

1990 - No. 43

**FAIR TRADING ACT 1987 - REGULATION**  
(Education Export [Industry] Code of Practice Regulation 1990)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Fair Trading Act 1987, has been pleased to make the Regulation set forth hereunder.

G. B. PEACOCKE,  
Minister for Business and Consumer Affairs.

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**Citation**

1. This Regulation may be cited as the Education Export [Industry] Code of Practice Regulation 1990.

**Commencement**

2. This Regulation takes effect on

**Code of Practice**

3. (1) For the purposes of section 75 of the Fair Trading Act 1987, the Education Export [Industry] Code of Practice set out in Schedule 1 is a prescribed code of practice.

(2) Matter appearing as explanatory notes in Schedule 1 does not form part of the Code.

**SCHEDULE 1 - EDUCATION EXPORT [INDUSTRY] CODE OF PRACTICE**

(C1.3)

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## PART 1 - INTRODUCTION

### 1.1 Definitions

For the purposes of this Code:

**education export industry** means the commercial activities of public and private educational institutions in delivering education export services to overseas students;

**education export institution** means an educational institution which markets its education export services to overseas students;

**education export services** means a range of courses and materials marketed and provided by an educational institution offering education opportunities to overseas students;

**educational institution** means a private or public educational organisation that provides education services to overseas students;

**overseas student** means a fee paying student who requires the issue of a student visa to study in Australia.

### 1.2 Application

The provisions of this Code are mandatory and compliance with the Code is enforceable under the Fair Trading Act 1987 through orders of the Commercial Tribunal.

The Code applies to all education export institutions which market education export services to be provided in New South Wales. It applies to private and public education export institutions.

In addition, the Code applies to educational institutions that may not actively market education services to overseas students but enrol such students from unsolicited applications.

**Explanatory Note: Institutions that do not actively market education services to overseas students must comply with clauses of the Code other than those specifically related to marketing and promotion activity, in order to be placed on the**

**Education Export Register and to be recognised by the Commonwealth for issue of Overseas Acceptance Advice Forms.**

**1.3 Objectives**

The primary objectives of the Code are to establish the rights and obligations of overseas students and educational institutions in relation to:

- (a) courses offered and provided to overseas students; and
- (b) suitable academic and language assessment before acceptance of overseas students for enrolment; and
- (c) disclosure of all important information relevant to a person considering entering a particular institution providing education services to overseas students, enrolled at an institution or transferring to another course of study or to another institution; and
- (d) suitable documentation of the contractual and financial relationship between the overseas student and an institution; and
- (e) internal and external complaint handling mechanisms for the resolution of any dispute between an institution and an overseas student.

The Code, together with the Fair Trading Act 1987, also provides a legal basis to enforce these standards and to require rectification of the consequences of any contravention of them.

**1.4 Compliance**

Industry self-regulation is the cornerstone of the compliance process. Each educational institution providing education services to overseas students is, in the first instance, responsible for ensuring compliance with the provisions of the Code.

The Code recognises that certain organisations may well be governed by their own legislation, rules and regulations, through which they set educational standards. The Code is designed to complement such systems of control in relation to their export activities.

Educational institutions not complying with this Code will not be prosecuted as in the case of a breach of law but can be

subject to enforcement sanctions and action under the Fair Trading Act 1987.

## **1.5 Update and review**

The Code of Practice format has been adopted because it is flexible and encourages industry self-regulation. It is intended that the Code will be reviewed periodically and appropriate changes made as required.

## **PART 2 - COURSES**

### **2.1 Nomenclature and content**

**2.1.1** School courses must meet the curricula and certification requirements published by the New South Wales Board of Secondary Education.

**2.1.2** Post school courses provided by private educational institutions that do not meet the relevant criteria for use of titles as defined by the Australian Council on Tertiary Awards (ACTA) or by universities, as appropriate, are regarded as non-formal courses and must meet the requirements set out in clause 2.2 and marketing or promotion literature must include a statement as to recognition of each course that complies with clause 3.3.3 (g).

### **2.2 Private institutions providing non-formal courses**

Full-time courses must be provided. A full-time course is to involve at least 25 professionally Supervised class contact hours per week of which 20 must be direct face-to-face tuition and the remaining 5 may be of a non-directed nature (e.g. supervised practical work). There must be a one hour break within any 4 hour teaching period. The 25 hours of class teaching must be timetabled between 8.00 am and 8.30 pm, Monday to Friday, except where the nature of the course would require otherwise (e.g. night flying). If the educational institution is to be open outside these hours, professional supervision must be available for overseas students wishing to use the premises.

**Explanatory Note: These provisions are based on current Commonwealth Department of Employment Education and Training (DEET) requirements for the issue of student visas.**

## PART 3 - DISCLOSURE OF INFORMATION

### 3.1 General principles

Educational institutions must recognise that students from overseas may not be familiar with the variety of educational opportunities, nor the cost of living, in New South Wales.

