

Provider e-newsletter edition 11

News from the Commonwealth Ombudsman – Overseas Students

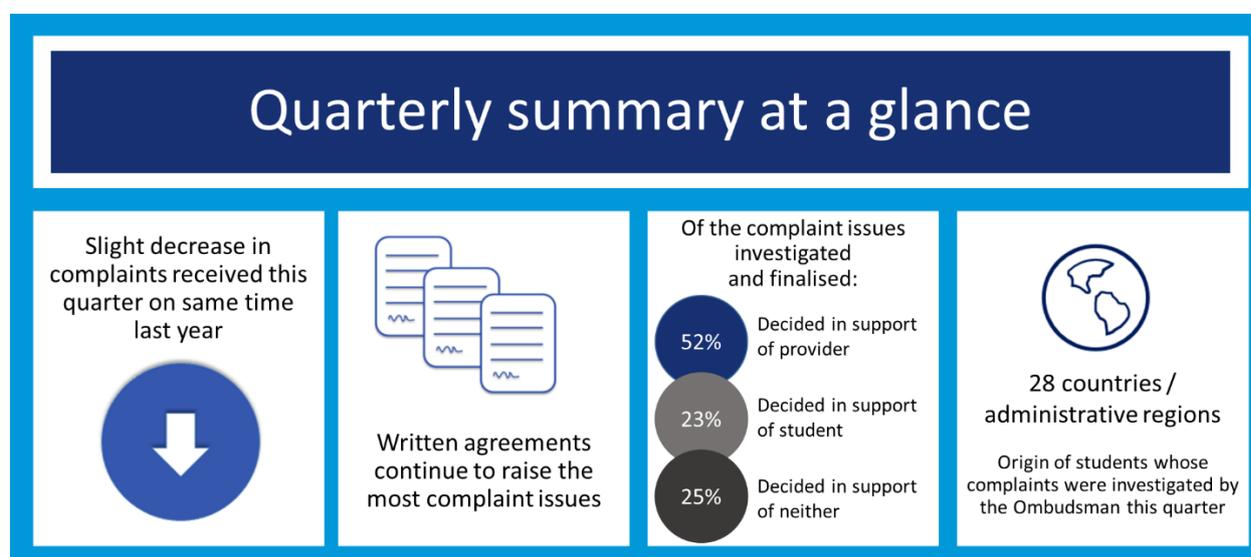
December 2017

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Quarterly summary for July–September 2017 is now available

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



Outreach and engagement

National Code 2018

With a focus on the upcoming changes to the [National Code](#), one of our team members led a professional development session for 38 education providers at the [ISANA](#) ACTiveNSW meeting on 10 November 2017.

Providers were asked to closely consider three standards which give rise to the highest number of student complaints received by the Ombudsman:

- written agreements
- monitoring attendance and course progress, and
- requests for release to transfer to a new provider.

Participants engaged in discussion of three case studies, considering how those situations would be dealt with under the revised National Code.

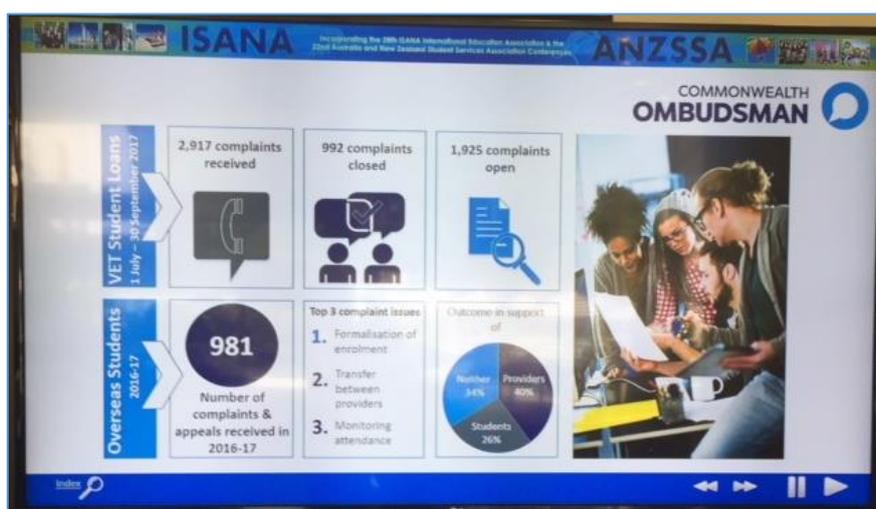
You can find this presentation on our [website](#).

What went wrong?

