

Providing Education to Overseas Students

Briefing paper for School Governors, Principals, Bursars and Business Managers of non-government schools.

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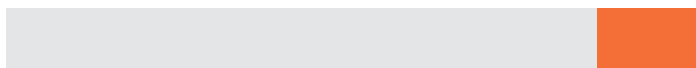


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Executive Summary

To provide educational courses to overseas students¹, non-government schools are required to be registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS). To become a registered provider, schools must demonstrate their ongoing compliance with a great number of obligations stemming from laws, regulations, standards and guidelines.

The most in-depth and cumbersome of these requirements come from the recently overhauled National Code of Providers of Education and Training to Overseas Students 2018 (National Code). The National Code is a set of nationally consistent standards that govern the protection of overseas students and the delivery of courses to those students by CRICOS-registered providers. The new National Code took effect on 1 January 2018.

The National Code consists of 11 standards that require schools to implement policies and procedures to ensure that overseas students are appropriately cared for.

The National Code was enacted under the Education Service for Overseas Students Act 2000 (Cth) (ESOS Act). The ESOS Act aims to:

- ✓ protect the interests of overseas students coming to Australia on student visas
- ✓ protect and enhance Australia's reputation for quality education
- ✓ provide tuition protection
- ✓ support the integrity of the student visa program.

The National Code is divided into Part A and Part B.

Part A describes the National Code and the ESOS Framework. Part B outlines the 11 standards:

- ✓ Standard 1: Marketing Information and Practices
- ✓ Standard 2: Recruitment of an Overseas Student
- ✓ Standard 3: Formalisation of Enrolment and Written Agreements
- ✓ Standard 4: Education Agents
- ✓ Standard 5: Younger Overseas Students
- ✓ Standard 6: Overseas Student Support Services
- ✓ Standard 7: Overseas Student Transfers
- ✓ Standard 8: Overseas Student Visa Requirements
- ✓ Standard 9: Deferring, Suspending or Cancelling the Overseas Student's Enrolment
- ✓ Standard 10: Complaints and Appeals
- ✓ Standard 11: Additional Registration Requirements.

Compliance with the National Code, its 11 standards and related legislation, regulations and standards is mandatory for all non-government schools who wish to provide educational services to overseas students. Each jurisdiction's designated state authority has the power to initiate site inspections and audit schools' compliance with the Code at any time.

Background

The purpose of the National Code is to provide nationally consistent standards and procedures for registered providers and persons who deliver educational services on behalf of the registered provider, including schools. The National Code sets out the requirements for the effective management and care of overseas students, and applies to all schools who provide educational services to overseas students.

The National Code is legally mandated under the Education Services for Overseas Students Act 2000 (Cth) (ESOS Act) and requires schools with overseas students to comply with the Code's 11 standards. The standards require schools to have continuously compliant and up-to-date policies and procedures in place for the care and education of overseas

¹ Overseas student is defined as a person (whether within or outside Australia) who holds a student visa, but does not include students of a kind prescribed in regulations (s 5 ESOS Act).

students.

During 2017, the National Code was in a constant state of flux. From 13 February 2017 until 31 March 2017 there was a consultation period inviting responses from all international education stakeholders, which included registered providers (such as schools and universities) and peak bodies. The peak bodies that were consulted during this period included: English Australia (EA), the Australian Council for Private Education and Training (ACPET), Australian Government Schools International (AGSI), the Council of Private Higher Education (COPHE), Independent Schools Council of Australia (ISCA), the International Education Association of Australia (IEAA), TAFE Directors Australia (TDA) and Universities Australia (UA).

This consultation process resulted in nearly 100 submissions from international education stakeholders to the Commonwealth Department of Education and Training (Cth DET). The National Code 2007 was repealed on 1 April 2017 and the Interim National Code 2017 was introduced on 9 April 2017. The Interim Code was replaced by the National Code 2018 from 1 January 2018.

ESOS Framework

The ESOS Act and related legislation, regulation and standards have been implemented to address the interests of the overseas students² coming to Australia to study. The aim of the ESOS Framework is to protect and enhance Australia's reputation for quality education to overseas students, provide tuition protection for students and support the integrity of Australia's visa program.

The ESOS Framework consists of the:

- ✓ ESOS Act
- ✓ Education Services for Overseas Students Regulations 2001 (Cth) (ESOS Regulations)
- ✓ National Code
- ✓ Migration Act 1958 (Cth)
- ✓ English Language Intensive Courses for Overseas Students (ELICOS) Standards 2018
- ✓ ESOS (Calculation of Refund) Specification 2014 (Cth) (Refund Specification)

- ✓ state and territory legislation relating to education and training of overseas students.

