



Quarterly Report 1 April 2017 – 30 June 2017

About the Commonwealth Ombudsman

The Commonwealth Ombudsman has three main functions in its specialist Overseas Students role:

1. investigate complaints about actions taken in connection with overseas students by private registered education providers
2. give private registered providers advice and training about best practice complaint-handling for overseas student complaints, and
3. report on trends and systemic issues arising from our complaint investigations.

This report sets out our activities from 1 April – 30 June 2017 in relation to each of these functions.¹

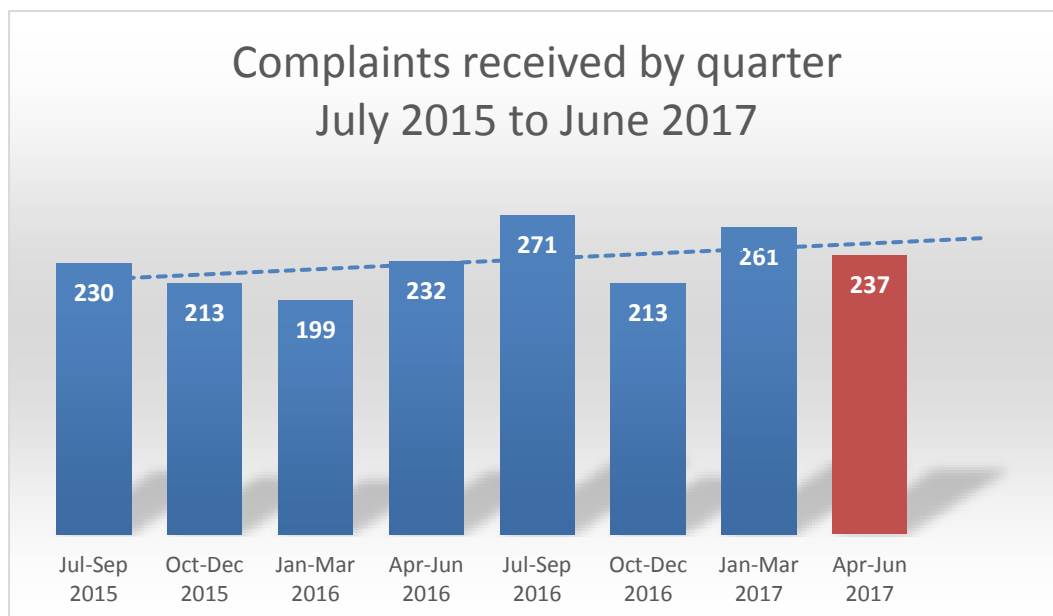


Key points in this report

- » the number of complaints received during the period 1 April – 30 June 2017 show a modest increase compared to the same period last year, consistent with an increase in complaints overall
- » complaints about written agreements (fees and refunds) continue to be the main issue
- » complaints about provider administration of deferrals, suspensions or cancellations increased over the last quarter
- » of the 127 complaint issues investigated and finalised, 44 (35 per cent) were decided in support of the provider, 32 (25 per cent) in support of the student and 51 (40 per cent) in support of neither party.

¹ Every effort is made to ensure that the figures published in this report are accurate, however they should be viewed as a guide only. Official statistics relating to the 2016–17 reporting year will be published in the Commonwealth Ombudsman’s annual report.

Complaints received July 2015 – June 2017



Complaints received 1 April – 30 June 2017

Received	Closed		Ongoing	
	Not investigated	Investigated	Under assessment	Under investigation
237	152	21	12	52
	64%	9%	5%	22%

Complaints finalised 1 April – 30 June 2017²

Finalised	Not investigated	Investigated	No. of issues investigated	Outcome found in support of:		
				Provider	Student	Neither
276	175	101	127	44	32	51
	63%	37%		35%	25%	40%

