



Independent Schools
Council of Australia

ISCA Response to the Review of the ESOS Framework Discussion Paper

Submission by The Independent Schools Council of Australia (ISCA)

Introduction: About ISCA

The Independent Schools Council of Australia (ISCA) is the peak national body covering the independent schools sector. It comprises the eight State and Territory Associations of Independent Schools. Through these Associations, ISCA represents a sector with nearly 1,080 schools and 567,000 students, accounting for nearly 16 per cent of Australian school enrolments.

Independent schools are a diverse group of non-government schools serving a range of different communities. Many independent schools provide a religious or values-based education. Others promote a particular educational philosophy or interpretation of mainstream education. Independent schools include:

- *Schools affiliated with larger and smaller Christian denominations for example, Anglican, Catholic, Greek Orthodox, Lutheran, Uniting Church, Seventh Day Adventist and Presbyterian schools*
- *Non-denominational Christian schools*
- *Islamic schools*
- *Jewish schools*
- *Montessori schools*
- *Rudolf Steiner schools*
- *Schools constituted under specific Acts of Parliament, such as grammar schools in some states*
- *Community schools*
- *Indigenous community schools*
- *Schools that specialise in meeting the needs of students with disabilities*
- *Schools that cater for students at severe educational risk due to a range of social/emotional/behavioural and other risk factors.*

Independent schools are not-for-profit institutions founded by religious or other groups in the community and are registered with the relevant state or territory education authority. Most independent schools are set up and governed independently on an individual school basis. However, some independent schools with common aims and educational philosophies are governed and administered as systems, for example the Lutheran systems. Systemic schools account for 18 per cent of schools in the independent sector. Independent Catholic schools are a significant part of the sector, accounting for 8 per cent of the independent sector's enrolments.

Streamlining quality assurance agency processes

ISCA supports attempts to deregulate the current system by: “supporting a simpler and seamless approach to the accreditation and registration of institutions providing education and training to international students.”

In ISCA’s previous submission to the ESOS Review we stated: “ISCA continues to support efforts in this area as streamlining the requirements on schools would be of great benefit in terms of reducing the compliance and reporting burden as well as unnecessary duplication.”¹

Further, ISCA has consistently advocated for greater use of existing state and territory domestic registration and regulatory frameworks and focussing on *ESOS*-specific requirements to reduce unnecessary duplication for the schools sector. For example, in the schools sector, most of the requirements for the *National Code Part D Standards 9-12* are met by internal school policies and procedures. For these standards, the critical element for *ESOS* purposes is having a documented intervention policy for overseas students at risk of not meeting attendance or satisfactory course progress requirements. These elements could equally be covered under a strengthened *Standard 6 – Student Support Services*.

Proposed changes

1 Amend the current legislative arrangements to simplify decision making powers and responsibilities by directly providing rather than delegating some powers to TEQSA and ASQA. This will also simplify the registration and assessment process for ELICOS and foundation programs.

- ISCA supports this recommendation.

2 Allow quality assurance agencies to deem compliance with ESOS standards if equivalent domestic standards are met.

- ISCA supports this recommendation. Please see comment regarding *Standards 9-12*, above.

3 Amend the registration period in the ESOS Act to ensure it allows more flexible registration periods and extensions of registration timeframes, in line with domestic registration timeframes.

- ISCA supports this recommendation. Consultation would be needed with state and territory departments of education and non-government school accreditation agencies to ensure a flexible and workable arrangement for management of CRICOS registration cycles for schools could be achieved. Because domestic processes may vary between jurisdictions, this may mean regulators are able to determine a registration period based on or aligned with domestic accreditation timeframes, or as a risk management tool. For example, regulators might offer non-government schools the option of being reviewed

¹ ISCA Submission [Review of the Education Services for Overseas Students \(ESOS\) Framework](#) (May 2014) p.8

for CRICOS registration or re-registration concurrently with or separately from domestic accreditation or registration processes.

