



# Provider e-newsletter

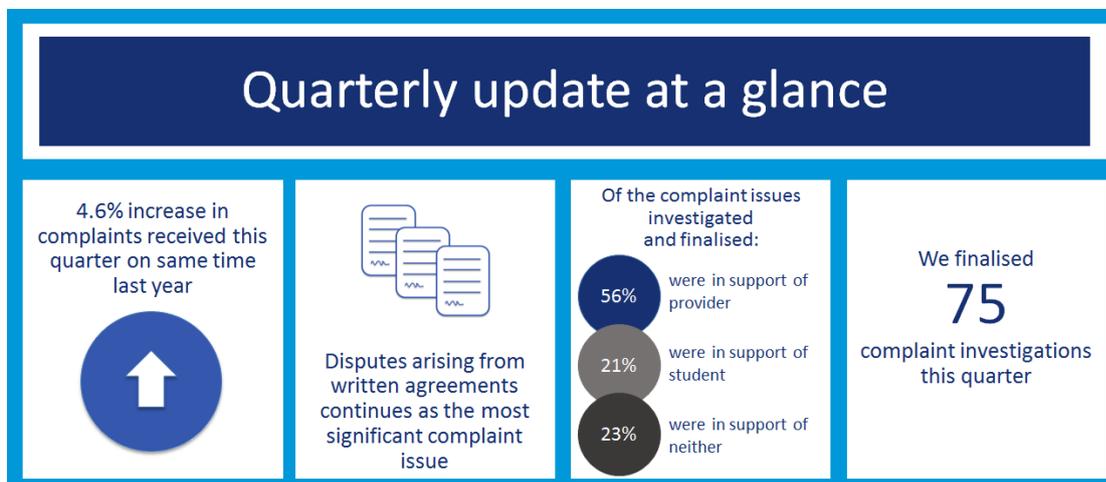
August 2018

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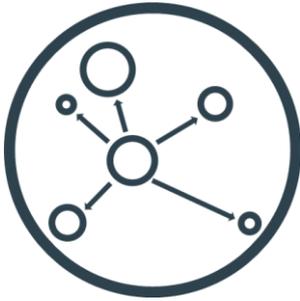
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Quarterly update for April–June 2018 is now available

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



## Outreach and engagement



### Council of International Students Australia (CISA)—Annual Conference

On 26 and 27 June this year, a representative from our Office travelled to Cairns to attend and deliver a presentation at the CISA annual conference. Our [presentation](#) was 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](mailto:overseas.students@ombudsman.gov.au).

### International Education Association of Australia (IEAA)—Admissions and Compliance Forum

On 4 May this year, an Office representative participated in IEAA's Admissions and Compliance Forum in Melbourne. Our representative spoke about the requirements of Standard 3 of the updated *National Code for Providers of Education and Training to Overseas Students 2018* (the National Code), which deals with written agreements.

After a short introduction touching on common areas of written agreement disputes, our representative addressed questions from provider compliance officers. The providers were particularly interested in changes to the National Code and the requirements for additional information to be included in the agreements. This included the distinction between required and 'supplementary' information. The forum was a great opportunity to hear directly from providers about their concerns and questions, and to discuss the implications of changes to the National Code in a case-specific context.

## VET student loans

As you may know, the Commonwealth Ombudsman investigates complaints about the VET Student Loans program and the former VET FEE-HELP scheme. The VET student loans team is also responsible for giving VET providers advice and training about best practice complaint-handling



This year, the team will begin delivering Best Practice Complaint-Handling workshops directly to VET Student Loan approved course providers. If you're interested in participating in a two-hour in-house training session, please email the team at [VET.StudentLoans@ombudsman.gov.au](mailto:VET.StudentLoans@ombudsman.gov.au).

The team has recently added a new [How to make a complaint](#) factsheet for students on our website. This factsheet includes tips for students on how to make a complaint with their provider and when to approach the Office. You can also view a video on the VET Student Loans Ombudsman for students [here](#) and a video for providers [here](#).