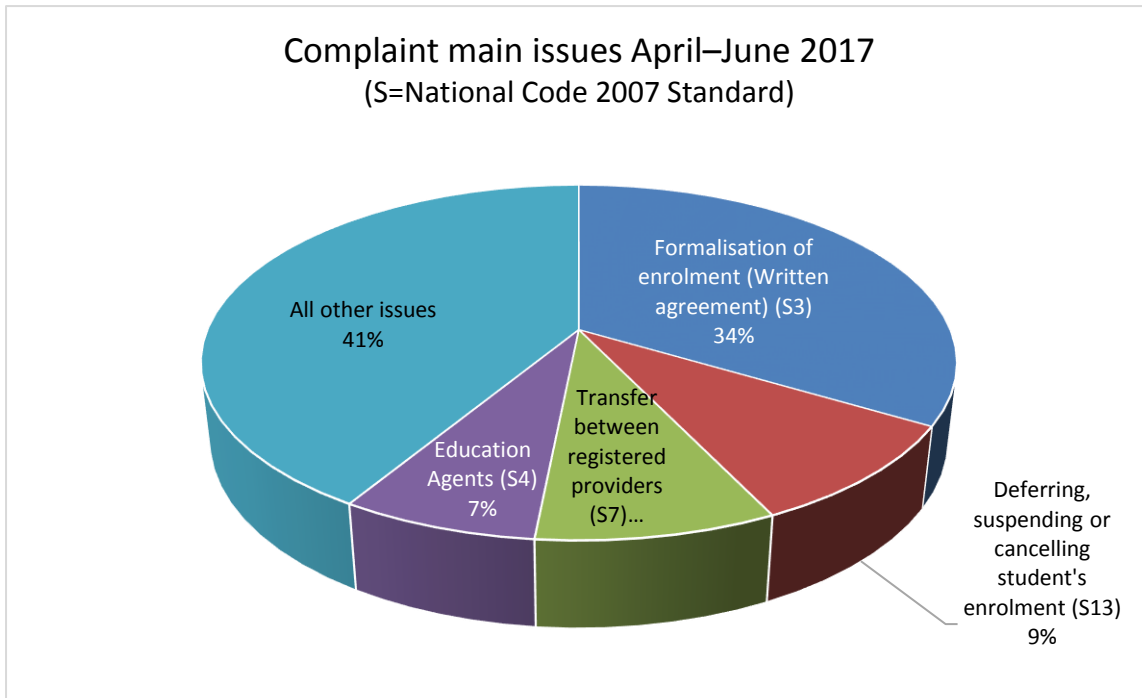
We finalised 276 complaints during the quarter, having investigated 101, which included 127 issues. Of these 127 issues, 44 were decided in support of the provider, 32 in support of the student and 51 in support of neither party.

We did not investigate 175 complaints, which means that we did not contact the provider to request information to help us consider the dispute. Documents provided by the student at the time of the complaint allow us to form a view about the dispute raised to determine if it requires further investigation.

² Complaints finalised in the period including some complaints received in a prior period.

Complaint Issues

Finalised complaints (276) including those we did not investigate (175) contained 322 issues. Complaints about provider refund refusals and fee disputes remain the most significant issues. For detailed data about complaint issues handled during the period, please refer to [the appendix to this report](#).



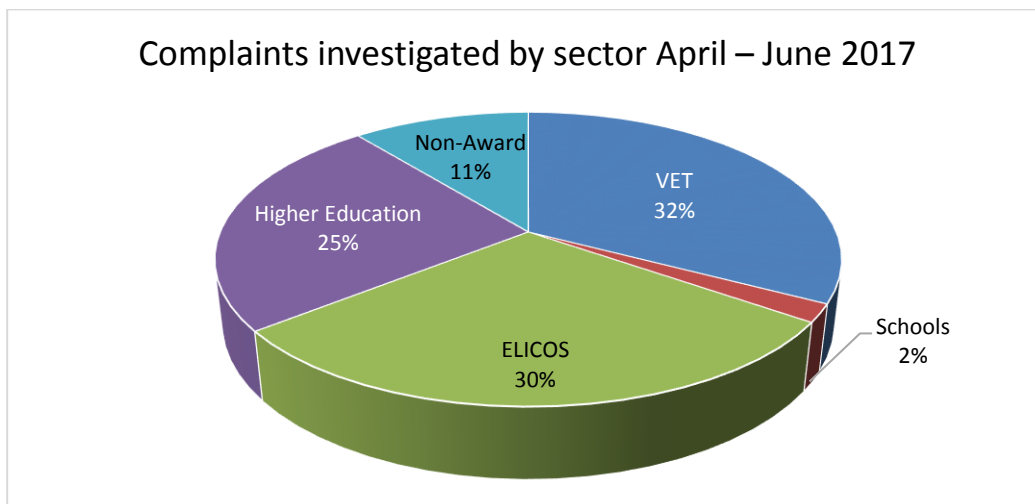
Complaints about education agents remain significant. We continued to receive a number of complaints about alleged dishonest practices by an education agent, and provider handling of refunds of tuition fees.