- 4 Provide a ‘check and balance’ power to the Minister responsible for ESOS to direct TEQSA and ASQA in relation to the performance of their functions and the exercise of their powers under the ESOS Act, in consultation with other relevant ministers where appropriate.**
 - ISCA supports this recommendation.
- 5 Amend the ESOS Act and the National Code to enable quality assurance agencies to consider additional relevant material gathered through other registration processes in assessing CRICOS registration.**
 - ISCA supports this recommendation. An example of this for schools might be information from relevant state and territory studies authorities for the schools' domestic registration process, or regarding VET or other programs delivered in schools as part of senior secondary studies.
- 6 Amend the ESOS Act to increase consistency in compliance and enforcement powers under ESOS and domestic legislative frameworks.**
 - ISCA supports this recommendation. For the schools sector, ISCA would like to suggest establishing a working group of national *ESOS* and state and territory regulators, and government and non-government schools peak bodies to examine how consistency and reduction of duplication in registration processes and other *ESOS* reforms can be achieved in the schools sector initially. Such a group could then provide an ongoing forum, with other stakeholders invited as necessary, to address any regulatory or other issues arising in the schools sector.

Reviews of decisions by quality assurance agencies

It is ISCA’s understanding that as school CRICOS registrations fall under the purview of state-based registration authorities, internal review processes are not available through national *ESOS* mechanisms that might be available to institutions regulated by either TEQSA or ASQA. However, ISCA would like it to be clarified whether and how schools might request an internal review of decisions made by the Australian Government Department of Education, or by state or territory regulators.

Proposed changes

- 7 Amend the ESOS Act to allow an education institution to seek an internal review of decisions made by the relevant quality assurance agency prior to application to the Administrative Appeals Tribunal.**
 - ISCA supports this recommendation but seeks clarification, as noted above.
- 8 Require publication of information regarding the quality assurance agency’s internal review approach and process.**
 - ISCA supports this recommendation.

Reducing the reporting burden

In ISCA's previous submission we noted our belief that the current level of administration and reporting required is acting as a disincentive for non-government school providers to continue to enrol overseas students and that we are aware of schools that have let CRICOS registration lapse as a consequence². Further, because the profile of overseas students in the non-government schools sector is quite different to other sectors, with most schools enrolling relatively small numbers of overseas students, this creates a disproportionate workload on schools with limited administrative resources. ISCA supports any effort to reduce the reporting and administrative burden for non-government school providers.

ISCA supports the Department of Education's suggestion to hold a separate workshop / workgroup for PRISMS users from all sectors to assist in identifying any areas of change required in PRISMS by end users. Our previous submission provided a list of suggested changes³ including further functionality associated with the Confirmation of Appropriate Accommodation and Welfare (CAAW) letter.

As part of this process we would like to see any other enhancements considered which would assist regulatory authorities manage student behaviour, for example, where circumstances might require a different reporting protocol for students under 18 years old, or reporting non-payment of fees as a reason for student default.

Proposed changes

9 Streamline the student default reporting process in PRISMS to align with the 14-day reporting timeframe, consistent with the proposed policy changes to Tuition Protection Service (TPS) ..., to allow easier reporting of student defaults through the student course variation process.

- ISCA supports this recommendation, however we would also encourage further examination of what constitutes 'student default' to see if providers are still required to report student default using SCVs that may not be appropriate or even necessary in particular circumstances.
- It is always imperative to consider how any reporting changes may impact on the welfare considerations associated with under 18 year old students.

10 Provide data upload facilities and links between PRISMS or CRICOS and other data systems to decrease manual entry and increase data quality.

- ISCA supports this recommendation; however we would request that there be a basic upload capability for excel / .csv files compatible with smaller institution systems, as well as for more sophisticated IT systems used by large providers.

² ISCA Submission [Review of the Education Services for Overseas Students \(ESOS\) Framework](#) (May 2014) p.10

³ Ibid., p.11

11 Standardise data elements to assist with data collection and reporting, including utilisation of information provided across different data collection systems.

