



# Standard 5: Younger overseas students

## National Code of Practice for Providers of Education and Training to Overseas Students 2018

### Overview

The Australian Government is committed to ensuring the safety and wellbeing of younger overseas students.

This fact sheet contains information on:

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All registered providers who enrol overseas students under the age of 18 must meet certain obligations. They must:

- meet Commonwealth, state or territory legal requirements relating to child welfare and protection; **and**
- give younger overseas students important age and culturally appropriate safety information, including what to do and who to contact in an emergency, and how to report any incident or allegation of sexual, physical or other abuse.

If an overseas student is under the age of 18, the student's welfare must be maintained for the duration of their stay in Australia as a student visa condition. To maintain welfare, overseas students can either:

- stay in Australia with a '**nominated guardian**' approved by the Department of Home Affairs, who can be the overseas student's parent, person who has legal custody, or an eligible relative who is aged over 21 and is of good character; **or**
- stay in accommodation, support and general welfare arrangements that have been approved by the overseas student's registered provider. In this case, the registered provider will issue a Confirmation of Appropriate Accommodation and Welfare (CAAW) letter.

Registered providers taking responsibility for the welfare of overseas students under the age of 18 must ensure that the overseas student is in living arrangements which are safe and adequately meet their needs. Registered providers must take all practical steps to ensure welfare is maintained at all times, regardless of the overseas student's study circumstances. They must also:

- ensure any adults involved in providing overseas student accommodation or welfare arrangements have Working with Children Checks (WWCC) appropriate to the jurisdiction in which the provider operates and the accommodation is situated; **and**
- regularly verify that overseas student accommodation is appropriate to the student's age and physical needs; **and**
- notify the police and any other relevant agencies as soon as practicable if unable to contact an overseas student and there are concerns for the overseas student's welfare; **and**
- report through Provider Registration and International Student Management System (PRISMS) if the registered provider is no longer able to take responsibility for the overseas student's welfare; **and**
- make all efforts to contact a younger overseas student's parent or legal custodian immediately if they can no longer approve the overseas student's welfare.

## Key Requirements

### Requirements for all registered providers

All registered providers enrolling overseas students under 18 must meet the relevant Commonwealth, state or territory legislation or other regulatory requirements relating to child welfare and protection appropriate to the jurisdiction in which the provider operates. This is irrespective of whether the provider is taking responsibility for the welfare arrangements or the Department of Home Affairs has approved a nominated guardian.

Requirements may include but are not limited to:

- WWCCs or Criminal Record Checks for staff and/or homestay providers.

- regulation around reporting of child abuse by teachers, counsellors or other support personnel.
- any additional state or territory regulatory requirements, for example 'Child Safe Standards'.
- state or territory requirements regarding schools sector courses, such as minimum age or year level for enrolment of overseas students in homestay accommodation.

All registered providers must also give age and culturally appropriate information to overseas students under the age of 18, in accordance with any state and territory requirements, on:

- who to contact in emergency situations, including contact numbers of nominated staff members or service providers; **and**
- how to seek assistance and report any incidents involving sexual, physical or other abuse.

### Welfare arrangements approved by the Department of Home Affairs

If an overseas student is under the age of 18, a parent, legal custodian, or an eligible relative can be nominated to take responsibility for the overseas student's accommodation, welfare and support in Australia. The parent, legal custodian or eligible relative must have an appropriate visa or have applied for a Student Guardian visa (subclass 590).

An eligible relative is:

- a parent, spouse, de facto partner, brother, sister, step-parent, step-brother, step-sister, grandparent, aunt, uncle, niece or nephew, or a step-grandparent, step-aunt, step-uncle, step-niece or step-nephew; **and**
- nominated by a parent of the applicant or a person who has custody of the applicant; **and**
- aged at least 21; **and**
- of good character, and show this by providing a police clearance from the countries in which they have lived for more than 12 months in the past 10 years after the age of 16; **and**
- an Australian citizen, permanent resident or be eligible to remain in Australia until the overseas student's visa expires or the overseas student turns 18 years of age (whichever happens first).

The Department of Home Affairs will assess the nominated arrangements according to the *Migration Regulations 1994* and, if approved, the parent, legal custodian or eligible relative will be the overseas student's '**nominated guardian**'. The registered provider is not involved and must not issue a CAAW letter.

The registered provider is not obliged to follow up where a nominated guardian has been approved by the Department of Home Affairs. However, the registered provider should contact the Department of Home Affairs and other local agencies if it becomes aware the overseas student is not being well looked after. State or territory requirements regarding overseas students' welfare may

also require registered providers to meet with the nominated guardian prior to, or shortly after, course commencement.

## When a registered provider takes responsibility for the overseas student's welfare

If a registered provider accepts responsibility for the welfare arrangements of an overseas student under the age of 18, a CAAW letter is created at the same time as a Confirmation of Enrolment (CoE). They must be created together as the details of the CoE appear in the CAAW and vice versa. A registered provider signs a CAAW to confirm they are placing an overseas student into, or are approving, arrangements they consider suitable. The Department of Home Affairs is not involved in this process.