We are aware that the collapse of Careers Australia has left a number of international students in difficulty. However, this has not had a significant impact on our complaint numbers, as this matter is being managed by the Tuition Protection Service.

Complaints by education sector

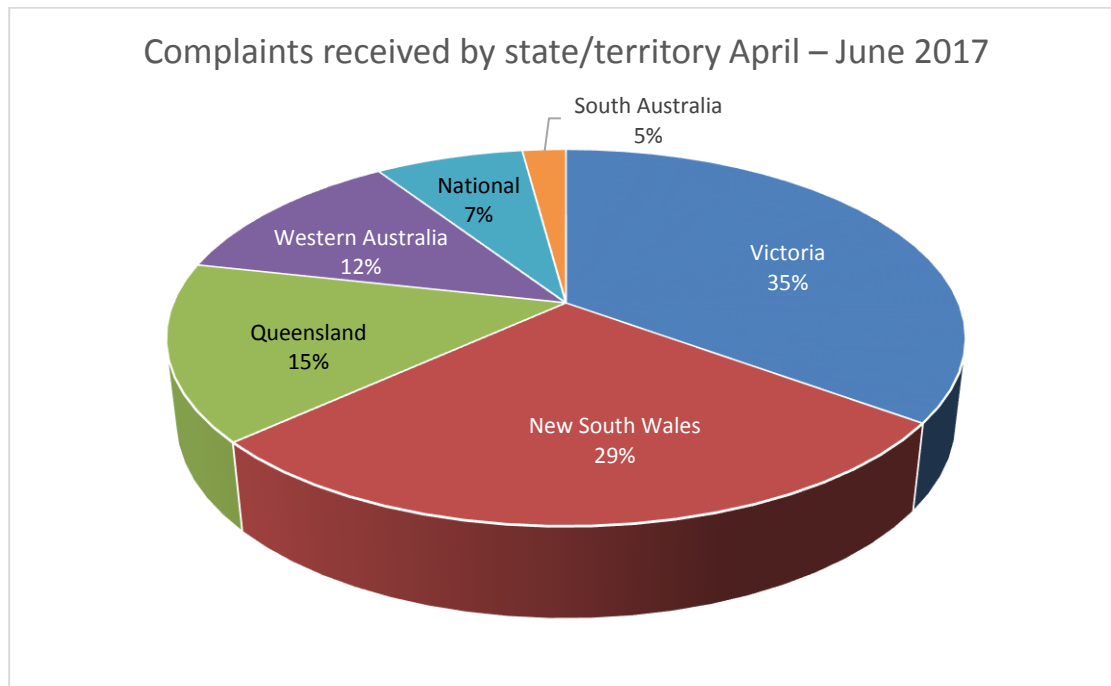
Most finalised investigated complaints related to Vocational Education and Training (VET) (32 per cent), English Language Intensive Courses for Overseas Students (ELICOS) (30 per cent), and Higher Education (HE) (25 per cent) sectors.

VET again represented the most common course sector for complaints investigated and closed, however VET also has the highest number of private providers in the Commonwealth Ombudsman’s jurisdiction.



Complaints received by State/Territory

Complaints received from students about providers registered in Victoria (35 per cent) were significantly higher than in other states, despite having fewer in-jurisdiction students than NSW.