The ESOS Act

The ESOS Act is the overarching legislative instrument, providing the foundation of the ESOS Framework. The main objective of the ESOS Act is to establish a framework to regulate registered providers who provide courses to overseas students. The ESOS Act imposes various obligations upon registered providers to ensure that overseas students are protected in Australia and the quality of overseas student education is maintained. The National Code is made under the ESOS Act.

The ESOS Regulations

The ESOS Regulations are subordinate to and operate alongside the ESOS Act. The ESOS Regulations provide procedures around the operation of the ESOS Act and details of infringement penalties if a registered provider breaches its obligations under the ESOS Act.

² National Code, page 3.

The Migration Act

The Migration Act 1958 (Cth) regulates the entry into and presence in Australia of non-citizens. It also regulates visa requirements.

The ELICOS Standards

The ELICOS Standards are made under the ESOS Act and are a series of standards which require schools to be registered to provide English language instruction to overseas students, known as an ELICOS course. For the purposes of the ELICOS Standards, an ELICOS course is a course of education or training that is:

- ✓ solely or predominantly of English language instruction; and
- ✓ provided, or intended to be provided, to an overseas student.

There are nine ELICOS Standards that address topics such as course contact hours, standards of teaching and student assessment. The updated ELICOS Standards took effect on 1 January 2018 for existing and new providers.

The Refund Specification

The Refund Specification is made under the ESOS Act and outlines a method for working out the amount of 'unspent tuition fees' for the purposes of calculating refunds to overseas students.

State and Territory Obligations

Designated State Authorities

To receive CRICOS registration, and to be eligible to teach overseas students, schools need to first be approved by their jurisdiction's Designated State Authority (DSA).

The DSAs are:

- ✓ **ACT:** The ACT Minister for Education
- ✓ **NSW:** The NSW Education and Standards Authority (NESA)
- ✓ **VIC:** The Victorian Registration Qualifications Authority (VRQA)
- ✓ **QLD:** The International Quality Schools Unit of the Queensland Department of Education and Training (IQSU)
- ✓ **SA:** The Education and Early Childhood Services Registration and Standards Board of South Australia
- ✓ **NT:** The International Services of the Northern Territory Department of Education and Training
- ✓ **WA:** The Department of Education Services WA (DES WA)
- ✓ **TAS:** The Office of Tasmanian Assessment, Standards and Certification

The DSA will assess a school's application for CRICOS registration based on compliance with the ESOS Framework and compliance with any of the jurisdiction's specific set of guidelines.

Once the DSA has approved their application for CRICOS registration, the school's application is then forwarded to the Cth DET for final approval.

Upon approval, the school will be allocated a CRICOS Number, which is retained on the CRICOS register. Once the approval process is complete, a school's registration will be renewed at least every five years. However, this may vary depending on registration requirements in each state or territory.

A DSA has rights under each jurisdiction's education legislation to initiate a site inspection and audit a school's compliance with their CRICOS registration requirements at any time.

Additional Legislation and/or Guidelines

In addition to complying with the sources of federal legislation and regulation that form the ESOS Framework, schools may also be required to comply with additional state and territory obligations. NSW and VIC have produced guidelines which apply to schools who are CRICOS-registered. QLD and WA do not have guidelines, however legislation exists in those states which imposes additional obligations on CRICOS-registered schools.

NSW

NESA has the power to suspend, cancel or amend their approval of a school's CRICOS Registration.

NESA has issued the Guidelines for Approved NSW School Providers Delivering Courses to Overseas Students, which outline how schools can comply with the requirements under the National Code and the overarching ESOS Framework. These Guidelines also add further obligations for schools to meet. These requirements, in addition to the National Code, require NSW schools to notify NESA in writing:

