



# **Education Services for Overseas Students (Foundation Program Standards) Instrument 2021**

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I, Alan Tudge, Minister for Education and Youth, make the following instrument.

Dated 14 September 2021

Alan Tudge  
Minister for Education and Youth

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## Part 1—Preliminary

### 1 Name

This instrument is the *Education Services for Overseas Students (Foundation Program Standards) Instrument 2021*.

### 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of the instrument	On the day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

### 3 Authority

This instrument is made under section 176C of the *Education Services for Overseas Students Act 2000*.

### 4 Schedules

The item in Schedule 1 to this instrument has effect according to its terms, and the instrument that is specified in Schedule 2 to this instrument is repealed as set out in the applicable item in that Schedule.

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## 5 Outline

The Foundation Program Standards for the purposes of subsection 176C(1) of the *Education Services for Overseas Students Act 2000* are set out in this instrument.

## 6 Application to providers

- (1) The Foundation Program Standards apply to a provider in the provision of a Foundation Program, including in the provision of any part of a Foundation Program through arrangements with another party or parties, whether in Australia or overseas.
- (2) Despite subsection (1), the Foundation Program Standards do not apply to a provider in the provision of one or more of the following:
  - (a) a course of education at a level that, under section 15 of the *Australian Education Act 2013*, constitutes primary education or secondary education;
  - (b) an ELICOS;
  - (c) a course which leads to a qualification recognised under the Australian Qualifications Framework; or
  - (d) an undergraduate preparatory program delivered exclusively to non-student visa holders.

## 7 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) Australian Qualifications Framework
- (b) ELICOS
- (c) ESOS agency
- (d) Foundation Program Standards
- (e) national code
- (f) overseas student
- (g) provider
- (h) registered provider.

In this instrument:

**Act** means the *Education Services for Overseas Students Act 2000*.

**Course information** includes Foundation Program prospectuses, brochures, syllabuses, website material and other documents designed to inform prospective students about the course.

**Course material** means guidance documents, teaching or educational materials (written or other, such as books, online material, or equipment) and any other materials that are relevant to a specific subject or the Foundation Program as a whole.

**CRICOS** means Commonwealth Register of Institutions and Courses for Overseas Students.

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**Discipline-based subjects** are subjects that primarily focus in-depth on a distinct field of study or key learning area.

**English language learning** has the meaning given by paragraph 12(4)(a).

**English language teaching qualification** has the meaning given by subsection 15(3).

**ESL/EFL** means English as a Second Language or English as a Foreign Language.

**Extended Foundation Program** means a Foundation Program which consists of at least 37 teaching weeks and no more than 78 teaching weeks.

**Formal class contact time** has the meaning given by paragraph 12(4)(b).

**Formally assessed coursework** includes classroom tests, presentations, research projects, assessed practical work and other assignments, but does not include examinations.

**Formative assessment** means informal or formal assessment carried out over the duration of a course which provides feedback on student progress towards course outcomes or learning goals.

**Full-time** means at least 20 hours of scheduled course contact hours per teaching week.

**Generalist program** means a Foundation Program covering a broad range of disciplines, including four compulsory study areas, and English language subjects to prepare students for a range of undergraduate studies.

**IELTS** means International English Language Testing System.

**Scheduled course contact hours** means the hours for which students enrolled in the course are scheduled to attend, either online or in person, classes, course-related information sessions, supervised study sessions and examinations.

**Standard Foundation Program** means a Foundation Program which consists of at least 26 teaching weeks and no more than 36 teaching weeks and contains a minimum of 720 scheduled course contact hours.

**Stated goal** has the meaning given by subsection 13(7).

**Streamed program** means a Foundation Program made up of subjects designed to prepare students for a particular undergraduate field of study and includes English language subjects to develop students' academic English skills.

**Study period** means a discrete period of study of no more than 6 months within a course, such as a semester, session, or term.

**Summative assessment** means assessment carried out during or at the end of a course of study to determine and specify student achievement of course outcomes or learning goals.

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## Part 2—Standards

### 8 Basic Requirements (Standard 1)

A Foundation Program must:

- (a) be delivered as a standard or extended Foundation Program;
- (b) be delivered by a CRICOS-registered provider;
- (c) provide an academic entry pathway to first year undergraduate study; and
- (d) be delivered in one or more full-time study periods, with a minimum break of one week between study periods.