Educational institutions must ensure that their agents and their marketing provide adequate information on these and other matters to permit potential overseas students to make informed judgments about learning and living opportunities in New South Wales.

### 3.2 General marketing and promotion

- 3.2.1 All promotional and marketing materials published by or on behalf of an education export institution, in whatever form, must be truthful, accurate and unambiguous.

**Explanatory Note: Promotion and marketing materials must be entirely consistent with the Code and all other relevant State and Federal laws. The following clause gives applications of particular relevance to educational exports.**

- 3.2.2 Marketing or promotion literature and general media advertising by educational institutions in relation to education export services must not:
- (a) encourage unrealistic expectations about the level of qualifications attainable and the facilities and equipment provided or make any claim to approval or recognition that is in any way inaccurate; or
  - (b) use misleading nomenclature for courses; or
  - (c) provide misleading information on class sizes or staff to student ratios; or
  - (d) make misleading or false comparisons of courses with others provided by competitors; or
  - (e) make misleading statements concerning the qualifications or experience of staff; or
  - (f) provide misleading information about the physical resources to be provided (e.g. premises, classrooms,

equipment, library, private study facilities, counselling room, duplicating facilities); or

- (g) make use of photographs of places unrelated to the institution without any explanatory notes (e.g. buildings or parks being depicted as part of a campus); or
- (h) guarantee or warrant the acquisition of employment in Australia or immigration or residency in Australia.

**3.2.3** Marketing activities by or on behalf of education export institutions must comply with any educational, cultural and regulatory requirements of any country in which they are presented.

### **3.3 Specific marketing and promotion**

**3.3.1** The following requirements apply to literature that informs a prospective student about details of an educational institution and courses. They do not apply to general media advertising inviting initial contact with an institution.

**3.3.2** Education export institutions and their agents must provide adequate written information to potential overseas students before they enter into any written agreement with the institution.

**Explanatory Note: The adequacy of information provided will be judged having regard to whether or not the institution lives up to what it represents itself to be. The following clause states the minimum information that must be provided.**

**3.3.3** Promotional literature published by or on behalf of education export institutions must be current and clearly dated. It must declare that the institution complies with this Code and that any necessary approval to provide Overseas Student Acceptance Advice Forms has been obtained. The information provided must include the following:

- (a) a description of the courses offered and their content;
- (b) all tuition and other fees payable to the institution in connection with the courses and any other fees required;
- (c) course and term commencement dates and the duration of courses expressed in weeks or months;

- (d) details of teaching hours, teaching patterns and an estimate of out-of-class study required, shown in a weekly sample timetable where relevant;
- (e) details of the basic assessment for courses or, for postgraduate research courses, the specifications under which they are undertaken and thesis requirements;
- (f) a description of the certificate or other qualification to be awarded, or statement of attainment to be given, on completion of any course;
- (g) in the case of private educational institutions providing non-formal courses, a statement as to whether each course is recognised by nominated industry or professional organisations, public institutions or government authorities;
- (h) a description of student support services including counselling and welfare facilities and orientation program details and, where student support services refer to accommodation provided or arranged, a realistic description of the cost and standard must be given, and, where reference is made to living conditions, a realistic estimate of general living expenses must be given;
- (i) the minimum level of English language proficiency required for entry to each course.

### **3.4 Agents**

Under the Fair Trading Act 1987 and Trade Practices Act 1974 of the Commonwealth, educational institutions are responsible for the actions and conduct of their agents.

Consequently, education export institutions must make every reasonable effort to establish the credentials of agents and monitor their efforts.

### **3.5 Mandatory documentation**

- 3.5.1** All educational institutions must provide documentation to prospective overseas students regarding the terms and conditions of the relationship between the student and the institution or their agent.

- 3.5.2** Documentation must be written in clear, concise, plain English, which avoids vague and ambiguous clauses. It is to disclose fully all of the arrangements between the educational institution, its agents and any prospective student, in relation to:
- (a) the course or courses contracted for; and
  - (b) a detailed curriculum together with the contracted hours of lectures per week and proportion of course time devoted to each subject area; and
  - (c) attendance requirements under the student visa conditions; and
  - (d) any additional charges and costs that will be levied by the institution, such as support services, additional English language tuition, book fees, excursions, special facility fees etc.; and
  - (e) where living arrangements are provided by the institution, details of the accommodation and associated fees; and
  - (f) how increases in fees are to be determined and the method of notifying students; and
  - (g) the institution's refund policy and procedures for the resolution of disputes.
- 3.5.3** The documentation must draw the attention of students to the existence of this Code.
- 3.5.4** The documentation must express all fees in easy to understand terms (e.g. \$A per week or month or term) and indicate a payment schedule.
- 3.5.5** An educational institution must give overseas students applying to do courses at the institution the documentation referred to in this clause.
- 3.5.6** Private educational institutions providing non-formal courses must maintain an accurate record of attendance of overseas students and, if requested by such a student, give the student an attendance certificate certifying the proportion of classes attended.