- ✓ when the school provider, or an associate of the provider, or high managerial agent of a provider who has been, is, or will be involved in the business of delivering programs to overseas students:
 - has been convicted of an offence
 - has been convicted of an offence under the ESOS Act at any time during the past five years
 - has ever had its CRICOS registration cancelled or suspended under the ESOS Act
 - has ever been issued with an Immigration Minister's suspension certificate
 - has ever had conditions imposed on its registration under the ESOS Act
 - has been bankrupt
 - has ever been disqualified from managing a corporation under the Corporations Act
 - has been involved in the business of provision of a course by another provider that was subject to any of the points above.
- ✓ of a change of name or address of the school provider at least one month before such a change is to take effect
- ✓ of any intention to relocate premises (including the head office or principal place of business) at least three months before the relocation
- ✓ of a change in the school name and/or name of a delivery site at least one month before such a change is to take place
- ✓ of any prospective changes that may to the ownership of the school as soon as practicable before the change is to take effect
- ✓ of any change to the details of the course approved including changes to courses duration and course cost at least one month before the change is to take place
- ✓ to request, in writing, a decrease in the overseas student capacity of the school provider's scope of approval at least one month before such a change is to take place
- ✓ to request, in writing, the cancellation or suspension of the school provider's approval and registration to deliver courses to overseas students, at least three months before the cancellation or suspension
- ✓ to request, in writing, to add to the school provider's existing scope of approval by adding a course, adding a delivery site or increasing the maximum approved overseas student capacity.

Victoria

The VRQA has the power to advise the Cth DET on approving, suspending, cancelling, amending or imposing conditions on a school's CRICOS registration.

The VRQA has issued guidelines on CRICOS registration, including:

- ✓ the VRQA Guidelines on [homestay accommodation](#) for Overseas Students at least 13 years of age
- ✓ the VRQA Guidelines on the provision of [VCAL Courses to Overseas Students](#).

The VRQA has also released Consultation [Guidelines](#) for the enrolment of overseas students aged under 18 years. The consultation period in December 2017 and will conclude on 28 February 2018. The Consultation Guidelines are issued pursuant to the Education and Training Reform Act 2006 (Vic). The Consultation Guidelines are expected to be finalised, and take effect, in July 2018.

Queensland

The Education (Overseas Students) Act 1996 (Qld) and the Education (Overseas Students) Regulation 2014 (Qld) detail fees and registration requirements under the ESOS Framework. The Education (Overseas Students) Bill 2018 is currently before the Queensland Parliament and if passed, it will have the effect of repealing the Act and Regulation. It is expected that the IQSU will release new guidelines if/once the Bill becomes law.

WA

The Education Service Providers (Full Fee Overseas Students) Registration Act 1991 (WA) (the Act) introduces its own criteria for assessing applications for CRICOS registration, which includes requirements to:

- ✓ have a proper method of financial reporting and monitoring for money received from overseas students;
- ✓ ensure all marketing and promotional material is not false or misleading;
- ✓ have proper contractual agreements with overseas students, specifying fees and refund policies; and
- ✓ implement proper procedures for complaints and disputes.

The National Code Standards

Part B of the National Code outlines the 11 standards that schools must comply with under the National Code. This section of this paper goes into detail about what is included in each standard of the National Code.

Standard 1: Marketing Information and Practices

Standard 1 requires schools to uphold the integrity and reputation of Australia's education industry by ensuring the marketing of services by schools or persons acting on their behalf are not false or misleading. This standard refers to the Australian Consumer Law 2010 (Cth), which prohibits false or misleading claims being made about products and services and provides other consumer protections for overseas students.

This standard requires schools to include their CRICOS registered name and registration number in any written or online material it disseminates or makes publicly available for the purposes of providing or offering to provide a course to an overseas student, inviting a student to undertake or apply for a course, or indicating it is able or willing to provide a course to overseas students. It is a criminal offence under section 107 of the ESOS Act, with a penalty of imprisonment for six months, if a person fails to include the required CRICOS information in any written or online materials.

Additionally, providing false or misleading information about PRISM registration under section 19 of the ESOS Act, accepted students under section 20 of the ESOS Act or TPS levies under section 26 of the ESOS Act are criminal offences with a penalty of imprisonment for 12 months.

Standard 2: Recruitment of an Overseas Student

Standard 2 requires schools to engage in responsible recruiting procedures before accepting overseas students for

enrolment. Information provided to overseas students must be comprehensive, up-to-date and in plain English. This standard ensures that schools assist potential overseas students to make an appropriate and well-informed decision about studying in Australia. It requires documented policies and assessment of an overseas student's English language proficiency, recognition of prior learning, educational qualifications and experience to enter a school course.

Standard 3: Formalisation of Enrolment and Written Agreements

Standard 3 regulates enrolment agreements between a school and its overseas students, and provides general guidance for schools on what is required to be in the written agreement between the student/the student's parents/legal guardians. The standard sets out the requirement for schools to formalise the enrolment process of overseas students through written agreements to record the responsibilities of each party and protect the rights of the overseas students and the school.