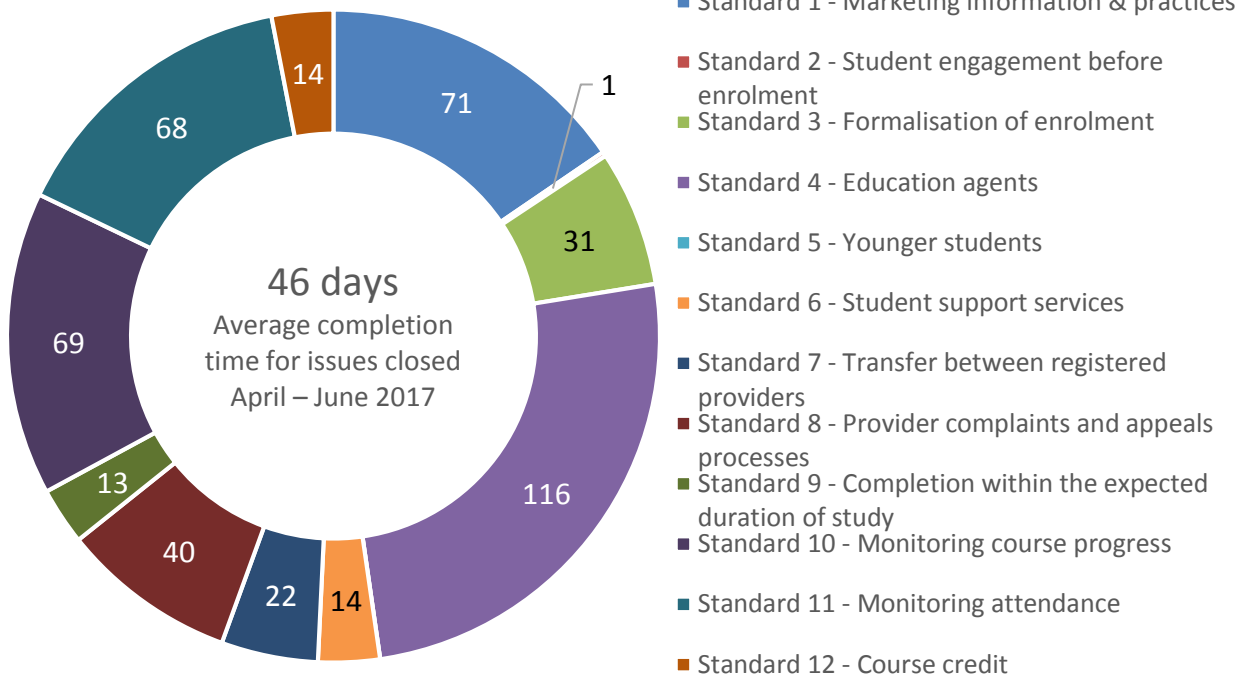


Complexity

Some investigations take longer than others. The length of the process may vary depending on the complexity of the case and the responsiveness of the student and education provider. We continue to look for ways to reduce finalisation times.

