

Provider e-newsletter

November 2018

In this edition

- Spotlight on the National Code standard 7: Transfers between providers
- Quarterly update: July–September 2018
- Outreach and engagement
- Ombudsman’s submission to the Joint Standing Committee on Migration’s inquiry into the efficacy of current regulation of Australian migration agents
- Complaints about transfers between education providers
- Provider enquiry
- Case study
- Ombudsman efficiency improvements

Spotlight on the National Code standard 7: Transfers between providers

This issue of our provider e-newsletter focuses on Standard 7 of the *National Code for Providers of Education and Training to Overseas Students 2018* (National Code): consideration of requests from students to transfer between registered education providers within their restricted period.

Since the changes to the National Code came into effect on 1 January 2018, we have seen an increase in the number of complaints from students about providers refusing to release the student for study with a new education provider. Complaint investigations has revealed that many providers have not yet updated their policies to comply with the requirements of the updated National Code.

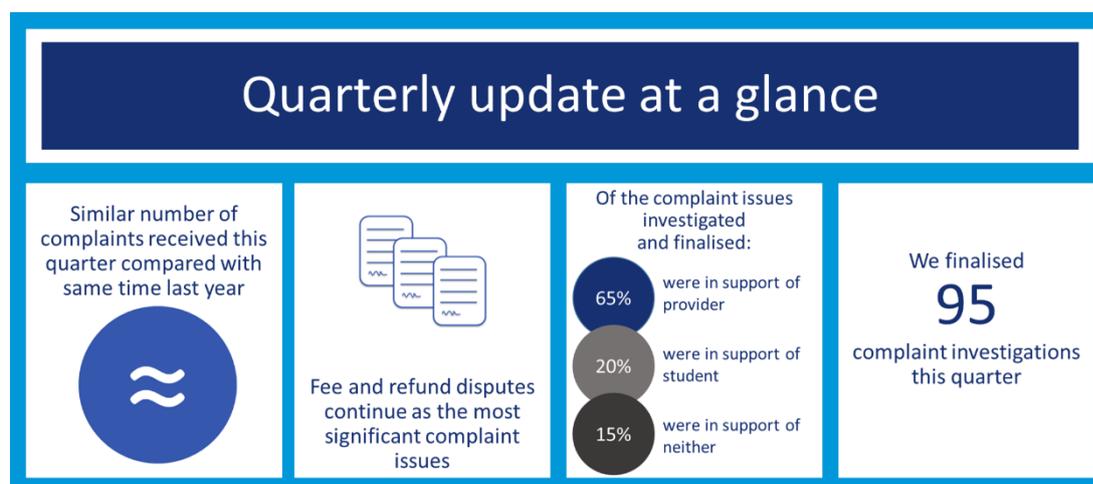
In such cases, many of our determinations support the student, given that the student’s request was not assessed according to the correct criteria. In those cases, we recommend that the provider releases the student.

The case study in this issue looks at one provider’s approach to assessing a transfer request, where the provider decided not to approve the request. Read on to see the outcome of the student’s complaint to our Office.



Quarterly update for July–September 2018 is now available

You can download a copy of the latest [quarterly update](#) from our website.



Outreach and engagement



Victorian International Student Conference (VISC)—Annual Conference

On 20–21 August 2018, we attended the inaugural Victorian International Student Conference, delivering a presentation on the protections of the National Code as they apply to international students. With the help of student volunteers, we also facilitated a role play about common complaint scenarios and discussed some case studies with the student audience.

We are always looking for effective ways to reach international students in our jurisdiction and to assist providers in achieving best practice complaint-handling. If you have any suggestions on ways to spread knowledge of our services or if you would like support with your complaints and appeals processes, please let us know at overseas.students@ombudsman.gov.au.

Australian Council for Private Education and Training (ACPET) national conference

On 30 August 2018, we presented at the ACPET national conference in Canberra. The presentation covered the benefits to education providers of best practice complaint-handling. For more information on best practice complaint-handling for education providers, please see the [resources](#) on our website.

Education Consultants Association of Australia (ECAA) seminar

On 12 September 2018, we presented at the ECAA seminar in Melbourne on the updated National Code. The presentation introduced the work of the Office and outlined our approach to standard 4 of the National Code, which applies to education agents.

We also participated in a panel discussion and fielded many questions from education agents. Agents were particularly interested in the focus subject for this newsletter: student transfers between providers.

SYMPLED – Symposium on leading education recruitment

On 17 September 2018, our Senior Assistant Ombudsman, Dermot Walsh presented at the ‘SYMPLED’ symposium, a gathering of education agents and other international education industry stakeholders. A new agent association, the International Student Education Agent Association (ISEAA) was launched, with the mission of representing its members’ interests to government, and establishing and improving ethical standards in the industry. Dermot delivered a presentation on the lessons learned from complaints about education agents.



