



# LESSONS FROM INTERNATIONAL STUDENT COMPLAINTS

Council for International Students Australia (CISA)  
National Conference, 27 June 2018

# Acknowledgement of Country

The Office of the Commonwealth Ombudsman acknowledges the traditional owners of Country throughout Australia and their continuing connection to land, culture and community.

We pay our respects to elders past and present.



# What is an Ombudsman?

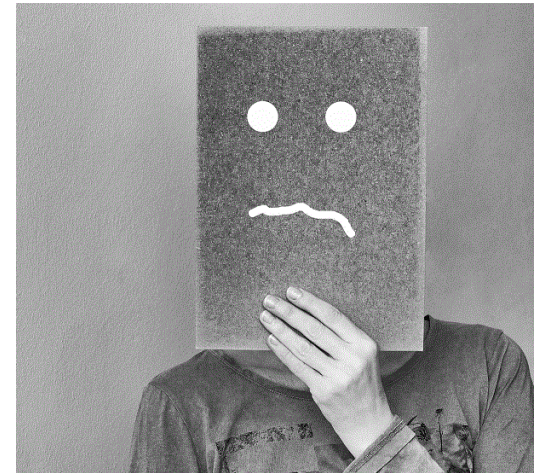


Wikipedia:

“An ombudsman... is usually appointed by the government or by parliament, but with a **significant degree of independence**.

He or she is charged with representing the interests of the public by **investigating** and **addressing complaints** of maladministration or a **violation of rights**.”

An Ombudsman can investigate your complaint when you have **exhausted** all **other avenues**, but you still feel like you haven't really been heard.



# Commonwealth Ombudsman

Many different types of Ombudsmen:

- Problem with your phone company: Telecommunications Industry Ombudsman
- Problem with your working conditions: Fair Work Ombudsman
- Problem with your electricity supplier: Energy and Water Ombudsman
- Problem with an Australian Government Agency: **Commonwealth Ombudsman**

**Specialist** roles:

Private Health Insurance Ombudsman Postal Industry Ombudsman  
Overseas Students Ombudsman, VET Student Loans Ombudsman

We take complaints from overseas students about problems with their education providers, if the education providers are privately owned.



**Also:** **VISAS, HEALTH INSURANCE** and **public education providers in ACT**

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# How do we decide if a student has been treated fairly?

We look at whether the provider has complied with:

- The *Education Services for Overseas Students Act 2000 (ESOS Act)*
- The provider's own policies, procedures and agreements, and
- general principles of Australian Law, including procedural fairness, and Australian Consumer law



# The National Code

*The National Code of Practice for Providers of Education and Training to Overseas Students* is part of the ESOS Act.

All education providers, including universities, TAFEs, schools and private colleges are required to follow the standards in the national code.

These standards set out the requirements for providers when dealing with international students.



# The National Code

## 1. Marketing information and practices

Information on courses, work-based learning opportunities, migration outcomes must be accurate

## 2. Recruitment of an overseas student

What provider must inform student of before enrolling re: course content

## 3. Formalisation of enrolment and written agreements

Course content, prerequisites, tuition and non-tuition fees, refund policy, conditions of enrolment, payment options, complaints & appeals process

## 4. Education agents

Must have written agreement with provider. Agent must be in PRISMS.  
Provider responsibility to monitor behaviour. Code of ethics

## 5. Younger students

No gaps in welfare arrangements. Info re: emergency situations/abuse to be age/culture appropriate. Providers to regularly check care. Notification of cessation of care

## 6. Student support services

Critical incident policy. Reasonable support to study at no additional cost

## 7. Student transfers

Circumstances for grant. Notify intention to refuse. Not record in PRISMS until after appeal process

## 8. Monitoring course progress and attendance

Policy and process to identify, notify & assist students at risk of not meeting progress/attendance requirements

## 9. Deferring, suspending or cancelling the student's enrolment

Policy and process for assessing deferrals, suspensions and cancellation of enrolment  
Circumstances where a student must be given opportunity to appeal

## 10. Complaints and appeals

Providers must have, and implement, a complaints and appeals process  
Students must have access to external complaints and appeals process

## 11. Additional requirements

Criteria for provider to apply to register a full-time course at a location

# Emma, Jermaine and Huyền star in **Going Troppo**



[By © The Ocean Agency / XL Catlin Seaview Survey / Aaron Spence](#)

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# Debrief

What should Jermaine do now?

What could Jermaine have done differently?

How might the Ombudsman consider this case?



*Don't worry, it's just a freshie*

# Written agreements (fees and refunds)

Number 1 complaint to the Overseas Student Ombudsman.

Rules are in standard 3 of the National Code.

Letter of offer, when accepted by student, is the written agreement.

Written agreements must:

- Itemise all tuition fees
- List all non-tuition fees
- Include refund policy

If not compliant, provider must refund according to the *Education Services for Overseas Students Act*

From 2018, students must keep a copy of their written agreements.



# Refund policies

## When visa refused

- ESOS formula
  - refund amount is course fees paid minus:
    - 5% of course fees received, or
    - \$500whichever is *lesser*
- Provider's policy can be more generous

## When visa cancelled

- No default ESOS formula
- According to written agreement

## When student withdraws

- According to written agreement



# Eddie races ahead...

Eddie was enrolled to study two terms of English, then move to a Diploma in Nursing, which articulated into a Bachelor's degree.

