

# **Resolving Complaints under Standard 10 of the National Code of Practice (2018) for Providers of Education and Training to Overseas Students**

## **Procedure**



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## 1 Purpose

These procedures are designed for overseas students (or their authorised representative) and the school providing the education and training to overseas students.

The procedures relate to the complaints and appeals process under Standard 10 of the Education Services for Overseas Students (ESOS) Act 2000: National Code of Practice for Providers of Education and Training to Overseas Students 2018.

The procedures also relate to complaints under Standards 8 and 9 of the ESOS Act 2000 concerning unsatisfactory course progress or attendance or behaviour, and/or any circumstances that lead to a change in enrolment status that could adversely affect an overseas student's visa conditions.

All other complaints not related to these issues should be resolved in accordance with each education institution's internal policies and procedures and / or in accordance with the relevant Catholic Education SA or South Australian Commission for Catholic Schools policy or procedure.

## 2 Principles

- 2.1 Both schools and international students are entitled to raise complaints.
- 2.2 All efforts are to be made to resolve complaints at the school level.
- 2.3 Natural justice requires both/all parties to have the opportunity to put their case and be heard.
- 2.4 The complaints and appeals process is to be conducted in a dignified and respectful manner, maintaining confidentiality to the extent that is possible, in a timely manner and, at minimal or no cost to the complainant.
- 2.5 This procedure does not remove the right to take action under Australian Law.

## 3 Scope

- 3.1 These procedures are for use in Catholic schools in South Australia that provide education and training to overseas students.
- 3.2 A Catholic school may use its own documented processes in relation to complaints and appeals as outlined above, if these meet the requirements of Standard 10 of the National Code of Practice (2018) as outlined in this document. Schools undertaking this course of action are required to advise and provide an electronic copy to the Director of Catholic Education SA [director@cesa.catholic.edu.au](mailto:director@cesa.catholic.edu.au)

## 4 Policy Supported

- 4.1 This procedure supports the ESOS Act 2000.

## 5 Definitions

**Case:** version of factual situation, evidence (oral and written), submissions as to the relevance and weight of facts / evidence.

**Complainant:** overseas student or school initiating the complaint / appeal.

**Director:** the Director of Catholic Education SA.

**ESOS Act:** the Education Services for Overseas Students Act 2000 sets out the legal framework governing delivery of education to overseas students studying in Australia on a student visa.

**Formal Complaint:** an appeal from the outcome of the informal complaint process.

**Overseas Student:** international student studying in Australia, with a Visa sub-class 500 (Student Visa – Schools Sector Stream).

**Office of the Training Advocate:** is the state based equivalent of the national Overseas Student Ombudsman and is the independent complaints-handling authority for all matters relating to international education and training in South Australia. Matters raised with the Overseas Student Ombudsman are usually referred to the Office of the Training Advocate.

**Principal:** the leader of the education and training institution for overseas students, which includes a school, college, or technical college.

**PRISMS:** the Provider Registration and International Student Management System is the system used to process information given to the Secretary of the Department of Education and Training (DET) by registered providers.

**Registered Provider:** the education and training institution of overseas student, which includes a school, college, or technical college which shall be CRICOS registered to enrol overseas students.

**School:** an education institution, including a college or technical college, that provides education and training for students, including those with a Visa sub-class 500 (Student Visa – Schools Sector Stream).

**Support Person:** a person not otherwise involved in the complaints / appeal process. The student should consider whether it is preferable that this person be over 18 years. Lawyers and education agents are precluded from attending meetings with the student as a support person.

**Translator/Interpreter:** an adult person competent in the student's language, who is not a member of the student's family.

**Working day:** during term time normal school day.

## 6 Overview of Complaints/Appeals Process available to the Overseas Student

### Internal School Complaints and Appeals Process

- 6.1 Informal Complaint Process
- 6.2 Formal Complaint
- 6.3 Appeal Process School
- 6.4 Appeal Process Director of Catholic Education

### External Appeal Processes

- 6.5 Student Overseas Ombudsman

## 7 Overview of Complaints/Appeals Process available to the School

### Internal School Complaints Process

7.1 Informal Complaint Process

7.2 Formal Complaint Process

**The Overseas Student may then use the following Appeal Processes**

### Internal Appeal Process

7.3 Appeal Process School

7.4 Appeal Process Director of Catholic Education

### External Appeal Process

7.5 Student Overseas Ombudsman

## 8 Parent or Guardian Notification

8.1 Where the overseas student is under 18 years of age the school should inform, in writing, the overseas student's parent(s) / legal guardian(s)/ of the complaint / appeal process instigated, any disciplinary action taken and possible subsequent action.

8.2 The school may also inform the overseas student's Migration Agent or, where applicable, the registered student exchange organisation.

## 9 Support Person

9.1 The overseas student must be informed of his/her right to be accompanied by a support person at all relevant meetings.

9.2 Where the overseas student has limited written English, the services of an independent support person must be provided to help with the written formal complaint.