Registered providers who create a CAAW letter are not taking over legal responsibility for the overseas student under the age of 18. **The parent or person who has custody of the overseas student is at all times legally responsible for the student.**

In the CAAW, registered providers must nominate the beginning and end dates of the period for which they are willing to accept responsibility for approving accommodation, support and welfare arrangements for an overseas student under the age of 18. These nominated dates must cover the length of the CoE plus seven days at the end, at a minimum. Please see the section below on *'Transferring between registered providers'* for more information on when an overseas student with CAAW arrangements transfers to another provider.

Some states and territories have a minimum year level or age for an overseas student to be enrolled on a CAAW in a school sector course. Registered providers of school sector courses need to ensure that they do not enrol an overseas student in a school sector course where the student will be below the relevant minimum year level or age at course commencement.

Visa condition 8532 requires overseas students under the age of 18 to maintain appropriate welfare arrangements for the duration of their stay in Australia. Therefore, this condition prevents overseas students under the age of 18 from entering Australia without appropriate welfare arrangements in place. If an overseas student wishes to arrive in Australia earlier than their CAAW commencement date, he or she must be accompanied by a nominated guardian approved by the Department of Home Affairs. If the overseas student is unaccompanied, the registered provider must agree to extend its approved care arrangements to cover the overseas student from the date of their arrival or the student must not travel to Australia until the CAAW commences.

## Acceptable welfare arrangements

If a registered provider accepts responsibility for the welfare arrangements of an overseas student under the age of 18, the overseas student must stay in accommodation approved by the registered provider.

A registered provider should not approve an overseas student's parent, legal custodian or eligible relative (as defined in *'Welfare arrangements approved by the Department of Home Affairs'*) as the welfare arrangement on a CAAW. If an overseas student's parent, legal custodian or eligible relative wishes to care for them in Australia, they should apply to be the overseas student's nominated guardian through the Department of Home Affairs.

Registered providers can approve a person who is not an Australian citizen or permanent resident (including a family friend, or a family member that does not meet the definition of eligible relative) to care for the overseas student on a CAAW. However, the provider should ensure that the visa holder is:

- at least 21 years old; **and**
- of good character; **and**
- has an appropriate visa to remain in Australia until the overseas student's visa expires or the overseas student turns 18.

In approving accommodation arrangements for the overseas student, registered providers may wish to consult best practice guidelines around provision of accommodation and homestays such as those developed by [Australian Government Schools International](#).

Registered providers can use an accommodation agent or registered homestay service to assist in arranging accommodation for overseas students, but it is the registered provider's responsibility to ensure the accommodation meets the requirements of the National Code.

Where registered providers engage third parties to organise and assess welfare and accommodation arrangements, they must have documented policies and processes for selecting, screening and monitoring these third parties.

Registered providers should note that the CAAW responsibility they undertake **cannot be delegated to any other party** such as a homestay service. The registered provider retains the ultimate responsibility for approving and assuring welfare arrangements until the overseas student:

- is outside Australia; **or**
- turns 18; **or**
- transfers to another provider's CAAW; **or**
- enters the care of a nominated guardian approved by the Department of Home Affairs.

The registered provider must not state or imply, or permit any third parties to state or imply, that the third party has or shares responsibility for the overseas student's accommodation, support or general welfare.

### Monitoring welfare arrangements

Registered providers who have issued a CAAW must have and implement processes for verifying that the overseas student's accommodation is appropriate to the overseas students' age and needs:

- prior to the accommodation being approved; **and**
- at least every six months thereafter.

Registered providers will conduct an initial physical site visit to verify the overseas student's accommodation, prior to the accommodation being approved. Registered providers should also have rigorous processes in place for subsequent verifications, which could include one or more of the following:

- a physical site visit;
- a student interview;
- a student survey;
- any other ways of confirming that the accommodation still meets the overseas student's needs.

Registered providers can use homestay services to assist in verifying the appropriateness of the overseas student's accommodation. However, the registered provider is ultimately responsible for the overseas student's welfare and must be satisfied that the processes are rigorous enough to ensure the overseas student is residing in appropriate accommodation. This should include some form of reporting or documentation by the homestay provider to the registered provider after each verification.

In monitoring welfare arrangements, registered providers must take into account any relevant state and territory laws such as the Victorian Child Safe Standards.

### **Transferring between registered providers**

If an overseas student who is under the age of 18 on a CAAW is transferring to another registered provider, the receiving registered provider must ensure there is no gap in welfare arrangements. In accepting the overseas student, the receiving provider must liaise with the first registered provider to ensure the overseas student has appropriate welfare in place at all times and issue a CAAW letter covering the transition from one accommodation arrangement to another.

### **Packaged courses and multiple registered providers**

When an overseas student is undertaking a package of courses, or a course with multiple registered providers, the overseas student must have adequate welfare arrangements during any gap period between courses or providers.

