

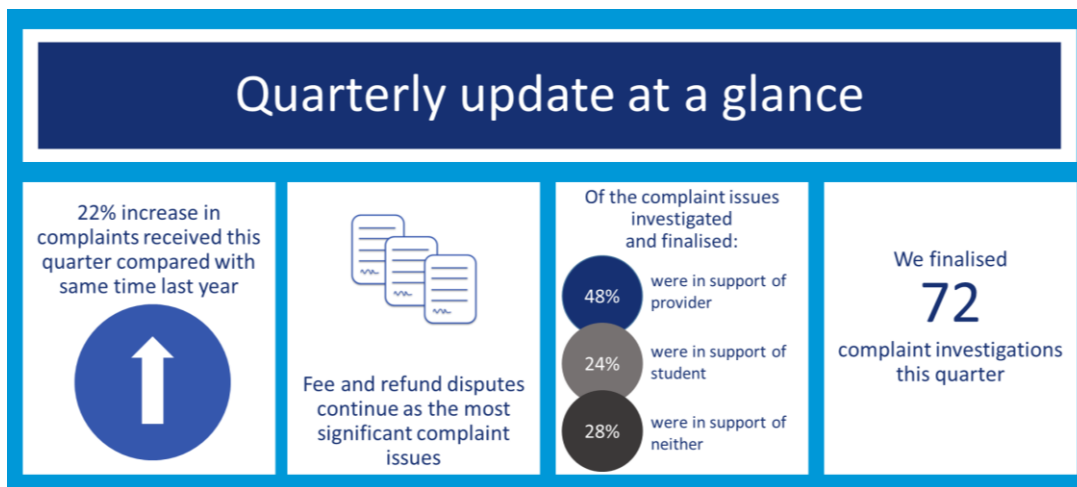
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Quarterly update for October–December 2018 is now available

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



## Spotlight on National Code standard 8—Overseas student visa requirements: attendance monitoring

In this issue of our provider e-newsletter, we focus on Standard 8 of the *National Code for Providers of Education and Training to Overseas Students 2018* (the National Code). In particular, the requirements on certain providers to monitor, intervene in, and report on student attendance.

All primary student visa holders are subject to the mandatory visa condition 8202, requiring that primary student visa holders engage with their studies in Australia by meeting minimum attendance and/or course progress standards. The type of engagement expected varies across the different sectors.



For example, in the English Language Intensive Courses for Overseas Students (ELICOS) sector, students are required to attend at least 80 per cent of their scheduled classes.

In the Higher Education sector, students are required to maintain satisfactory course progress. In the Vocational Education and Training (VET) sector, most students are required to maintain satisfactory course progress. However, some students are also subject to attendance requirements, depending on the education provider they are studying with. Since 1 January 2018, as a condition of their registration on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS), some VET providers are required to monitor attendance. As at 24 January 2019, 21 VET providers have been required to do this.

Both attendance monitoring and course progress monitoring systems place similar obligations on providers. Education providers must:

- have an easily accessible policy and process, and students must be advised of this during their orientation
- have strategies to intervene to improve the student's attendance or course progress, before it drops to the standard which requires reporting to the Department of Home Affairs
- notify students of the intention to report them to the Department of Home Affairs, once a student's attendance or course progress fails to meet requirements
- have an accessible complaints and appeals process for students to appeal the provider's decision to report students
- not report students while their complaint or appeal is being processed internally or with an external complaint-handling body.

Certain requirements in the National Code can be challenging to implement, in practical terms. For example, during very short courses, a student's illness can cause them to fail to meet progress and attendance requirements very quickly, giving providers little time to intervene.

The case study in this issue looks at how providers can manage difficult situations with monitoring student compliance with their visa conditions, while meeting their obligations under the *Education Services for Overseas Students Act 2000* (the ESOS Act). Read below to see the outcome of one student's complaint to us.

### Monitoring visa requirements for short courses



Some courses offered to international students are very short, as little as 3 weeks for some English language courses. With the upcoming review of the Australian Qualifications Framework (AQF), it is possible that short courses in other sectors will also be made available to international students.

It is unclear how attendance and course progress monitoring conditions will apply to new types of courses after the AQF review, but for now these conditions apply to students doing short courses as much as they apply to longer courses.