From left: Toshi Kawaguchi (StudyNSW), Ralph Teodoro (CISA Vice-President) and Dermot Walsh (Senior Assistant Ombudsman) at the SYMPLED symposium.

Australia and New Zealand Agent Engagement Workshop

On 18 September 2018, we attended the Australia and New Zealand agent engagement workshop, and learned about the differences between the two countries’ approaches to international education, including the management of education agents.

Chairs of Academic Boards Forum [non-university higher education providers]

On 20 September 2018 we represented the Office at the Chairs of Academic Boards forum. The presentation focussed on best practice complaint-handling.

ISANA International Education Association consultation on National Code tutorial tool

The Office is participating in ISANA’s redesign of its National Code tutorial tool as a Steering Group Standards Expert.

ISANA has been awarded an Enabling Growth and Innovation (EGI) grant from the Department of Education and Training (DET) to update this training to reflect the 2018 National Code standards, for providers, agents and international students.

Australian Skills Quality Authority (ASQA) Strategic Review of International Education

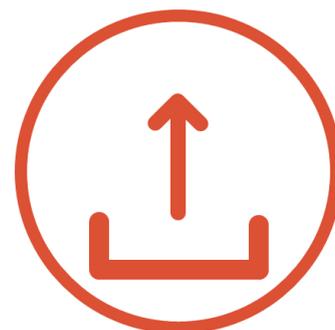
Jaala Hinchcliffe, Deputy Commonwealth Ombudsman is representing the Office on the reference committee established to guide ASQA's strategic review into the international VET and English language services delivered by ASQA-regulated providers. The review focuses on ensuring the high quality of education services delivered by ASQA-regulated providers, protecting international students and enhancing Australia's reputation as a destination of choice for international students. The findings of the review are due to be published by June 2019.

Submission to the Joint Standing Committee on Migration's inquiry into the efficacy of current regulation of Australian migration agents

On 10 May 2018, the Commonwealth Ombudsman made a submission to the Joint Standing Committee on Migration's inquiry into the efficacy of current regulation of Australian migration agents. The inquiry's terms of reference included exploration of the issue of education agents who are unlawfully giving migration advice.

Our Office has experience in receiving, investigating and analysing complaints from international students about their experiences with education agents. These complaints make up a very small proportion of complaints we have received, however some issues raised may be significant to the international education industry.

We have been invited to appear before the Joint Standing Committee on Migration to give more information in a public hearing in late November. Our submission has been published on our web site and you can read it [here](#).



Complaints about Transfers between providers



International students are required to complete at least six months of study in their principal course before they are able to transfer to another education provider¹.

The National Code is clear that providers and their agents should not actively recruit students who are within the restricted period of their studies with another education provider.

However, the National Code also makes provision for education providers to consider whether they will release a student to study with another education provider within their restricted period, because the release would be in the student's best interests.

The National Code requires providers to have a policy outlining the circumstances where they will release a student and these circumstances must include where the provider has assessed that:

¹ With the exception of students studying in the schools sector.

- the international student will be reported because they are unable to achieve satisfactory course progress at the level they are studying, even after engaging with that registered provider's intervention strategy (7.2.2.1)
- there is evidence of compassionate or compelling circumstances (7.2.2.2)
- the provider does not deliver the course as outlined in the written agreement (7.2.2.3)
- there is evidence that the international student's reasonable expectations about their current course are not being met (7.2.2.4)
- there is evidence that the international student was misled by the registered provider or an education or migration agent regarding the registered provider or its course and the course is, therefore, unsuitable to their needs and/or study objectives (7.2.2.5)
- an appeal (internal or external) on another matter results in a decision or recommendation to release the international student (7.2.2.6).

Providers may include more circumstances in their policies, but the above are mandatory.

The registered provider must also include in their policy a list of circumstances that it considers to be reasonable grounds for refusing a transfer request (7.2.3). No particular circumstances are listed in standard 7, giving some discretion to the provider. The circumstances listed here (reasonable grounds for refusal) do not override the provider's obligation to consider the circumstances listed under 7.2.2 (grounds for release) and to make a balanced decision.

Where we investigate complaints made by international students about their education provider's refusal to release them for study with another education provider, we will consider whether the provider's policies are compliant, whether the correct processes have been followed and whether the provider has taken into account the student's individual circumstances.

Many providers either do not have an updated policy or they neglect to consider the student's personal circumstances. Providers often respond to a student's request to transfer with a decision along the lines: *'students are not able to transfer between registered education providers until they have completed six months of study in their principal course'*, which pays no regard to the student's circumstances and implies that the student's request was not considered under a compliant transfer assessment policy. In cases like this, our conclusion is that the provider has not met their obligations under the National Code, and we recommend that the provider release the student.

