INDEPENDENT HIGHER EDUCATION AUSTRALIA

The Hon Julian Hill MP
Assistant Minister for International Education
Parliament House
CANBERRA ACT 2600

Dear Minister Hill

Suggested amendments to Ministerial Direction No. 106 – Assessing the genuine entry and stay requirements for Student visa and Student Guardian visa applications

I am writing on behalf of Independent Higher Education Australia (IHEA) to propose amendments to Ministerial Direction No. 106 (MD 106) to provide greater transparency, consistency and certainty in its application.

As you know, MD 106 requires decision makers to consider an applicant's circumstances as a whole and identifies a broad range of factors that may be relevant to assessing the applicable genuine entry and stay criterion**.**

However, there is considerable uncertainty for prospective students and education providers about how some of the factors identified in MD 106 are applied in practice, including the circumstances that trigger further scrutiny or requests for additional evidence and the weight given to particular factors in reaching a decision.

Changes in the way MD 106 is applied can also have significant consequences for students and providers where there is limited visibility of those changes or when they take effect.

This uncertainty is particularly significant given the substantial, non‑refundable Visa Application Charge incurred by most prospective students in lodging an application and the consequences of a refusal. Applicants should therefore have sufficient information to understand the matters relevant to the genuine student assessment and the material concerns affecting their application.

Greater transparency and predictability would also support providers to meet their obligations under the ESOS framework and National Code by enabling them to provide accurate information to students, assess recruitment risks, manage admissions processes and support visa applicants appropriately.

IHEA proposes amendments in five areas:

- **Factors leading to further scrutiny or an adverse finding:** Greater transparency should be provided about the circumstances that may lead to further scrutiny and how multiple factors are considered together, including through current public guidance and de‑identified examples.
- **Process where additional information or evidence is required:** Where a decision maker seeks additional information or evidence, applicants should, where practicable, be advised of the material issue or factor requiring clarification and why the information or evidence requested is relevant to the genuine student criterion. Requests should be proportionate to the issue being considered, and applicants should have a reasonable opportunity to address material concerns before an adverse decision is made, subject to applicable legislative and procedural requirements.
- **Matters that may create uncertainty for prospective students:** This includes changes in discipline or career direction, study gaps, changes of course or education provider and economic circumstances. Greater transparency should be provided about how economic circumstances are

considered, including their relationship to the applicant's individual circumstances and stated career objectives.

- **Material changes to the published guidance or operational application of MD 106:** Such changes would be published with their commencement date and transitional arrangements. The Department would also consult international education sector representatives before significant changes affecting prospective students or registered providers.

- **Aggregate and de–identified information on the operation of MD 106:** This would include information on patterns pertaining to issues where further scrutiny occurs and broad reasons for adverse outcomes. This will assist providers and prospective students understand how MD 106 is operating in practice and identify material changes over time. Any reporting should be sufficiently aggregated so as not to compromise migration integrity, fraud detection activities or operational risk settings.

The attached document sets out the proposed amendments in detail. They are intended to improve transparency and predictability for applicants and providers without limiting the Department's capacity to respond appropriately to migration integrity, fraud or compliance risks.

IHEA would welcome the opportunity to discuss these proposals with you.



The Hon. Dr Peter Hendy
Chief Executive Officer
Independent Higher Education Australia
14 October 2026

ATTACHMENT: DETAILED SUGGESTED CHANGES TO MD106

PART 2 – DIRECTIONS

1. Amend Section 7 – Assessing Subclass 500 (Student) visa applications and Student Guardian visa applications

Existing Section 7(2)

Decision makers should not use the factors specified in this Direction as a checklist The listed factors are intended only to guide decision makers when considering the applicant's circumstances as a whole, in reaching a finding about whether the applicant satisfies the genuine student criterion, the genuine student dependent criterion or the genuine temporary entrant criterion (as applicable). There may be relevant factors, other than those set out in this direction that a decision maker needs to consider when assessing an applicant's visa application.

Insert new Section 7(2A)

(2A) *The Department must publish and maintain current, publicly available guidance identifying the principal factors and circumstances that, in the Department's visa decision–making practice, commonly result in further scrutiny, requests for additional information or evidence, or adverse findings under this Direction. The guidance should include de–identified examples demonstrating how multiple factors may be considered together in reaching an overall finding.*

Existing Section 7(4)

Where closer scrutiny of the applicant's circumstances is considered appropriate, decision makers may request additional information and/or further evidence from the applicant to demonstrate that they satisfy the genuine student criterion, the genuine student dependent criterion, or the genuine temporary entrant criterion (as applicable).

Insert new Section 7(4A) and (4B)

(4A) *Consistent with the procedural requirements of the Migration Act 1958, and to provide greater transparency in the application of this Direction, where additional information or further evidence is requested, the applicant should be informed of the material issue or factor requiring clarification and the relevance of the information or evidence requested to the relevant criterion.*

(4B) *Requests for additional information or further evidence should be proportionate to the material issue being considered and should provide the applicant with a reasonable opportunity to respond before an adverse finding is made*

Existing Section 7(5)

Circumstances where further scrutiny may be appropriate include, but are not limited to:

a) Information in statistical, intelligence and analysis reports on migration fraud and immigration compliance compiled by the Department indicate the need for further scrutiny.

b) The applicant or a relative of the applicant has an immigration history of reasonable concern.

c) The primary applicant for a Subclass 500 (Student) visa intends to study in a field unrelated to their previous studies or employment.

d) Apparent inconsistencies in information provided by the applicant in their visa application.

e) The applicant holds a Subclass 485 (Temporary Graduate) visa, a Subclass 600 (Visitor) visa, a Subclass 601 (Electronic Travel Authority) visa or a Subclass 651 (eVisitor) visa.