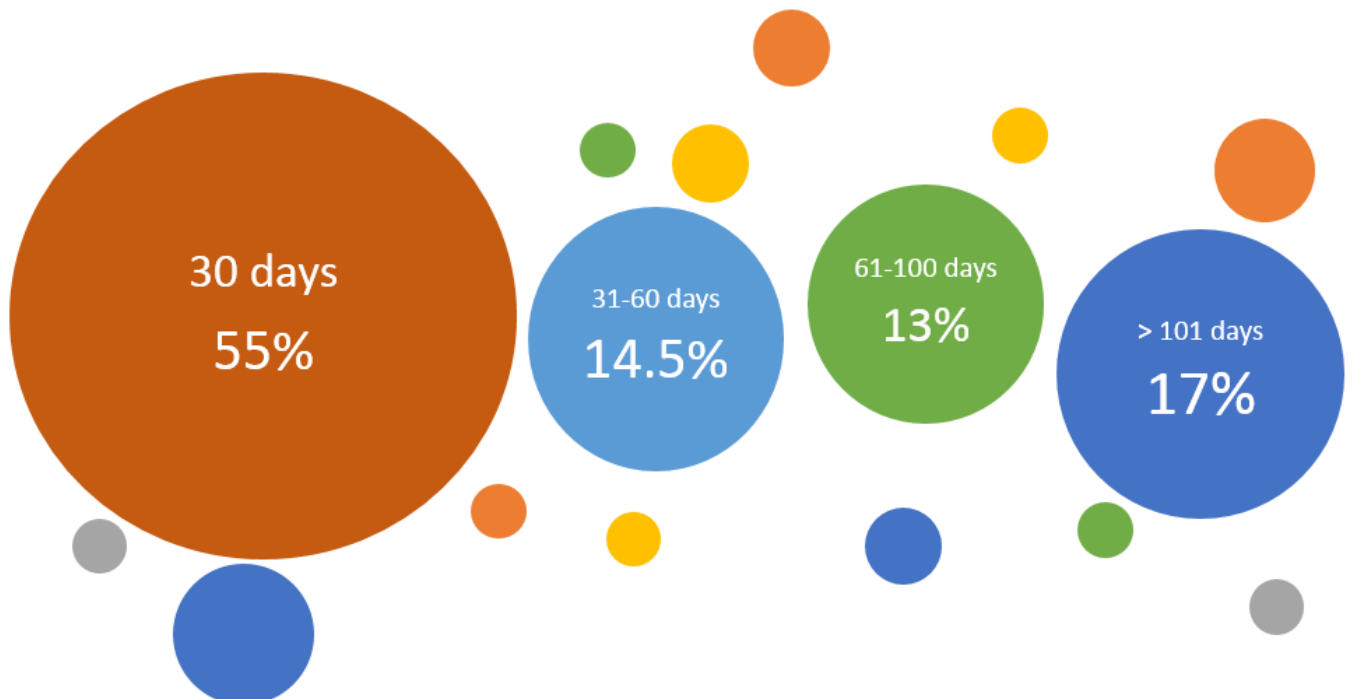
In the 1 April – 30 June 2017 period, although the average completion time for complaints finalised was 46 days, complaints about education agents, and about marketing information and practices, took longer to finalise. Complaints about education agents were largely related to the alleged dishonest practices by one specific agent. In many of these cases, the students were not in Australia which made communication difficult, in some cases they needed to get documents translated, and sometimes didn't respond to our requests for information. In relation to marketing information and practices, there were only seven cases closed relating to this issue, and the majority of these raised a number of other issues, including assessment of written agreements and representations by education agents.

Average completion time (days)



From 1 April – 30 June 2017, 55.5 per cent of complaints were closed within 30 days, 14.5 per cent from 31–60 days, and 13 per cent from 61–100 days. A further 17 per cent of complaints closed by our Office were closed more than 100 days after the complaint had been received (most of these complaints were made in relation to the alleged fraudulent behaviour of an education agent).

Proportion of complaints closed within 30, 60, and 100 days



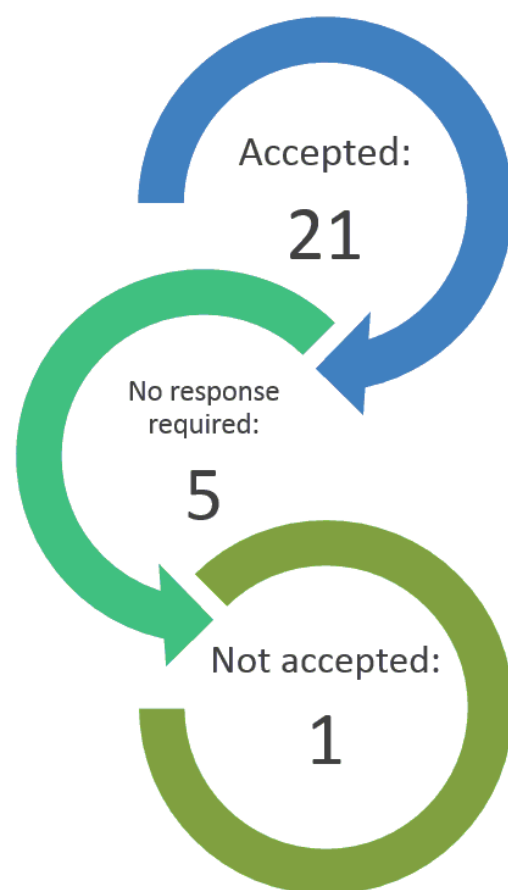
Recommendations

In the 1 April to 30 June 2017 period, we made **27** recommendations to providers.