## **PART 4 - FINANCIAL INFORMATION**

### **4.1 General principles**

An educational institution must make available, in writing, all information concerning fees and charges to overseas students prior to their completion of any enrolment agreement or contract.

### **4.2 Agreement terms and conditions**

The relationship between an overseas student and an educational institution must be confirmed in writing and the writing must disclose tuition fees, additional charges, fees associated with living arrangements provided by the institution and refund policy.

### **4.3 Financial records**

Educational institutions must retain good financial records that reflect all payments and charges and the balance due.

Payment arrangements must be consistent with current Government regulations governing the attendance of overseas students.

Any such institution must give overseas students a copy of their financial records on request and within a reasonable time of any such request.

### **4.4 Changes in fees**

Educational institutions must honour their advertised schedules of fees for overseas students, except where fees are altered in accordance with procedures disclosed in mandatory documentation supplied at enrolment.

Any changes in fees must be fairly and equitably applied, widely advertised and clearly indicate the effective date.

### **4.5 Safeguards for student funds**

Educational institutions must make adequate provision to safeguard overseas students' funds, particularly advance payments made for courses or related matters for which they have contracted.

Appropriate safeguards can include trust funds, insurance, bank guarantees and the like.

These safeguards are to be used where necessary to cover Justifiable claims for refunds, or compensation, or both, following variation or cessation of courses or orders from an authorised body or Tribunal.

**Explanatory Note: Registration for the Education Export Scheme and Register may require proof of a certain level of indemnity insurance or payment into a common industry fund.**

#### **4.6 Refund policy**

Every educational institution must have a refund policy which recognises the rights and obligations of the institution and its overseas students.

The administrative process adopted regarding refunds must not be unnecessarily complex or time-consuming and should be easily accessible to overseas students.

The refund policy and procedures for making a claim must be described in the mandatory documents detailing terms and conditions (see clause 3.5).

The amount of a refund given by an educational institution may take into account reasonable deductions for the administrative expenses of the institution. In certain circumstances, such as misrepresentation, the law may require an unconditional refund.

**Explanatory Note: Education providers are not able to limit their liability to make refunds by excluding, modifying or restricting in any way the rights and remedies available to students under this Code, the Trade Practices Act 1974 of the Commonwealth and the Fair Trading Act 1987. Provisions of particular relevance include those on misleading conduct and implied warranties for services.**

## **PART 5 - ACADEMIC AND LANGUAGE ASSESSMENT**

### **5.1 General principles**

Recruitment decisions will rest on an assessment by educational institutions of the extent to which the qualifications, proficiencies and aspirations of the applicant are matched by the offered educational opportunity.

### **5.2 Assessment**

**5.2.1** Before accepting overseas students for enrolment, educational institutions must assess their English language competence and ensure it is appropriate to the relevant course or courses for which they are enrolled. A record of the assessment must be kept.

**5.2.2** If the educational institution decides that English language training is required, it must advise the student accordingly.

**5.2.3** An educational institution must be able to present evidence that it is providing assessment of the suitability of prospective students for the courses in which they are enrolled. Matters to be assessed are to include:

- (a) educational capacity to undertake the proposed course of study, and
- (b) English language proficiency appropriate to the course.

## **PART 6 - INSTITUTIONAL DISPUTE RESOLUTION**

### **6.1 General principles**

The Code places particular emphasis on providing easy access to fair, informal and inexpensive procedures to resolve disputes between management and students of education export institutions.

An obligation rests on the parties to a dispute to attempt to resolve the dispute themselves informally. Should it be necessary to resort to a formal dispute mechanism, the procedures set out in clause 6.2 apply.

## **6.2 Formal dispute procedures**

In order to give an overseas student an opportunity to have disputes heard and resolved according to the principles of natural justice, educational institutions must establish a disputes resolution procedure appropriate to the size and complexity of the institution.

Disputes must be handled by a person designated by the educational institution as a disputes officer.

Educational institutions must maintain appropriate records of disputes.

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### **EXPLANATORY NOTE**

This Regulation prescribes a Code of Practice under the Fair Trading Act 1987 for educational institutions providing education services to overseas students in New South Wales. The Code provides agreed standards of practice relating to:

- . courses offered and provided; and
  - . academic and language assessment; and
  - . disclosure of information to students; and
  - . contractual and financial arrangements; and
  - . dispute resolution,
- and other matters.
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