Each registered provider can nominate the period for which it is responsible for welfare arrangements, which must be at least the length of the overseas student's CoE plus seven days at the end of that period. Registered providers can choose to take on additional welfare arrangements if they wish.

Ideally an overseas student's parent or legal custodian should be able to negotiate a common date when the first registered provider's approval will cease and the new registered provider will take responsibility for the welfare arrangements. These arrangements should be made and confirmed through the provision of CAAWs prior to the overseas student applying for a visa. Where there is a gap between the periods nominated by the registered providers or the registered providers cannot agree on providing welfare arrangements, the Department of Home Affairs will only issue a visa for the length of study where continuous welfare arrangements are in place. This is unless the overseas student's parent or legal custodian makes alternative welfare arrangements, such as nominating a guardian through the Department of Home Affairs.

If an overseas student wishes to return to their home country during a gap between courses, a registered provider may still issue a CAAW letter to cover the period the overseas student will be

abroad. This arrangement will mean the overseas student does not need multiple visa applications and should benefit both the provider and the overseas student.

Registered providers that deliver courses as part of a package of courses, or who deliver a single course together through a partnership arrangement, should communicate with each other about sharing responsibility for approving accommodation, support and general welfare arrangements.

### **Disruption to welfare arrangements**

Registered providers must activate their critical incident policy in emergency situations which may disrupt welfare arrangements without warning. This can be part of the registered provider's general critical incident policy under Standard 6 of the National Code. A critical incident policy should include:

- the action to be taken;
- any immediate welfare arrangements in an emergency;
- required follow-up by the registered provider;
- records of the incident to be kept for at least two years after the overseas student ceases to be an accepted student; and
- protocols for informing authorities such as the police, the Department of Home Affairs officials, the overseas student's parent or legal custodian, and other relevant authorities.

### **Suspension or cancellation of enrolment**

Where a registered provider suspends or cancels the enrolment of an overseas student on a CAAW, the registered provider must continue to check the suitability of care arrangements until one of the following occurs:

- the overseas student has alternative welfare arrangements approved by another registered provider; **or**
- the overseas student has a nominated guardian approved by the Department of Home Affairs; **or**
- the overseas student leaves Australia; **or**
- the registered provider has notified the Department of Home Affairs through PRISMS that it is no longer able to approve the overseas student's welfare arrangements; **or**
- the registered provider has taken the required action under Standard 5.5 after not being able to contact the overseas student; **or**
- the overseas student turns 18.

### **Terminating a registered provider's responsibility for welfare arrangements**

The registered provider's responsibility for welfare arrangements can only be terminated in two circumstances.

The first is if alternative welfare arrangements have been put in place. In this circumstance, the registered provider should confirm that the new welfare arrangements are formally in place before terminating the CAAW.

In the situation where an overseas student's parent, legal custodian, or eligible relative is planning to look after the overseas student for a short period, for example during a holiday, the provider may wish to continue their CAAW arrangements rather than terminate the CAAW.

The second circumstance where a registered provider may terminate a CAAW is where they can no longer take responsibility for the overseas student due to events, such as:

- the overseas student refusing their accommodation or leaving their accommodation without notice, even after the registered provider has exhausted all possible avenues of assisting the overseas student to maintain appropriate arrangements;
- the accommodation provider becoming unable to maintain arrangements;
- the overseas student's enrolment being suspended or cancelled; or
- the overseas student going missing from their accommodation and cannot be found or contacted, even after the registered provider has implemented its critical incident policy.

In the above situations, the registered provider must report the overseas student within **24 hours** using the 'Non-Approval of Appropriate Accommodation/Welfare Arrangements' letter through PRISMS.

This report should be used as a **last resort**, as it may lead to cancellation of the overseas student's visa by the Department of Home Affairs for breaching visa condition 8532.

The registered provider must make all reasonable efforts to ensure the overseas student's parents or legal custodians are notified immediately if it can no longer take responsibility for the overseas student's welfare.

### After an overseas student turns 18

A registered provider's CAAW responsibility for an overseas student under the age of 18 will cease when the overseas student turns 18. In addition, the requirements of Standard 5 will no longer apply at this point.

Registered providers of school sector courses enrolling overseas students who will turn 18 years of age during the final period of their course may choose to apply a condition on enrolment in the course, requiring the overseas student to continue to reside in provider approved accommodation until the completion of the course. However, this needs to be made clear in the overseas student's written agreement.

### Disclaimer

The Department of Education provides general information and assistance to registered providers and overseas students on the National Code and the *Education Services for Overseas Students Act 2000*.



However, such information or assistance should not be relied on as legal advice or as a substitute for legal advice. Overseas students and education providers should seek independent legal advice as appropriate.

The National Code fact sheets are designed to give registered providers practical guidance in day to day operations. Registered providers should note that compliance will be measured against the requirements of the National Code, not against the fact sheets.