



**Australian Government**

**Department of Education, Science and Training**

**DEST  
ESOS REGULATION UNIT**

**COMPLIANCE MONITORING PACKAGE  
PROCEDURE**

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# 1.

## INTRODUCTION

### 1.1 Purpose of the ERU Compliance Review Procedure

**This** procedure provides detailed instructions for the conduct of compliance reviews of registered providers under the *Education Services for Overseas Students Act 2000* (the Act), the *Education Services for Overseas Students Regulations 2001* (the Regulations) and the relevant provisions of the *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students* (the National Code). Combined with the Compliance Monitoring Package Report Summaries and Test Units and associated checklists and reports, they provide a

comprehensive set of procedures and instructions to ERU members in planning, conducting, and reporting compliance monitoring of registered providers of education to overseas students.

Along with the Compliance Monitoring Package Report Summaries and Test Units at Attachment A, this procedure will help DEST officers ensure that they conduct consistent, transparent and effective compliance reviews and produce reports that promote enhanced understanding by providers of their compliance obligations.

### 1.2 International Education (Education Services for Overseas Students)

**The** international education industry brings enormous benefits to Australia. These benefits depend on the quality of the services Australian providers supply to the overseas student and on public confidence in the integrity and quality of the industry.

There are important differences between export and domestic education. Unlike domestic education, the export education industry is also involved in migration control – students from overseas are generally required to hold a student visa to enter Australia for education and must

comply with its conditions. In addition, the consumer protection requirements for export education are different from those for domestic education. Consumer protection for export education must cater for the fact that students who travel to Australia cannot usually see before they purchase and, if there is a reason for discontent with the services they have obtained, they may not be able to remain in Australia to pursue the consumer protection remedies provided through the courts.

## 1.3 Compliance Monitoring

**Compliance** monitoring is an important feature of both Commonwealth and State or Territory governments' responsibility to protect and promote export education. The Commonwealth is primarily responsible for monitoring and ensuring compliance with the provisions of the Act and the Regulations. States are primarily responsible for monitoring and ensuring compliance under the National Code and relevant State or Territory legislation which mirrors the Commonwealth legislation. The overall compliance of providers is the result of a partnership between the States and Territories and the Commonwealth in combination with the Department of Immigration and Multicultural Affairs (DIMA) in a whole-of-government approach.

Compliance monitoring is normally performed under section 130 of the Act. Under this section an authorised employee of DEST may enter the premises of a provider only with their consent. However, once consent is granted, the monitoring powers noted under section 131 of the Act are very broad and include the power to:


- search the premises;
- examine anything;
- examine any activity conducted on the premises;
- take photographs or make video or audio recordings or sketches of any activity or thing on the premises;

- take extracts from or make copies of any documents;
- take onto the premises any equipment and materials needed for monitoring;
- secure, until a search warrant is obtained to seize them, items found on the premises that could reasonably be believed to be evidential material that could be lost, destroyed or tampered with before the warrant can be obtained;
- operate equipment found on the premises to see if it contains relevant information and to put that information in a form that enables it to be taken off the premises;
- ask questions of the registered provider and any other person on the premises and request answers, and
- request that documents be shown.

Normally, monitoring visits would only exercise the powers enabling the authorised officers to ask questions and view and take copies of documents.

Under exceptional circumstances, compliance monitoring may be conducted without the consent of the provider under a *monitoring warrant* obtained under section 137 of the Act. This provides the same general monitoring powers as under section 130, as well as compelling the provider to answer questions.

As a true assessment of the compliance of a provider relies on truthful and open responses by the provider, sections 135 and 136 of the Act make it an offence for the provider to present false or misleading documents or information and entail severe penalties.



## 1.4 Educative Function


*In* addition to ensuring compliance with the Act as described above, an equally important focus of the compliance function is educating registered providers to ensure sustained compliance.

The educative function helps us ensure ongoing compliance and best practice amongst providers. We help providers understand their obligations under the Act, the Regulations and the National Code; we provide advice on particular questions about compliance across the framework; and we give providers a basis for understanding the whole-of-government considerations.

In this function, we draw on our experience in monitoring compliance to advise on best practice and patterns of risk.

In addition, we participate in provider forums and seminars and we have an important role in supporting effective liaison and information flow between providers and DIMA.

To this end, the Department is committed to providing compliance services that are fair and as useful to providers as possible. We are also committed to giving providers with a prompt report of our compliance findings with suggestions for continuous improvement.



# 2.

## OVERVIEW OF THE COMPLIANCE REVIEW PROCESS

*The* main way that DEST meets its responsibility of both ensuring compliance by industry with the Act and its educative function is through the compliance review process and in particular the compliance visit to providers.

