

NATIONAL CODE OF PRACTICE FOR PROVIDERS OF EDUCATION AND TRAINING TO OVERSEAS STUDENTS

REGULATION IMPACT STATEMENT

2017

1 The quality framework for international education services

THE IMPORTANCE OF INTERNATIONAL EDUCATION QUALITY

The legislative framework governing education services to students in Australia on a student visa is set out in the *Education Services for Overseas Students (ESOS) Act 2000* and *National Code of Practice for Providers of Education and Training to Overseas Students 2017* (National Code). The framework protects students' financial investment, ensures high quality education services and supports students to adapt to life in Australia, while maintaining the integrity of Australia's student visa system.

As outlined in the *National Strategy for International Education 2025*, robust quality assurance is key to the international student experience and to Australia's reputation for quality education and training offerings. The National Code sets quality requirements for providers delivering education to international students and ensures Australia delivers on its commitment to offer international students an exceptional experience. It sets out appropriate processes for the administration and oversight of education providers registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS), and for persons who deliver education services on behalf of registered providers.

The objectives of the National Code 2017 include:

- a. supporting the effective administration of the framework by the Australian Government and state and territory governments
- b. establishing and safeguarding Australia's international reputation as a provider of high quality education and training by:
 - i. ensuring that education and training for overseas students meets nationally consistent standards, and
 - ii. ensuring the integrity of registered providers
- c. protecting the interests of overseas students by:
 - i. ensuring that appropriate consumer protection mechanisms exist
 - ii. ensuring that student welfare and support services for overseas students meet nationally consistent standards, and
 - iii. providing nationally consistent standards for dealing with student complaints and appeals

SUPPORTING REGISTERED PROVIDERS IN MONITORING STUDENT COMPLIANCE WITH STUDENT VISA CONDITIONS AND IN REPORTING ANY STUDENT BREACHES TO THE AUSTRALIAN GOVERNMENT.

HISTORY OF INTERNATIONAL EDUCATION STANDARDS

The ESOS legislative framework is complemented by the *Migration Act 1958* (Migration Act) and *Migration Regulations 1994*, the *Tertiary Education Quality and Standards Agency Act 2011* (TEQSA Act), the *National Vocational Education and Training Regulator Act 2011* (NVETR Act), as well as relevant state and territory legislation. A 2007 update to the National Code replaced the original 2001 version, and took effect on 1 July that year. It was to be reviewed periodically.

The 2007 National Code reflected an environment of regulation largely by state and territory government agencies. While states and territories continue to be designated State authorities (DSAs) under the ESOS Act as amended in 2015, since 2012 responsibility for regulation of vocational education and training (VET) providers has largely rested with the Australian Skills Quality Authority (ASQA). In 2012 the Tertiary Education Quality and Standards Agency (TEQSA) was established as national regulator of the higher education sector. The ESOS Act and National Code therefore now operate in tandem with a number of other quality assurance frameworks, including the Standards for Registered Training Organisations (RTO Standards), administered by ASQA and the Higher Education Standards Framework, administered by TEQSA. Since 2007 there have also been major changes to the way education courses are designed and delivered, particularly through technology.

While the Higher Education Standards Framework and the RTO Standards quality assure the provision of education in the higher education and VET sectors respectively, the National Code applies to the full range of education sectors and is focused on the additional support and services for, and rights and obligations of, international students in Australia on a student visa.

The National Code guides DSAs and ESOS agencies in protecting international students as consumers while they are in Australia, addressing their unique needs and supporting visa integrity.

In December 2015 the *Education Services for Overseas Students Amendment (Streamlining Regulation) Bill* was enacted. The bill created ESOS agencies, including TEQSA and ASQA, who have direct responsibility for providers' registration and monitoring providers' compliance (among other changes included in the Bill).

Administrative updates were made to the National Code in April 2017 which adopted terminology consistent with terms used in the ESOS Act, as amended in 2015. The update aligned the registration process under the ESOS Act, which took effect on 1 July 2017. The substantive content of the preceding National Code 2007 was unchanged.

However, for some time the international education sector has been calling for the National Code to be substantially updated. The National Code provides a strong foundation ensuring the sector is regulated effectively. From ongoing consultation it is clear that, while the international education sector highly values the National Code and the protections and support it offers to international students, a number of issues need to be addressed to increase its effectiveness and relevance. For this reason, the Government has been working with the sector to identify ways in which the National Code could better reflect the evolving and highly competitive international education environment.

2 What are the problems to be solved?

There are a number areas that could be improved in the National Code which have come to light in recent years:

- **Better supporting students** to succeed in their studies by:
 - addressing the particular vulnerabilities international students face in terms of safety and welfare
 - improving the information provided to international students before and at the time of enrolment
 - reflecting modernised methods of educational delivery.
- **Improving regulatory requirements** by:
 - reducing regulatory burden that has come to light since the National Code was last substantially revised;
 - removing duplicative and confusing legislative arrangements.

SUPPORTING STUDENTS TO SUCCEED IN THEIR STUDIES

PROTECTING STUDENTS AGED UNDER 18

Providers may approve the accommodation and welfare arrangements for students aged under 18 (where the student is not staying with parents or another suitable nominated relative).

Requirements relating to the provision of appropriate welfare and accommodation arrangements for students aged under 18 no longer fit, given that this aspect of the international education sector has changed markedly in recent years, with increasing numbers of minors enrolling in school study. This needs to be recognised in the National Code by specifically requiring providers who take responsibility for the general welfare of a minor to undertake ongoing verification of the suitability of students' accommodation and welfare arrangements, which does not currently occur. Improving benchmarks and clarifying requirements for welfare arrangements for these students is imperative to the continued protection of these students and assuring Australia's reputation as a safe destination for international students.

Feedback from designated state authorities (DSAs) and school peak bodies (Australian Government Schools International [AGSI] and the Independent Schools Council of Australia [ISCA]) has strongly indicated existing requirements do not provide sufficient clarity at the national level to ensure providers confirm underage students are safe in their accommodation and have appropriate welfare arrangements in place for the duration of

their study (or until they turn 18). To ensure the National Code remains an example of best practice legislation, these provisions could be expanded to include processes for providers to verify the appropriateness of accommodation and welfare arrangements for under 18 students.

ADDRESSING THE INFORMATION NEEDS OF INTERNATIONAL STUDENTS

International students are a different consumer group to domestic students, and more vulnerable due to their lack of local knowledge of the education market and reliance on advice offshore to make a decision.

Clear and accurate pre-enrolment information on available providers and courses, as well as effective written agreements between the provider and the student, are essential regulatory mechanisms for protecting students and assuring the reputational integrity of Australia's international education industry. Potential improvements in the way information is conveyed to international students includes providing key information so that students are fully informed at every step of the recruitment process.

Students often undertake paid work while in Australia, and may not be clear on their work rights and obligations while on a student visa. They may not be aware of where to seek help if they experience exploitation, such as underpayment of wages, poor working conditions and instances of abuse. Amending the National Code so that providers offer key information would be an effective first step in addressing this problem and would better reflect the contemporary issues facing international students.

CHANGING METHODS OF EDUCATIONAL DELIVERY

The international education context has changed significantly since the last comprehensive update of the National Code in 2007. Since that time, Australia's international education environment has evolved at a rapid pace. The current National Code reflects a less technologically driven education sector with different global economic and competitive conditions, and imposes limits on online learning which do not reflect contemporary pedagogical approaches to innovative and flexible course delivery.

IMPROVING REGULATORY REQUIREMENTS

REDUCING REGULATORY BURDEN

Transfer requirements could be improved by including more detailed guidance for providers when assessing transfer requests from students. The National Code also contains restrictions on student transfers, which necessitate significant investment in terms of applications, assessment, paperwork and following up.

REMOVING DUPLICATIVE AND CONFUSING LEGISLATIVE ARRANGEMENTS

Current provisions relating to course progress and attendance which are highly complex and require supplementary guidelines outside of

the ESOS legislative framework. These requirements do not allow regulators to adopt an enforceable, risk-based approach to provider compliance and delivery.