Recent enquiry from a provider: releasing a student for transfer after a CoE has been cancelled

A provider contacted us with an enquiry about a student who had approached them for release, after the student's Confirmation of Enrolment (CoE) had already been cancelled.

The student had enquired with the provider about the process for release to study with another education provider, but the student did not make a formal application for release. The student stopped attending classes and informed the provider that they were withdrawing from their course of study. The provider cancelled the student's enrolment in the student's current and subsequent courses.



The student approached the provider some months later, wanting to submit an application to be released from his study program with the provider.

The provider's position was that as the student was not enrolled, therefore they were not able to consider a request for release. The provider sought guidance from us about how they could resolve the situation with the student.

After consulting the Education Services for Overseas Students (ESOS) policy team at the Department of Education and Training, we advised the provider that even though the student's CoE had been cancelled in the Provider Registration and International Student Management System (PRISMS), the system would still permit the provider to record a decision about a request for release to transfer to another provider. In addition, although the student was no longer enrolled with the provider, the student was still prevented from studying with any other provider unless the provider released the student.

Other than returning to their home country to apply for a new student visa, the only avenue for students to change providers during their restricted period is by applying for release to the provider they are enrolled with. Since this is the only way that a student may obtain release without leaving Australia, we advised that it did not appear reasonable for the provider to have a policy which excluded the student's ability to apply for consideration to be released.

The provider accepted our advice and proceeded to consider the student's application for release, however because the student did not meet the provider's criteria for release, the transfer was not approved.

Case study—a well-considered refusal to release



Kai² was enrolled in a Certificate IV in Commercial Cookery with a private education provider. Before commencing this principal course, Kai was enrolled to complete 10 weeks of English language studies. Kai commenced her English course, however, during the course, she changed her mind about where she wanted to study her principal Commercial Cookery course. Kai wasn't enjoying her life in the city and wanted to transfer to a regional provider. She had previously spent some time in that region as a working holiday visa holder, and had friends and work contacts there.

Kai moved to the regional town where her new provider was located, and applied for release from her principal course provider. She put together a statement explaining her choice.

Kai's provider assessed her request against its transfer assessment policy. Her provider did not find Kai's change of mind to be compassionate or compelling (7.2.2.2) and Kai had presented no other reasons for transferring.

Kai's provider also made reference to its circumstances for refusal of a request to release (7.2.3). In its transfer assessment policy, Kai's provider required students to access its support services before any decision to release would be made. As Kai had not commenced the course of study, she had not accessed the provider's support services.

² Name changed to protect privacy

The provider balanced reasons to release Kai with reasons to refuse her request and decided that she did not satisfy the criteria in their transfer assessment policy. The provider notified Kai of the decision.

Kai appealed the decision with the provider but the outcome was the same. Kai then complained to our Office.

Our investigation found that the provider's decision was supported by the National Code and the provider's policies, and a clear decision record which the provider clearly and simply explained to Kai. Our investigation supported the provider's decision.

Commentary

When assessing the student's request for release, we found no error in the provider's decision processes. Most importantly:

- the provider's policy and process for assessing standard 7 transfer requests were compliant with the National Code
- the provider had considered the student's application in reference to the policy, according to its process and by considering the student's individual circumstances.

Our investigations will be in support of providers where decisions are compliant with relevant laws and policies, and are reasonable in the given circumstances.

Ombudsman efficiency improvements: Dispute resolution

In keeping with our commitment to efficiently handle complaints and investigations, investigation officers will soon commence a dispute resolution process for some complaints, rather than a full investigation.

Where an investigation officer sees that there is still an opportunity for a complaint to be resolved between the education provider and the student, the officer will send the details of the complaint to the education provider, giving that provider the option of:

- attempting to resolve the dispute with the student, or, where this is not possible
- responding with requested information, so that our investigation officer can continue with an investigation.

Providers will be asked to respond to the request within 14 calendar days. If the provider and student have resolved the dispute, the provider should advise that this is the case within that period. If the provider and student have not resolved the dispute, the provider should attach requested information so that the dispute can be investigated.

The dispute resolution opportunity is most likely to be used for complaints about fees or refunds. Other complaint types, for example about reporting for course attendance or progress, are more likely to be investigated, as providers often make their decisions according to their interpretation of ESOS reporting requirements.

Investigation officers may provide some information for education providers which gives an outline of National Code and ESOS requirements relating to the issues in the complaint.

Education providers are welcome to call the investigation officer at any time to provide an update on progress or ask for further information.