### 9 Curriculum and pedagogy (Standard 2)

#### *Curriculum*

- (1) The curriculum of a Foundation Program must:
  - (a) be designed to prepare overseas students for further study in Australian higher education programs;
  - (b) include subjects comparable in standard to an Australian Year 12 curriculum in developing the academic skills and knowledge necessary for higher education study; and
  - (c) be open to independent scrutiny by the ESOS agency for the provider.
- (2) A provider must maintain an evidence base to demonstrate compliance with paragraph (1)(b), which must include a comparison of curriculum, set texts and assessment procedures between at least one Foundation Program subject and the corresponding Australian Year 12 subject.
- (3) For the purposes of paragraph (1)(b), a provider must provide the ESOS agency for the provider with sufficient information to allow evaluation of the equivalence of the course outcomes to those of an Australian Year 12 curriculum.
- (4) A provider may only deliver a Foundation Program if the curriculum of the Program has been approved by the ESOS agency for the provider upon registration and renewal of registration under Part 2 of the Act.
- (5) A provider must not make significant changes to a Foundation Program without approval from the ESOS agency for the provider.
- (6) For the purposes of subsection (5), significant changes include:
  - (a) changes, whether incremental or at one time, to more than 25% of the total number of course units or subjects from the time the Foundation Program was last approved by the ESOS agency for the provider;
  - (b) substantial variations to course delivery; or
  - (c) substantial changes to course nomenclature, duration, entry requirements, outcomes or structure.



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- (7) A provider must submit changes which are not significant changes to the provider's Academic Board or equivalent for assessment and approval and notify the ESOS agency for the provider.

*Pedagogy*

- (8) A Foundation Program must include explicit attention and focus, across the program as a whole, on:
- (a) academic rigour and integrity;
  - (b) collaborative or group work;
  - (c) communicating information to others orally as well as in writing;
  - (d) critical thinking;
  - (e) using technology;
  - (f) problem solving;
  - (g) independent reading;
  - (h) independently collecting and analysing information;
  - (i) research projects; and
  - (j) practical work relevant to the subject area.
- (9) A provider must provide all students with regular access to the following, for a reasonable period outside normal teaching hours and at no extra cost:
- (a) if the provider delivers courses at a campus—on-campus computer facilities for academic or English study available to all students;
  - (b) suitable electronic and physical resources borrowings through a library or learning commons;
  - (c) a digital student learning management system;
  - (d) technology and resources required for effective engagement in the course and units of study; and
  - (e) academic, careers, and welfare support and counselling, both virtually and in person.

### **10 Admission (Standard 3)**

- (1) A provider may enrol a student in a standard Foundation Program if:
- (a) the student has completed Australian Year 11 or a comparable educational level;
  - (b) the student has attained an English language proficiency comparable to an overall score of 5.5 in the IELTS, with a minimum of 5 in all skills, or equivalent;
  - (c) the provider is satisfied that the student has the academic abilities required to progress through the program; and
  - (d) subject to subsection (4), the student is at least 17 years of age at the time of commencement.
- (2) A provider may enrol a student in an extended Foundation Program if:
- (a) the student has completed Australian Year 11 or a comparable educational level;

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- (b) the student has attained an English language proficiency comparable to an overall score of 5 in the IELTS;
  - (c) the provider is satisfied that the student has the academic abilities required to progress through the program; and
  - (d) subject to subsection (4), the student is at least 17 years of age at the time of commencement.
- (3) For the purposes of paragraphs (1)(c) and (2)(c), a provider must have and implement a documented policy and process for assessing whether the student’s English language proficiency, educational background or qualifications, or work experience are sufficient to enable them to undertake the program.
- (4) Despite paragraphs (1)(d) and (2)(d), a provider may allow students to commence a Foundation Program with the provider at 16 years of age if:
- (a) the provider has been granted an exemption by the ESOS agency of that provider for the period, or remaining period, of the provider’s CRICOS registration; and
  - (b) either:
    - (i) the provider has a substantial history of enrolling students of 16 years of age without significant adverse feedback to the ESOS agency; or
    - (ii) the provider has demonstrated appropriate welfare processes and resources to deal with students of 16 years of age.
- (5) The course information for a Foundation Program made available to potential applicants must:
- (a) specify the relevant entry requirements;
  - (b) state whether or not certified forecast or provisional examination results on prerequisite courses are acceptable, if final results are not available;
  - (c) provide a table stating alternative English language minimum admission requirements; and
  - (d) if the Foundation Program is an extended Program—indicate the basis for modification of standard Foundation Program requirements.
- (6) In determining whether educational levels or English language proficiency attained in other countries are comparable to Australian Year 11 or IELTS, providers must base their assessment on robust advice or research.