3 Why is Government action needed?

STRONG SECTOR SUPPORT FOR CONTINUED GOVERNMENT INTERVENTION

International education is Australia's third largest export, behind iron ore and coal. In the 2007 calendar year, 451,477 international student enrolments and associated education services contributed approximately \$11 billion to the economy. In 2016, there were 712,884 enrolments, with education services contributing \$21.8 billion and supporting more than 130,000 jobs.

The international education market is not self-regulating. It requires government intervention to ensure appropriate standards are maintained for the benefit of international students and our global reputation.

The National Code is a set of nationally consistent standards that governs the protection of all student visa holders and delivery of courses to those students. It acts in tandem with, and as a complement to, legislated standards for the quality assurance of the higher education, vocational education and training, school, intensive English Language, and foundation program standards. The National Code is highly valued by the international education sector and international students.

At its most effective and efficient, the National Code ensures Australia has optimal settings to allow relevant regulators – including TEQSA, ASQA, and the Department of Education and Training – to address unsustainable, unscrupulous or unacceptable practices in the international education sector.

Consultation on proposed reforms to the ESOS framework throughout 2016 and 2017 found overwhelming support across all stakeholder groups for the continuation of enforceable, legislated arrangements – such as those provided for under the National Code – to promote stability and integrity in the international education sector.

NO FEASIBLE ALTERNATIVES TO GOVERNMENT ACTION

Alternatives to regulation, such as a voluntary code of ethics, may cover some aspects of the regulation incorporated in the National Code. However, the National Code supports the ESOS Act in the critical areas of consumer protection, student welfare and visa integrity and no alternatives to government action have been demonstrated in these areas.

A self-regulated code of ethics would not have sufficient authority to support the ESOS Act. Any shortfall in a voluntary code could have serious impacts on the reputation and economic success of the industry. Further, a code of ethics or other non-legislative option would not provide an enforcement capability to regulators: the use of legal enforcements is

imperative to managing high-risk providers. While the international education market has industry bodies that promote good business practice, their capacity is limited given that this is an international (cross-border) industry involving high amounts of capital.

4 Policy options: overview

This overview of policy options addresses only those proposed changes which will have a regulatory impact on the international education sector. Therefore, not all National Code standards are represented below. An overview of all proposed changes to the National Code, including those both with and without a regulatory impact, can be found at [Appendix A](#).

OPTION 1 – STATUS QUO

One policy option is to retain the National Code in its current form, without any amendment. The National Code as it currently stands provides a solid foundation of pedagogical, linguistic, welfare and other supports and protections to students who have travelled from overseas to study here. It recognises the international education sector is not self-regulating and international students face specific issues, particularly related to the context in which they are recruited and enrolled, which are not resolvable by market forces alone.

INFORMATION IMBALANCES: MARKETING PRACTICES, STUDENT ENROLMENT AND WRITTEN AGREEMENTS (STANDARDS 1 TO 3)

Under the current National Code, providers must meet certain requirements in promoting their courses to current and prospective international students. This recognises that international students are a different consumer group to domestic students, and ensures they are able to make informed choices about studying in Australia.

Standard 1 of the National Code states that providers must undertake marketing in a professional manner and must not give misleading information to prospective students on the provider and its offerings. This includes:

- claims of association between providers
- employment and migration outcomes associated with a course
- possible automatic acceptance into another course
- claims of association with other providers
- the provider's registration on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS)

- any other claims relating to the provider.

Under Standard 2, a provider must give a student specific information on the course or courses in which the student may enrol prior to accepting the student, including:

- course requirements, pre-requisites and content
- campus locations, facilities and equipment
- information on arrangements with any other providers
- indicative course fees and the potential for fees to change
- a description of the ESOS framework, including grounds for deferring, suspending or cancelling a student's enrolment and
- information on life in Australia, including the cost of living and accommodation options.

Standard 3 provides for formalisation of enrolment and specifies that a written agreement must be signed between the provider and student. The written agreement must:

- identify the courses in which the student is to be enrolled, any conditions on his or her enrolment, and an itemised list of course fees
- provide information in relation on refunds, including information on the process for gaining a refund under the ESOS Act in the case of student or provider default
- set out the circumstances in which personal information about the student may be shared between the provider and Australian Government agencies.

These requirements provide an adequate foundation for the ethical recruitment of prospective international students, particularly with regard to information to be provided to students, fees and refund processes.

ARRANGEMENTS FOR UNDERAGE STUDENTS (STANDARD 5)

Visa condition 8532, contained in the *Migration Regulations 1994*, states that if a student visa holder has not turned 18 years of age, he or she must stay in Australia with a parent, a suitable nominated relative, or in accommodation and welfare arrangements that are formally approved by the provider by issuing a Confirmation of Appropriate Accommodation and Welfare (CAAW) letter. If these conditions are not met, an underage student is not eligible for a student visa and cannot continue to hold a student visa.

The National Code contains provisions that reflect and support visa condition 8532. Currently the National Code states that if a provider has taken on responsibility for an underage student and issued a CAAW letter, the provider must:

- advise the Department of Immigration and Border Protection (DIBP) that it accepts responsibility for the student;
- set out the dates for which it assumes responsibility for a student (in the Provider Registration and International Student Management System, or PRISMS); and
- have documented processes for checking suitability of the student's accommodation, support and general welfare arrangements (with no minimum requirements).

Generally, providers continue to be responsible for the welfare of the student, even if the student's enrolment is suspended or cancelled; until other suitable arrangements are made for the student; or until the student returns home.

STUDENT SUPPORT SERVICES (STANDARD 6)

The National Code currently places requirements on providers to support students to adjust to life in Australia and succeed at their study. Providers must offer an age- and culturally-appropriate orientation program that gives information about available student support, legal, emergency and health services; facilities and resources; complaints and appeals process; and student visa conditions relating to course progress and/or attendance (as applicable to the student).

Providers must also have a documented critical incident policy, and must have a designated member (or members) of staff to be the official point of contact for students. Providers must ensure that staff members who interact directly with students are aware of the registered provider's obligations under the ESOS framework.

STUDENT TRANSFERS (STANDARD 7)

Currently, a student is not permitted to transfer providers until he or she has completed the first six months of the principal course, except in certain limited circumstances. The principal course is the final course in a "package" of courses included on the student's visa, usually the highest qualification. Data from PRISMS, which collects information on provider and student details and compliance with the ESOS legislation and visa requirements, shows that at the time of visa grant, students in packaged courses need to study for an average of approximately 500 days before being eligible to transfer without needing a release letter.

If the student wishes to transfer to another provider prior to completing six months of the principal course, the student must request a letter of release from the provider.

The provider must assess the application for transfer based on its implemented policy and procedure, which is available to staff and students, and either:

- grant a letter of release (if the request for transfer is successful); or
- inform the student, and provide written reasons, if the request is refused.

Exceptions to the need for a student to request a transfer are:

- in the case of provider default;
- where the provider has had a sanction imposed on its registration that prevents the student from continuing his or her course; or
- a home government sponsor of the student considers the change to be in the student's best interest and has provided written support for that change.

The intention of the current transfer requirements is to assist students to adjust to their course and the Australian lifestyle, before making any decisions about changing providers. The requirements also ensure students are committed to studying the course for which their visa was granted rather than moving immediately once they arrive onshore. The transfer requirements assist with some concerns in the sector about education agents or providers who 'poach' students from their current providers shortly after they arrive in Australia, and before they have had time to become fully orientated with their studies.

ATTENDANCE MONITORING (STANDARD 8)

Currently, about one-third of VET providers are required to monitor student attendance under the National Code. The remainder have implemented the DEEWR-DIAC Course Progress Policy (the DDCPP). DEEWR refers to the former Department of Education, Employment and Workplace Relations; DIAC refers to the former Department of Immigration and Citizenship.

