

# What you need to know if we make a recommendation

## Our role

Under Standard 10 of the *National Code of Practice for Providers of Education and Training to Overseas Students 2018* (National Code), overseas students have the right to access an external complaint –handling process if they are not satisfied with the outcome of their provider’s internal complaint–handling and appeals process. These external complaints may be made to our Office.

If a student complains to us and we investigate the complaint, the investigation may result in a recommendation.

## What is a recommendation?

We do not investigate every complaint made to our Office however, if we decide to investigate, we consider the Education Services for Overseas Students (ESOS) legislative framework<sup>1</sup>, information from the student and information from the provider including your relevant policies and procedures.

At the end of an investigation, we may conclude that the provider has not acted unreasonably, and will explain this to the student. Our Office will give the student an opportunity to comment and will consider any responses before finalising the investigation. In other cases, we may conclude that the provider failed to take appropriate action or the action appears to have been:

- contrary to law
- contrary to the provider’s policy or procedures
- unreasonable, unjust, oppressive or improperly discriminatory
- otherwise, in all the circumstances, wrong.

Depending on the issue we have investigated and the conclusion we come to, recommendations may include:

- providing clearer information
- reconsidering a decision affecting the student (e.g. reporting for unsatisfactory course progress)
- paying the student a refund
- making a change to a policy or procedure, or
- updating the Provider Registration and International Student Management System (PRISMS) to correct information which was previously recorded in error.

<sup>1</sup> The Framework consists of the *Education Services for Overseas Students (ESOS) Act 2000*, the *Education Services for Overseas Students Regulations 2001*, the *National Code of Practice for Providers of Education and Training to Overseas Students 2018*, and other legislative instruments made under the ESOS Act.

## Contact us

[ombudsman.gov.au](http://ombudsman.gov.au)  
1300 362 072

GPO Box 442  
Canberra ACT 2601

Education providers are given an opportunity to comment on any recommendations made by the Ombudsman before we make a final decision.

If the Ombudsman makes a recommendation, the provider must implement it.

Education providers are given an opportunity to comment on any recommendations made by our Office before the investigation is finalised and before the student is informed of the outcomes. We will consider any comments made before finalising the investigation.

### Am I required to implement a recommendation made by our Office?

Yes. Under Standard 10.4 of the *National Code for Providers of Education and Training to Overseas Students 2018* (National Code), if the external appeals process results in a decision or recommendation in support of the student, **the registered provider must immediately implement the decision or recommendation and/or take the preventative or corrective action required by the decision, and advise the overseas student of that action.**

### What if I do not implement a recommendation?

If you do not implement a recommendation, we may report your non-compliance to the regulator or other public authority. If we decide to report your non-compliance, we will contact you for further comments before making the formal disclosure.

### Case study

A student contacted us because their provider was going to report them to the Department of Home Affairs (formerly Department of Immigration and Border Protection) for failing to achieve satisfactory course progress. We decided to investigate the issue. In conducting the investigation we:

- reviewed information provided by the student
- requested information from the provider about their decision including documentation and policies applied, and
- considered the provider's and student's actions against the National Code and ESOS legislation.

We concluded that the provider's policy on course progress was not compliant with the National Code and recommended the student should not be reported to the Department of Home Affairs. We also recommended the provider update their policy on course progress.

The provider sought further guidance from us to help them update their policy and implement our recommendation.

Later on, another student of the same provider came to us with a similar complaint as the first student. The outcome of this investigation was in support of the provider. The provider had updated their policy which was now compliant under the National Code and ESOS legislation and the provider had followed the policy correctly.

### Commentary

A determination in support of the student should be seen as an opportunity for providers to improve their policies and procedures. In the example above, the provider implemented our recommendations and the next issue of the same nature brought to us was resolved in support of the provider.

---

More information is available at [ombudsman.gov.au](http://ombudsman.gov.au).

Please note: This document is intended as a guide only. For this reason, the information should not be relied on as legal advice or regarded as a substitute for legal advice in individual cases. To the maximum extent permitted by the law, the Commonwealth Ombudsman is not liable to you for any loss or damage suffered as a result of reliance on this document. For the most up-to-date versions of cited Acts, please refer to the [Federal Register of Legislation](#).