At the conclusion of an investigation, we can make recommendations to providers, not only in relation to specific remedies, but also in relation to the provider's processes.

For example, a student may contact us because their provider wishes to report them to the Department of Immigration and Border Protection (DIBP) for failing to meet attendance requirements. If an investigation reveals that the provider did not adhere to National Code standard 11.4 (which requires providers to have documented policies and procedures that include identification and counselling of students at risk of not meeting mandatory attendance requirements), we would recommend that the provider amend their policies and procedures to ensure that students are counselled before their attendance drops below the required standard i.e. 80 per cent.

In a recent case, we recommended that a provider implement more frequent attendance checking and reporting for their short courses, so that students who miss a relatively short period of required attendance are identified and counselled before they have breached their attendance requirements.



Complaints transferred to another authority

Under s 19ZK of the *Ombudsman Act 1976*, we must transfer a complaint to another statutory complaint handler if it could be more effectively dealt with by that complaint-handler.

Our Office transfers complaints about the quality of the education provider's teaching, staff or facilities to an appropriate regulator such as the Australian Skills Quality Authority (ASQA). We transfer complaints about provider defaults and provider refunds in visa refusal cases to the Tuition Protection Service (TPS). Complaints about a South Australian education provider are transferred to the Office of the Training Advocate, South Australia.

Complaint issues transferred under s 19ZK to another authority

Authority	Apr–Jun 2017	Jan–Mar 2017	Oct–Dec 2016
Tuition Protection Service (TPS)	15	5	6
Australian Skills Quality Authority (ASQA)	9	3	14
South Australian Training Advocate	1	2	1
Information Commissioner (OAIC)	1	0	0
Australian Human Rights Commission (AHRC)	0	1	1
Victorian Registration and Qualifications Authority	0	0	1
Tertiary Education Quality Standards Agency (TEQSA)	0	0	0
Total	26	11	23

Under s 35A of the *Ombudsman Act 1976*, the Ombudsman may also make disclosures to regulatory bodies or public authorities where it is in the public interest to do so.

We made no s35A disclosures during the April – June 2017 quarter.

Outreach and engagement activities

In this quarter, we met with some education providers in Brisbane, Perth, Cairns, Sydney, Adelaide and Melbourne. We held many of the meetings around our participation or presentations in the following events:

- » Universities Australia Deputy and Pro Vice Chancellors meeting in Brisbane in April
- » Australia & New Zealand education agent and provider workshops in Cairns in April
- » NEAS national conference in Sydney in May
- » ACPET Victorian State Forum in June, and
- » many of the 27 ASQA Provider Information Sessions held in various capital cities in April, May and June.



Publications

Our presentations to the NEAS National Conference, Universities Australia, and education agent and provider workshops have been published on our [website](#).

Submissions

The Office of the Commonwealth Ombudsman did not make any submissions in this quarter. Previous submissions can be found on our [website](#).

Provider e-newsletter

Keep up to date with the latest news from the Overseas Students Team by signing up to our provider e-newsletter [here](#).

Making a difference

Case study 1: Gosia's change in direction

After studying in Australia for just over a year, Gosia*, an international student from Poland, had completed a Certificate IV and Diploma of Accounting and had also commenced her principal course, an Advanced Diploma of Accounting. However, Gosia decided she wanted to change direction and study child care instead which required a transfer to another education provider.

She asked her provider to approve a transfer however the provider rejected her request. Gosia appealed, but her provider upheld its original decision. The reasons given by the provider were that:

- » Gosia had not demonstrated sufficient research into child care to support her decision
- » her past studies in accounting were unrelated to child care
- » she progressed well in her accounting studies which indicated that there was no lack of interest, and she could have a bright future in accounting.