## 10 Overseas Student's continued enrolment

10.1 For course progress and/or attendance breaches, the overseas student enrolment must be maintained throughout the Internal School Complaints and Appeals Process.<sup>i</sup>

10.2 Where an appeal is lodged against a school's decision to defer or suspend an overseas student's enrolment, or to cancel an overseas student's enrolment due to misbehaviour, then once the internal school's appeals process has been completed the school may elect, at its own discretion, whether or not to maintain the overseas student's enrolment during the external appeal processes.<sup>ii</sup>

## 11 Class Attendance during complaint / appeal processes

Where an enrolment is maintained, the school may determine in accordance with its internal policies whether, in each set of circumstances, the overseas student is required to attend all classes as normal throughout the complaint / appeal processes. Where it is not practicable for the overseas students to continue attending classes, a school may provide class work and supervision to enable the overseas student to continue his/her studies external to the classroom.

## 12 Appeal to be lodged within specified time

**12.1** Where the nature of the complaint or appeal concerns an overseas student having received notice by the school that it intends to report the student to the Department of Education and Training (DET) through PRISMS,<sup>iii</sup> for

- unsatisfactory course attendance, or
- unsatisfactory course progress, or
- deferral, or
- suspension, or
- cancellation of enrolment

the overseas student has a maximum of twenty (20) working days from the date of notification in which to lodge a written appeal to the Principal.

**12.2** Schools must inform overseas students that deferring, suspending or cancelling their enrolment on any grounds may affect their student visa.

**12.3** However, the registered provider must not report the overseas student to DET through the Provider Registration and International Student Management System (PRISMS) for unsatisfactory course progress or attendance until the overseas student has been offered the internal complaints handling and appeals process, and the decision or recommendation supports the school.

## Part A: Overseas Student Instigated Internal School Complaints/Appeals Process

### 13 Commencing an Internal Informal Complaint

**13.1** Where a complaint is made by an overseas student against a school, it should, in the first instance be brought to the attention of one of the following people:

- the designated International Student Co-ordinator
- the Principal of the overseas student's education institution.

When a complainant brings their complaint to the attention of a person in authority, 13.1 above, that person must attempt to resolve the complaint through informal means such as mediation or conciliation in accordance with that education institution's internal policies and procedures.

**13.2** The overseas student must be informed in writing by the school of the outcome of the informal complaint process.

**13.3** Where an overseas student is dissatisfied with the result of the internal informal process, the student may lodge a formal complaint in accordance with the terms contained in the following section.

## 14 Commencing an Internal Formal Complaint or Appeal

**14.1** A formal complaint will only be pursued where an informal complaint process has been followed in the first instance and been unsuccessful.

**14.2** A formal complaint must be lodged within twenty (20) working days of the overseas student being informed in writing of the result of the informal complaint process.

**14.3** An appeal will only be accepted once a formal complaint process has been finalised.

**14.4** All formal Complaints / Appeals

- must be in writing;<sup>iv</sup> and
- must be directed to the Principal; and
- the complainant must set out in the formal complaint / appeal, the nature of, and the details of, the complaint and/or appeal.

**14.5** The receipt of the formal complaint / appeal should be acknowledged by the school in writing within 7 days of receipt.

## 15 Internal Formal Complaint and/or Appeal Process

**15.1** As soon as is practicable, and in any event within 10 working days of receiving a formal complaint / appeal pursuant to clause 14.4 the Principal must:

- in the matter of a formal complaint, select an Inquiry Panel comprising a minimum of the Principal and a Principal Consultant

**15.2** The Principal must:

- as far as is practicable, ensure that the Inquiry Panel commences its investigation within 5 working days of the Panel's formation, and conclude its investigation as soon as is practicable and in any event, except in exceptional circumstances, within 10 working days<sup>v</sup>
- ensure that if the overseas student requires or requests an interpreter, that an interpreter is available at all times the Inquiry Panel or any member of the Panel (but only in their role as a member of the Panel) meets with the overseas student during the complaints process in relation to the complaints process
- comply with the overseas student's request for a support person to be present at all relevant meetings
- ensure that the overseas student has the opportunity to present his/her case to the Inquiry Panel.

**15.3** The decision of the Inquiry Panel must be provided to the overseas student in writing as soon as is practicable after the decision is reached. The written outcome must include the decision, the reasons for the decision, and the consequences, if any, flowing from the decision.

**15.4** If the Inquiry Panel finds in favour of the overseas student, the educational institution shall immediately implement the decision and any corrective and preventative action required.