## **11 Subjects (Standard 4)**

- (1) A provider must offer a streamed program or a generalist program.
- (2) The provider must clearly state in the course information:
  - (a) whether a Foundation Program offers a streamed program or a generalist program; and
  - (b) the program structure, including specification of core and elective subjects, and rules for subject choice and combination.
- (3) A Foundation Program must be comprised of discipline-based subjects and English language subjects.

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- (4) A student enrolled in a Foundation Program must complete three discipline-based subjects per study period.

Note: The same discipline-based subjects may be studied throughout the duration of the course. For example, a student may fulfil the requirement in subsection (4) by completing a Mathematics subject, a Science subject, and an Arts subject in each study period.

- (5) If the Foundation Program is a generalist program, discipline-based subject offerings must span a broad range of disciplines or Key Learning Areas, and the program must include at least one subject in each of the following areas:
- (a) Mathematics;
  - (b) the Arts;
  - (c) Humanities and Social Sciences; and
  - (d) either:
    - (i) Science; or
    - (ii) Technology.
- (6) If the Foundation Program is a streamed program, discipline-based subject offerings must clearly be relevant to the proposed area of higher education study, or be made up of one or more of the following areas:
- (a) Mathematics;
  - (b) the Arts;
  - (c) Humanities and Social Sciences;
  - (d) Science; or
  - (e) Technology.
- (7) A Foundation Program cannot include paid work experience.

## 12 English language subjects (Standard 5)

- (1) A standard Foundation Program must include a minimum of 200 hours of scheduled English language learning, and at least 100 of those hours must be scheduled formal class contact time.

Note: For example, a standard Foundation Program which included more than 200 hours of scheduled English language learning would still only need to include 100 hours of scheduled formal class contact time but could include more.

- (2) At least 28 per cent of scheduled course contact hours for an extended Foundation Program must be scheduled English language learning, and at least half of the minimum English language learning hours must be scheduled formal class contact time.

Note: For example, an extended Foundation Program with 1000 scheduled course contact hours must include a minimum of 280 hours of English language learning. Of those 280 hours, a minimum of 140 hours must be formal class contact time. If the program included more than the minimum hours of English language learning, the minimum number of hours of formal class contact time would remain at 140.

- (3) For the purposes of subsections (1) and (2), the minimum hours must be spread consistently throughout the duration of the program and must not be undertaken in a block of full-time study.

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- (4) For the purposes of this section:
    - (a) **English language learning** may be delivered online or in person and includes formal class contact time and regular, supervised self-directed study of English; and
    - (b) **formal class contact time** does not include supervised self-directed study of English.
  - (5) An English language subject must explicitly include all of the following teaching and learning components:
    - (a) academic listening skills;
    - (b) academic reading skills;
    - (c) academic writing skills, including essay and report writing;
    - (d) academic writing conventions, including understanding and avoiding plagiarism;
    - (e) independent study skills;
    - (f) oral presentation skills;
    - (g) group discussion; and
    - (h) critical thinking.
  - (6) A provider must put in place formal measures to ensure that assessment outcomes for the English language subjects are comparable to other criteria used for admission to the available higher education pathways, or for admission to other similar courses of study.