Providers that have implemented the DDCPP do not need to monitor attendance, but still need to monitor course progress under that policy, and under the National Code.

VET providers who have not implemented the DDCPP are required to identify the process for contacting and counselling students who have been absent for more than five consecutive days without approval or who are at risk of not attending for at least 80 per cent of the scheduled course contact hours.

Where the registered provider assesses a student as not achieving satisfactory attendance for a course, the provider must notify the student in writing of its intention to report the student for not achieving satisfactory attendance.

A student may access internal and external appeals on this matter. Based on Overseas Students Ombudsman data, in 2015-16 there were approximately 266 external appeals processes, and approximately 354 internal appeals on attendance related matters.

A provider may decide not to report the student for breaching the 80 per cent attendance requirement where the registered provider confirms that the student is attending at least 70 per cent of the scheduled course contact hours, and is maintaining satisfactory course progress.

OPTION 2 – RISK FOCUSED, MINIMAL REGULATION

As for Option 1, this overview addresses only those proposed changes which will have a regulatory impact on the international education sector. Not all National Code standards are represented below. An overview of all proposed changes to the National Code, including those both with and without a regulatory impact, can be found at [Appendix A](#).

Under this option key changes to the National Code would:

- address information imbalances for students
- address areas of risk, especially with regard to welfare arrangements for students under 18 years of age
- include student support service requirements which target specific areas of student need which have come to light since the National Code was last substantially revised
- reduce the administrative burden in relation to the process for assessing student transfers
- streamline course attendance requirements.
- minimise regulatory overlaps between the National Code and other legislation and standards.

ADDRESSING INFORMATION IMBALANCES: MARKETING PRACTICES, STUDENT ENROLMENT AND WRITTEN AGREEMENTS (STANDARDS 1 TO 3)

Under this option, requirements relating to marketing and enrolment practices and written agreements would expand on the basic information currently required under Standards 1 to 3 of the National Code (Marketing information and practices; Enrolment of an overseas student; and Formalisation of enrolment and written agreements).

Broadly, amendments would clarify marketing and enrolment requirements for providers to ensure they do not engage in false or misleading behaviour. Information gaps in current written agreement requirements would be addressed by requiring providers to include advice on government and provider consumer protection processes, provisions to protect students in the case of provider default, complaints and appeals processes, arrangements providers maintain with other institutions to deliver a course, and work-based learning opportunities. The majority of this information is expected to be provided at the course level.

Written agreements do not currently include a provision on who is to be credited with any refund of fees, meaning that fees can be diverted to an education agent or other third party.

Option 2 would seek to rectify this by including a provision that refunds cannot be credited to an agent acting as an intermediary in the transaction.

New provisions would require providers to clarify how the fees students pay correspond to the education services they receive, and course prerequisites, English language requirements, campus locations, facilities and equipment, and any additional fees students may need to pay. These requirements would align with Australian Consumer Law to ensure prospective students receive accurate and full information, in plain English, prior to enrolling in a course **and** in the written agreement that the student and provider must agree at the time of enrolment.

ARRANGEMENTS FOR UNDERAGE STUDENTS (STANDARD 5)

Standard 5 sets out the administrative process for providers approving accommodation and welfare arrangements for students aged under 18. They reflect the Migration Regulations and place minimum requirements under which a provider may approve accommodation, support and general welfare arrangements for these students.

Standard 5 would reiterate that welfare arrangements must be appropriate and maintained at all times, until the student turns 18. It proposes a clearer requirement on the frequency of review of those arrangements (twice yearly) and requires providers to have a policy and process for such reviews. Providers with approved welfare arrangements would be required to give the student information on who to contact in emergency situations; and how to report alleged abuse to the appropriate authorities.

Providers would also notify the student's parents or nominated relative immediately if they are no longer able to approve welfare arrangements for the student (i.e., in the case of provider default). In addition, if the provider is unable to contact a student and has concerns for the student's welfare, the provider must make all reasonable efforts to locate the student including notifying the police and any other relevant Commonwealth, state or territory agencies.

STUDENT SUPPORT SERVICES (STANDARD 6)

Proposed changes to Standard 6 would require providers to have and implement documented processes for supporting and maintaining contact with students undertaking online units of study.

Providers would also be required to provide additional information in their orientation program for all international students, including

- information on English language and study assistance programs;
- the support services available if a student's personal or other circumstances are adversely affecting their education in Australia; and

- services students can access for information on their employment rights and conditions, and how to resolve workplace issues (such as through the Fair Work Ombudsman).

STUDENT TRANSFERS (STANDARD 7)

Option 2 would remove the restriction on transfers which currently requires that in most circumstances, a student who has not completed the first six months of his or her principal course must produce a release letter from their original provider in order to transfer to a different provider.

Students would therefore be able to enrol in an alternative provider without needing to seek permission from the original provider. Proposed changes to Standard 3 provisions would allow providers to charge students a cancellation fee in accordance with the written agreement between the provider and student. In this way providers could recoup the costs associated with recruiting the student, and associated administrative costs.

ATTENDANCE MONITORING (STANDARD 8)

Changes under Option 2 would remove unnecessary complexities in the way student attendance is monitored. Option 2 would remove the requirement for providers to monitor attendance for students enrolled in VET courses, unless it is imposed as a condition of registration by the ESOS agency. Only those providers with a condition to monitor attendance on their registration would be required to do so, at a minimum setting of 70 per cent attendance for each student.

VET providers that are required to monitor attendance would need to have and implement a documented policy and process for monitoring and recording student attendance. The policy would specify details of the registered provider's strategy to identify, notify and assist 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 student's attendance drops below 80 per cent.

OPTION 3 – MORE NUANCED OPTION INCORPORATING STAKEHOLDER FEEDBACK

Under Option 3 most of the changes proposed under Option 2 would remain in the same form for all Standards, except for moderate changes to Standards 3, 5, 7 and 8. Differences in terms of regulatory impact are outlined below.

ADDRESSING INFORMATION IMBALANCES: MARKETING PRACTICES, STUDENT ENROLMENT AND WRITTEN AGREEMENTS (STANDARDS 1 TO 3)

Option 3 would require clear, comparable information to be provided to overseas students at each stage of the recruitment process. As for Option 2, key information, such as tuition fee amounts, the periods to which they relate and refund process would be required in full in the written agreement. However, Option 3 would clarify institutions should only use hyperlinks in written agreements to provide supplementary material. Key details of the contract would still be explicitly included in the written agreement.

ARRANGEMENTS FOR UNDERAGE STUDENTS (STANDARD 5)

Revisions to Standard 5 would introduce stronger requirements on providers in relation to the approval of welfare arrangements for students aged under 18.

Where a transfer takes place for a student aged under 18, Standard 5 would clarify that the relinquishing provider needs to take all reasonable steps to ensure that appropriate welfare and accommodation arrangements are in place prior to releasing the student. Both the releasing and the receiving providers would be required to negotiate the transfer date for welfare arrangements to ensure there is no gap in welfare arrangements, such as over a holiday break.

This option would require providers to have documented policies and processes for selecting, screening and monitoring any third parties engaged by the provider to organise and assess welfare and accommodation arrangements.

The National Code would explicitly state that adults involved with providing accommodation and welfare must have appropriate working with children clearances as required in that state or territory. This aligns the National Code with existing state and territory child protection frameworks. State and territory DSAs would be able to impose additional requirements under their regulatory frameworks.

STUDENT TRANSFERS (STANDARD 7)

Under Option 3, the restriction on transfer between providers would remain in place. Providers would be required to maintain a transfer policy and process to assess requests for

transfers, but would no longer be required to provide transferring students with a letter of release. Release would instead be indicated by ticking a box in PRISMS.

The revised Standard 7 would include existing provisions which state a student can transfer providers in certain circumstances, such as in cases of provider default and where the student has support from a government sponsor. In addition, the provider's policy and process would need to allow for consideration of transfer where:

- there are compassionate or compelling circumstances as set out on the provider's policies
- the student can provide evidence that his or her reasonable expectations about their current course are not being met
- the student can provide evidence that he or she was misled by the provider or an education or migration agent regarding the provider or its course.