### National reporting standard: international student complaints

The Office is working with other international student complaint-handlers including state and territory ombudsmen to improve the availability of complaints data.

The project aims to create a national reporting standard which can be used to highlight trends and systemic issues raised by international student complaints, promote consistency of decision making and handling among complaint-handlers, and provide information for providers and policymakers to improve the international student experience.

As with all our complaint reporting, provider and student information will be aggregated and de-identified to protect the privacy, anonymity and commercial interests of providers and students.

### Complaints about Grades and Assessment

The Office has seen an increase in the number of complaints from international students about the mark, grade, exam result or other measure of competency received after assessment by their providers.

Our first step in assessing such matters is to confirm with the student that their provider's formal process for complaints and appeals has been accessed and completed. If the student has not yet accessed or completed this process, we cannot investigate the complaint and refer the student to their provider. We advise the student that they may contact us after they have completed their provider's internal process, if they are not satisfied with the outcome.



If a student has completed their provider's formal complaints and appeals process and they wish to make an external complaint, our Office may be able to investigate.

Our Office can consider external complaints about an academic assessment result awarded to an international student only from a procedural perspective. This means we can look at administrative policies and processes only, for example whether the provider:

- has a policy and procedure for assessing academic merit and competency and awarding academic assessment results
- has followed its academic assessment and award policy and procedures
- has reasonably responded to the student's formal complaint or appeal regarding their assessment.

We cannot make academic merit decisions, cannot assess competency and cannot alter grades. However, if we find that documented procedures have not been followed, we can recommend that the provider reconsiders the assessment.

We are producing a factsheet which will be available in the [student resources](#) section of our website. You may find it useful to pass this information to students considering making an external appeal.

## Recent enquiry from a provider: reporting unsatisfactory course progress

A provider contacted our Office to enquire about the requirement to wait before reporting a student for unsatisfactory course progress until after the outcome of the student's external appeal.

The provider was concerned that this process would be administratively difficult given the student was enrolled in a short course, and the appeal process may take longer to finalise than the course is scheduled to run.

Under Standard 8.14 of the National Code, providers may only report a student for unsatisfactory course progress after the internal and external appeals processes are completed, if the student has chosen to access those processes. If the internal or external appeal is resolved in support of the student, the provider must not report a student for unsatisfactory course progress.

A provider is not obliged to extend a student's enrolment during the appeals process. This means that if the student's enrolment expires, the provider may allow it to lapse and not create a new Confirmation of Enrolment.

To exert some control over the amount of time that a provider would need to wait before reporting a student, providers may include a clause in their complaints and appeals policy stating that once the internal appeal has been finalised and notified to the student, they have  $x$  days to lodge an external complaint with the Ombudsman (where  $x$  is an appropriate number of days—in our experience, providers give students 10–20 business days) and that the student must advise the provider as soon as an external complaint has been made.

These instructions would need to be repeated in the provider's communication advising the outcome of the student's internal appeal.

Investigations about course progress requirements are prioritised in our Office due to the potential impacts on a student's visa, hence if we investigate the complaint, providers should receive contact from our Office shortly afterwards.

If a student claims to have lodged a complaint with our Office and you have not heard from us, you may ask the student for evidence that he/she has made a complaint. The student will be able to request this from our Office.

For more information about overseas student visa requirements, you can refer to this [Factsheet](#) published by the Department of Education and Training.



## Case study—2017 letter of offer signed in 2018



Jie<sup>1</sup> was enrolled in a Bachelor's degree, which she was due to start in late February 2018. In early February her husband had an accident, so she decided to withdraw from her studies to help him in his rehabilitation.

Jie applied for a refund of her pre-paid tuition fees, but her education provider refused the refund, stating that she had not withdrawn from her studies within 28 days of her course commencement date, so she was ineligible. Jie appealed that decision under the provider's compassionate and compelling circumstances exception, but her situation was not seen as sufficiently compelling.

