting status)
- the course duration, including holiday breaks;

- modes of study, including components delivered as online study, distance or work-based training;
- the number of overseas students enrolled in the course, within the limit or maximum number approved by the ESOS agency for each location; or
- arrangements with other providers (including partners) in delivering a course or courses to overseas students.

Seeking approval for course registration

When applying to register a full-time course at a location, the registered provider must demonstrate any matters requested by the ESOS agency, or designated State authority. This includes, but is not limited to, demonstrating that:

- the expected duration of the course does not exceed the time required to complete the course on the basis of full-time study (for VET courses, this is a minimum of 20 scheduled course contact hours per week unless specified by an accrediting authority);
- the expected duration of the course includes any holiday periods or any work-based training (for example, a school course may include the total of each term and end of term vacation periods);
- any work-based training to be undertaken as part of the course is necessary for the overseas student to gain qualification and there are appropriate arrangements for supervision and assessment of overseas students;
- the course is not to be delivered entirely online or by distance learning;
- the registered provider and any partners they engage with to deliver courses have adequate staff and education resources, including facilities, equipment, learning and library resources and premises, to deliver courses to overseas students; and
- the maximum number of overseas students proposed reflects the appropriateness of the staff, resources and facilities for the delivery of courses.

Registered providers must provide any information on proposed changes to a registered course to the ESOS agency, or designated State authority, for approval. This must be done at least 30 days prior to the date the changes will commence.

Self-accrediting registered providers

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

Self-accrediting providers do not need to provide an annual declaration of conformity to Tertiary Education Quality Standards Agency (TEQSA).

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The National Code fact sheets are designed to give registered providers practical guidance in day to day operations. Registered providers should note that compliance will be measured against the requirements of the National Code, not against the fact sheets.