### 13 Pathways (Standard 6)

- (1) A provider must have a formal, written agreement with a higher education provider in which:
  - (a) the provider gives assurance to the higher education provider that successful completion of the Foundation Program by a student demonstrates overall higher education readiness; and
  - (b) the higher education provider gives assurance to the provider that successful completion of a Foundation Program will provide entry into one or more higher education pathways.
- (2) For the purposes of subsection (1), a provider must maintain a register of all agreements with higher education providers, including the period of currency of each agreement and the authorising persons from each higher education provider.
- (3) The course information for a Foundation Program made available to potential applicants must:
  - (a) contain a list of higher education courses which will be available to students upon successful completion of the Foundation Program;
  - (b) where specific subjects are required for a student to gain entry to particular higher education courses, contain a list of those subjects; and
  - (c) state the Foundation Program grades required to enter each of the specified higher education courses including, where appropriate, both an aggregate

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or average grade and any additional requirements for achievement in specified subject areas.

- (4) For the purposes of paragraph (3)(c), where the grades required for individual courses are not fixed, or where they may change from year to year, this should be noted, together with the most recent set of required grades.
- (5) Information required to be included in course information under subsection (3) must be updated annually.
- (6) Prior to a student enrolling with a provider, the provider must provide the student with guidance on pathways available to the student, which:
  - (a) assists the student to identify a stated goal to achieve in their course;
  - (b) indicates alternative pathways, entry to which may be more or less demanding than their stated goal; and
  - (c) if the student intends to enrol in a packaged course, informs the student of any transfer restrictions that may apply.
- (7) For the purposes of subsection (6), a **stated goal** must set out:
  - (a) one or more specified courses at a specified university or other higher education provider, to which the successful student of the Foundation Program can seek entry; and
  - (b) the subjects and grades required for qualification for entry to one or more pathways.

#### **14 Assessment (Standard 7)**

- (1) Providers must have and implement assessment policies and procedures which provide for:
  - (a) formative assessment;
  - (b) summative assessment;
  - (c) clear identification of assessment outcomes as they relate to progress through the course;
  - (d) compulsory assessment procedures that are valid, reliable, fair, flexible, and clearly referenced to criteria;
  - (e) appropriate independent oversight or moderation of assessment outcomes; and
  - (f) formal measures to ensure that assessment outcomes are comparable to other criteria used for admission to the tertiary education course of study, or for admission to other similar courses of study.
- (2) Each subject must include a minimum of two of either or both of the following types of assessment:
  - (a) formally assessed coursework; or
  - (b) examinations.
- (3) Providers must retain an accurate record of:
  - (a) individual students' results in exams and assessed coursework; and

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- (b) the patterns of results, including percentages of students achieving each grade or band of percentage scores in each subject and changes made to the results given by teachers.
  - (4) At the outset of the Foundation Program, a provider must provide students with the assessment criteria used for each subject, together with information on the way in which these are to be assessed, including the marking or grading system to be used.
  - (5) A provider must inform students, at the commencement of each subject, of the assessment outcomes they need to achieve the stated goal.
  - (6) A provider must provide each student with their assessment results for each formal coursework assessment or examination.
  - (7) A provider must provide each student with a progress report for each subject, available in an online format, at least once per study period in each subject.
  - (8) A provider must give a student formal notification if the student consistently performs below the standard required in any subject to achieve the stated goal.
  - (9) A provider must provide each student with a formal report, available in an online format, at the end of each study period for each subject, informing them if they are on target to achieve the stated goal.
  - (10) For the purposes of subsection (9), if a student is not on target to achieve the stated goal, formal reports must be supplemented with ongoing informal reports from teachers.
  - (11) If a student is at risk of not achieving adequate assessment results or grades for their intended pathway, the provider must, during the Foundation Program, provide the student with advice on alternative possible pathways.
  - (12) A provider must clearly articulate the appeal mechanisms available to students within the Foundation Program who seek a review of the assessment process or results.
  - (13) Without limiting this section, a provider must comply with the requirements in the national code to identify, notify and assist an overseas student who is at risk of not achieving adequate assessment results or grades for their intended pathway or stated goal.