Or

f) The applicant holds a student visa, or previously held one or more student visas.

Insert new Section 7(5A)

(5A) *The Department must publish, at least quarterly, aggregate and de–identified information on the operation of this section, including:*

a) The proportion of applications subject to further scrutiny.

b) Broad categories of factors or circumstances associated with further scrutiny.

c) The proportion of applications subject to further scrutiny that result in a request for additional information or evidence.

d) Broad categories of reasons associated with adverse findings.

Division 1 – Assessing the genuine student criterion and the genuine student dependent criterion for Subclass 500 (Student) visa applications

2. Amend Section 8 – The applicant's circumstances

The applicant's circumstances in their home country

Existing Section 8(2)(c)

Economic circumstances of the applicant that would present as a significant incentive for the applicant to apply for a Subclass 500 (Student) visa as means of obtaining entry to Australia for purposes other than study or other than to accompany a Subclass 500 (Student) visa holder to Australia (as applicable). These circumstances may include consideration of the applicant's circumstances relative to the home country and to Australia;

Insert new Section 8(2A)

(2A) *In considering economic circumstances under paragraph (2)(c), decision makers should have regard to the applicant's individual circumstances, including their education, employment, experience, financial circumstances and stated career objectives.*

Economic circumstances must not be treated as adverse solely because the applicant may have greater employment, remuneration or economic opportunities in Australia. The relevant consideration is whether the applicant's economic circumstances, considered in context, enable the student to study on a Subclass 500 (Student).

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3. Amend Section 8 – Value of the course to the primary applicant's future

Value of the course to the primary applicant's future

Existing Section 8(5)(a)

Whether the primary applicant is seeking to undertake a course that is consistent with their past employment and their current level of education, and whether the course will assist the primary applicant to obtain employment or improve employment prospects in their home country or another country. Decision makers should allow for reasonable changes to career or study pathways.

Insert new Section 8(5)(aA)

(5)(aA) *A change in discipline, occupation or career direction is not, of itself, evidence that the applicant does not satisfy the genuine student criterion. In considering such a change, decision makers should have regard to the applicant's stated career objectives, relevant education and employment experience, and individual circumstances.*

The Department must publish de–identified examples demonstrating how reasonable changes to career or study pathways are considered in the assessment of applications.

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4. Amend Section 11 – Any other relevant matter

Existing Section 11(1)(b)(vi)

Section 11(1)(b)(vi) provides for consideration of whether, where an applicant previously held a student visa, there are:

study gaps of concern, a pattern of changing or deferring courses, changing to unrelated courses or changing education providers.

Insert new Section 11(1)(b)(vii)

(vii) *A study gap, change of course, change of education provider or change to an unrelated course must not, of itself, be treated as evidence that the applicant does not satisfy the genuine student criterion. Where such a matter is considered relevant, the decision maker should have regard to the applicant's explanation, the circumstances giving rise to the change or gap, the applicant's subsequent study or employment history and the applicant's circumstances as a whole.*

Existing Section 11(2)

Decision makers must also have regard to any other relevant information provided in respect of the visa application when assessing applicants against paragraph 500.212(c) or 500.312(c) (as applicable). This includes information that may be either beneficial or unfavourable to the applicant.

Insert new Section 11(2A)

(2A) *Consistent with the procedural requirements of the Migration Act 1958, and to promote transparency and consistency in decision making, where information is relied upon as materially adverse to the applicant in determining that the relevant criterion is not satisfied, the decision record should identify the material factor or factors relied upon and explain how those factors, considered in the context of the applicant's circumstances as a whole, contributed to the finding that the relevant criterion was not satisfied.*

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5. Insert new Section 12 – Transparency of application changes

Insert new Section 12 – Transparency of application and changes

12(1) *The Department must publish and maintain current, publicly available guidance explaining the application of this Direction, including material changes to published guidance, assessment practices or risk settings that are reasonably likely to affect the assessment of applications.*

12(2) *A material change to the operational application of this Direction that is reasonably likely to affect applicants or registered providers must be published before, or as soon as practicable after, the change takes effect and must state the date from which the change applies.*

12(3) *Where a material change is reasonably likely to affect applications already lodged, the Department must publish any applicable transitional arrangements or explain why transitional arrangements are not appropriate.*

12(4) *The Department should consult relevant international education sector representatives before implementing a material change that is reasonably likely to have a significant impact on prospective international students or registered providers, except where urgent action is required to address a material migration integrity, fraud or compliance risk.*

12(5) *Nothing in this section prevents the Department from taking immediate action where disclosure or prior consultation would materially compromise migration integrity, fraud detection, compliance activity or the effective operation of the visa program.*