### 2.1 Compliance Review Process

*The* main components of the compliance review process are:

- programming – which uses the ERU Risk Matrix to allow programming of visits to providers during the year on the basis of risk;
- pre-visit planning and compliance review – setting a definite schedule of providers to visit and beginning the review of the provider’s compliance;
- the compliance visit – which involves visiting a provider’s premises and consists of:
  - the entrance interview;
  - compliance testing using the Compliance Monitoring Package Test Units;
  - preparation of the Provider Compliance Report – which is given to the provider at the end of the visit;
  - the exit interview; and
- post-visit activities – follow-up of non-compliances, completion of the review and updating the Risk Matrix.



## 2.2 The Compliance Visit

*There* are two types of compliance visit:

- 1. A compliance monitoring visit.** During such visits, DEST will test the providers compliance with its regulatory obligations. DEST formally contacts a provider and requests a compliance monitoring visit. One month's notice is normally given and documents are requested in advance.
- 2. A compliance education visit.** These visits are less formal than compliance monitoring visits and are to build relationships with industry and assist providers with their understanding of their compliance obligations. During these visits, the providers compliance is not tested. These visits may be arranged in advance or at short-notice.

In most cases, the ERU will conduct a compliance monitoring visit and this is the main subject of this procedure. However, the ERU may conduct a compliance education visit with shorter notice if officers are in the area or will be in the area shortly.

## 2.3 Key Phases and Activities

*There* are three phases and six activities in the compliance review process as follows:

### **Pre-Visit Phase**

- Programming
- Visit Planning
- Pre-visit Compliance Review

### **Visit Phase**

- The Compliance Visit

### **Post-Visit Phase**

- Post-Visit Actions
- Enforcement Action

## Pre-Visit Phase

*In* the pre-visit phase, the following actions occur:

- information from the ERU Risk Matrix is reviewed and an annual program of visits is determined;
- providers to be visited are selected and notified;
- necessary data is collected from the provider and PRISMS;
- a sample of student files to be examined during the visit is selected;
- the pre-visit compliance review is conducted; and
- the visit is planned in detail.

## Visit Phase

*The* visit phase consists of the actual conduct of the visit and the completion of compliance review testing and the *Provider Compliance Report*. The visit itself focuses on:

- any anomalies identified in the information reviewed prior to the visit;
- arrangements between providers for the provision of CRICOS courses (if applicable);
- attendance, academic progress and reporting in PRISMS;
- student support services, including grievance handling and mediation;
- providing advice to providers on their compliance performance (the Provider Compliance Report) including areas they should address to improve compliance;
- any follow-up action the Department may wish to undertake in relation to compliance; and
- educating providers about methods to ensure ongoing compliance

## Post-Visit Phase

*After* the visit, teams must:

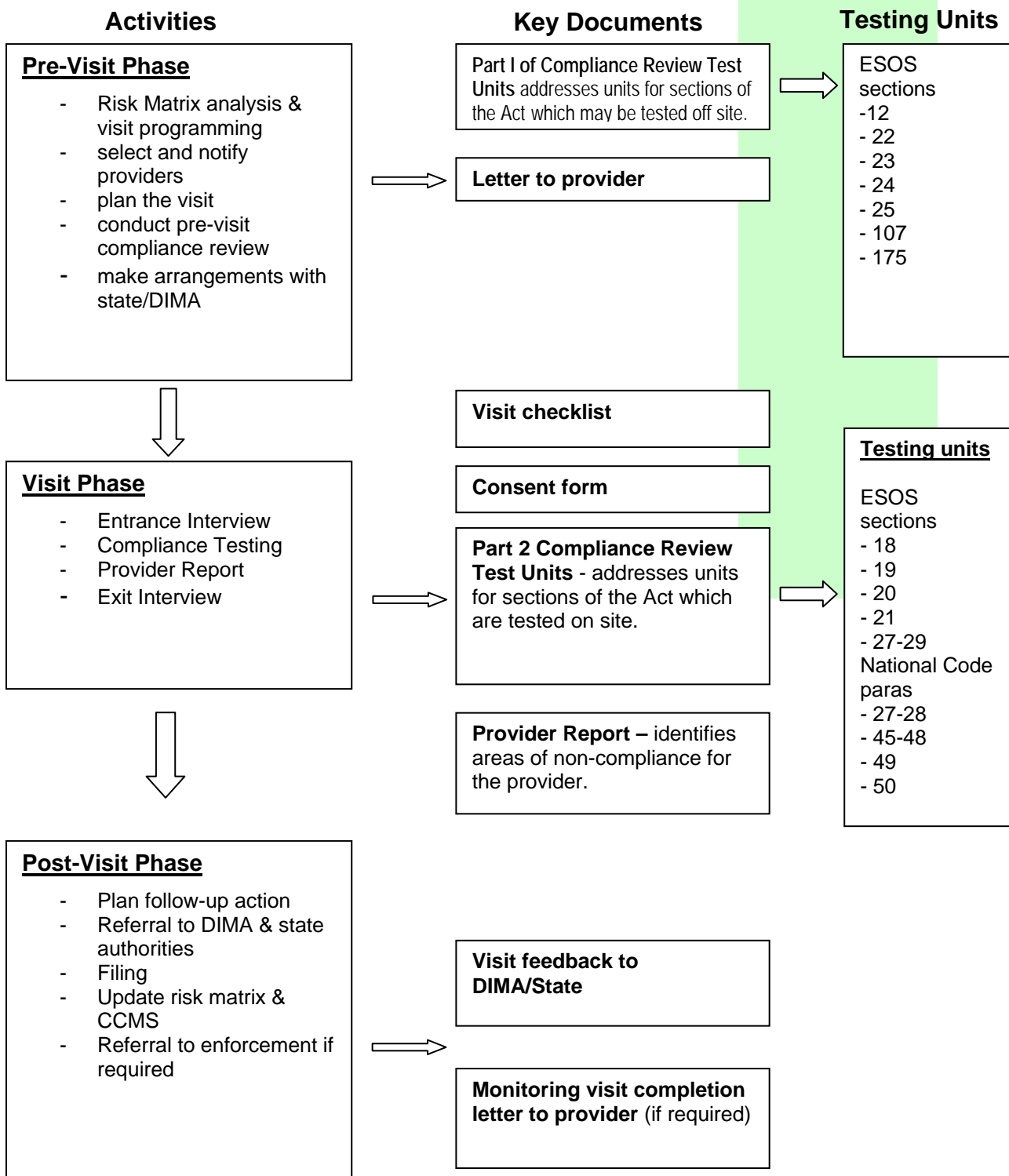
- notify the provider of their findings if they were unable to give a full provider compliance report on the day of the visit;
- undertake a follow-up plan (if required) including follow-up of compliance breaches, referral to the ERU Enforcement Team and provision of information to any other government authorities;
- ensure all filing has been done – especially that the Provider File contains a full copy of all relevant documents received, copies of all notifications and correspondence relating to the visit, and the original copy of the Compliance Monitoring Package Report Summaries and Test Units and Provider Compliance Report; and
- update the Risk Matrix and Compliance Case Management System (CCMS).



