



Submission by the Commonwealth Ombudsman

Review of the English Language Intensive Courses for Overseas
Students National Standards

Submission by the Commonwealth Ombudsman, Michael Manthorpe

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Introduction and summary

The Office of the Commonwealth Ombudsman (the Office) investigates complaints from intending, current or former international students about private schools, colleges or universities (education providers) in Australia.

The Department of Education and Training (the department) has released a consultation draft¹ of revised English Language Intensive Courses for Overseas Students National Standards (ELICOS National Standards).

ELICOS students represent 9 per cent of all current students studying with Australian private education providers². The proportion of complaints received by our Office regarding the ELICOS sector is higher, making up 18 per cent of all complaints in our Overseas Students jurisdiction.³

This submission draws upon issues relating to student protection mechanisms in the ELICOS sector we have identified from complaints to our Office and from our liaison with government agencies and provider peak bodies.

About the Commonwealth Ombudsman – Overseas Students

The Commonwealth Ombudsman's Overseas Students role commenced in April 2011, to give international students studying with a private provider access to an independent, external complaint body. The Office joined the existing system of external complaint-handling offered by the eight state and territory ombudsmen and the Office of the Training Advocate in SA.

Our jurisdiction includes intending, current and former overseas students and private education providers registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS)⁴.

This means we can investigate complaints about the actions of a private CRICOS provider relating to overseas students who hold a student visa or held a student visa at the relevant time, or intending students taking steps towards becoming an overseas student/student visa holder.

We work with private registered education providers to promote best practice complaint handling and report on trends and broader issues that arise from complaint investigations.

ELICOS National Standards

The ELICOS National Standards are guidelines for regulatory authorities to make recommendations for acceptance of providers to be registered on the CRICOS under the Education Services for Overseas Students (ESOS) legislative framework.

¹Release of consultation draft ELICOS National Standards for public comment, 14 July 2017
<https://www.education.gov.au/news/release-consultation-draft-elicos-standards-public-comment>

² Based on 15,722 Studying Confirmations of Enrolment (CoE) of a total of 165,559 Studying CoE's across all sectors in the jurisdiction of the Overseas Students Ombudsman. Data obtained from PRISMS as at 18 July 2017.

³ In jurisdiction complaints from international students concerning CRICOS providers 2016-17.

⁴ www.cricos.education.gov.au

The ELICOS National Standards are in addition to the ESOS legislative framework and sector-specific regulatory standards. CRICOS registered providers delivering ELICOS programs must meet the ELICOS National Standards and comply with the:

- National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2017
- *Education Services for Overseas Students Act 2000*
- *Education Services for Overseas Students Regulations 2001*.

Revised ELICOS National Standards

Key changes in the consultation draft of revised ELICOS National Standards include:

- clarifying that the definition of ELICOS National Standards applies to all courses provided to overseas students that are solely or predominantly of English language instruction including vocational education and training (VET) courses
- clarifying that the scheduled course contact hours for ELICOS courses is 20 hours of face-to-face tuition per week
- strengthening requirements in relation to student assessment
- providing greater detail regarding how providers need to structure courses for students aged under 18
- clarifying the strategy for assessing achievement of learner outcomes, samples of certification of completion and partial completion, and course syllabus⁵.

The revised ELICOS National Standards will be applied to new market entrants (providers) from 1 January 2018, and to existing providers from 1 July 2018, to allow providers time to make required changes to staffing, curriculum and delivery.

Our comments on the draft revisions are set out below.

1. ELICOS National Standards - Introduction

The revision includes a clear definition of ELICOS in the introductory section of the document.

Response: We support the inclusion of the definition. This will help providers of intensive English language courses to overseas students to understand that they are bound by the requirements of the ELICOS National Standards.

We are aware of concerns in the sector that some providers registered their English language course as a Certificate II, III or IV VET qualification which enabled the provider to deliver the course in ways that may not meet the ELICOS National Standards, for example, by requiring 10 hours face-to-face learning a week instead of the 20 hours required for ELICOS courses.

The updated definition will help ensure that the ELICOS National Standards apply consistently to providers, including VET courses that are solely or predominantly of English language instruction.

⁵ <https://www.education.gov.au/news/release-consultation-draft-elicos-standards-public-comment>

2. Standard C1 – Mandatory requirements for course applications

The revisions are aimed at providing greater clarification of the requirements for course applications, that information must be 'fit for purpose', and the strategy for assessing achievement of learner outcomes, samples of certification of completion and partial completion, and course syllabus.