Often the first point of contact for overseas students considering their study plans are education agents, as they play a vital role in promoting Australia as a study destination. Agents who know the market can match students to the providers and courses who will best be able to support the student to progress in their chosen fields. Agents often help students navigate the enrolment process, the visa application process, purchase of health insurance, qualifications recognition, and the logistics of settling into life in Australia.

Agents are trusted with a great deal of information about students, and a great deal of their money. But what happens when an agent takes advantage of this trust? What mechanisms does Australia have in place to prevent unethical behaviour? Find out by [viewing a presentation](#) delivered by Ron Colley, Director, Postal Industry and Overseas Students at the [ISANA-ANZSSA Annual Conference](#).

The presentation also contains some interesting information about Transnational Education (where students located outside Australia are studying with an Australian registered education provider), and an update on the operations of the VET Student Loans function.



Commonwealth Ombudsman's poster on display at the ISANA-ANZSSA annual conference 2017

Recent enquiries from providers: What you should know

A provider contacted us recently enquiring if one of their students had contacted our Office to complain about the college. The provider advised that they were at the point of reporting the student to the Department of Immigration and Border Protection for poor attendance, but the student advised they had contacted us to exercise their right to an external appeal of their provider's decision to report.

We are unable to confirm whether a student has contacted us until we decide to conduct an investigation. If we decide to investigate a student's dispute with their provider, we contact the provider in writing and ask for information from the provider to assist with our investigation. If we have not contacted the provider, that means we have not begun an investigation.

We don't investigate every approach made to our Office. When a student contacts us, we make an assessment about whether the Ombudsman can investigate. In some cases the Ombudsman may decide not to investigate. This might be because:

- the student has not complained to the education provider first, or
- another organisation is better able to deal with the dispute.

We may also ask the student for further information to help us determine whether we will investigate. If the student does not provide the information we requested, we may not be able to investigate. In this circumstance, we would not contact the provider as we have made a decision not to investigate the dispute.

When making a decision about whether to report a student, we can suggest that you adhere to the guidance in your policy, the National Code and the *Education Services for Overseas Students (ESOS) Act 2000*. You may like to contact the [ESOS enquiry line](#) and seek assistance. They are unable to give you legal advice, but may be able to provide general advice to help you make an informed decision.

Fair Work Ombudsman open letter to international students

You're probably well aware that the Fair Work Ombudsman (FWO) has written an open letter to international students to raise awareness of international students' rights while working in Australia.

As education providers, you play an important role in providing support to international students in Australia. Jessica's story, a case study based on a true story, shows how provider monitoring of course progress and proactive advice to students can be instrumental in getting students the help they need. You can read Jessica's Story [here](#), and feel free to share it with your international students.

Case study—provider implements recommendation resulting from our Office's investigation

A student contacted us because their provider was going to report them to the Department of Immigration and Border Protection (DIBP) for failing to achieve satisfactory course progress. We decided to investigate the issue. In conducting the investigation we:

- requested information and documentation from the provider
- requested relevant policies from the provider, and
- considered the provider information, documentation, the National Code and ESOS legislation.

The provider had given the student ample support and implemented a number of intervention strategies, but ultimately notified the student that he would be reported to the Department of Education and Training (DET) and DIBP.

The notification letter stated that the student had seven days to respond with evidence, showing cause as to his lack of progress. The student submitted their evidence within the stipulated seven days.

A month later, the provider responded to the student to say that their original decision stands, and they would report him to DET and DIBP. The provider stated that an unsuccessful internal appeal had been submitted, and therefore his enrolment had been cancelled. The provider had considered that their 'show cause' process was equivalent to an internal appeal.

Following investigation of the complaint, we concluded that the provider had not complied with the National Code because:

- The provider had not informed the student that he could access the provider's complaints and appeals process and that the student had 20 working days in which to do so (10.6).
- The provider had not informed the student of his right to an external appeal (8).

We recommended the student not be reported to the DIBP and that the provider update their policy on course progress.

The provider sought further guidance from us to help them update their policy and implement our recommendation.

Later on, another student of the provider came to us with a similar complaint as the first student. The outcome of this investigation was in support of the provider. The provider's policy was compliant under the National Code and ESOS legislation and the provider followed their policy correctly.

Commentary:

National Code 2018: Under the new Standard 8 (Monitoring course progress and attendance), providers can only report a student for unsatisfactory course progress and attendance in PRISMS after the outcome of internal and external complaints processes (if accessed by the student) which support the provider's decision. Before this, providers must advise students of their right to access the complaints and appeals process in accordance with the new Standard 10, within 20 working days.