Standard 4: Education Agents

An education agent is a formally appointed person or organisation (in or outside Australia) who represents or acts on behalf of the provider, including by having the capacity to create a legal relationship (such as an agreement that binds the parties) between the school and a student.

Standard 4 requires schools to ensure that education agents act ethically, honestly and in the best interests of the overseas student while at the same time upholding the integrity of Australia's international education sector. This standard outlines what must be in the written agreement between a school and an education agent.

Importantly, this standard outlines what a school must do if they know, or reasonably suspect, that an agent has acted dishonestly or unethically. The standard requires that the school must immediately terminate its relationship with the education agent, or require the education agent to terminate their relationship with the employee or subcontractor who engaged in those practices.

Standard 5: Younger Overseas Students

Standard 5 sets out the requirements for schools who enrol overseas students under the age of 18, to ensure that younger students have continuous welfare arrangements while they are studying in Australia. This standard requires schools to:

- ✓ provide information that is age and culturally appropriate
- ✓ abide by their jurisdiction's child protection laws
- ✓ ensure staff have appropriate working with children clearances
- ✓ provide students with a list of emergency contacts
- ✓ have documented policies and processes for assessing accommodation arrangements
- ✓ have age and needs appropriate requirements for younger overseas students, until they turn 18 years of age.

If the student turns 18 during their final year at the school, then the school may decide to still take on the care of the student until they have completed their course at the school. However, if a school decides to do this, it will need to be stipulated in the written agreement between the student and the school.

Standard 6: Overseas Student Support Services

Standard 6 specifies what student support services must be provided to overseas students to enable them to adjust to study and life in Australia. The standard requires schools to have and implement a documented policy and process for managing critical incidents that can affect the students' ability to undertake or complete the course. This standard

also requires schools to ensure that they effectively assist overseas students to adjust to life and study in Australia.

This must include providing:

- ✓ English language and study assistance programs
- ✓ information about relevant legal services
- ✓ health and emergency services
- ✓ information on school facilities and resources
- ✓ information about the school's complaints and appeals process
- ✓ support services to assist the overseas student with their general or personal circumstance such as counselling.

Standard 7: Overseas Student Transfers

Standard 7 prohibits schools from knowingly enrolling an overseas student from another school prior to the student completing the first six months of their school course, unless an exception in Standard 7.1 applies. Exceptions include provider registration and sanctions, where there is provider agreed release (upon second course registration), or if the student's government sponsor considers it to be in the best interests of the student. The standard requires schools to implement a student transfer policy to deal with the transfer of the overseas student.

Additionally, when a school is transferring an overseas student who is under 18 years of age to another school provider, it is the receiving school's responsibility to ensure that there are no gaps in welfare arrangements. This is to ensure that overseas students are adequately protected during the transition from one school to another.

Standard 8: Overseas Student Visa Requirements

Standard 8 requires schools to have clear procedures in place for monitoring overseas students' minimum attendance and course progress. Schools must make sure that overseas students meet the minimum attendance requirement of 80 per cent of the scheduled contact hours for the school course. If a student has been absent for more than five consecutive days without approval, or is at risk of not meeting 80 per cent attendance requirement, an intervention strategy must be implemented to identify, notify and assist the overseas student.

For the purposes of course progress, if a student has been identified as at risk of failing or not meeting course requirements, the school must implement an intervention strategy to ensure that the overseas student is meeting minimum course progress requirements.

Standard 9: Deferring, Suspending or Cancelling the Overseas Student's Enrolment

Standard 9 requires schools to appropriately manage their enrolment of students by having processes in place for assessing deferment, suspension or cancellation of an overseas student's enrolment in limited circumstances. A school may decide to defer or suspend the enrolment of a student if it believes there are "compassionate or compelling circumstances". Guidance on the National Code released by the Cth DET states that compassionate or compelling circumstances are generally circumstances outside the overseas student's control, which impact on their course progress and wellbeing. This could include, but is not limited to:

- ✓ serious illness or injury
- ✓ bereavement of a close family member
- ✓ major political upheaval in the overseas student's home country
- ✓ a traumatic experience.

Schools may decide to suspend or cancel the enrolment of the overseas student on the basis of:

- ✓ misbehaviour by the student
- ✓ the student's failure to pay the fees he or she is required to pay
- ✓ breach of course progress or attendance requirements by the overseas student, which must occur in accordance with standard 8 of the National Code.