Course applications must also demonstrate that the course will include 20 hours of face-to-face tuition per week.

Response: We do not have any specific comments about this proposed change.

3. Standard P1 – Scheduled course contact hours

The revision includes a direct reference to an ELICOS course being 20 hours of face-to-face tuition per week.

Response: We support this revision.

We understand that English Language courses registered as a certificate II, III or IV VET qualification enabled the provider to deliver the course in ways that may not meet the ELICOS National Standards, for example, by requiring 10 hours face-to-face learning a week instead of the 20 hours required for ELICOS courses.

This revision will help ensure that the ELICOS National Standards apply consistently to all courses that are solely or predominantly of English language instruction, regardless of the sector in which they are delivered.

4. Standard P2 – Needs of younger ELICOS students

Revisions include minimum requirements regarding the needs of students aged under 18 years, and a requirement that providers structure courses for students of different levels of age, maturity and English language proficiency.

Response: We support this proposal to increase the safeguards for younger students by requiring English Language courses to be tailored to the needs of younger students.

We recognise that younger students can be particularly vulnerable and can experience an increased barriers to accessing external complaint and appeal mechanisms when they have difficulties with their study.

We refer to comments in our Submission on proposed changes to the *National Code of Practice for Providers of Education and Training to Overseas Students 2007*⁶ in relation to Standard 5 of the National Code – Younger Students, and protection mechanisms.

5. Standard P3 – Teaching ELICOS

The revision replaces the requirement for records of teaching delivery to ensure efficient administration with the requirement for retention and accessibility of records.

⁶ <http://www.ombudsman.gov.au/about/overseas-students/oso-publications> Submission March 2017

Response: We note that the proposed P3.1 subsection (a) is that the records of teaching delivery ensure ‘retention and accessibility of records’. We are supportive of this proposed change, however we suggest that P3.1 (a) is open to a broad range of interpretations and may need to be better defined. For example, it may be useful to provide some clarity by specifying how long the records should be retained and to whom they should be accessible.

6. Standard P4 – Assessment of ELICOS students

The revision includes requirements for providers to ensure that assessments:

- are valid, reliable, fair, flexible and clearly referenced to criteria
- have appropriate oversight or moderation
- are benchmarked against external reference points commonly used in admission criteria for tertiary courses for outcomes in English for Academic Purposes courses.

The requirement for records of assessment to ensure efficient administration has been replaced with the requirement for retention and accessibility of records.

Response: We note that the proposed P4.2 subsection (a) is that records of assessment ensure ‘retention and accessibility of records’. While we are supportive of this proposed change, we suggest that P4.2 (a) is open to a broad range of interpretations and may need to be better defined.

As set out above in relation to Standard P4, it may be useful to specify how long the records should be retained and to whom they should be accessible.

7. Standard P7 – ELICOS premises

The revision specifies that rooms and equipment should be fit for purpose and proportionate or appropriate to the number of students and course syllabus.

Response: We do not have any specific comments about this proposed change.

8. Standard P8 – Business management

The revision is to update the term ‘designated authority’ to reflect the new role of the ‘ESOS agency’ and/or designated state/territory authority.

Response: We do not have any specific comments about this proposed change.

9. Glossary

Outdated provisions have been revised or removed where appropriate.

Response: We do not have any specific comments about this proposed change.

10. Other comments

10.1. Observations from complaints and appeals

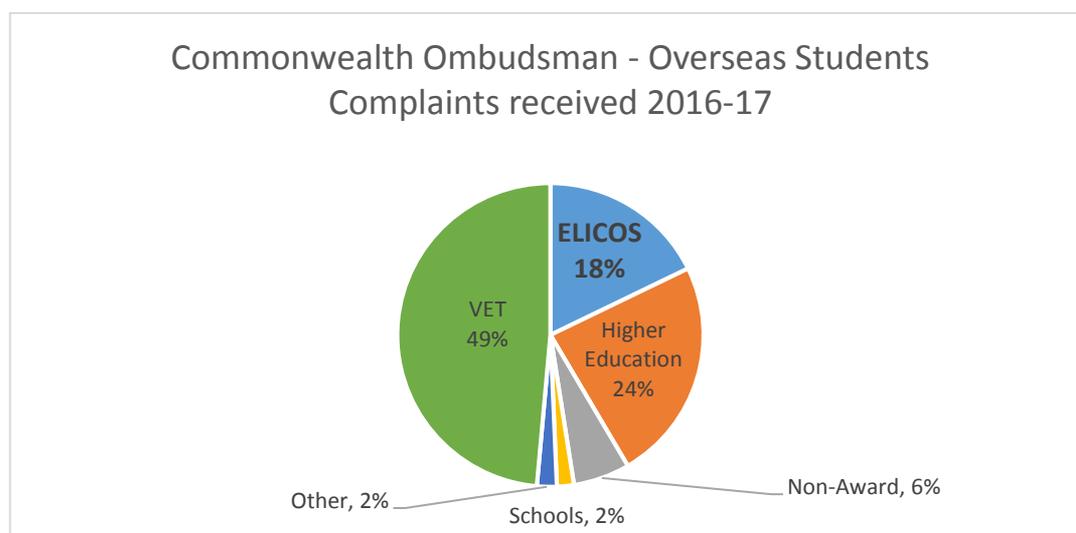
The two main complaint issues received by our Office in our Overseas Students role in 2016-17 were refunds and fees disputes, and the provider decisions to refuse a student transfer to another provider under Standard 7 of the National Code.

