

EXPLANATORY STATEMENT

National Code of Practice for Providers of Education and Training to Overseas Students 2017

Issued by authority of the Minister for Education and Training

Subject: National Code of Practice for Providers of Education and Training to Overseas Students 2017

1 NAME

This clause provides that the name of the instrument is the National Code of Practice for Providers of Education and Training to Overseas Students 2017 (National Code 2017).

2 COMMENCEMENT

This instrument commences on the day after registration on the Federal Register of Legislation.

3 AUTHORITY

This clause provides that the National Code 2017 is made under subsection 33(1) of the *Education Services for Overseas Students Act 2000* (ESOS Act).

4 PURPOSE AND OPERATION

The purpose of this instrument is to make, in substantially the same terms, the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007 (National Code 2007) (F2007L00646).

The National Code 2017 sets out national standards for the delivery of education to overseas students.

The instrument makes a number of clerical changes to the National Code 2007 to update terminology for consistency with terms used in the ESOS Act as amended in 2015 and also to effectively align the National Code with legislative changes made to streamline the registration process under the ESOS Act, which took effect on 1 July 2016. The substantive content of the National Code 2007 remains unchanged in the National Code 2017.

The National Code 2017 is to be replaced later in 2017 by a new National Code and the Department of Education and Training has invited public comment on a consultation draft. A new National Code is the next step in a broader reform of the quality framework governing international education services following amendments to the ESOS Act in December 2015.

5 CONSULTATION

Extensive consultation is being undertaken on the new National Code.

Consequently, it is not necessary to consult on this instrument which substantially mirrors and replicates the National Code 2007 which was itself, the subject of extensive consultation.

The consultation period on the new National Code opened on 13 February 2017 and closed on 10 March 2017 with almost 100 written submissions. Proposed changes have been broadly supported across representative groups. This also follows intensive discussions with peak bodies in late 2016.

The proposed changes aim to modernise and simplify the National Code and increase protections and support for international students following the amendments to the ESOS Act in December 2015.

This instrument is an interim measure pending the making and commencement of the new National Code later in 2017.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

National Code of Practice for Providers of Education and Training to Overseas Students 2017

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The National Code of Practice for Providers of Education and Training to Overseas Students 2017 (National Code 2017) sets out national standards for the delivery of education to overseas students and is made in substantially the same terms as the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007 (National Code 2007) (F2007L00646).

The instrument makes a number of clerical changes to the National Code 2007 to update terminology for consistency with terms used in the *Education Services for Overseas Students Act 2000* (ESOS Act) as amended in 2015 and also to effectively align the National Code with legislative changes made to streamline the registration process under the ESOS Act, which took effect on 1 July 2016. The substantive content of the National Code 2007 remains unchanged in the National Code 2017.

Education providers must comply with the National Code 2017 to maintain their registration to provide education services to overseas students.

The National Code 2017 is to be replaced later in 2017 by a new National Code. The consultation period on the new National Code opened on 13 February 2017 and closed on 10 March 2017 with almost 100 written submissions. A new National Code is the next step in a broader reform of the quality framework governing international education services following amendments to the ESOS Act in December 2015. The proposed changes, which have been broadly supported, aim to modernise and simplify the National Code and increase protections and support for international students.

This instrument is an interim measure pending the making and commencement of the new National Code later in 2017.

Regulatory impact assessment

As the instrument is intended as a temporary measure until the commencement of a new National Code, for which a Regularity Impact Statement is already being prepared, the Office of Best Practice Regulation (OBPR) agrees it can be considered machinery in nature. On that basis the OBPR also agrees there is no regulatory impact. Please note OBPR ID 22255 for this matter.

Human rights implications

This instrument engages the following human right:

Right to Education

This instrument engages the right to education, contained in Article 13 of the *International Covenant on Economic, Social, and Cultural Rights*, insofar as it relates to the provision of education services to international students by education service providers registered under the ESOS Act.

The National Code 2017 balances Australian Government interests in consumer protection, quality of education, and migration policy, with the need to minimise the regulatory burden on governments and providers. It has an increased focus on providing greater clarity and flexibility for education providers. The National Code 2017 enhances Australia's world class reputation and commitment to high quality education services for overseas students.

The National Code 2017 outlines the roles and responsibilities for both regulatory authorities and providers offering education services to overseas students studying on a student visa. It has four parts:

- a framework
- an outline of Government roles and responsibilities
- requirements pertaining to registration on the Commonwealth Register of Institutions and Courses (CRICOS)
- standards outlining the obligations on registered providers in delivering education and training to overseas students.

The Australian Government has the overarching responsibility for protecting the reputation of Australia's education and training industry, supporting the capacity of the international education industry to provide quality education and training services, and maintaining the integrity of the student visa program. State and territory governments have responsibility for the regulation of education in their jurisdictions. The measures contained in the National Code 2017 enhance the right to education by ensuring that registered providers comply with nationally consistent standards that ensure they deliver a high quality of education for international students. In particular, measures implemented by this instrument enhance the right to education by:

- supporting the ESOS Act framework, including the effective administration of that legislative framework by the Australian Government and state and territory governments
- establishing and safeguarding Australia's international reputation as a provider of high quality education and training by ensuring that education and training for overseas students meets nationally consistent standards
- ensuring the integrity of registered providers.

The National Code 2017 also protects the interests of overseas students by ensuring that appropriate consumer protection mechanisms exist, that student welfare and support services for overseas students meet nationally consistent standards and by providing nationally consistent standards for dealing with student complaints and appeals. To the extent that the right to education is engaged, the measures contained in the instrument are compatible with the right to education.

Conclusion

The instrument is compatible with human rights because it advances the protection of human rights.