- ISCA supports this proposal in principle; however we would like further information regarding what this means in practice. Given the very large number of registered non-government schools, it will be important that any standardisation of data elements is appropriate for all sectors.

12 Remove redundant data items from PRISMS and CRICOS.

- ISCA supports this proposal in principle; however peak bodies would need to be consulted further.

Minimising Tuition Protection Service requirements

While supportive of the Tuition Protection Service (TPS) generally, ISCA agrees that many of the reporting requirements associated with the TPS are overly onerous and burdensome. One issue that has not been noted for review is the requirement to report pre-paid fees received monthly. Ideally this requirement would be abolished. However we understand that the TPS believes that it requires this data in some form. At the very least, changing the requirement for reporting pre-paid fees from the end of each month to align the reporting of fees received with domestic financial and accounting systems, for example, at the end of each semester, would go a long way to reducing the administrative burden on schools.

Proposed changes

13 Change the requirement that all education institutions be subject to the 50 per cent limit on the collection of tuition fees prior to commencing a course.

- ISCA supports this recommendation.

14 Amend or remove the requirement to maintain a designated account for all education institutions, for instance making it a condition of registration for fewer education institutions.

- ISCA supports this recommendation.

15 Remove requirements to identify study periods in the ESOS Act.

- ISCA supports this recommendation.

Increasing flexibility in education delivery

Where appropriate, ISCA supports separate theme-based consultations with interested stakeholders on proposed changes to increase flexibility in education delivery. However, in the case of the *Standards 1 and 10*, it is important to retain a trigger for intervention processes to

assist students to meet course progress and attendance requirements, even if the prescriptive elements of these standards are modified.

Proposed changes

16 Amend the National Code to increase flexibility and discretion in the use and allowable amount of online and distance learning, within visa requirements.

- This is an area where it seems there are significant sectoral differences and what is appropriate in the Higher Education Sector, for example, may not be appropriate in the ELICOS sector. It is ISCA's view that this is an area where further consultations with stakeholders will be required and it may be necessary to find a way to differentiate between sectors.
- It is also important to differentiate between on-line learning as part of a course and distance education. In the schools sector, a distance education course would not be regarded as suitable for an overseas student.

17 Amend the National Code to broaden the work-based training or work-integrated learning provisions.

- ISCA supports this proposal.

18 Amend the National Code to allow course progress to be deemed by the relevant quality assurance agency as sufficient for meeting visa compliance requirements where appropriate.

- In principle ISCA supports this proposal for the schools sector; however peak bodies would need to be consulted further.

19 Amend the National Code to allow existing practices for monitoring attendance to be deemed to satisfy the requirements under the National Code where appropriate.

- In principle ISCA supports this proposal for the schools sector; however peak bodies would need to be consulted further.

Transfer of students

It is ISCA's view that removing the six month restriction on student transfer would be problematic for the schools sector as we regard the transfer of students under the age of 18 as a welfare issue. Students under the age of 18 are vulnerable and are legally not able to make the decisions that, for example, an adult student studying at a university can.

In the event of transfer, a mechanism in PRISMS could be of assistance in ensuring on-going welfare arrangements whereby a new CoE cannot be created for a student under 18, unless a CAAW is also created or other approved welfare arrangements are confirmed.

Proposed changes

20 Amend Standard 3 of the National Code to more clearly require a written agreement to include a cancellation (currently refund) policy in the event of a student cancelling an enrolment or transferring to another education institution.

- ISCA supports this proposal.

21 Amend the student transfer process in Standard 7.

- ISCA is very concerned about the proposal to remove the six month transfer limitation in the principal course of study in relation to students who are under 18. ISCA believes removal of this provision is unworkable in a school context and has the potential to create welfare issues. Should this standard be significantly altered, one possibility would be for this provision in relation to under 18 year olds to be re-assigned to *Standard 5*.
- It would be useful to clarify what “principal course of study” might mean for the school sector if a school level course is packaged with another school level course for visa length purposes.