The decision by a provider to report students to the Department of Immigration and Border Protection (DIBP) for failing to meet attendance requirements under Standard 11 of the National Code is the third most common issue.

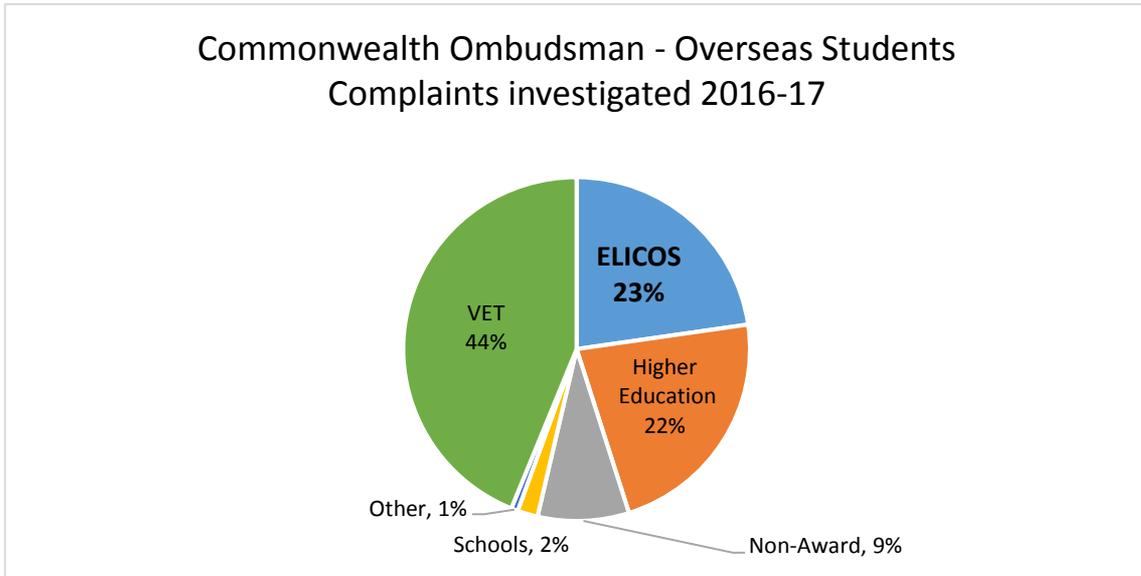
In the ELICOS sector, issues relating to the terms of a student's written agreement, for example refunds and fees, generate the most complaints to our office. This is followed by complaints about a provider's notice of intention to report the student to DIBP for failure to meet course attendance requirements under Standard 11 of the National Code.

This may reflect the higher threshold for attendance by ELICOS students required by Standard 11.9 of the National Code.

As noted above, ELICOS students represent 9 percent of all current students in the jurisdiction of the Office, however complaints related to ELICOS courses represent 18 percent of all complaints received by our Office in its Overseas Students jurisdiction. We believe this may be due to the low level of English language proficiency of ELICOS students, which could affect the student's understanding of the terms of their written agreement and ability articulate their complaint to their education provider.

