

# Finalising investigations: information for providers on implementing our views

## 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 can be made to the Office of the Commonwealth Ombudsman (the Office).

If we investigate a student's complaint, we may propose a specific remedy that the provider should give to the student.

## What we do when we receive a complaint

The Office can investigate a complaint made to it using our powers under the *Ombudsman Act 1976*, however, we do not investigate every complaint we receive. 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 acted reasonably and will explain this to the student. Our Office will ask the student to comment and will consider any comments before closing the investigation. In other cases, we may conclude that the provider failed to take appropriate action, or that the provider's 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 our conclusion, actions we propose that a provider take may include:

- providing clearer information to the student
- reconsidering a decision affecting the student (e.g. reporting for unsatisfactory course progress)
- paying the student a refund

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<sup>1</sup> The Framework consists of the *Education Services for Overseas Students (ESOS) Act 2000*, the *Education Services for Overseas Students Regulations 2019*, 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

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Education providers  
are asked to  
comment on any  
remedies we propose  
before we make a  
final decision.

Under the National  
Code, if an external  
complaints and  
appeals body makes a  
recommendation, the  
provider must  
implement it.

- changing a policy or procedure
- updating the Provider Registration and International Student Management System (PRISMS) to correct information which was previously recorded in error.

We ask education providers to comment on our views before we finalise our investigation or inform the student of the outcome. We consider any comments made before finalising the investigation.

### Do I really need to act on views formed by the Ombudsman's office?

Under Standard 10.4 of the National Code, if the external complaints handling or appeals process results in a decision or recommendation to the provider, 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 the proposed actions?

Any actions we propose are the result of an investigation considering all the facts and the requirements of relevant legislation. We therefore strongly advise that providers implement any actions we propose.

If providers do not implement the proposed action, the Office may consider reporting this to the regulator or other public authority. If we propose to make such a report, we will contact the provider 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 for failing to achieve satisfactory course progress. We decided to investigate the issue by:

- reviewing information provided by the student
- requesting information from the provider about their decision including documentation and policies applied
- considering 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 proposed that the provider not report the student to the Department of Home Affairs. We suggested the provider review and update their policy on course progress.

The provider sought further guidance from us on updating their policy and implementing our proposal.

Later, another student at the same provider came to us with a similar complaint to the first student. We investigated and formed the view that the provider had substantially met their responsibilities. The provider had updated their policy since the first complaint and was now compliant under the National Code and ESOS legislation. In addition, the provider had followed the policy correctly.

### Commentary

Complaints give providers an opportunity to improve their policies, procedures or published information. Where our investigations identify areas that require correction or improvement, our complaint finalisation advice to the provider will outline the issues and how they can be addressed. In the example above, the provider made changes because of our view that their policy was non-compliant and investigation of the next similar complaint brought to us resulted in a view that the provider had substantially met their responsibilities.

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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

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