22 Amend standard 4 of the National Code to require education institutions to enter into a written agreement with each education agent whose services it uses (as opposed to ‘each education agent it engages to formally represent it’).

- ISCA does not support this proposal; it is open to misinterpretation, and is impractical and onerous. It is common in the schools sector for parents to engage the services of education agents to find a school placement and assist with enrolment applications. The current wording of *Standard 4* captures common practice in the schools sector. The proposed wording does not.

23 Consider whether further information on the use of agents should be provided in addition to the current requirement for the publication of agent names and details on an education institution’s website and the voluntary requirement in PRISMS for education institutions to give details of an education agent for each enrolment.

- In principle ISCA supports this proposal; however peak bodies would need to be consulted further. It may be that voluntary entry of details of agents involved with an enrolment in PRISMS would be sufficient to flag improper agent behaviour to regulatory authorities if this data could be usefully analysed. Providing a searchable database of known agents from which providers could select an agency to match with a CoE might be possible.

24 Support an industry driven shared set of principles or code of ethics for education agents. This may include an industry-led system for recognising formally trained, high-quality, ethical and suitably qualified or knowledgeable education agents (rather than a formal registration system).

- ISCA supports the proposal for a shared set of principles or code of ethics for education agents that could be recognised in a number of ways, but would not support a mandatory or formal registration or recognition process that might favour one sector or type of agent or agency over another.

25 Support more options for training and informing education agents of their obligations to students.

- ISCA supports this proposal, but would wish to include training and information about agent obligations to providers in this recommendation.

Welfare of students aged under 18

Welfare of students under 18 is an extremely important area of concern for the schools sector and ISCA welcomes the proposal by the Department of Education to hold a further workshop on this issue involving a range of stakeholders, including ISCA.

As ISCA noted in its submission to the review, more clarity around ‘appropriate accommodation and welfare’ would assist schools when approving arrangements for students under the age of 18.⁴

The Discussion Paper notes a range of issues in addition to the proposed changes below regarding welfare of under 18 year old students which also needs to be clarified. For example, who is responsible for an under 18 year old student when a provider closes and a student has not enrolled in an alternative provider?

ISCA proposes that cases where issues arise specifically relating to welfare of students aged under 18 are canvassed in a solutions oriented workshop of relevant stakeholders, and recommendations from this forum might inform changes to *Standard 5* of the *National Code*, the *National Code Explanatory Guide* and systems procedures for responding to urgent welfare scenarios.

Proposed changes

26 Amend the National Code to clarify requirements and responsibility for the welfare of international students aged under 18, including clearer references to supervision, accommodation as ‘adequate and appropriate’, health and well-being, and welfare arrangements.

- ISCA supports this recommendation noting the Department of Education’s intention to hold further consultations with stakeholders on these issues.
- ISCA notes there are concerns being raised in a range of settings and forums about “homestay” and “guardianship” arrangements for under 18s. We think it is very important to clarify the legislative requirements that apply for ongoing support, welfare and accommodation arrangements for all care options for younger students and for all providers enrolling under 18s, including when approved arrangements are disrupted or become unviable for some reason.

⁴ ISCA Submission [Review of the Education Services for Overseas Students \(ESOS\) Framework](#) (May 2014) p.7

27 Clarify that responsibility for ensuring appropriate welfare arrangements for a student remains with a provider until the student commences a course with another provider, regardless of the date from which the transfer is accepted.

- ISCA does not agree with this proposal. It is both impractical and unworkable. For example, if a student is moving interstate the receiving provider needs to have responsibility for approving welfare arrangements from the time the student arrives in the new location. It is ISCA's view that these arrangements need to be joined up, flexible and mutually agreed by providers.
- A separate solution needs to be agreed in the event of a gap in or breakdown of welfare arrangements, rather than mandating requirements that may not be feasible.