Gosia contacted our Office to request an external appeal of the decision. We conducted an external appeal, which considered whether the provider's transfer request and assessment policy and procedures were consistent with the *Education Services for Overseas Students (ESOS) Act* and the National Code of Practice for Providers of Education and Training to Overseas Students 2007. In particular, the preamble to standard 7 of the National Code states:

It is expected that the student's request will be granted where the transfer will not be to the detriment of the student.

Our investigation found that the provider had not demonstrated that the transfer would be to Gosia's detriment, taking into account her individual circumstances. The considerations taken into account at the stage of the initial decision and appeal did not support the decision that changing her field of study would be detrimental.

We therefore recommended that the provider grant Gosia's transfer request and issue her with a release letter. We also advised Gosia that she will need to continue to meet her student visa conditions, and referred Gosia to the DIBP website for more information.

Gosia was very pleased and thanked us for investigating her case.

* Names changed to protect privacy

Commentary

Standard 7.2 of the National Code requires providers to have a transfer request assessment policy and procedure, specifying:

- » circumstances in which a transfer will be granted
- » circumstances which the provider considers to be reasonable grounds for refusing a transfer, including when a transfer could be considered detrimental to the student,³ and
- » the timeframe for assessment and reply to the request for transfer.

For more guidance on policies and procedures for assessment of transfer requests, please see the [explanatory guide to the National Code](#).

Case study 2: Tanvi wants to change providers

Complaining that she was not satisfied with the quality of her English course, Tanvi from India asked her education provider to approve a transfer to another college. However, Tanvi's provider refused her request to transfer, and Tanvi came to the Commonwealth Ombudsman to request an external appeal.

Our Office requested further information from Tanvi and her education provider. After reviewing the requested documents, it appeared that Tanvi had applied for the transfer after her provider had informed her that it would notify the DIBP about her poor attendance record.

From the information provided by Tanvi, we decided that the provider had complied with all requirements of standard 11 of the National Code, including the requirement to monitor her attendance, to contact and counsel her when she was at risk of not meeting attendance requirements, and had considered her appeal against the decision to report her to DIBP.

Her education provider informed her that it could not issue her a letter of release because she had already been advised that DIBP would be notified of her unsatisfactory attendance.

Standard 7.2 of the National Code requires providers to have a documented transfer request assessment policy and procedure. In this case, the provider's published policies and procedures clearly stated that a letter of release would not be granted if a student may be avoiding being reported to DIBP for breach of a student visa-related condition.

Our Office formed the view that the education provider had substantially followed the National Code rules in relation to attendance monitoring and transfer, and their related policy and procedures. This was communicated to Tanvi and her education provider, and the complaint was closed.

Commentary

This case illustrates how investigations often involve assessment of a provider's compliance with more than one standard of the National Code. In this case, the provider had clear policies in accordance with standards 11 (monitoring attendance) and standard 7 (assessing transfers), and had acted in accordance with these policies.

³ The [draft revision to the National Code](#) proposes to change this test to approving a transfer when it is in the student's best interests.

Appendix – detailed data regarding finalised complaints 1 April – 30 June 2017

Complaint issues closed, compared to previous quarters⁴

Issues	Apr–Jun 2017	Jan–Mar 2017	Oct–Dec 2016
Standard 3 – provider refund/fee dispute/written agreement	108	82	90
Standard 13 – deferring, suspending or cancelling enrolment	30	13	9
Standard 7 – transfer between registered providers	28	47	51
Standard 4 – education agents	23	28	1
Grades/assessment	22	8	6
Standard 10 – monitoring course progress	21	18	9
Standard 11 – monitoring attendance	16	20	22
Out of jurisdiction to investigate ⁵	13	10	7
Standard 8 – provider complaints and appeals processes	11	10	11
Standard 14 – staff capability, educational resources and premises	10	2	17
Provider default	8	4	6
Standard 1 – marketing information and practices	8	3	2
Bullying or harassment	5	3	3
Academic Transcript	5	1	2
Graduation Completion Certificate	4	5	8
Standard 12 – course credit	3	5	2
Discipline	2	0	3
Standard 6 – student support services	2	0	1
Standard 2 – student engagement before enrolment	1	3	3
Standard 9 – completion within the expected duration of study	1	1	1
Overseas Student Health Cover	1	0	0
Work placement/experience	0	2	0
Standard 5 – younger students	0	1	0
Standards for VET accredited courses	0	0	0
TOTAL	322	266	254