## 2.4 Diagrammatic Overview of the Process

An overview of the activities in the planning, review and reporting process with links to key documents and testing units is shown diagrammatically at Figure 1.

**Figure 1- Compliance Visit Procedure - Diagrammatic Overview**



# 3.

## PRE-VISIT PHASE

### 3.1 Programming

**Programming** is performed by ERU Team Leaders at the beginning of each year to program the number of visits and quarterly during the year to select providers which should be visited. The activity is based on the use of the ERU Risk Matrix which identifies providers which may have a high risk of failing to comply with their obligations under the Act. Use of the Risk Matrix supports a targeted and focused regulatory compliance function and maximises the effectiveness of the resources put into compliance review.

The Risk Matrix should be run according to the Risk Matrix Guidelines. The list of providers should be reviewed by the Team Leader in conjunction with other information which may be available

to the Department and the high risk providers identified. A program which includes compliance visits to these providers should be agreed with the Director. This program will then form the basis of the more detailed visit planning.

The program should be communicated to DIMA and relevant State or Territory authorities with the aim of agreeing times for joint visits. Where possible, the program may be adjusted to suit these authorities provided this does not interfere with any critical compliance action which DEST may be required to undertake.

### 3.2 Visit Planning (selection, preparation and notification)

#### Visit Planning - Overview

**The** steps in planning the visit are:

- select the provider;
- allocate responsibilities;
- notify the provider, seek consent and request information;
- collect information from PRISMS;
- conduct the Pre-Visit Compliance Review (Part 1 of the Compliance Monitoring Package Report and Test Units);
- liaise with DIMA and State or Territory authorities;
- address administrative aspects; and
- finalise Visit Plan.

## Select the Provider

1. Providers are selected by the visit team for a compliance review in two key ways:
  - on the basis of risk identified through the Risk Matrix; and
  - strategically identified sectoral or cross-sectoral priority issues for monitoring, agreed at the beginning of the year.
2. Other considerations in selection may include the following:
  - how recently the provider has been visited by DEST, or any other authority;
  - if the provider has been previously visited, whether any issues were raised in relation to compliance;
  - whether the provider has been registered recently; and
  - requests received from providers for a compliance visit.
3. DEST may receive information about possible provider non-compliance with the Act and/or the National Code from the following sources:
  - its own compliance reviews;
  - government sources via official correspondence: designated State or Territory authorities, DIMA (and other Australian Government agencies); the Minister's office, DEST's overseas counsellor network, references in Parliament or at Senate Estimates;
  - industry sources via informal correspondence: overseas students, providers, industry peak bodies, agents, the public at large;
  - other sources: media reports, anonymous sources.

Consult with the State authority and DIMA and ask for any relevant information they may have on providers you propose to visit, particularly if they have performed recent compliance visits or have any current compliance issues.

4. The providers selected for a compliance visit must be endorsed by the Director prior to contacting the provider. This may occur through the normal regular meetings between the Team Leaders and the Director. When the visit schedule is developed, visits should be logged on to the team work planner.