Eddie found his English course too easy and wanted to get started on his Diploma early.

Eddie withdrew from the second term of his English course 4 weeks before it was due to start, and sought a refund from his provider. The provider refused to give Eddie a refund and he complained to our office.

We asked the provider for a copy of the written agreement. The provider supplied:

- a copy of a signed application to study form, which did not list the courses or itemise the fees, and
- an unsigned letter of offer, which had the course and fee details, and included terms stating that no refund would be payable after the course start date

Eddie had paid the fees listed in the letter of offer.

**Is Eddie entitled to a refund of the unspent tuition?**

# Eddie changes his mind...

Eddie passed his Diploma with flying colours. He had particularly enjoyed his units in public health studies.

During his summer holidays, Eddie worked in a Nursing home for the elderly. After a month or so, he got the idea that it would be much more useful to help prevent disease than to deal with the effects when it is too late.

Eddie found another provider that offered a Bachelor of Public Health degree. The course sounded very interesting and Eddie was excited thinking about it. He decided to go for it.

When he tried to enrol, the provider said he first needed to be released by the provider he was due to start his B. Nursing with.

Eddie applied for release, but the provider said that the B. Nursing was his principal course for his visa, so he would need to complete the first 6 months of the course.

**What can Eddie do?**

# Transfers

National Code Standard 7:

Providers must have a policy for assessing transfer requests. The policy must outline:



circumstances in which the provider will **approve** the transfer, because it is in the student's best interests, including where:

- the student will be reported because they are unable to achieve satisfactory course progress, even after engaging with the provider's intervention strategy
- there are compassionate or compelling circumstances
- the provider cannot deliver the course as agreed
- the student provides evidence their reasonable expectations aren't met
- the student was misled by the provider or an education or migration agent



circumstances the provider considers reasonable to **refuse** the transfer



# An unwelcome surprise

Eddie started on his Bachelor of Public Health, and found it fascinating.

He confidently handed in his first set of assessments, and did some mid-semester exams, and was very surprised at his poor results.

He got feedback that his writing was unclear and poorly structured. He tried harder, but he had always done practical studies and was frustrated with the written demands of his course.

Eddie failed at his semester 1 exams. He was able to re-sit the exams and managed to pass one unit, but he still failed the other one.

Eddie received an email from his provider saying that he was at risk of not meeting his course progress requirements, and he should come in for a meeting.

Eddie thought he could handle it, so he ignored the email and re-enrolled in his failed unit, on top of his other semester 2 subjects.

**What advice would you give Eddie? What could go wrong?**

# Course progress monitoring



Under standard 8 of the National Code, a provider must:

- monitor and record course progress
- have processes to identify students who are at risk of unsatisfactory course progress
- implement an intervention strategy to assist students at risk of unsatisfactory course progress
- have a process for determining when a student has failed to meet satisfactory course progress

When a provider has identified a student as failing to meet satisfactory course progress, they need to have a process for reporting the student to the Department of Home Affairs.

This includes first notifying the student, and allowing the student to access an internal and external complaints and appeals process.



# Recap of other standards

## 1. Marketing information and practices

Information on courses, work-based learning opportunities, migration outcomes must be accurate

## 2. Recruitment of an overseas student

What provider must inform student of before enrolling e.g: course content and credit for prior studies

## 4. Education agents

Must have written agreement with provider. Provider has responsibility to monitor behaviour of agents. Code of ethics

## 5. Younger students

No gaps in welfare arrangements. Information to be age/culture appropriate. Providers to regularly check care. Notification of cessation of care

## 6. Student support services

Critical incident policy. Reasonable support to study at no additional cost

## 9. Deferring, suspending or cancelling enrolment

Policy and process for assessing deferrals, suspensions and cancellation of enrolment

## 10. Complaints and appeals

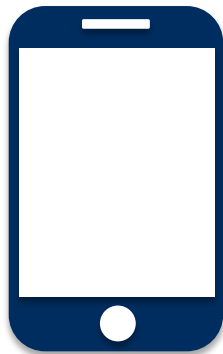
Providers must have, and implement, a complaints and appeals process  
Students must have access to external complaints and appeals process

# What if my problems is not about my private education provider?

Issue	Help is available through	Where to find out more
Public education provider	State or Territory Ombudsman	Search for 'ombudsman' in your state or territory
Employment	Fair Work Ombudsman	<a href="http://fairwork.gov.au">fairwork.gov.au</a>
Discrimination	Australian Human Rights Commission	<a href="http://humanrights.gov.au">humanrights.gov.au</a>
Housing	Consumer Affairs	Search for 'consumer affairs' or 'fair trading' in your state or territory
Legal, welfare and advocacy	Community legal centres	Search for 'community legal' and your nearest capital city, e.g. 'Sydney community legal'
Quality of teaching, training and assessment	Australian Skills Quality Authority Tertiary Education Quality and Standards Agency	<a href="http://asqa.gov.au">asqa.gov.au</a> <a href="http://teqsa.gov.au">teqsa.gov.au</a>

# How to find us

**Internet:** [www.ombudsman.gov.au](http://www.ombudsman.gov.au)



**Phone:** 1300 362 072

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# Thank you!



Please spread the word, and enjoy your studies!

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