The National Code would specify, as is now the case, that if a provider refuses a transfer request, it would need to give the student, in writing, the reasons for rejecting the request. Students who are dissatisfied with the outcome of their request for transfer could continue to seek internal review by the education institution and, if not satisfied with the outcome of the internal review, contact their relevant external complaints body (the OSO for students at most private providers, and the relevant state or territory Ombudsman for students at public providers).

ATTENDANCE MONITORING (STANDARD 8)

Peak body representatives from the VET sector agreed that the minimum attendance requirement should remain at 80 per cent, rather than 70 per cent proposed under Option 2, in light of recent quality and compliance issues affecting certain VET providers.

5 Policy options: analysis of nett benefits (and costs)

This analysis is based on data extracted from PRISMS and other sources in 2016. The analysis was conducted following the release of the April 2016 National Code draft, on which Option 2 is based, to key peak bodies and national regulators.

OPTION 2 – RISK FOCUSED, MINIMAL REGULATION

Under Option 2, the National Code would be revised to reflect the current operating environment for education institutions, and to keep pace with changing student needs. Option 2 of the National Code would:

- protect students in key risk areas, particularly in relation to welfare arrangements for students under 18 years of age
- expand on the information providers are currently required to give students to support to the transition to life in Australia and succeed in their studies
- reduce the administrative burden in relation to the process for assessing student transfers, and
- streamline course attendance requirements.

Some of these changes are anticipated to increase the administrative efforts providers will be required to undertake, particularly in terms of the additional protections and supports that would be offered to international students. This is seen as commensurate with the need to reduce risk across the sector for more vulnerable students, and to enhance the student experience in line with the goals of the *National Strategy for International Education 2025*.

Taken as a whole, the regulatory savings for Option 2 are approximately \$7.7 million.

REGULATORY IMPACT: ADDRESSING INFORMATION IMBALANCES: MARKETING PRACTICES, STUDENT ENROLMENT AND WRITTEN AGREEMENTS (STANDARDS 1 TO 3)

PROVIDERS

This proposal would result in a nett reduction in regulatory impost. The impact of a short-term, moderate increase in regulatory burden on providers would be outweighed in the longer term by the benefits of the changes to providers and students, resulting in an overall reduction in regulatory impost.

In the short-term, providers would need to undertake one-off administrative updates to written agreements, application forms and institutional marketing and policy documents.

This would include detail on cancellation fees in the case of student transfer (to reflect proposed amendments to Standard 7), information about the Tuition Protection Service and complaints and appeals processes, and students' responsibilities.

Providers would also be required to include information specific to individual students, to the written agreement (for example, conditions on enrolment and the person who is to receive any refunded fees). The majority of this information would be at the course or provider level. Providers would be able to streamline the application process by combining the application form and written agreement into a single document.

Students would be allowed to agree to written agreements by conduct (for example by paying fees), which would ensure that students who do not sign their written agreement are still covered by its provisions. This means student enrolment documentation – such as an application form – could be adjusted to allow providers to incorporate written agreement material, streamlining administrative processes in the long-term.

Complaints and appeals

Making pre-enrolment and written agreement requirements more explicit would assist students to make better choices. In the long term, the clarification of students' and providers' rights and obligations would result in an overall reduction in regulatory burden as it would forestall the emergence of disputes resulting in internal complaints and appeals to the provider. Rectifying areas of ambiguity would clarify students' and providers' rights and obligations at the outset and result in a significant reduction in disputes, complaints and appeals.

The Overseas Student Ombudsman (OSO) Annual Report (2015–16) states that it received 315 external complaints and appeals on private provider refund and fee issues. There is an approximate 57 per cent – 43 per cent split across public and private providers and it is assumed the total number of external complaints from public providers is around 417. Therefore, for all public and private providers, it is assumed that the total would be 732 (315 + 417).

The OSO has reported that it found in favour of the student in 31.6 per cent of cases (i.e., where the written agreement was non-compliant) since it began operations in April 2011 (76 complaints/appeals). Therefore, the reduction in external appeals is assumed to be approximately one-third of 732, or 244. The OSO has advised that it requires providers against whom a complaint or appeal is being made to provide certain documentation which is assumed to take one hour to provide.

Internal appeal is an initial stage in the appeals process, therefore it is estimated that the number of internal appeals conducted directly by providers would be in a range of 125 per cent to 133 per cent of the number of external appeals. Taking an average of 130 per cent, the total would be 317. Internal appeal is estimated to require a full working day for the provider to investigate, adjudicate and report on for each case.

STUDENTS

Current requirements do not fully address information gaps which uniquely affect students arriving in Australia to study. Option 2 would address these imbalances by aligning Standards 1 to 3, so that students are recruited in an ethical manner, and provided with accurate and transparent information at every step of the recruitment process.

Requiring providers to offer information at key points will ensure students are effectively exposed to the information they need on their education options, rights and obligations. All current and prospective students will have access to timely, comparable information on the range of providers they are considering which will assist the student to make the right choice of course and provider, regardless of their location. Students will receive the information they need before they reach the point of signing a written contract with the provider.

New provisions will improve the student and provider experience by clarifying students' and providers' rights and obligations at the outset. They will also support regulators to undertake compliance action against providers engaging in unethical recruitment practices. Finally, they will ensure that students who neglect to sign their written agreement, but who intend to study with the provider, are still covered by its protections.

In the long term, they will reduce administrative costs to students, as provider responsibilities will be set out more clearly in written agreements and students will not need to seek clarification from providers and the government as to their rights and obligations on an ad hoc basis.

Preventing the emergence of 317 internal and 244 external complaints and appeals would avoid a significant investment in students' time in terms of preparation and process. This would be in the order of a full working days' input from a student, or a total of 561 days per year.

GOVERNMENT

Similar to the above, state and Commonwealth Ombudsmen would benefit from a reduction in complaints and appeals across the sector. This proposal would reduce the regulatory burden on Government by approximately 244 days per year, as it would reduce the number of external appeals by approximately 244 cases per year, each of which is assumed to take Government a full working day to investigate and finalise.

REGULATORY IMPACT: ARRANGEMENTS FOR UNDERAGE STUDENTS (STANDARD 5)

PROVIDERS

Standard 5 sets out the administrative process relating to approval of accommodation and welfare arrangements. It does not currently contain any requirements relating to providers' obligations to ensure that arrangements remain suitable over time, and that children are safe and protected for the duration of the time they are studying away from their families.

Option 2 would require providers enrolling underage students, who had taken on responsibility for those students' welfare, to revise their policies to give effect to the new requirement that they verify the student's accommodation is appropriate to the student's age and physical needs at least twice yearly. While providers are already required to confirm the appropriateness of such arrangements, the National Code does not specifically require providers to undertake subsequent verification of ongoing arrangements. Including such a provision would address a key area of stakeholder concern with regard to maintaining appropriate welfare arrangements for younger students.

In addition, providers would need to confirm the student is supervised in homestay arrangements by an adult or adults who have appropriate clearances for working with children as required by the relevant state or territory regulatory body, and that welfare arrangements are maintained until the student turns 18.

Providers would be required to update processes for managing critical incidents for students aged under 18, to maintain accurate and up-to-date student records, and ensure appropriate reporting of alleged or actual child abuse.

These changes would reflect the shared responsibility of the Commonwealth and state and territory regulators for quality assuring education providers across the schools sector, and have been designed to complement, rather than duplicate, existing immigration law and state and territory child protection frameworks.

Based on feedback from AGSI and ISCA, a large number of providers already meet, or exceed, the proposed standards for checking arrangements at least twice yearly. Approximately 50 per cent of the 500 or so providers with these arrangements in place conduct a physical inspection of the student's accommodation arrangements twice yearly, with the remainder undertaking checks at least once yearly.