All necessary information about enrolments must be provided to the relevant government department by maintaining updated information in the Provider Registration and International Student Management System (PRISMS) database.

Standard 10: Complaints and Appeals

Standard 10 requires schools to have a complaints and appeals process and policy for assessing any grievance that an overseas student may have. Schools must ensure their overseas students have their right to natural justice protected through access to professional, timely, inexpensive and documented complaints handling and appeals processes. A school must also ensure that during the complaints and appeals process, the enrolment of the student who made the complaint is unaffected during this process.

This requirement represents the Federal Government's commitment to ensuring the overseas students have access to internal and external complaints and appeals processes.

Standard 11: Additional Registration Requirements

Standard 11 of the National Code ensures that schools continue to meet CRICOS registration requirements and ensure that the Cth DET approve and hold up-to-date information on specific aspects of schools and take appropriate enforcement action when necessary.

Additional registration requirements under Standard 11 that apply to schools who register a full-time course at a location are:

- ✓ course duration, including holiday breaks
- ✓ modes of study such as online or distance education
- ✓ number of overseas students enrolled
- ✓ arrangements with other education providers.

If there are any proposed changes to these requirements, schools will need to notify the Cth DET at least 30 days prior to the changes taking effect.

About CompliSpace

CompliSpace combines specialist governance, risk, compliance and policy management (GRC&P) consultancy service with practical, technology-enabled solutions. We are the leading provider of GRC&P services to non-government schools and educational authorities in Australia, working with 580 schools and education authorities across all Australian States and Territories.

Our team of lawyers, educators, subject matter and industry experts actively monitor changes to relevant laws and standards enabling us to deliver a full suite of online policies, procedures and governance programs that enables schools to continuously comply with their legal and regulatory obligations.

CompliSpace's New Overseas Students Program

CompliSpace has developed a comprehensive and practical Overseas Students Program for non-government schools around Australia that systematically addresses each requirement of the National Code and other elements of the ESOS Framework. The Program also includes relevant state and territory overseas student legal obligations.

The creation of the Overseas Student Program involved a comprehensive research and development process, in which CompliSpace undertook extensive research into the requirements under the National Code, the ELICOS Standards, state and territory legislative and guideline requirements and the international education market in Australia.

CompliSpace also investigated how Australian non-government schools provide educational services to overseas students through a lengthy user experience (UX) process to ensure the practicality and applicability of the Program to all schools and to gain practical knowledge about how schools educate and care for overseas students.

The Overseas Students Program is delivered online through our PolicyPlus™ platform and is purposely designed to be tailored to each school's specific requirements. Its content is continuously reviewed to ensure it is kept up-to-date with legal and regulatory changes as they occur which allows schools to focus on the management, care and education of overseas students, assuring that they are compliant with key legal obligations and regulatory responsibilities.

CompliSpace's Overseas Students Program is divided into two parts. The first part outlines the ESOS Framework and National Code and how they are incorporated into the Overseas Students Program. The second part includes policies and procedures to meet the regulatory requirements of the ESOS Framework.

The Overseas Student Program includes online training through our Staff Learning System via PolicyPlus to assist with the induction and ongoing learning and development of staff on their requirements under the National Code and ESOS Framework.

Due to the nature of the National Code and the ESOS Framework, requirements included in the Overseas Student Module do not exist in a vacuum.

The CompliSpace Overseas Students Program is therefore purposefully designed to integrate with other programs and policies that should already exist in a school, including those relating to:

- ✓ Risk Management
- ✓ Compliance
- ✓ School Registration
- ✓ Boarding Students
- ✓ Child Protection
- ✓ WHS/OHS/OSH
- ✓ Student Duty of Care (Safety, Health & Wellbeing)
- ✓ Critical Incidents
- ✓ Privacy
- ✓ Complaints Handling
- ✓ Human Resources
- ✓ Continuous Improvement.

CompliSpace clients can choose to link directly to their own, existing content or alternatively the Overseas Student Program integrates seamlessly with other CompliSpace content that has been implemented within their school.

We acknowledge that each school is unique, and for this reason CompliSpace is committed to a hands-on implementation process for schools using the Overseas Students Program. There is a high degree of tailoring required within the Program to ensure that each policy, process or procedure accurately reflects the characteristics of the school in question.

CompliSpace works with schools to tailor compliance and risk management systems to a school's individual needs and

characteristics, ensuring meaningful compliance with their legal and regulatory obligations.

If you are looking to update your existing child protection content, contact us on:

T: 1300 132 090

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