- 15.5** If the Inquiry Panel does not find in favour of the overseas student or the overseas student is dissatisfied with the result of the complaints procedure, the overseas student may instigate an appeal in accordance with clause 14.4.
- 15.6** The Principal of the overseas student's school will communicate the overseas student's appeal request to the Director of Catholic Education SA.
- 15.7** The body used by Catholic Education SA for external appeals process will be determined by the Director of Catholic Education SA, or his/her nominee.
- 15.8** The Catholic Education SA appeals body must determine the appeal as soon as is practicable. The role of this appeals body is to determine whether the practices and procedures of the internal complaints process were properly complied with. The role of this appeals body is not to re-examine the complaint itself.
- 15.9** The overseas student must be notified immediately in writing of the outcome of the Catholic Education SA external body's decision.
- 15.10** If the Catholic Education SA appeals body makes a decision in favour of the overseas student, the school must immediately update the overseas student's file to record the outcome, and any subsequent actions.
- 15.11** If the Catholic Education SA appeals body makes a decision in favour of the school then:
- if the complaint / appeal process was activated in relation to course progress or attendance (see Standard 8 use link in 18.2 )
  - if the complaint / appeal process was activated in relation to deferring, suspending or cancelling an overseas student's enrolment (see Standard 9, use link in 18.2)

the Principal of the registered education institution will notify Department of Education and Training through PRISMS of the decision.

An outcome letter signed by the Director of Catholic Education should inform the overseas student of the external complaints and appeals process available through the Overseas Students Ombudsman (see section 17) should the overseas student be dissatisfied with the result of the complaints procedure and seek further redress. The overseas student must be informed that the Overseas Students Ombudsman will assess whether the school has followed the requirements of the National Code of Practice for Providers of Education and Training to Overseas Students (2018) <https://www.legislation.gov.au/Details/F2017L01182>, rather than make a decision on the outcome.

## **Part B: School Instigated Internal Formal Complaints / Appeal Procedure**

### **16 Commencing an Internal Informal Complaint**

- 16.1** Where the school makes a complaint to an overseas student, the grievance should be in writing, explaining the resolution process and the support available to the student.



- 16.2** Initially, internal informal means such as mediation or conciliation, in accordance with the school's usual complaint resolution policies and procedures, are to be used. Where the school can demonstrate that the internal informal process has failed to resolve the complaint, the Principal will instigate the internal formal complaint procedure in accordance with the terms contained in Section 14: Commencing an Internal Formal Complaint or Appeal and Section 15: Internal Formal Complaint and/or Appeal Process. This involves forming an Inquiry Panel comprising a Principal Consultant and others, and if the complaint remains unresolved, the Director of Catholic Education SA will determine an external appeals process.
- 16.3** The school must inform the overseas student of the appeal process as outlined in Section 14: Commencing an Internal Formal Complaint or Appeal and Section 15: Internal Formal Complaint and/or Appeal Process.

## PART C: External Appeals Procedure

### 17 Overseas Student Ombudsman

- 17.1** If, at the conclusion of the internal complaints and appeals processes, including the Catholic Education SA appeals process, the overseas student is dissatisfied with the process, the school must inform the overseas student in writing that the Office of the Training Advocate: <http://www.trainingadvocate.sa.gov.au/> is available for advice and that the Overseas Students Ombudsman is available as an independent complaints-handling authority for all matters relating to international education and training in South Australia.
- 17.2** The overseas student may contact the Overseas Students Ombudsman by telephone on 1300 362 07 or through the following link <http://www.ombudsman.gov.au/about/overseas-students>.
- 17.3** The overseas student must be informed that the Overseas Students Ombudsman will assess whether the school has followed the requirements of the National Code of Practice for Providers of Education and Training to Overseas Students (2018) <https://www.legislation.gov.au/Details/F2017L01182>, rather than make a decision on the outcome.

## Part D: Further Complaints and Appeals

If, at the conclusion of the internal complaints and appeals processes, including the Catholic Education SA appeals process, and the Office of the Training Advocate or Overseas Students Ombudsman determination, the overseas student can access multiple external appeals. However, the school is not required to assist the overseas student with finding further appropriate appeals processes.

### 18 References

For further information, please refer to:

- 18.1** Education Services for Overseas Students (ESOS) Act 2000  
<https://www.legislation.gov.au/Details/C2018C00210>
- 18.2** Education Services for Overseas Students(ESOS) Act 2000: National Code of Practice for Providers of Education and Training to Overseas Students (2018)  
<https://www.legislation.gov.au/Details/F2017L01182>

18.3 ESOS Framework <https://internationaleducation.gov.au/regulatory-information/pages/regulatoryinformation.aspx>

18.4 National Code of Practice Factsheets 2018  
<https://internationaleducation.gov.au/Regulatory-Information/Pages/National-Code-2018-Factsheets-.aspx>

## 19 Resources

The Office of the Training Advocate: <http://www.trainingadvocate.sa.gov.au/>

## 20 Revision Record

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<sup>i</sup> Standard 8: Overseas Students Visa Requirements see Unsatisfactory Course Progress and Unsatisfactory Attendance.

<sup>ii</sup> Standard 9: Deferring, Suspending or Cancelling the Overseas Student's Enrolment.

<sup>iii</sup> Department of Education and Training (Cth) through PRISMS.

<sup>iv</sup> Where a student has limited English language skills, a translator/interpreter will be made available as necessary

<sup>v</sup> Failure to comply with the requirement of 10 working days may be a breach of the ESOS Act  
<https://www.legislation.gov.au/Series/C2004A00757> .