## Allocate Responsibilities

1. There are two key responsibilities to be allocated for a compliance visit:
  - Case manager – one person will manage and be responsible for all aspects of the planning and preparation for the visit and will be relied upon by other member of the team for their detailed and conclusive knowledge of all aspects of the case. The case manager should be prepared to provide background information that will be of assistance during the compliance review. The case manager may do pre-visit preparation and testing using the Compliance Monitoring Package Report Summaries and Test Units. The case manager need not necessarily be the most senior person involved in the visit;
  - Visit leader (lead auditor) - one person will make the introductions, lead the discussion with the provider, ask the questions and drive the visit. This person also makes the decisions about what to inspect, what information to supply to the provider and when a visit should end. This person will normally be the most senior person on the visit team.
2. To expedite the compliance visit, teams may allocate roles so that each ERU member takes primary carriage of parts of the review. In this case, this must be agreed in advance and it must be clear that each person will be required to take detailed and comprehensive notes of their investigation.
3. In all cases other than when invited to participate in a visit sponsored by another agency, two DEST authorised employees should conduct the compliance visit. They may be accompanied by representatives of DIMA and the State or Territory authority. Only in exceptional cases should a compliance review sponsored by DEST be conducted by only one authorised employee and this must be confirmed with the Team Leader or Director in advance.
4. Compliance visits may only be led by an authorised employee. Under section 5 of the Act, authorised employees are DEST officers at APS Level 5 and above. Authorised employees must have an ESOS Identity Card.



## Notify the Provider and Seek Consent

### *Compliance Monitoring Visits*

1. For compliance monitoring visits, the initial contact with the provider should be by phone and followed up in writing four weeks before the date of the scheduled visit. This will ensure that the provider has ample opportunity to provide the documentation and information requested well in advance of the visit.
2. Contact the provider by telephone:
  - contact the Principal Executive Officer or, if they are unavailable, a person who is authorised to act on behalf of the provider. State:
    - your name;
    - that you are from the Department of Education, Science and Training ESOS Regulation Unit;
    - that you would like to conduct a compliance monitoring visit under section 130 of the Act;
    - the date, time and estimated duration of the proposed visit;
    - that you will be requesting that the provider provide certain information and documentation in advance of the visit and that this will assist in reducing the amount of time needed for the actual visit; and
    - request that key staff be available on the day to assist with the review.
  - Confirm and record the contact details of the person you spoke to.
3. Using the Notice of Compliance Visit template (Attachment B) write to the provider confirming your proposed visit. Ensure that the notice includes a copy of the Compliance Monitoring Consent Form (Attachment C) for information, and that the letter specifies:
  - that the compliance visit is authorised under the Act;
  - that the provider will be asked to confirm their consent for the visit using the Visit Consent Form at the time of the visit;

*Note: The consent form cannot be signed in advance. However, as a courtesy, a copy of the consent form is included in the letter formally notifying a provider of our intended visit.*
  - the proposed time, date and place of the visit;
  - a date by which the provider must confirm that the proposed time and date is convenient;



- a note that State or Territory or DIMA representatives may also attend;
- that the following information should be provided to the Department, either electronically or in hard copy, no later than 2 weeks from the date of the letter:
  - copies of the following documents:
    - a. an example of a letter of offer;
    - b. student handbook or prospectus;
    - c. brochures, flyers and other promotional material;
    - d. examples of applications and enrolment forms; and
    - e. induction or orientation packages;
    - f. refund policy or arrangements;
  - details of any CRICOS courses that the provider conducts under an arrangement with any other providers including:
    - a. the names and codes for the courses;
    - b. the details of the registered provider; and
  - details of the provider's record keeping procedures for attendance, academic progress, course payments, overdue/non payment and written agreements with students including whether the records are kept in hard copy or electronically;
- that, during the visit, the review team will seek access to selected student files, both electronic and hard copy, to review and that the provider will be advised on the day of the visit which of the files they will be asked to produce;
- that the review team may speak with staff and students; and
- requesting the provision of a workspace for the review team to review files and documents as part of the visit.

**4.** Log the visit into the Compliance Case Management System (CCMS) and complete the relevant details.

**5.** The case manager should follow up with the provider if the information has not been received by the due date.

It is important to check that the requested information has been sent to DEST by the provider. If you appear not to have received the requested information, contact the provider to check that it has been sent. Allow plenty of time for the provider to supply the information before the visit.

If the provider is unable to supply the requested information prior to the visit they should be informed that extra time may be required during the visit.

6. Once the information has been received, it should be placed on the provider's file and the file should be folioed. This ensures that the Department's records in relation to provider are demonstrably in order should the Department need to rely on the file at some later time, for example, for follow-up, enforcement or Freedom of Information purposes.
7. As a courtesy, the provider should be notified that the Department has received the material. This is also a good opportunity to follow up on any individual items that may have been forgotten in the original request.