The introduction of these requirements would impose a moderate burden across the sector, with approximately 250 providers out of all 500 providers needing to undertake an additional check for each of their students every year. This could be undertaken on a "remote" basis, for example, a conversation with the student or email exchange with the accommodation provider, as the proposed amendments to the National Code do not stipulate that a site visit is necessary every time. Based on sector feedback, it is estimated that the average time would equate to one hour per student.

STUDENTS

The safety of all international students, and particularly younger students, is of critical importance to the reputation of international education in Australia. Stronger regulation for the welfare of younger students demonstrates Australia's commitment to the well-being of students aged under 18, and is appropriate in meeting the needs of this vulnerable group.

In particular, CISA has indicated that the quality of student accommodation is an important issue for international students, which is recognised by the changes to strengthen checks of younger students' accommodation.

These changes would not have a regulatory impact on students.

GOVERNMENT

These changes would address a key area of stakeholder concern with regard to maintaining appropriate welfare arrangements for younger students and will ensure Standard 5 stands as a credible, national reassurance to parents and students of effective standards of protection.

These changes would not have a regulatory impact on Government on top of existing Commonwealth, state and territory frameworks.

REGULATORY IMPACT: STUDENT SUPPORT SERVICES (STANDARD 6)

PROVIDERS

Providers would need to design and implement new policies and procedures to support students succeed in their studies and transition to life in Australia. Updating the information providers give to students is expected to impose a minor, one-off cost on providers (anticipated to be one business day per provider). Much of the required information would be easily assessable either through the provider's own internal documentation, or through the Fair Work Ombudsman website (for information to be provided to students on their work rights and support).

This change would support proposed amendments to allow providers greater flexibility in the delivery of online learning, without jeopardising the quality of support they receive.

STUDENTS

These changes will increase students' awareness of their entitlements, and in particular their rights at work. Students will be better protected and will have an enhanced living and learning experience in Australia.

The Council of International Students Australia (CISA), the national peak international student representative organisation, has indicated that worker exploitation is a key issue for the international student cohort.

GOVERNMENT

Providing better support to students will increase their awareness of their employment rights and Australia's reputation as a destination of choice. The status of overseas students in Australian workplaces has become a significant issue in recent years after a number of high-profile media reports uncovered numerous instances of overseas student exploitation, from underpayment of wages to poor conditions and instances of abuse. On a national level this has resulted in the establishment of the Migrant Workers' Taskforce by the Minister for Employment, Senator the Hon Michaelia Cash, in October 2016, which is using a whole of government approach to addressing the issue of migrant worker exploitation.

The FWO collects statistics on complaints on compliance and enforcement cases for international students. However, FWO has reported it does not anticipate a significant increase in student complaints based on its analysis of data trends.

REGULATORY IMPACT: STUDENT TRANSFERS (STANDARD 7)

PROVIDERS

Sectoral feedback from institutional administrators has strongly conveyed student transfer provisions under Standard 7 of the National Code impose a significant regulatory burden on providers by: implementing a transfer request policy; assessing individual requests for release; drafting release letters; and internal and external appeals processes. Based on feedback from university peak body Universities Australia, this can cost larger providers (such as universities) tens of thousands of dollars each year. There is little economy of scale as providers are required to assess each case individually.

Removing the requirement for students to request a release from their provider would give greater flexibility to students aged over 18 and protect their right to transfer providers freely as befitting their educational needs. The proposed changes would protect providers' financial investment in recruiting students. Providers would be able to charge a cancellation fee, which would also act as a disincentive to student transfers for frivolous reasons. It would also address a potential conflict of interest whereby providers making decisions on whether or not a student can transfer to another provider also have an incentive to maintain a student's enrolment (and fee-paying status).

Creating greater flexibility for students would result in a large regulatory saving to providers. Under the status quo, when students are successful in their request to transfer providers, their provider generates a release letter (approximately 35,000 across the sector per year,

based on PRISMS data). For students whose requests are not successful, providers offer reasons in writing which are specific to the student's case and the provider's transfer policy; and give students information on internal and external appeals processes.

Removing this requirement for all but a very small number of enrolments would also drastically reduce the number of appeals cases, in the order of 99 per cent, as most students would be able to move without seeking permission from the provider. Only students aged under 18 would need to request permission to transfer: this is approximately 291 enrolments out of a total of 35,449, or 0.8 per cent. In this way, approximately 400 external appeals processes would be avoided. The Overseas Student Ombudsman (OSO) has advised that it requires providers against whom a complaint or appeal is being made to provide certain documentation which is deemed to take one hour to provide.

The OSO Annual Report (2015-16) states that it received 174 external complaints and appeals on student transfer issues. There is an approximate 57 per cent - 43 per cent split across public and private providers and it is estimated the total number of external complaints from public providers is 230. For all public and private providers, it is calculated that the total number of complaints would be 404 (174 + 230).

In addition, it is estimated that the number of internal appeals conducted directly by providers as the first stage in the appeals process would be in a range of 125 per cent to 133 per cent of the number of external appeals (as not all appeal processes would reach the external appeal stage). Taking an average of 130 per cent, the total number of complaints would be 515. Internal appeals are estimated to require a full working day for the provider to investigate, adjudicate and report on for each case.

STUDENTS

PRISMS data shows that, at the time of visa grant, students in packaged courses need to study for an average of approximately 500 days before being eligible to transfer without requiring a release letter. This timespan far exceeds the time needed for students to settle in to study and life in Australia.

In requesting release from their provider, students are required to provide proof of an offer from an alternative provider. They also need to meet internal administrative requirements of the provider, as set out in the provider's policies and procedures. Students who are not successful in their application for transfer have the option of an internal or an external appeal if they are not satisfied with the outcome.

The reduction in internal and external appeals described above would reduce regulatory burden on the student. Assuming a student requires one business day to prepare for an internal or external appeal, Option 2 would result in a reduction of approximately 915 days

administration for students, entailing approximately 515 internal appeals and 400 external appeals.

GOVERNMENT

Similarly to the above, state and Commonwealth ombudsmen would experience a reduction of complaints and appeals across the sector. This proposal would reduce the regulatory burden on Government by approximately 400 days per year, as it would reduce the number of external appeals by the same number, with each case estimated to take the Government a full working day to investigate.

REGULATORY IMPACT: ONLINE STUDY (STANDARD 8)

PROVIDERS

Based on a feedback from the national regulators (the Australian Skills Quality Authority, or ASQA; and the Tertiary Education Quality and Standards Agency, or TEQSA) on the delivery of online units to overseas students, requirements relating to providing better support for students undertaking online study would affect approximately 75 per cent of registered providers delivering education to international students.

This estimate takes into account the expected increase in online delivery permitted under this option. One-off changes under this standard are estimated to require providers to spend approximately one full business day updating and approving the requisite changes.

STUDENTS

Students would benefit from these changes through a more flexible, modern approach to course delivery. For example in the tertiary education sector (both higher education and vocational education and training), course delivery has evolved significantly over past decades and online education is no longer the “poor cousin” of face-to-face learning. Providers have developed sophisticated online study, and are rethinking their delivery of education by utilising digital media and online resources to add value to the student learning experience.

Quality assurance processes of the national regulators (TEQSA for the higher education sector and ASQA for the VET sector) would ensure that all courses, whether delivered in online or traditional formats, would continue to be of high quality.

GOVERNMENT

These changes would not have a regulatory impact on the government.

REGULATORY IMPACT: ATTENDANCE MONITORING (STANDARD 8)

PROVIDERS

National Code requirements for monitoring attendance under Standards 10 and 11 place a regulatory burden on providers which is not commensurate to the benefits of overall quality provision in the international education sector.

While the DEEWR-DIAC Course Progress Policy (DDCPP) was based on increasing the flexibility to VET providers, the inconsistency in having two requirements across the VET sector (one under DDCPP and one under the National Code), is not ideal as the DDCPP is external to the ESOS legislative framework.