Working with stakeholders to produce a practical and accessible National Code and explanatory guide for ESOS

Proposed changes

28 Remove redundant provisions in the National Code.

- ISCA supports streamlining the *National Code* in line with changes that have made some sections redundant but would like further consultation on the specific items to be removed.

29 Develop a simpler and clearer explanatory guide and other supporting material for ESOS, in collaboration with stakeholders, with sector-specific examples.

- ISCA supports this recommendation.

30 Amend the ESOS Act to better reflect the purpose of the National Code, its contents and the changes proposed in this discussion paper.

- ISCA agrees in principle but would like further information and consultation regarding this proposal.

Registration charges

Proposed change

31 Amend the Registration Charges Regulations to include a provision that allows for an exemption from the Entry to Market Charge for a class of education institutions with an appropriate history of education provision and CRICOS registration, and no adverse compliance record.

- ISCA supports this recommendation being applicable to non-government schools, i.e., those with an appropriate history of education provision and CRICOS registration, and no adverse compliance record being exempt from the Entry to Market Charge. ISCA also supports waiving the Entry to Market Charge in the case of a short break or simple change in registration status by a provider.

Comments on other areas of the National Code and ESOS not canvassed in the Discussion Paper

ISCA proposes that the following areas of the *National Code* and *ESOS* might also benefit from review:

- Clarify the extent to which the *National Code Part C.6.1.c* requires regulators to have address and contact details for *all* sites where students are scheduled classes, etc. This can be impractical for schools where teaching and other school activities can occur on excursions, in outdoor education centres, on school camps, etc.
- Allow activities such as those cited above to be excluded from requirements under *Part C.10 Arrangements with other providers* and *Standard 2.d* where use of another provider is an essential part of the school arranged activity, for example, students might be required to do a water safety course or certificate before participating in a boating activity on a school camp.
- Adjust requirements for written agreements in *Standard 3* to comply with any relevant *Australian Consumer Law* requirements.
- Ensure standards that are related to *Standard 7* are appropriately adjusted if substantial changes are made to *Standard 7*, for example, *Standards 1.3* and *4.3.a*.
- Review *Standard 8* to reflect current practice and the role of the OSO in external complaints and appeals handling processes.
- Adjust relevant standards to reflect removal of visa auto-cancellations.
- Increase functionality of the CRICOS (i.e., information provided at <http://cricos.deewr.gov.au>) to allow for providers to be listed by trading name as well as legal entity, and for increased consistency between registered courses and course search fields.
- Consider ways of collecting and analysing data on critical incidents involving overseas students so that appropriate action can be taken to address common causes.

Conclusion:

In addition to the above, ISCA would like to endorse the Department of Education's intention to "Focus ESOS on elements critical and unique to supporting international students"⁵. We look forward to further discussions on how this might be achieved.

We would also like to draw attention to ISCA's efforts in previous submissions to make a case for appropriate risk profiling of non-government schools to allow regulators to focus on providers presenting a higher level of risk than is characteristic of the majority of "lower risk" schools. For example, ISCA has suggested it would be appropriate for providers in the non-government schools sector criteria to be rated for provider risk based on criteria which includes:

- Overseas students as a proportion of the entire school cohort
- Receipt of Australian Government General Recurrent Grants

⁵ AIEC 2014 Presentation ESOS and the student visa policy framework: the government perspective (1202) 08/10/14

- Years of operation
- Overseas ownership⁶

ISCA commends the Department of Education in seeking to reduce red tape and regulatory burden, and on its consultative approach to *ESOS* reform. We look forward to working closely with the Department and other stakeholders to achieve a robust and more flexible regulatory environment to ensure Australia maintains its quality assurance and competitiveness in delivery of international education services.

Independent Schools Council of Australia
31 October 2014

⁶ The issue of risk profiling of non-government schools is extensively addressed in the ISCA Submission [*Review of the Education Services for Overseas Students \(ESOS\) Framework*](#) (May 2014) and attached letter to the Department of Education (21/10/11)