

THE SCHOOLS SECTOR AND THE NATIONAL CODE 2007

ACT/NSW ISANA State Conference 2007 - **Getting it Right: new views on the National Code**

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Introduction

The Independent Schools Council of Australia is the peak body representing over 1000 Australian independent schools. ISCA represents the interests of the independent school sector on national policy issues and on international education ISCA also represents the Catholic sector. For international education this mainly involves dealing with the Department of Education, Science and Training (DEST) and the Department of Immigration and Citizenship (DIAC) on broad policy issues such as the student visa program and the *Education Services for Overseas Students Act* (ESOS Act).

Review of the ESOS Act and the National Code

The ESOS Act and the National Code 2007

- Review of the ESOS Act 2000 began in 2004
- Legislative changes including National Code 2007
- National Code 2007 has become a set of **standards for providers** with implementation date of 1 July 2007
- Funding for transition support projects provided under National Code Transition Support Programme by DEST



Following the review of the ESOS Act, which began in 2004, there have been significant changes to both the Act and the National Code for providers and registration authorities. Broadly speaking, for providers the National Code has been turned into a set of standards. The National Code 2007 comes into effect on 1 July 2007.

In 2006 ISCA received funding from DEST under the National Code Transition Support Programme to undertake a project to assist non-government schools comply with the National Code 2007.

National Code 2007: transition support handbook for non-government schools

National Code 2007: Transition support handbook for non-government schools

- Legislative environment
- General information regarding the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS)
- Detailed guide to the standards required by the National Code 2007
- Sample documentation, demonstrating best practice compliance with the new standards
- Quick Compliance Checklist
- Connections Matrix (legislation & standards)



ISCA decided that the best way to assist non-government schools was to produce a handbook which would not only outline all the requirements of the Code but also provide sample policy documents to illustrate ways for schools to comply with the National Code 2007.

Like the Explanatory Guide, the handbook provides several examples of ways to comply with the different standards and, like the Guide, has Questions & Answers. In the handbook these have been tailored specifically to the schools sector.

The main parts of the handbook are:

- Background on legislative environment in which we operate
- General process information regarding the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS)
- detailed guide to the STANDARDS required by the National Code 2007
- Sample documentation, demonstrating best practice compliance with the new standards
- a Quick Compliance Checklist
- a Connections Matrix of the standards and relevant legislation

The version on ISCA's website will be updated in the next few weeks based on feedback we've had and further questions that have come up, and will include some new sample documents.

Key Areas of Compliance for schools

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- Younger students
- Written agreements with agents
- Written agreements with students
- Course attendance and progress
- Change of provider and refunds
- Complaints and appeals
- Deferment and suspension



Key areas which schools need to look at to comply with the National Code 2007 include:

- Younger students
- Agreements with agents
- Agreements with students
- Course attendance and progress
- Change of provider and refunds
- Complaints and appeals
- Deferment and suspension

Standard 5 - Younger students

Standard 5 - Younger students

- **Nominate dates** for which school will approve accommodation and welfare arrangements for students under 18 yrs
- New standard aims to provide clarity for providers
- Need to be aware of pathway issues i.e. **gaps** in accommodation and welfare arrangements



While the schools sector is not the only sector which enrolls students under the age of 18, it is the only sector in which these students predominate. Issues of pastoral care and care for minors are ones which we feel the school sector excels at but at the same it can be

problematic and there have been recurring questions from schools for some time regarding at which point schools' responsibilities for these students ends.

Largely in response to this, there have been some changes to the requirements for schools in the National Code 2007. Standard 5 now requires that schools nominate the dates for which they will accept responsibility for the accommodation and welfare arrangements for students under the age of 18. Of course this won't always be required. Some under 18 year old students will have other DIAC approved arrangements in place such as living with a parent or a DIAC approved suitable relative.

This issue was raised recently at an ESOS information session as there is a belief that currently schools are not responsible for students under the age of 18 after they finish their studies. In fact DEST and DIAC have always interpreted the responsibility of schools towards under 18 year old students for whom they have approved arrangements to end only when the student's school visa had come to end. So for a year 12 student who was under 18, this could have been until March the following year.

So this change to the Code does in fact provide schools with more clarity regarding the period for which they are actually taking responsibility for approving the arrangements of the student.

What schools will need to be very aware of is how this standard will affect students' pathways if they are here to do more than just a school level course. DIAC will not accept gaps in a student's accommodation and welfare arrangements and will require them to go home. Schools will need to liaise with any preliminary ELICOS providers to ensure students are always 'covered'. At the other end, where students go on to tertiary studies, there may be an opportunity for some schools who are willing to provide accommodation and welfare arrangements for this period if the student does not want to go home. It is up to each school to decide what their policy in this area will be.

Standard 3 - Written agreements with students

Standard 3 – Written agreements with students

- Written agreements now required with **every student**
- Schools can use either enrolment form or have separate written agreement
- Agreement must be signed **before** or at the same time the school accepts any course money
- Course monies include all fees payable in order to undertake course



Standard 3 requires that schools have written agreements with every overseas student and, in the case of under 18 year olds, their parents. Schools will already be requiring

students and parents to sign enrolment applications and they can either choose to use their enrolment form as their written agreement or to have a separate written agreement that is signed after the student is accepted by the school.