Despite the proposed removal of the DDCPP, providers would still have to monitor course progress and ensure that, unless exceptional circumstances apply, students complete their study within the expected duration of their student visa. However, providers would not need to mark attendance for each of their VET students across all providers, unless they have a condition imposed on their registration.

This option would bring all VET providers in line with one another and reduce overall regulatory burden in the VET sector. It also provides an opportunity for regulators to enforce attendance monitoring requirements in a targeted way for providers for whom it is warranted, based on previous non-compliance. The number of businesses estimated to be affected is:

the number of VET providers who have not implemented the DDCCP (169), minus

- the number of providers estimated to have attendance monitoring imposed as a condition of registration (26), estimated to be five per cent of the total number of VET providers [524]).

Across the 169 providers there are 43,837 students, or approximately 260 students per provider. The total number of VET providers whose regulatory burden would be reduced as a result of this change is approximately 143. The number of occurrences is the number of students per year at these 143 providers (approximately 259.75 multiplied by approximately 142.8, with a total of 37,093). Based on a saving for providers of 15 minutes per student, this would result in a total saving of 9273 hours per year, or 1236 working days.

Counselling students, internal and external appeals

Consequential to the amendment removing the requirement for providers to monitor attendance unless it is imposed as a condition of registration, most providers would no

longer need to contact and counsel students at risk of not meeting attendance requirements, nor would students seek access to internal and external appeal processes.

The Overseas Student Ombudsman (OSO) Annual Report (2015–16) states that it received 115 external complaints and appeals on attendance monitoring issues. There is an approximate 57 per cent - 43 per cent split across public and private providers and it is assumed the total number of external complaints from students at public providers is 151. For all public and private providers, the total complaints would be 266 (115 + 151).

Removing the requirement for 95 per cent of VET providers to monitor attendance would also avoid approximately 95 per cent of external appeals processes, or approximately 252 of the 266 complaints. The OSO has advised that it requires providers against whom a complaint or appeal is being made to make available certain documentation which is assumed to take one hour to supply.

Internal appeal is an initial stage in the appeals process, therefore it is estimated that the number of internal appeals conducted directly by providers would be in a range of 125-133 per cent of the number of external appeals. Taking an average of 130 per cent, the total for appeals would be 328. It is estimated internal appeal processes would take one full working day for both the provider and the student.

STUDENTS

It is assumed that an external appeal would require a full working days' input from a student. These changes would result in a regulatory saving of approximately 580 working days for students, as both internal and external appeal cases require approximately a full working day.

GOVERNMENT

These changes would not have a regulatory impact on the Government.

OPTION 3 – MORE NUANCED OPTION INCORPORATING STAKEHOLDER FEEDBACK

Analysis of this option is based on data extracted from the PRISMS and other sources in 2016. The analysis was conducted following the release of the April 2016 National Code draft to key peak bodies and national regulators. Option 3 builds on the April 2016 draft, identified in the previous section as Option 2.

Taken as a whole, the regulatory savings for Option 3 are approximately \$2.2 million.

REGULATORY IMPACT: ADDRESSING INFORMATION ASYMMETRIES: WRITTEN AGREEMENTS (STANDARD 3)

PROVIDERS

Feedback on the National Code has indicated that providers view the changes proposed under Option 2, relating to the provision of information in written agreements, as overly detailed and burdensome. Option 3 proposes a means to streamline these requirements for providers by allowing them to use hyperlinks for certain information to be included in the written agreement with students. This would make the provision of information more convenient for students and providers. It may also result in minor regulatory savings, but these are not anticipated to be significant.

STUDENTS

These requirements are more restrictive on students in comparison to option 2, however it ensures that students are provided with the information needed to make a well-informed decision on their course and provider.

GOVERNMENT

These provisions would ensure that the Government and national regulators have the information necessary to monitor provider compliance with requirements relating to the provision of information to students.

REGULATORY IMPACT: ARRANGEMENTS FOR UNDERAGE STUDENTS (STANDARD 5)

PROVIDERS

Feedback from stakeholders has indicated a desire to strengthen provisions targeted at protecting the welfare of students aged under 18 whose accommodation and welfare arrangements are approved by the provider. Currently, where a student transfers providers, neither the releasing provider nor the receiving provider is under any obligation to check the student's welfare arrangements. This creates a lack of continuity throughout this transition for many students.

Changes under Option 3 would require providers to ensure there is no gap in welfare arrangements if an under 18 student transfers. The providers concerned would need to negotiate a release date for the receiving provider to take on responsibility for the student. The receiving provider would not be able to enrol the student to commence on a date later than the end of the Confirmation of Enrolment for the releasing provider.

This would impose a moderate administrative burden on releasing and receiving providers. It is estimated that for each case of a student aged under 18 transferring, of which there are

291 per year, it would take a total of one hour for the providers to consult on an appropriate date for the student to transfer, and follow up in their administrative processes.

Under Option 3, providers would also be required to implement processes for selecting, screening and monitoring third parties. It is estimated that determining these processes and finalising them in policy would take approximately one business day per provider.

STUDENTS

This change would extend on Option 2 to protect the welfare of younger students while they are living in Australia, and would further demonstrate Australia's commitment to the welfare of this underage cohort.

These amendments would strengthen the current framework around the provision of accommodation and welfare to underage students, by providers and by the third parties they engage to deliver accommodation. The provisions would bolster and enhance protection mechanisms for children while they are living and studying in Australia.

These changes would not have a regulatory impact on students.

GOVERNMENT

These changes would provide further assurance, both domestically and internationally, of the priority Australia places on protecting minors from harm.

They would not have a regulatory impact on Government on top of existing Commonwealth, state and territory frameworks.

REGULATORY IMPACT: STUDENT TRANSFERS (STANDARD 7)

While the requirement to draft release letters has been removed under Option 3 and replaced with an automated PRISMS process, the requirement that providers assess requests for release according to their documented transfer policy would remain.

Maintaining the transfer restriction under this option responds to stakeholder concerns that lifting transfer restrictions could negatively affect visa integrity and send the wrong message to education agents that students can be easily induced to move to lower cost or to less reputable providers once they arrive in Australia.

These changes would reduce the time taken to process transfer requests and remove the need for written evidence of release while capturing a record of transfer approval. Providers would no longer need to draft letters of release and the overall regulatory burden would be

reduced in the order of more than 2,300 working days per year (or 17,500 hours per year to draft approximately 35,000 letters, each taking half an hour).

STUDENTS

In developing these amendments to Standard 7 the department consulted with CISA. CISA agreed continuing the restriction on transfers would benefit students by ensuring they have time to adjust to their education provider and to living in Australia. Students who are experiencing culture shock and settling into their new studies, in a language of which they are often not native speakers, may make quick decisions about changing providers. This option would neither increase nor decrease the regulatory burden on students compared with the status quo.

GOVERNMENT

This would not have a regulatory impact on Government but systematising the method for release would allow Government to track student movement and ensure compliance with Standard 7.

REGULATORY IMPACT: ATTENDANCE MONITORING (STANDARD 8)

PROVIDERS

VET providers will no longer be required to counsel students at risk of not meeting minimum attendance requirements (unless attendance monitoring is imposed as a condition of registration). There were 1362 incidences of an intervention strategy being implemented across the 169 VET providers that monitor attendance in 2016-17.

The overall number of VET providers that would be required to monitor attendance as a condition of their registration would be limited (estimated at five per cent (26) of the total number of VET providers [524]). It is estimated that 95 per cent of counselling processes would no longer be necessary (1294 total). Assuming each process takes half a working day, the amount of time saved through this measure is approximately 647 working days.

This change would reduce regulatory burden while giving assurance that appropriate oversight of providers and support for students will remain in place.

STUDENTS

These changes will ensure the National Code aligns with the reform of VET regulatory and funding frameworks made in recent years in order that students receive high quality education while they are in Australia.

