

Source of Obligation

Standard 1.1 of the National Code requires the College to ensure that the marketing and promotion of its education services in connection with the recruitment of overseas students or intending overseas students, including through an Education Agent, is not false or misleading, and is consistent with the Australian Consumer Law.

Sections 18 and 29 in Schedule 2 of the Competition and Consumer Act 2010 (Cth) (the Australian Consumer Law) respectively prohibit the College from, in trade or commerce, engaging in conduct that is misleading or deceptive or is likely to mislead or deceive, and from making false or misleading representations about its goods or services.

This applies to the College when it is conducting its marketing and promotional activities, as well as its provision of educational services to overseas students.

Any breach of Standard 1 may require enforcement action by the Cth DET, including sanctions for non-compliance.

Thomas Carr College's Policy

It is the College's policy that when seeking to enter into written agreements with overseas students or intending overseas students, we are completely honest and accurate in our communications and do not provide any false or misleading information on:

- associations with any other providers, persons or organisations the College has arrangements with for the delivery of the course in which the student intends to enrol or may apply to enrol
- any work-based training a student is required to undertake as part of the course
- any prerequisites – including English language proficiency – for entry to the course
- any information relevant to the College, its courses or outcomes associated with those courses.

The College will not:

- claim to commit to secure for the student, or on the student or intending student's behalf, a migration outcome from undertaking any course offered by the College
- guarantee a successful education assessment outcome for the student or intending student.

This policy is made available on the College's website to demonstrate our commitment to transparent and truthful communications with potential overseas students.

Australian Consumer Law Protections

The College ensures that we abide by the provisions of the Australian Consumer Law and provide information to overseas students and their parents/guardians about the consumer protections afforded to overseas students.

The College ensures that we do not:

- in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive
- engage in unconscionable conduct
- have unfair contract terms within our contracts with overseas students
- provide false or misleading representations about goods or services provided by the College.

Definitions

Trade or Commerce

In "trade or commerce" refers to conduct, which in itself, has an aspect or element of activities or transactions which are commercial in nature: *Concrete Construction v Nelson* (1990) 169 CLR 594.

Under the Australian Consumer Law, transactions between the College and overseas students and their parents/guardians for the purposes of enrolment and tuition payments are dealings in trade or commerce.

Misleading or Deceptive Conduct

The ACL does not define the terms “misleading” or “deceptive”.

To determine what is misleading or deceptive conduct, a court will assess an action or omission by considering whether the overall conduct induces or is capable of inducing an ordinary person in the position of an overseas student or intending overseas student into error.

Unconscionable Conduct

The Australian Competition and Consumer Commission (ACCC) provides guidance on unconscionable conduct.

Unconscionable conduct is described as business behaviour that is harsh or oppressive and goes beyond commercial bargaining.

To be considered unconscionable, the conduct must be more than simply unfair – it must be against conscience as judged against the norms of society.

Unfair Contract Terms

The ACCC has provided guidance on the characteristics of unfair contract terms.

Common examples of unfair contract terms include terms that:

- enable one party (but not another) to avoid or limit their obligations under the contract
- enable one party (but not another) to terminate the contract
- penalise one party (but not another) for breaching or terminating the contract
- enable one party (but not another) to vary the terms of the contract.

In the context of overseas students, unfair contract terms are terms that:

- cause a significant power imbalance between the overseas student and the College
- are not reasonably necessary to protect the legitimate interests of the College
- would cause the overseas student’s detriment (financial or non-financial) if the College tried to enforce it
- are not transparent.

False or Misleading

The ACCC provides guidance on what is false or misleading. It is illegal for the College to make representations that are incorrect or are likely to create a false impression.

This includes any representations in print, radio, television, social media or other advertising mediums, and includes any statement made by a person representing the College.

Approval of Materials

Before any marketing or pre-enrolment materials are released by the College, all marketing materials must be approved by the Principal.

The Principal must ensure that any statements made in the College’s marketing materials are not false or misleading.

CRICOS Requirements

The College must include the College’s name, College’s Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) registration number (and the name of the CRICOS registered provider, if not the College) on any written or online material that it distributes or makes publicly available for the purposes of:

- providing or offering to provide a course to an overseas student
- inviting an overseas student to undertake or apply for a course
- indicating it is able to provide a course to overseas students.

It is a criminal offence under section 107 of the Education Services for Overseas Students (ESOS) Act, with a penalty of imprisonment for six months, if a person fails to include the required information in any written or online materials.

Record Keeping

The College maintains evidence of compliance with this policy by maintaining records of marketing and other materials used in relation to overseas students. Records will be maintained in accordance with our Overseas Students Records Management and Retention Policy.

Policy status: New

Key Stakeholders: College staff, students and parents

Endorsement Body: College Executive

Ratification Body: College Board Policy

Author: Director of International Programs

Date of Approval: 2018

Date of Scheduled Review: 2021

The content of this policy can be changed at the College Board's discretion at any time without notification.