## **15 Teacher requirements (Standard 8)**

- (1) A teacher who is primarily responsible for one or more academic subject areas must:
  - (a) hold a minimum of a 3-year Bachelor degree in an area relevant to the subject being taught, and
  - (b) either:
    - (i) hold a Bachelor of Education, Diploma of Education, Diploma of Education Studies or a 2-year Teaching Certificate; or

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- (ii) have at least two years of senior secondary, vocational education and training college, or higher education teaching experience, including breadth of experience in delivering to students from non-English speaking backgrounds.
- (2) A teacher who is primarily responsible for one or more academic English language subject areas must:
    - (a) hold a minimum of a 3-year Bachelor degree;
    - (b) hold an English language teaching qualification; and
    - (c) have at least two years ESL/EFL teaching experience.
  - (3) For the purposes of subsection (2), an ***English language teaching qualification*** includes:
    - (a) a Graduate Certificate in Teaching English as a Second Language;
    - (b) a Graduate Diploma in Teaching English as a Second Language;
    - (c) a Graduate Diploma in Applied Linguistics;
    - (d) a Diploma of Education (English); or
    - (e) a recognised Teaching English as a Second Language program.

Note: For the purposes of subparagraphs (1) to (3), qualifications may be from Australia or overseas. Overseas teacher qualifications must be equivalent to those of Australian qualifications.

- (4) A provider must retain a copy of a Curriculum Vitae, together with certified copies of degrees and qualifications, of all teachers currently employed to teach on the Foundation Program.
- (5) A provider must have written policies governing the recruitment, induction and ongoing professional development of teachers and communicate these policies to teachers as part of the initial employment process.
- (6) A provider must implement a professional development program, to be delivered to teachers annually.
- (7) A teacher must comply with all applicable state, territory and Commonwealth child protection legislation and child safety requirements.

## **16 Marketing of Foundation Programs (Standard 9)**

- (1) A provider who provides a program which does not comply with the Foundation Program Standards must not use the word 'Foundation' in the title of that program.
- (2) If a Foundation Program complies with the Foundation Program Standards, the title of the program must include the word 'Foundation'.
- (3) Without limiting subsection (2), if an extended Foundation Program complies with the Foundation Program Standards, the title of the program must include the word 'extended'.
- (4) A provider must specify that a Foundation Program is specifically designed for overseas students.

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- (5) In advertising a Foundation Program, a provider must not:
    - (a) claim or suggest equivalence of the Foundation Program to an Australian Senior Certificate of Education; or
    - (b) claim guaranteed entry into higher education from enrolment alone into the Foundation Program, without clearly stating the conditions for such entry as per the requirements in section 10.
  - (6) Documents or certificates provided to students to demonstrate successful completion of a Foundation program must include the word 'Foundation', and if applicable, 'extended'.

### **17 Younger students (Standard 10)**

- (1) Where a provider enrolls students under the age of 18 in a Foundation Program, the operations of the provider must be appropriate for the age, maturity, and English language proficiency of the students.
- (2) Operations of a provider that are appropriate for the age, maturity and English language proficiency of the students would include:
  - (a) making arrangements for students under the age of 18 which comply with the national code;
  - (b) ensuring facilities and operations for any mixed-age student cohorts are designed to meet the needs of students of different ages, maturity and levels of English language proficiency;
  - (c) providing students with access to services, learning opportunities, facilities and equipment that address their English language and academic learning needs; and
  - (d) ensuring course materials and teaching are tailored to meet student learning requirements, taking into account their differing levels of age and maturity.
- (3) A provider must comply with all applicable state, territory and Commonwealth child protection legislation and child safety requirements.



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## Schedule 1—Saving and Transitional

### 1 Saving and Transitional

Despite their repeal by Schedule 2 of this instrument, the Foundation Program Standards, as in force immediately before the commencement of this Schedule, are to be taken to continue to apply on and after that commencement in relation to the following:

- (a) an application for registration, renewal of registration or changes to registration made, but not decided, under Part 2 of the Act before that commencement; and
- (b) powers exercised, rights created, and duties imposed under the Act before, on or after that commencement as a result of:
  - (i) enforcement action commenced before that commencement under Part 6 of the Act, in relation to the Foundation Program Standards; or
  - (ii) monitoring and searching actions commenced before that commencement under Part 7 of the Act, in relation to the Foundation Program Standards.

## Schedule 2—Repeals

### *Foundation Program Standards (19/06/2011)*

#### 1 The whole of the instrument

Repeal the instrument