### *Compliance Education Visits*

1. For compliance education visits the notification requirements are less formal and no documentation has to be requested prior to the visit.
2. As much notice should be given to the provider as possible, but minimal notice of no less than 2 days should be given for these visits. In this case, contact the provider by telephone stating:
  - your name;
  - that you are from the Department of Education, Science and Training ESOS Regulation Unit;
  - that you would like to visit the provider to assist them with understanding their regulatory requirements;
  - the date, time and estimated duration of the proposed visit.
3. Following the telephone conversation, confirm your proposed arrangements by email or fax, enclosing a copy of the consent form for the provider's information, and print a copy of the email and attach it to the file along with any reply.

## Collect Provider Information through PRISMS

1. Extract information from PRISMS. Print out:
  - the Individual Provider report. This report provides the basic provider details (CRICOS provider number, business details and contact details) as well as information on courses, including duration and cost;
  - the provider's CoE Statistics report. This report provides the status of all CoEs issued by the provider, the number of students currently studying and the number enrolled to study;
  - the provider's CoE and Student Export report. This report is configurable, but would normally contain the following information for each student who has been granted a CoE:
    - name;
    - date of birth;
    - CoE number;
    - CoE status (approved, visa granted, reported on, studying etc);
    - CRICOS course number and name;
    - record of any fees pre-paid;
    - visa status; and
    - course start and end dates;For a provider with a very large number of students, only a sample of students may be printed out.
  - Course Cost/Duration Comparison report. This report compares cost and duration of courses registered on CRICOS with the information from the student's CoE;
  - Course list; and
  - 'Student Course Variation' report.





## 3.3 Pre-Visit Compliance Review

1. **The** pre-visit compliance review is a formal part of the Compliance Review Process and provides information for the Compliance Monitoring Package Report and Test Units (Attachment A), but is conducted prior to the actual visit. It is primarily based on information obtained through PRISMS, other in-house sources or supplied by the provider. It enables the Department to:
  - determine compliance in relation to:
    - the initial registration charge;
    - membership of a tuition assurance scheme (TAS);
    - payment of:
      - a. annual registration charge (ARC);
      - b. annual Fund contribution;
      - c. special levies specified by the Fund Manager;
    - notifications on written material;
    - privacy notifications;
  - determine the student files to be inspected during the visit;
  - assess priority issues for investigation during the visit including:
    - joint arrangement for the provision of CRICOS courses, including payment of course monies;
    - breaches of student visa conditions relating to attendance or satisfactory academic performance by accepted students;
  - determine the level of investigation anticipated for:
    - refund agreements, PRISMS notifications and payments;
    - attendance and academic performance breach notifications;and
  - gain a preliminary assessment of the level of compliance likely to be found at the visit.
2. Review all the information obtained on the provider and complete Part 1 of the Compliance Monitoring Package Report Summaries and Test Units. The team should be able to determine matters on a yes, no or N/A basis and complete most of Part 1 of the test package.
  - Review the material to check for anomalies. For example, from time to time, registration details may not have been updated, even though registration fees are shown on the system to be paid. Liaise about any anomalies in the data with the responsible State or Territory agency.

- Compare CRICOS information with information published by the provider on their website or otherwise on documentation provided to DEST. Information such as courses on offer, cost and duration may be checked.
- Review other information published by the provider on their website or otherwise provided to DEST, eg written refund agreement.
- Review the provider file for compliance history. For example, has the provider had previous compliance issues? Are there any previous allegations about the provider? Has the provider paid registration and other fees? Outstanding issues may be followed-up during the compliance visit.
- Consider all the data obtained to identify what implications it may have for the visit, in particular the emphasis to be placed on particular elements of the Compliance Monitoring Package Report Summaries and Test Units during the visit.

**3.** Make a list of the student files you will want to view during the Compliance Visit.

- The total number of student files to be inspected will depend on the number of international students enrolled with the provider. The following table should be used to determine the number of files to inspect.

Number of international students enrolled	Minimum number of files to inspect
1 - 500	10
501 or more	20

If the pre-visit review shows higher than expected numbers of notifications and refunds or other possible problems, a larger sample may be taken. If problems are identified and enforcement action is contemplated, the ERU may take a further sample to assist in quantifying the scope of problems identified.



- A variety of types of students should be included in the list of files which are selected, although the majority of files should pertain to current students (i.e. at “studying” status in PRISMS).
- Record the names of the students on the Student File Sample test sheets of the Compliance Monitoring Package Report Summaries and Test Units. In addition, also enter the names on the Provider Information Request. You will hand a copy of the Provider Information Request to the provider at the interview.

## **Notify DIMA and State or Territory Authorities**

1. Once a date and time has been confirmed with the provider, telephone or email the relevant contact officer in DIMA, the State or Territory DEST office and the relevant State or Territory authority. Advise them of:
  - the name and location of the provider you intend to visit;
  - the proposed date, time and duration of the visit;
  - invite one officer from the agency to attend the visit
2. Following the telephone call, confirm the details of the invitation to participate in the visit by email. Print out the email and place it on the file, along with any responses received.