This can be particularly challenging for providers and students as monitoring must be done regularly, and interventions must happen as soon as a possible problem is identified. If a student struggles with the course material or takes ill for more than a couple of days, it can quickly become impossible for the provider to effectively intervene before the student finds themselves in breach of their visa requirements.

Even so, providers are obliged to follow the attendance requirements under the ESOS Act and National Code, including intervention with the student, notification of intention to report, and appeals requirements as outlined in our Spotlight article on Standard 8 of the National Code above.

For short courses, if the provider must report the student in PRISMS, providers can include a note to highlight any relevant circumstances, such as the short duration of the course, the student's illness, or other mitigating factors.

Other options the provider may consider where compassionate and compelling circumstances exist are:

- deferring the enrolment to a future period (including retrospectively)
- suspending the enrolment during the period of illness, misadventure, or other circumstances affecting the student's course progress or attendance.

In the above cases, the provider would avoid reporting the student under standard 8 of the National Code, but they would need to meet the requirements in National Code standard 9, in particular 9.5:

*9.5.1 inform the overseas student of the need to seek advice from Immigration on the potential impact on his or her student visa*

*9.5.2 report the change to the overseas student's enrolment under section 19 of the ESOS Act.*

The following case study highlights challenges faced by providers in monitoring attendance during a short course.

### Case study—illness during a short course

Antonio<sup>1</sup> enrolled in a three-week English language course with a private education provider, and commenced studies. On his third day, Antonio felt unwell so did not come to classes. On the fourth day Antonio attended again, but left before the last period of the day as he didn't feel well. Antonio didn't attend on the fifth day.

On the following Monday, Antonio called the education provider to say that he was recovering from a serious illness in hospital, and that doctors had told him he would be away for at least the rest of that week.

Due to his illness, Antonio was not able to attend the rest of his course, and he provided medical certificates to explain his absence for the period of his illness and recovery.

During the second week of his illness, Antonio's provider sent him a notice of intention to report for unsatisfactory attendance. Antonio appealed that decision with his provider unsuccessfully. He then lodged a complaint with our Office.

We investigated Antonio's complaint, and found that Antonio's education provider had not complied with the requirement to notify him that he was at risk of not meeting attendance requirements, before his attendance dropped below 80 per cent (National Code 8.12.3).



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

In particular, after Antonio had missed his first day of studies, his projected attendance based on contact hours had fallen to 89 per cent. At that stage, his provider had an opportunity to warn him about the consequences of missing more classes.

When Antonio called from the hospital on the following Monday, his provider was presented with an opportunity to predict the effect on Antonio's ability to meet attendance requirements, and it could have suspended his enrolment.

As Antonio was not provided with appropriate warnings, we proposed that the provider not report Antonio for unsatisfactory attendance.

### Commentary

In short courses, a student's overall attendance can drop significantly if they are absent for even a couple of days. However, the requirements on education providers to monitor and report unsatisfactory attendance remain.

We recommend that providers offering short courses explain this risk clearly at the beginning of the course, to make sure students are aware of the consequences of illness, misadventure or other absence. We also recommend providers explain to students that they can raise the possibility of a suspension of studies when calling the provider to notify them of their absence due to illness or misadventure.

If the student is unable to call the provider and the provider learns of a compassionate and compelling reason for the student's absence after the course, providers may consider a retrospective deferral or suspension of studies.

Where this is not possible, and the provider has given appropriate warnings and notifications to the student, the provider may be obliged to report the student through PRISMS for unsatisfactory attendance. In those cases, we recommend that the provider includes a note stating the student has given evidence of illness between specific dates.

### Complaints about attendance monitoring—conditions required of some VET providers



We have received complaints in recent months from international students in the VET sector whose providers have commenced the process to report them in the PRISMS for unsatisfactory attendance.

In their efforts to comply with new attendance monitoring conditions required of them by the Australian Skills Quality of Authority (ASQA), providers have decided that the students should be reported for unsatisfactory attendance, but missed some important requirements in the process.