⁵ Out of jurisdiction means the provider was in jurisdiction but the student was out of jurisdiction because they were not a current, former or intending international student visa holder or the issue complained about was out of jurisdiction, for example Discrimination, employment or privacy issues.

Complaints investigated and closed by education sector

Sector	No. of providers ⁶	%	Apr–Jun 2017	%	Jan–Mar 2017	%
VET	470	48%	33	32%	33	42%
Schools	337	34%	2	2%	3	4%
ELICOS ⁷	97	10%	30	30%	16	21%
Higher Education	65	7%	25	25%	17	22%
Non-Award	9	1%	11	11%	9	11%
TOTAL	978		101		78	

VET Issues investigated and closed (33 complaints with 43 issues)

Issues	Number of Issues	%
Standard 3 – provider refund/fee dispute/written agreement	14	33
Standard 10 – monitoring course progress	10	23
Standard 7 – transfer between registered providers	6	14
Standard 13 – deferring, suspending or cancelling enrolment	6	14
Standard 8 – provider complaints and appeals processes	2	5
Standard 4 – education agents	2	5
Grades/Assessment	1	2
Provider Default	1	2
Standard 14 – staff capability, educational resources and premises	1	2
TOTAL	43	100%

ELICOS Issues investigated and closed (30 complaints with 43 issues)

Issues	Number of issues	%
Standard 3 – provider refund/fee dispute/written agreement	15	35
Standard 4 – education agents	14	14
Standard 11 – monitoring attendance	6	6
Standard 7 – transfer between registered providers	3	3
Standard 8 – provider complaints and appeals processes	2	2
Standard 1 – marketing information and practices	2	2
OSHC	1	1
TOTAL	43	100%

⁶ Number of providers in OS jurisdiction by 'main course sector'. Excludes South Australian (SA) providers as, while they are in jurisdiction, we transfer complaint about SA providers to the SA Training Advocate, as recommended by the 2010 Baird Review.

⁷ English Language Intensive Courses for Overseas Students

HIGHER EDUCATION Issues investigated and closed (25 complaints with 27 issues)

Issues	Number of issues	%
Standard 10 – monitoring course progress	11	41
Standard 3 – provider refund/fee dispute/written agreement	5	19
Standard 8 – provider complaints and appeals processes	3	11
Standard 13 – deferring, suspending or cancelling enrolment	3	11
Grades/Assessment	3	11
Standard 11 – monitoring attendance	2	7
TOTAL	27	100%

NON-AWARD Issues investigated and closed (11 complaints with 11 issues)

Issues	Number of issues	%
Standard 4 – education agents	6	55
Standard 11 – monitoring attendance	3	27
Standard 3 – provider refund/fee dispute/written agreement	1	9
Grades/assessment	1	9
TOTAL	11	100%

SCHOOLS Issues investigated and closed (2 complaints with 2 issues)

Issues	Number of Issues	%
Standard 3 – provider refund/fee dispute/written agreement	2	100%
TOTAL	2	100%

Complaints received by State/Territory

State/Territory	Apr–Jun 2017	Number of registered providers ⁸	Jan–Mar 2017	Number of registered providers ⁹
Victoria	83	275	78	275
New South Wales	67	294	72	288
Queensland	36	268	65	269
Western Australia	29	85	16	85
National	17	29	20	28
Australian Capital Territory	0	12	0	11
South Australia	5	79	10	79
Northern Territory	0	5	0	5
Tasmania	0	10	0	9
Total	237	1057	261	1048

⁸ Number of providers in jurisdiction by 'main course sector'. Includes South Australian (SA) providers, noting that we transfer complaints about SA providers to the SA Training Advocate. As at 18 July 2017.

⁹ As above