Jie lodged a complaint with our Office. Our investigation officer considered the written agreement between Jie and her provider, her provider's refund policy and also examined her provider's decisions relating to the refund request.

The investigation officer noticed that the letter of offer was issued in November 2017, but that Jie had not signed her acceptance until mid-January 2018. The written agreement was therefore made in January 2018.

From 1 January 2018, an update to the National Code came into effect. Within this update were new requirements for written agreements. The letter of offer which was provided to Jie did not include new clauses which were required under the updated National Code.

S 47B of the *Education Services for Overseas Students Act 2000* (ESOS Act) states:

*A registered provider must enter into a written agreement with each overseas student or intending overseas student that:*

- a) sets out the refund requirements that apply if the student defaults in relation to a course at a location*
- b) meets the requirements (if any) set out in the national code.*

In addition, the letter of offer had included the statement "this offer expires 28 days from the date of issue". Jie had signed her acceptance 49 days after the letter of offer had been issued.

Our investigation officer determined that the letter of offer had expired at the time of Jie's signature, and the written agreement did not comply with the Standard 3 of the National Code 2018—and consequently was non-compliant with s 47B of the ESOS Act.

Where a written agreement between an education provider and an overseas student does not comply with the requirements of the National Code and the ESOS Act, a defaulting student must be refunded in accordance with s 47E of the ESOS Act and calculated pursuant to the *ESOS (Calculation of Refund) Specification 2014*. In Jie's case, that entailed a full refund of her pre-paid fees.

### Commentary

In the case above, the National Code 2018 had only just taken effect, and the provider has since updated its written agreement template. However we continue to see some providers working from policies (and templates) which have not been updated in years.

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<sup>1</sup> Name changed to protect privacy

Where we find that a provider's policies, procedures and agreements do not comply with the ESOS legislative framework, it would be unusual for us to resolve the complaint in support of the education provider. This can have a financial impact on the education provider.

It is in the interests of all parties for education providers to keep their policies, procedures and templates up-to-date.

Education providers should note that this commentary applies only to written agreements entered into after 1 January 2018. Written agreements entered into before 1 January 2018 do not need to be updated, unless there are other reasons to change the agreement.

For more information, you can refer to the [Factsheet on Written agreements](#) published by the Department of Education and Training.

## Ombudsman efficiency improvements

### Step 2: More phone contact

In keeping with our commitment to reduce handling times and reducing the administrative burden on all parties, investigation officers are prioritising communication by telephone where appropriate.

Our powers to request information are based on provisions in the *Ombudsman Act 1976* (the Ombudsman Act). In many cases, the Ombudsman Act does not specify the method that must be used to request information. A delegate of the Ombudsman may make a request in writing, but they may also make a request by telephone.

Accordingly, the Principal Education Officer (PEO)\* of your organisation may receive a telephone call from an investigation officer informing them that an investigation has commenced and asking for certain documents to be provided. This telephone call is an opportunity to clarify the core of the disagreement between the student and education provider, which may help to focus the investigation officer's request for documents.

After the phone call, investigation officers send a brief email to the PEO to summarise the request. If the PEO wishes for a more detailed request to be made in writing, this should be requested as soon as possible.

If the PEO cannot be reached by telephone, we will send our usual request in writing.

You are also welcome to contact our Office by telephone at any stage of the investigation process, if you believe that speaking to the investigation officer would assist in understanding their request or if you would like to explain something verbally.

Recent experience has been positive, with one provider commenting that they appreciated our telephone exchanges, which are quicker and easier to understand than emails.

We are always open to your feedback, so if you have any comments or ideas about how we may improve our external complaint-handling processes, please send an email to [overseas.students@ombudsman.gov.au](mailto:overseas.students@ombudsman.gov.au).

\*Your PEO may nominate another person in your organisation as the first contact point for any complaints which arise. This person should be someone the PEO thinks will be well placed to communicate with us and able to provide information to resolve a complaint. The PEO may nominate the other person by sending an email to [complaints.oso@ombudsman.gov.au](mailto:complaints.oso@ombudsman.gov.au).