## **Administrative Aspects**

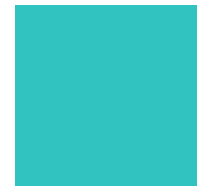
1. Covering administrative aspects is an important part of visit planning:
  - confirmation of address and telephone contact numbers of the provider;
  - confirm availability of key DEST team personnel and contingency arrangements;
  - make/confirm travel (and accommodation if necessary) arrangements;
  - liaise with the DEST State or Territory office; and
  - arrange to borrow the DEST mobile phone, laptop and printer as required.

Follow the check list in the Compliance Monitoring Package Report Summaries and Test Units and enter details as required.



## Finalise the Visit Plan

1. After the planning steps have been completed, the proposed visit team should:
  - review all data to determine what gaps in information exist, and agree on any areas it may be appropriate to emphasise during the visit;
  - if the questions from the Compliance Monitoring Package Test Units are to be split between team members during the visit, agree and confirm responsibilities; and
  - confirm roles and responsibilities for the visit.
2. Agree on any special requirements such as inclusion of representatives from other agencies.
3. If no information has been received from the provider, check all appropriate internal DEST sources, including internal mail, and follow up with the provider.



# 4.

## VISIT PHASE

### 4.1 Conducting the Compliance Visit

*The* provider compliance visit is a core part of the compliance review. While planning is important, the process needs to be flexible enough to allow for difficulties in gaining information from the provider or following up on unexpected findings.

The roles of team members will have been decided during the visit planning conducted in the pre-visit phase and it is usual that, in a two person visit team, the person leading the compliance visit will normally be the most senior officer on the team. However, for training and development purposes, a less senior person may lead the visit under the supervision of the more senior person.

If any officer from a State or Territory authority or DIMA is

accompanying the team, their role must be made clear to the provider before entering the provider's premises. Note that State and Territory agencies and DIMA have different responsibilities from DEST under the framework:

- State and Territory agencies are responsible for compliance with the National Code; and
- DIMA has responsibility for immigration and visa related matters.

During the compliance visit, officers from DIMA and the State and Territory authorities may want to ask specific questions in relation to their responsibilities. They may also seek copies of information provided to DEST that may assist them in relation to those responsibilities.

## 4.2 Visit Procedure Checklist

1. **The** leader of the visit should meet the contact person for the provider, introduce colleagues and be prepared to provide confirmation of identity and authorisation by showing their ESOS Identity card.

During the entrance interview, using the Entrance Interview check list in the Compliance Monitoring Package Report Summaries and Test Units, the visit leader should:

- ask the provider to complete and sign the *Compliance Monitoring Consent Form* (Attachment C), reminding the provider that they can withdraw their consent at any time during the visit;  
*Note: This is important because, under the ESOS Act, DEST does not have a right of entry without a warrant. A signed Compliance Monitoring Consent Form demonstrates the provider's consent to our entering the premises.*
- record the names and positions of all provider staff present;
- outline the scope and purpose of compliance visits (reiterating information in the original notification letter to the provider);  
*Note: The purpose of the visit is to assess the provider's compliance with the Act. It is also to encourage questions about compliance and is an opportunity to develop dialogue and promote good relations with providers.*
- reinforce the educative aim of the visit and the Department's willingness to answer questions and make suggestions;  
*Note: This is an opportunity to educate providers about ongoing compliance with the Act.*
- re-confirm the likely duration of the visit giving the provider an outline of the activities during the visit to help them plan their day;
- give the provider brief feedback of the review of the material supplied to DEST by the provider and raise any non-standard issues prior to beginning the regular compliance review. These might be issues which were identified in the pre-visit review work;
- give early notice of people or documents you wish to see to give the provider time to provide them;
- ask for a brief inspection of the facilities to allow general discussion and information gathering prior to commencing detailed compliance testing.  
*Note: Although requested at the entry interview, the site inspection may be conducted later in the visit.*

2. Conduct compliance testing against the Compliance Monitoring Package Report and Test Units (Attachment A) and in accordance with the visit plan developed earlier in the pre-visit phase.

3. Complete Part 2 of the Compliance Monitoring Test Package and follow up any parts of Part 1 which were unable to be completed prior to the visit.

## 4.3 Preparation of the Provider Compliance Report

1. Once the investigation is completed, the team should take time away from the provider's presence – in an office provided, or another location, to review the Compliance Monitoring Package Report Summaries and Test Units results and any supporting documentation. Fill out the Summary of Breaches section of the Exit Interview page.
2. The Enforcement Actions and Protocols (section 5.2) outlines the basis on which breaches of the Act or National Code are classified as:
  - minor breaches of the Act (including Section 107 breaches);
  - breaches of the National Code; or
  - serious Breaches of the Act.

Assess the breaches you have identified and classify them in accordance with this procedure.