GOVERNMENT

These changes will ensure that changes to regulatory frameworks made to the VET sector in recent years are accounted for and supported in these changes.

6 What is our preferred option and why?

Option 3 builds on the streamlined and modernised version of the National Code proposed under Option 2. It incorporates peak body, provider and other stakeholder feedback received over a two-stage consultation process in 2016-17 to ensure that in reviewing the National Code, the Government does not create unintended consequences for the sector which could damage Australia's international reputation for quality education and impose unreasonable regulatory burden on providers. This is particularly pertinent considering the number of education sectors which come under the ESOS umbrella (VET, higher education, schools, foundation courses and ELICOS courses).

Option 3 addresses stakeholder feedback by:

- clarifying institutions may use hyperlinks in written agreements to provide supplementary material, with key details of the contract still to be explicitly included in the written agreement
- introducing stronger safeguards for students aged under 18 years by requiring providers to: regularly check on students' accommodation and welfare arrangements; have specific policies for selecting, screening and monitoring third party arrangements; provide information on who to contact in emergency situations and how to report actual or suspected abuse; have a specific critical incident policy for underage students; and ensuring there is no gap in welfare arrangements where an under 18 student transfers between providers
- reducing regulatory burden by automating the process for student transfers between providers, and providing clarity with regard to aspects of students' circumstances providers may consider in assessing applications for transfer
- introducing greater flexibility for students and providers with a slight increase in the allowable proportion of study undertaken online
- keeping minimum attendance requirements at 80 per cent, rather than 70 per cent, in light of recent quality and compliance issues affecting certain VET providers.

7 Consultation on options for change

APPROACH

Consultation on the National Code grew out of stakeholder consultations on reform of the ESOS legislative framework in 2014 and 2015.

The department carefully engaged with stakeholders at the outset of the National Code review process to ensure broad support for proposed changes without jeopardising the quality and rigour of governmental regulatory processes, particularly with regard to areas of greater sensitivity or contention. This included numerous group workshops and one-on-one consultations with interested stakeholders on draft proposals throughout 2016 and 2017.

The Council of International Students of Australia (CISA) was included in workshops and one-on-one meetings, in acknowledgement of the impact that National Code changes may have on the student cohort and to capture the student perspective. As the national peak body, CISA is the most appropriate organisation to represent the interests of overseas students in Australia, and by extension, those of their parents and extended families in the home country.

In September 2016, the Minister approved a two-stage consultation process based on the draft National Code released in April 2016. The first stage, which took place from September 2016 to January 2017, included targeted discussions with key peak bodies and regulators. The second stage was broad online public consultation with a call for written submissions from all interested parties.

FIRST STAGE CONSULTATION

First stage consultation included group workshops, face to face meetings and teleconferences on proposed amendments. Key stakeholders involved included:

- English Australia
- TAFE Directors Australia
- Council of Private and Higher Education
- Australian Council for Private Education and Training
- Council of International Students Australia
- Universities Australia
- Independent Schools Council Australia
- International Education Association of Australia

- The Tertiary Education Quality and Standards Agency (TEQSA)
- The Australian Skills Quality Authority (ASQA)
- state and territory regulators with responsibility for the regulation of the international schools sector
- the Department of Immigration and Border Protection (DIBP).

The department also convened an Under 18 Working Group, which included state and territory regulators, Australian Government Schools International, Independent Schools Council of Australia, English Australia, and the Department of Immigration and Border Protection, to refine arrangements relating to student visa holders aged under 18. This group will continue to operate beyond the National Code review and is a vehicle for discussion between the Commonwealth and state and territory governments on how best to support younger international students.

The key themes emerging in the first stage of consultation included the need for:

- Standards 1 - 3: More comprehensive, stronger consumer protection measures for students throughout the marketing, acceptance of enrolment and written agreement processes
- Standard 5: Stronger and clearer requirements for providers taking responsibility for approving arrangements for students under the age of 18 to ensure their welfare and protection
 - There was broad support for the provisions in this standard, however DSAs expressed concern that "gaps" in welfare arrangements created when an underage student transfers between providers could place minors in an unnecessarily risky position when studying in Australia.
 - Similarly, DSAs expressed concern that the outsourcing of accommodation of welfare arrangements to third parties created a false impression that providers would no longer be responsible for ensuring students have appropriate accommodation and welfare arrangements for the duration of their course.
- Standard 7: Revision of transfer of provider requirements to enhance consumer protections for students and reduce administrative burden for providers
 - All peak bodies advocated for retaining the restriction on student transfer until the student has completed the first six months of the principal course, including CISA. Peak bodies were concerned that removing the restriction would make it easier for unscrupulous providers and agents to convince students to move to a course which may be unsuitable in terms of level or content.

- This has implications for maintaining visa integrity. Students' visa outcomes impact the original recruiting provider's risk rating, rather than any other provider the student transfers to. This means that if a student transfers providers and subsequently has his or her visa cancelled, it affects the original recruiting provider's risk rating. The risk rating is used by DIBP to determine evidentiary requirements for future students applying for a visa at that provider.
- Standard 8: Updating requirements for monitoring and reporting on course progress and attendance
 - Key peak bodies agreed that in order to help manage risk in the VET sector (for providers monitoring attendance as a condition of their registration), there should be stricter student attendance requirements.
- Standard 8: Increased flexibility and updating of requirements for the provision of online and distance education to student visa holders.

SECOND STAGE CONSULTATION

Full public consultation and a call for submissions on proposed changes in took place February 2017 for four weeks as part of the second stage of consultation. The Overseas Students Ombudsman and the Fair Work Ombudsman were also consulted in the final stages of refining the draft.

Overall, the key stakeholder feedback from the public consultation process focused on:

- Standard 3: The level of detail required in information given to students in written agreements may be difficult for providers to provide and confusing for students to understand.
- Standard 5: Many providers interpreted this provision as a physical site visit of accommodation arrangements, and expressed concern that a visit every six months could be onerous. The draft National Code was amended to refer to "verifying" that the student's accommodation is appropriate to the student's age, which may include regular interviews with the student or homestay parents.
- Standard 7: Providers advocated for stronger monitoring of National Code requirements to ensure institutions could not enrol students who have not been released by their original provider. Some providers are concerned that listing circumstances where students should be granted a release will limit the provider's discretion to refuse a transfer request and enable students to transfer more easily.
 - With the aim of facilitating greater compliance, the Government will revise the guidance that given to providers on assessing student transfer requests, once the revised National Code is in place.

- Standard 8: Providers requested further clarity regarding the definition of ‘online learning’. In particular, they suggested the definition restricts innovation as it did not take into account distant education and circumstances where asynchronous modes of delivery are used.
 - The Government incorporated stakeholder feedback on asynchronous modes of delivery and distance education to ensure greater clarity. The department aims to ensure this definition supports innovative delivery and supports student learning outcomes.

8. Evaluation of the effects of the preferred option

The Government will continue to work closely with all stakeholders to monitor the effectiveness of the measures. Implementation should be reviewed within five years from the date of commencement of the changes to the TPS requirements. This review may occur as part of a broader review of the effectiveness, efficiency and appropriateness of the ESOS framework.

Summary of proposed changes to the National Code

Overview

- Parts A, B and C of the 2007 National Code have been streamlined to summarise the role of the National Code and its purpose, the role of the regulators to reflect the creation of the ESOS agency in the ESOS Act and the aspects of the National Code that apply to registration activities in Part A. Part B contains the standards. Registration requirements in part C have been included in standard 11 of the revised National Code draft.

Standard 1 – Marketing information and practices

- Standard 1 retains the focus on marketing information and practices but has been amended to more specifically ensure providers do not engage in misleading or deceptive behaviour. This requirement extends to services provided through an education agent.
- It includes specific provisions preventing a provider from suggesting it can secure a migration or education assessment outcome.
- Standard 1 requires providers not to provide any false or misleading information on its courses, or outcomes associated with those courses. This is consistent with Australian Consumer Law. This includes information on the provider's association with any other providers, work-based or work-integrated learning opportunities, and prerequisites including English language in marketing material.