There are pros and cons for both. The National Code 2007 has a list of information that must be included in the written agreement. If a school chooses to use its enrolment form for the written agreement it needs to ensure it includes all the items specified in the National Code. These are:

- to identify the course or courses in which the student is to be enrolled and any conditions on enrolment
- an itemised list of course money payable
- information in relation to refunds of course money
- the circumstances in which personal information may be shared and
- the student's obligation to notify the school of a change of address while enrolled in the course.

If using the enrolment/application form, schools will need to note that upon acceptance of the student the form becomes the written agreement. For students who are accepted into a different course to the one indicated on the enrolment form, if only the course name changes the school can amend the form by hand and have both parties sign it again. If more than the course name changes, for example the course fees are different, then the school will need to have a new separate written agreement.

This is because the written agreement has to indicate the course the student is enrolled in and the course monies payable for that course. For this reason schools might consider using a separate document for their written agreement.

The sample agreement in the handbook is set out as a separate document so that schools can clearly see what the required inclusions are. It also suggests some optional inclusions that might be useful, such as confirmation of the dates for which the school is accepting responsibility for approving the student's accommodation and welfare arrangements if this is the case.

Finally, providers cannot accept any course money until the written agreement has been signed. Course monies include all fees payable for the course (such as additional materials costs, library fees or fees for excursions if these are compulsory), not just the course fees.

Standard 4 – Written agreements with agents

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- Need to have written agreements with all agents who **formally** represent the school
- Education agents must agree to comply with the ESOS Act
- Schools need to have **monitoring systems** in place
- Can still accept enrolments from agents representing parents without a written agreement



Under this standard, schools are required to have written agreements with every agent who formally represent them. However this does not preclude schools from accepting students from agents who represent parents.

Written agreements must include the requirement that agents comply with the ESOS Act and on-going monitoring to ensure they are ethical and professional. If they are found not to be, then schools are required to cease their agreement and no longer accept students from that agent.

There are a number of suggestions for ways to monitor agents in the handbook and also a sample written agreement. It is also important the schools get any agreement checked by the school's lawyers as they are legal contracts. They do however enable schools to specify clearly what they expect of their agents and what is permissible for an agent to do on a school's behalf.

Standard 7 - Change of provider

Standard 7 - Change of provider

- No transfer period down to **6 months** from 1 year
- Students under 18 must have parental permission and have accommodation and welfare arrangements approved by new provider
- Also applies to preliminary courses in a package of courses
- Schools can strengthen refund policies



The period for which students are restricted from changing provider has been lowered from one year to 6 months. Schools will be required to have a policy stating under what conditions students will be granted a letter of release before the end of the first 6 months. Typically this would be only in very specific circumstances such as if their accommodation arrangements changed and travel time became an issue. There is a sample policy document in the handbook with examples.

A student must have a valid enrolment offer in order to request a letter of release and a school can only grant a letter of release to a student under 18 years of age if:

- the school has written confirmation that the student's parent(s)/legal guardian supports the transfer
- the enrolment offer also confirms that the receiving school will accept responsibility for approving the student's accommodation and welfare arrangements

If a school does not grant a letter of release, the National Code specifies that the student has the right to appeal.

The 6 months also applies to preliminary courses packaged with the principal course. Students wishing to transfer out of a preliminary course in these circumstances would be required to apply for a letter of release and would have to go back to the principal provider for their principal course.

Schools may also wish to look at their refund policies in light of the change to 6 months and may wish to strengthen those. There is a sample policy in the handbook.

Standard 8 - Complaints and Appeals

Standard 8 - Complaints and appeals

- Schools must have internal procedures and arrangements in place for **external appeals process**
- The complaints and appeals processes must meet the requirements of the National Code 2007
- A student's enrolment must be **maintained** while the complaints and appeals process is taking place



Schools must have an internal complaints and appeals process in place with arrangements for an external appeals process. All schools would have these systems in place already, but we have also provided a sample policy document in the handbook to take into account the requirements of the National Code 2007. The handbook also

provides examples of possible external appeals bodies. Schools should ensure that the entity they intend to use for this purpose deals with this type of dispute.

The requirements for a school's complaints and appeals processes are;

- there is a process for lodging a formal complaint or appeal if the matter cannot be resolved informally
- each complainant has an opportunity to present their case at minimal or no cost
- each party may be accompanied and assisted by a support person at any relevant meetings
- the complainant is given a written statement of the outcome, including details of the reasons for the outcome
- the process commences within 10 working days of the formal lodgement of the complaint or appeal and supporting information and the process is finalised as soon as practicable.

Schools must maintain the enrolment of students while the complaints and appeals process is on-going. What that means is up to the school to determine; however schools should take into account that if the student's case is upheld, the student will be able to continue his or her studies and should not be educationally disadvantaged.