3. If possible, before the exit interview, prepare a written Provider Compliance Report for all minor breaches of the Act using the template provided in Attachment D. The report consists of a covering letter and an attachment that lists any breaches of the Act, corrective action required by the provider and a time-line for each breach which DEST requires a response by. For most breaches, a response time of two weeks is appropriate.
4. For those breaches associated only with the National Code (those paragraphs noted in the Test Package or any other observed breaches of the National Code noted in the Test Package), the breaches should be noted in the report as observations and put into a separate attachment. The specific breaches should be listed and it should be noted that a copy of the report will be communicated to the relevant State or Territory authority. No corrective action should be requested.
5. Print the report, proof-read and have the report signed by the Visit Leader. Print a second copy of the report for your records.
6. Where any potential instances of serious breaches are identified, they should not be referred to in the Provider Compliance Report at the time of the visit. During the exit interview the visit leader should briefly describe the potential breach issue and note that the Department will provide written notification to the provider if required.
7. Where no breaches of the Act or Code were identified, a Provider Compliance Report will be issued which is modified from the Provider Compliance Report template. The report should contain the following statement; 'Prior to and during this visit we have reviewed documents and records relevant to your compliance with the Act. Based on this evidence no areas of non-compliance were identified.'
8. During the exit interview, the team leader will outline to the provider the breaches identified and, in the case of minor breaches of the Act and breaches of the National Code, give a written report that includes the remedial action that will be required. If there are serious breaches, the provider will receive written confirmation and required actions and timeframes, within one week of your return to the office.

## 4.4 Exit Interview

**At** the conclusion of the visit, the visit leader should conduct the exit interview, following the Exit Interview Check list in the Compliance Monitoring Package Report Summaries and Test Units. The visit leader should:

- thank the provider for their time and assistance;
- where possible, present the signed and completed Provider Compliance Report to the provider and/or talk the provider through the compliance issues identified and the remedial action required;
- note the set timeframes for responses to any non-compliances identified during the review;
- outline any follow up action you propose;
- for serious breaches of the Act or those minor contraventions open to dispute, indicate that provider may not be compliant but that a determination will be made and details of any breach and suggested corrective action will be provided in writing; and
- offer to answer any questions from the provider.





# 5.

## POST-VISIT PHASE

### 5.1 Post-Visit Actions

1. Where minor breaches of the Act have been identified, a Provider Compliance Report will be given or sent to the provider no later than 1 week after the day of the audit. The report will identify:
  - the breaches;
  - the remedial action required;
  - the timeframe in which the remedial action is to be completed; and
  - a date for follow-up by DEST.
2. Where the visit may have identified a serious contravention of the Act, the case should be referred to the Enforcement Section within a week of the visit. The Enforcement Section will review the case and make a determination on future action (see Enforcement Action and Protocols).
3. Within 1 week of the visit, the case manager should ensure that the following actions have been completed:
  - update the case in CCMS;
  - if serious breaches were identified, finalise the *Provider Compliance Report* and send to the provider;
  - a copy of the *Provider Compliance Report* should be sent to the State or Territory Authority and DIMA. For the State or Territory authority, make particular note of the National Code breaches and request their appropriate action;
  - any follow up action should be scheduled and monitored;
  - if the visit required no follow-up action, all relevant documentation, including a completed *Provider Compliance Report* and Compliance Monitoring Package Report Summaries and Test Units should be filed on the providers Compliance Review file and relevant emails on the G:drive. Close the case in CCMS;
  - the Risk Matrix should be updated (in accordance with the DEST Risk Matrix Guidelines);
  - where follow-up action was required from the provider, once the case is concluded and the provider has been assessed as compliant, a final closure letter should be sent to the provider using the *Monitoring Visit Completion Letter* template (Attachment E); and
  - all relevant documents should be filed in the provider's file, including any documents in which compliance breaches were identified. Other materials from the provider which were compliant or not relevant to the compliance review should be destroyed.
4. Where satisfactory responses are not received from the provider in response to compliance breaches, refer to Activity 5 - Enforcement Action section.

## 5.2 Enforcement Action and Protocols

### Introduction

**Most** provider compliance reviews performed by the ERU focus on helping the providers improve their compliance with their obligations under the ESOS Act. For providers with relatively undeveloped systems of compliance, our reviews and visits are an opportunity to help them improve their operations under the Act. This helps them lower the risk of future breaches of the Act and reduces the risk to students and to the international education industry. For those providers with good systems of compliance, ERU compliance reviews are an opportunity to give them positive feedback on their efforts and assure them that their work is worthwhile.

In some instances, however, providers may feel that the requirements of the Act or of DEST are an imposition on their business and may be reluctant to take the action required to ensure compliance. Under these circumstances, the Act has provisions which enable DEST to compel a provider to comply. Under the Act, DEST may impose a number of sanctions for failure to comply, including fines and restrictions on a provider's registration. For certain breaches of the Act, criminal prosecution is possible, with the penalties of up to two years imprisonment.

In any cases where criminal prosecution may be pursued by DEST (through the National Investigations Unit), legal complexities make it important that the cases be handled by the

Enforcement Team, who have detailed knowledge of the procedural and legal requirements.

The circumstances where a case may be referred to the Enforcement Team for action are outlined in the Handover Protocol (below). Most often, handover to the Enforcement Team will occur because a provider has repeatedly failed to comply with a request to comply with the Act in a satisfactory and timely manner.