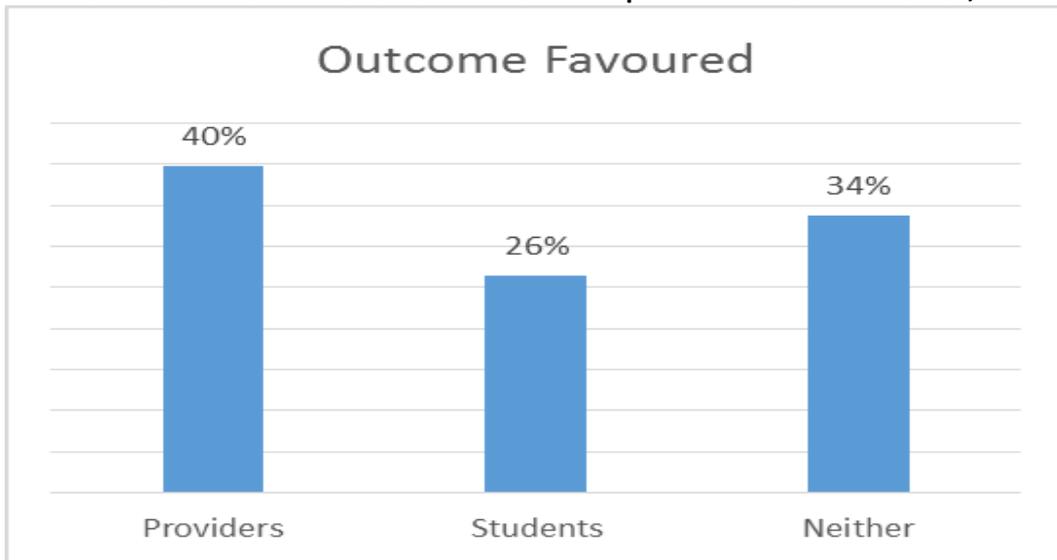


Not all complaints received are investigated, however considering the number of students in the ELICOS sector, we tend to investigate more complaints concerning ELICOS when compared to all sectors, especially issues relating to monitoring attendance⁷. This is likely due to students seeking external appeal for attendance issues because the potential outcome, cancellation of the student’s visa, has a high impact on the student.



When we finalise an investigation, our office makes a decision which supports either the student, education provider or neither. We find in support of neither party where, for example, a complaint has been withdrawn or the provider and the student resolve the matter before we have completed our investigation.

Commonwealth Ombudsman – Overseas Students complaints finalised – outcomes, 2016-17



The outcomes of complaints finalised in the ELICOS sector are generally consistent with the proportion of complaint outcomes across all sectors, indicating that there is no particular trend.

⁷ The average investigation rate of issues reported across all sectors to our office is 39%. For ELICOS issues, the investigation rate is 66%.

We also refer the department to comments in our *Submission on proposed changes to the National Code of Practice for Providers of Education and Training to Overseas Students 2007*⁸ relating to ELICOS courses relevant to National Code Standards 3, 7, 8 and 11.

10.2. Compliance Frameworks

As noted above, the ELICOS Standards are in addition to the ESOS legislative framework and sector-specific regulatory standards. CRICOS registered providers delivering ELICOS programs must meet the ELICOS National Standards and comply with the:

- National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2017
- Education Services for Overseas Students Act 2000,
- Education Services for Overseas Students Regulations 2001

In addition, ELICOS providers who are also providers in other sectors, will need to comply (as appropriate) with:

- *National Vocational Education and Training Regulator Act 2011*
- Standards for Registered Training Organisations (RTOs) 2015
- *Tertiary Education Quality and Standards Agency Act 2011*
- Higher Education Standards Framework (Threshold Standards) 2015
- National Standards for Foundation Programs

There is also an Industry Accreditation scheme offered by NEAS. NEAS is a voluntary quality assurance organisation that endorses English Language Training centres which meet NEAS quality standards⁹. The NEAS Quality Assurance Framework comprises six Quality Areas:

1. Teaching, Learning and Assessment
2. The Student Experience
3. Resources and Facilities
4. Administration, Management and Staffing
5. Promotion and Student Recruitment
6. Welfare of Students Aged Under 18 Years

Many of these quality assurance areas overlap with the National Code and sector-specific standards. We note that the Australian Skills Quality Authority (ASQA) has contracted NEAS to conduct CRICOS audits of registered providers delivering ELICOS programs.

With multiple separate compliance frameworks in place for ELICOS registered providers, including the National Code, RTO Standards, Threshold Standards and NEAS Quality Assurance Standards, we consider that it is important for the department to ensure that compliance activities are aligned as closely as possible to avoid undue duplication of effort and cost for providers in dealings with regulatory bodies.

⁸ <http://www.ombudsman.gov.au/about/overseas-students/oso-publications> Submission March 2017

⁹ http://www.neas.org.au/wp-content/uploads/NEAS_QualityAssuranceFramework_LR_20160531.pdf