Standards 10 & 11 - Course attendance and progress

Standards 10 & 11 - Course attendance and progress

- Course progress to be assessed at the end of every term/semester
- Attendance to be assessed regularly
- Attendance requirement is 80% with scope for reporting at 70% (e.g. due to illness)
- If school wants to use a higher percentage then must be included as part of **course progress policy**
- Reporting subject to school's complaints and appeals process



The National Code 2007 requires that schools have policies for monitoring both course attendance and course progress. The National Code now gives schools more responsibility in assessing whether visa conditions have been breached and assessing compassionate and compelling circumstances as opposed to DIAC's current decision making role.

It is up to schools to decide how they will assess adequate course progress. The National Code only specifies minimum requirements for implementing an intervention policy.

The National Code 2007 specifies that attendance is to be assessed regularly. This is different wording to the current National Code which specifies fortnightly. Regular assessment means that attendance should be monitored in a way that a school can judge when a student is in danger of not attending at the required level and when the student is no longer meeting the required level for the study period. If a school's processes for fortnightly assessment are working well then there is no reason to change the assessment period.

The attendance measure has been lowered to 80% with scope for not reporting the student until they reach 70% attendance if a school judges that there are compassionate and compelling circumstances and this is in line with the school's policy.

If a school wishes to have a higher attendance requirement than 80%, it can do so but this needs to be part of the school's course progress policy. For example, the policy would say that for a student to achieve satisfactory course progress, they would need to have attendance of greater than, say, 90%.

DEST have strongly suggested that schools do not say they want 100% attendance as the wording of the National Code is such that absences due to illness may not be taken into account when calculating attendance. If a school said they expected 100% attendance and the student had one sick day then they'd be in breach of their visa conditions.

Breaches for course attendance and progress are both subject to the school's complaints and appeals processes. Schools are advised to wait the full period allowed for an appeal before reporting a student.

The handbook has a sample course progress and attendance policy which relates to the 80% attendance requirement. We will be adding one with a higher than 80% requirement soon.

Standard 13 – Deferment, suspension and cancellation

Standard 13 – Deferment, suspension and cancellation

- Schools must have **documented procedures** for assessing, approving and recording a suspension or deferment of studies
- Compassionate and compelling circumstances or student misbehaviour
- For misbehaviour easier to **exclude from class** for short periods (no complaints and appeals process)



The National Code 2007 will allow providers to defer a student's commencement of studies or suspend their studies after commencement using PRISMS to report and change or issue new COEs.

The National Code 2007 requires schools to have documented procedures for assessing, approving and recording a suspension or deferment of studies. These can be either student initiated or school initiated. Where a student applies for a deferment or a suspension, assessment of applications for deferment and suspension will be based on the student's providing evidence of compassionate and compelling circumstances. A school would initiate the process where it intends to suspend a student for misbehaviour. Under Standard 2, students must be told of the grounds for deferment, suspension and cancellation prior to enrolment.

DEST have advised however that for short periods of suspension due to misbehaviour, which is most likely to occur at the schools level, it is easier for schools to 'exclude from class' for short periods rather than go through the PRISMS based suspension process. In this way the action is not subject to the school's complaints and appeals process.

Standard 13 – Deferment, suspension and cancellation cont.

- If suspension for longer than 28 days students must return home
- Suspension longer than 6 months will result in visa cancellation
- **Extenuating circumstances** relating to the welfare of the student allow the school to cancel a student's enrolment prior to the completion of the complaints and appeals process



If the suspension of studies is for longer than 28 days then students must return home. Suspension of longer than six months will result in visa cancellation. It is recommended that students wishing to suspend their studies for more than 6 months be directed to their local DIAC office to discuss the ramifications and to explore alternative options.

Standard 13 also covers cancellation. The main thing to note is that any cancellation of enrolment is subject to the school's complaints and appeals processes except where the school cancels a student's enrolment when extenuating circumstances relating to the welfare of the student apply.

This allows schools to suspend or cancel the student's enrolment prior to the completion of the internal complaints and appeals process. It is important to note that use of 'extenuating circumstances' by the school does not remove the student's right to appeal. The student will still be able to appeal under the terms of the school's complaints and appeals policy whether he/she is in Australia or in their home country.

'Extenuating circumstances' include that the student:

- refuses to maintain approved welfare and accommodation arrangements (for students under 18 years of age)

- is missing
- has medical concerns or severe depression or psychological issues which lead the school to fear for the student's wellbeing
- has engaged or threatened to engage in behaviour that is reasonably believed to endanger the student or others
- is at risk of committing a criminal offence
- is the subject of investigation relating to criminal matters

The handbook includes a sample policy for deferment, suspension and cancellation which includes differentiation between suspension and 'exclusion from class' and lists possible grounds for deferment, suspension and cancellation.

Web links

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National Code 2007: Transition support handbook
for non-government schools

<http://www.isca.edu.au>

DEST AEI ESOS Website and National Code
2007 Explanatory Guide

<http://aei.dest.gov.au/esos>

(both also include links to all NCTSP projects)