Standard 2 – Recruitment of an overseas student

- Standard 2 continues to focus on the enrolment process and makes minimal changes to the 2007 version but more clearly lists what a provider must inform a student of before they enrol regarding course content, including online and work related learning.
- It incorporates the requirements relating to course credit, previously in standard 12.
- It includes a requirement to provide information about the process for approving welfare and accommodation arrangements for students under 18.
- The standard continues to require information on costs of living(?) and accommodation options to be given to the student.

Standard 3 – Formalisation of enrolment and written agreements

- Standard 3 continues to focus on the formalisation of enrolment and written agreements. Its scope has been broadened to give providers and students more specific information about what should be in a written agreement. Previously requirements related mainly to student refunds.
- The new standard clarifies that a written agreement may take any form provided it meets the requirements of the ESOS Act and the National Code. Providers must now provide information in written agreements on:
 - course content, including online learning and work related learning
 - prerequisites

- conditions on enrolment
- tuition fees payable, the period to which the tuition fees relate and options for payment (including that the student may choose to pay more than 50 per cent of their tuition fees before their course commences in accordance with the ESOS Act)
- any additional non-tuition fees associated with reassessment of study outcomes, deferral, late payment of fees etc.
- who receives the refund
- the Tuition Protection Service
- the student's responsibility to keep a copy of the written agreement and receipts
- set out the circumstances in which personal information about the student may be shared by government agencies
- outline the registered provider's internal and external complaints and appeals processes,
- state that the student is responsible for keeping a copy of the written agreement, and receipts of any payments of tuition fees or non-tuition fees
- only use electronic links in the written agreement to provide supplementary material.

Standard 4 – Education agents

- Standard 4 requires providers to enter into a written agreement with each education agent it engages to formally represent it, consistent with the current National Code.
- It now requires providers to enter and maintain the details of education agents with whom they have a written agreement in PRISMS.
- It ensures the agent has up to date and accurate information, does not engage in false or misleading conduct, declares and avoids conflicts of interest, observes appropriate levels of confidentiality and transparency in dealing with students, and acts honestly and in good faith.
- Standard 4 also makes explicit reference to the Australian International Education and Training Agent Code of Ethics.

Standard 5 – Younger students

- Standard 5 continues to define requirements of providers who are approving welfare arrangements for students under the age of 18 but clarifies how certain arrangements must be made, in particular to ensure there are no 'gaps' in welfare arrangements.
- Standard 5 clarifies providers who enrol students under the age of 18 must meet any Australian, state or territory legislation or other regulatory requirements relating to child welfare and protection appropriate to the jurisdiction(s) in which they operate.
- It clarifies that information given to students on who to contact in emergency situations, and in seeking assistance in the case of actual or alleged abuse, must be age and culturally appropriate.
- It requires providers to give information on how a student under 18 can report any incident or allegation involving actual or alleged sexual or physical abuse, in response to concerns raised by state regulators during consultations.
- It clarifies that, where a provider is no longer able to approve welfare arrangements, all reasonable steps must be taken to notify the student's parent or relative immediately.

- It requires providers to regularly verify that students' accommodation is appropriate to the student's age and physical needs.
- It also clarifies that providers must report to the Department of Immigration and Border Protection if:
 - the student will be cared for by a parent or nominated relative approved by Immigration and a Confirmation of Appropriate Accommodation and Welfare (CAAW) is no longer required
 - the registered provider is no longer able to approve the student's welfare arrangements.

Standard 6 – Student support services

- Standard 6 clarifies providers must offer reasonable support to students to enable them to achieve expected learning outcomes regardless of the student's mode of study, at no additional cost to the student.

Standard 7 – Student transfers

- Standard 7 clarifies the provider must have a policy for assessing student transfer requests prior to the student completing six months of their principal course, and this policy must be made available to staff and students.
- It clarifies the student must provide a valid enrolment offer from another provider in lodging a request to transfer.
- If a transfer is to be refused, the standard requires providers to notify the student of their intention to refuse the request. The provider must not finalise the refusal in PRISMS until the student has been given an opportunity to access the complaints and appeals process, or the student withdraws from the process, or if the process finds in favour of the provider.
- The standard clarifies the provider should grant a transfer request where they have assessed that:
 - the student has been reported because they are unable to achieve satisfactory course progress at the level they are studying, even after engaging with the provider's intervention strategy
 - there are compassionate or compelling circumstances
 - an appeal (internal or external) on another matter results in a decision or recommendation to release the student.
 - The standard requires providers to include in their transfer policy the circumstances which they consider as reasonable grounds to refuse the transfer, and a reasonable timeframe for assessing and replying to the student's transfer request having regard to the restricted period.

Standard 8 – Monitoring course progress and attendance

General requirements

- Standard 8 now relates to monitoring student progress and student visa requirements, previously in standards 9 to 13.
- All providers must ensure students comply with their visa conditions relating to course attendance, progress and completion. These vary according to the sector of education.

- Under the new standard, providers still cannot extend the duration of a student's enrolment unless:
 - there are compassionate or compelling circumstances, or
 - the registered provider has implemented or is implementing an intervention strategy because the student is at risk of not meeting their visa conditions, or
 - it is an approved deferral or suspension of the student's enrolment.
- If the duration of the student's enrolment is extended, the provider must advise the student of any potential impacts on their visa.

Monitoring attendance and/or course progress

- Standard 8 continues to require providers to have processes for determining the point at which the student has failed to meet satisfactory course attendance or course progress.
- Higher education and VET providers must monitor course progress regularly and implement an intervention strategy to assist a student not making satisfactory course progress. Higher education providers are not required to monitor attendance.
- School, ELICOS and foundation providers must monitor both course progress and attendance. The requirement for attendance is 80 per cent of the scheduled contact hours for the course. These providers must also assist students through an intervention strategy if they are not making satisfactory course progress.
- The requirement for attendance monitoring now only applies to VET providers if this is set as a condition of registration by the ESOS agency for the provider (if the provider is considered higher risk). The minimum attendance requirement, if imposed, is 80 per cent of the scheduled contact hours for the course.

Reporting student visa breaches

- The National Code continues to outline the process for dealing with students who do not meet course progress and (if applicable) attendance requirements, which are visa conditions.
- Under standard 8, providers must continue to report students who do not meet course progress and/or attendance requirements and ensure the student is notified of the impending report and has the right of appeal.
- However, a registered provider may decide not to report a student enrolled in a school, ELICOS and Foundation Program course if the student provides genuine evidence of compassionate or compelling circumstances.
- A provider may decide not to report a VET student for breaching the attendance requirements if the overseas student is still attending at least 70 per cent of the scheduled course contact hours and the student is maintaining satisfactory course progress.
- The standard clarifies providers must only report a breach of course progress or attendance if the internal and external complaints processes have been completed and the breach has been upheld; or the student has chosen not to access the internal or external appeals process; or the student withdraws from the internal or external appeals process.

Online learning

- Standard 8 maintains the existing provision that prevents exclusively distance learning for a student on a student visa.

- Only one-third of a course may be undertaken online by higher education and VET students on a student visa. As is the case now, providers must ensure that students undertake at least one face to face unit in each compulsory study period.
- The standard clarifies that online learning does not include the provision of online lectures, tuition or other resources that supplement scheduled classes or contact hours.
- It stipulates that a provider must ensure that in each compulsory study period for a course, the student is studying at least one unit that is not by distance or online learning, unless the student is completing the last unit of their course.

Standard 9 – Deferring, suspending or cancelling the student’s enrolment

- Standard 9 now relates to deferring, suspending or cancelling the student’s enrolment (previously standard 13).

Standard 10 – Complaints and appeals

- No policy changes.

Standard 11 – Additional requirements

- Standard 11 includes criteria the provider must demonstrate to the ESOS agency in applying to register a full-time course at a location, based on Part C of the current National Code.