We noticed that in the provider's attempts to report students appropriately for unsatisfactory attendance, they did not comply with other requirements of standard 8 of the National Code, in particular:

*8.12.3 identify[ing], notify[ing] and assist[ing] overseas students who have been absent for more than five consecutive days without approval, or who are at risk of not meeting attendance requirements before the overseas student's attendance drops below 80 per cent*

8.13.3 [advising] *the overseas student of their right to access the registered provider's complaints and appeals process, in accordance with Standard 10 (Complaints and appeals), within 20 working days*

8.14 Only reporting unsatisfactory attendance if the student has exhausted, withdrawn from or chosen not to access the complaints and appeals process within the relevant timeframe.

In these complaints, we found that providers did not:

- notify students of their falling attendance
- implement an intervention strategy in time to improve attendance levels, or
- allow the student time to exhaust the provider's internal complaints and appeals process.

Because of this, we determined that the providers should **not** report the students at that stage.

### Outreach and engagement

International Student Advisers Network of Australia (ISANA) Contact Points project workshop, Melbourne

On 30 October 2018, we participated in a workshop held by ISANA which brought together personnel from emergency, legal and other support services. The purpose of the workshop was to plan a strategy for reaching international students with information about what to do when faced with a critical incident affecting themselves or others they know.

In particular, previous research had shown that many international students in Australia do not know the emergency '000' number and are likely to look at home country information sources about what to do in a crisis.

In addition, many international students are hesitant to call '000' in case of a fire, in case they are charged a call-out fee. Compounding this is a fear in some cultures of authorities and people in uniform.



We spoke to workshop participants about our own role in assisting international students in Australia, and also highlighted the roles of the State and Territory Ombudsmen. We shared some of our strategies for reaching international students, including through education providers and social media.

If you would like to share your own views on the best ways to reach students with information on what to do in critical incidents, please contact the Research Assistant for the project, Franklin Patrao, at [franklin.patrao@rmit.edu.au](mailto:franklin.patrao@rmit.edu.au).

### Migration Institute of Australia—professional development session for migration agents

On 31 October 2018, we held a professional development webinar for migration agents. We covered the broad jurisdiction of our Office, including our ability to consider complaints about the Department of Home Affairs and the Australian Border Force, our inspection and reporting functions in relation to immigration detention, and our Overseas Students Ombudsman role.

### Australian Education Consultants' Alliance (AECA) National Conference

The AECA is an association of education consultants, also known as education agents, based in Sydney. On 11 December 2018, we presented at the AECA national conference. Our presentation touched on our role in assessing complaints about education agent behaviour, but the primary focus

was on the kinds of complaints that students tend to seek help from their agents about, and how agents can assist students with the complaint-handling process.

### ISANA International Education Association consultation on National Code tutorial tool

The Office is continuing to participate 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 grant from the Department of Education and Training to update this training to reflect the 2018 National Code standards for providers, agents and international students.

### Ombudsman efficiency improvements—Assisted referrals



The Office usually does not investigate a complaint before a student has made a formal internal complaint or appeal to their education provider and this process has been completed. This gives the education provider an opportunity to resolve the matter first.

Students who have not yet complained to their provider make up a significant proportion of approaches to our Office - approximately 35 per cent. To assist these students to make their complaints to the provider in the first instance, in January 2019 we commenced a process of referring complaints to education providers.

The process involves the following steps:

- 1) The student gives permission to the Ombudsman to refer their complaint to the education provider.
- 2) The Dispute Resolution Officer telephones the education provider to confirm that a complaint has not been lodged and to advise that the complaint will be transferred to them. We ask the provider to contact the student to assist them with their complaint.
- 3) The Dispute Resolution Officer sends referral by email to the education provider, and sends confirmation to the student that the complaint has been referred.
- 4) The education provider contacts the student to resolve the issue, or to assist the student to lodge a complaint. The education provider then considers the complaint according to their internal complaints and appeals process.
- 5) We ask the education provider to confirm by email that the student has been contacted and assisted.

This process will help ensure that the education provider and the student have an opportunity to resolve the issue. If the education provider advises that the complaint has been resolved, but the student advises that they are not satisfied with the provider's resolution, our Office may commence an investigation. Similarly, if the education provider does not assist the student by initiating the provider's internal complaints and appeals process, our Office may also commence an investigation.

Providers are not obliged to participate in the assisted referral process but we appreciate the cooperation of education providers who have participated in this new process and worked with students to promptly resolve their complaints.