However, some breaches of the Act present a high level of risk to students or to the industry and are called '*serious breaches*'. If this type of breach is suspected during a Compliance Review, the matter is referred to the Enforcement Team immediately due to the risk to students or industry and due to the potential legal and procedural complexities of dealing with the case.

Serious breaches generally carry a maximum penalty of imprisonment for six months or more. Breaches which are most likely to be found are noted in the following table.



<b>Serious Breaches</b>	
Act reference	Brief description of the breach
Section 8	Providing or promoting a course without having a registered provider in that State or Territory
Section 101	Inviting, making an offer to, or enrolling students while the providers registration is suspended
Section 108	Giving false or misleading information about students, or student visa breach notices
Section 109	Failing to comply with the conditions required to use the PRISMS system
Section 110	Being a bogus provider – that is, a provider who provides a course which is not genuine or facilitates a breach of the student's visa requirements
Section 135	Giving false or misleading information when asked questions during a compliance monitoring visit
Section 136	Showing false or misleading documents during a compliance monitoring visit

It should be noted that, for the purposes of a Compliance Review and potential enforcement action, Section 107 (Failing to identify registered provider in written material) is not considered a serious breach of the Act, despite having a maximum penalty of six months imprisonment.

### **DEST National Investigations Unit (NIU).**

*In* addition to any enforcement action which may be undertaken under the ESOS Act, if it is possible that criminal matters may have been uncovered during compliance or enforcement activity, the case will be referred by the Enforcement Team to the DEST National Investigations Unit (NIU).

The NIU is responsible for the prevention, deterrence, investigation and prosecution of fraud, other criminal offences and serious staff misconduct. It undertakes investigations of suspected or alleged fraud, other criminal activity or malpractice committed by providers, clients, DEST staff or others.

If a potential criminal offence, such as fraud, is uncovered during compliance or enforcement work, the matter is referred to the NIU for their investigation in parallel with any investigation of breaches under the ESOS Act.

### **Enforcement Action**

*To* investigate a case referred to them, the Enforcement Team may use provisions of the Act which are not normally used in regular compliance work. This may include the use of a *Production Notice* or an *Attendance Notice*, both of which are compulsory notifications to providers requiring them to supply information or attend meetings. In certain circumstances, the

Enforcement Team may also obtain a *Monitoring Warrant* which allows them entry to a provider's premises and ask questions without consent.

Failure of providers to comply with these notices or warrants may result in serious penalties, including imprisonment. These provisions are powerful tools in investigation and enforcement.

Following investigation of a case, in conjunction with the DEST Secretary's delegate, the Enforcement Team may decide to impose sanctions or, in extreme cases, suspend or even cancel a provider's registration on CRICOS. This would prevent the provider from participating in the international education industry.

In the end, the ESOS Act is designed to ensure high quality education providers and safeguard the welfare of students and the integrity of the international education industry. Through the Enforcement Team, DEST exercises the powers in the Act to achieve this end – compliance with the Act, or removal from the industry.



## **Enforcement Handover Protocol**

Following a compliance visit to a provider, it may be necessary to refer issues to the Enforcement Team. The following provides guidelines for this process.

- 1.** For providers where a serious breach of the Act may have been identified
  - Where a serious breach of the Act may have been identified during a compliance visit the case should be referred immediately to the Enforcement Team for consideration.
  - Where the Enforcement Team believes that there is a strong likelihood that a serious breach of the Act has taken place, further action on the case will be undertaken by the Enforcement Team in conjunction with the Compliance Team.
  - Where the Enforcement Team determines that no serious breach of the Act has taken place, the case may be progressed by the Compliance Team.
- 2.** For providers who fail to respond to requests for follow-up information
  - Following a compliance visit, a Provider Compliance Report will have been given to the provider which may have requested information or required responses to questions by a nominated date.
  - Where a provider has failed to respond to these requests by three working days after the nominated date, a reminder letter should be sent. The letter should be based on the *Provider Compliance Reminder Letter* template (Attachment F).

- A new response date should be nominated no longer than two weeks after the date that the reminder letter is sent.
- Where no response is received from the provider to the reminder letter by the nominated date, a final reminder letter should be sent, based on the *Provider Compliance Final Reminder Letter* template (Attachment G). Again, a new response date should be nominated no longer than two weeks after the date that the reminder letter is sent. The final reminder letter must be checked and signed by the Team Leader.
- Where no response is received to the final reminder letter by three days after the nominated date, the matter should be referred to the Enforcement Team.

### 3. For providers who provide inadequate responses

- If a provider responds to a feedback letter or subsequent reminder letters but the response is inadequate in any way, it may also be necessary to send a letter based on the *Provider Compliance Final Reminder Letter* template, modified to suit the situation. The issues should first be discussed with the Team Leader and the letter must be checked and signed by the Team Leader.
  - Where a provider fails to respond adequately to this letter the matter may be referred to the Enforcement Team for consideration.
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