



Submission by the
Commonwealth Ombudsman

**Victorian Registration and Qualifications
Authority 'Guidelines for the enrolment of
overseas students aged under 18 years'**

Submission by the Commonwealth Ombudsman, Michael Manthorpe

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Introduction and summary

The Office of the Commonwealth Ombudsman (the Office) investigates complaints from intending, current or former international students about private schools, colleges or universities (education providers) in Australia as part of our overseas students' role. This includes overseas students who are under 18 years of age who can study in Australia on a student visa, provided there are adequate welfare arrangements in place.

The Victorian Registration and Qualifications Authority (VRQA) is the statutory authority responsible for ensuring that providers of education and training (including course and qualification owners) meet quality standards, and that information is readily available to support informed choice in education and training¹. It is the Education Services for Overseas Students² (ESOS) State Designated Authority (SDA) for Victoria which also regulates Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS)³ schools sector providers under Victorian legislation.

The VRQA has reviewed its guidelines for the enrolment of overseas students aged under 18 years to supplement the National Code 2018⁴ and strengthen the safety of the child studying in Victoria.

When our Office investigates complaints from overseas students aged under 18 year old we consider the actions or decisions of their education provider including where the provider has undertaken the responsibility for approving the student's accommodation, support and general welfare arrangements and whether the provider is meeting these obligations.

This submission draws upon issues raised in complaints to our Office and from our engagement with education providers and other stakeholders, relating to student protection mechanisms for overseas students aged under 18 years.

About the Commonwealth Ombudsman – Overseas Students

The Commonwealth Ombudsman's Overseas Students role commenced in April 2011. We:

- investigate complaints about problems that intending, current or former overseas students have with private schools, colleges and universities (education providers) in Australia
- provide information about best practice complaints handling to help private education providers manage internal complaints effectively
- publish reports on problems and broader issues in international education that we identify through investigations.

¹ www.vrqa.vic.gov.au/about

² *Education Services for Overseas Students Act 2000*

³ a register of Australian education institutions that recruit, enrol and teach overseas students which is maintained by the Department of Education <http://cricos.education.gov.au/>

⁴ *National Code of Practice for Providers of Education & Training to Overseas Students 2018*

Protection Arrangements for International Students Aged Under 18 years

The ESOS legislative framework forms Australia's quality assurance and international student protection arrangements. The National Code 2018 provides nationally consistent standards that govern the protection of international students and delivery of courses to those students by education providers registered on CRICOS. The revised National Code 2018 commenced on 1 January 2018.

All registered providers who enrol overseas students aged under the age of 18 must meet standards outlined under Standard 5 – Younger overseas students⁵. There are also specific requirements in some of the other National Code Standards relevant to under 18 year old students.

Where an overseas student is aged under 18, as a condition of their student visa the student's welfare must be maintained for the duration of their stay in Australia, either by a parent or nominated guardian or in accommodation, support and general welfare arrangements that have been approved by the overseas student's registered provider. Where the provider approves the accommodation, support and general welfare arrangements, the provider must sign a Confirmation of Appropriate Accommodation and Welfare (CAAW) letter.

National Code Standard 5 requires registered education providers who enrol overseas students aged under 18 to meet the Commonwealth, state or territory legislation or other regulatory requirements relating to the child welfare and protection appropriate to the jurisdiction(s) in which it operates, through an SDA.

Complaints to our Office

Since April 2011 we have received 14 complaints across Australia relating to overseas students aged under 18 years about accommodation and welfare arrangements.

⁵ The [Department of Education Fact Sheet about Standard 5 – Younger Overseas Students](#) provides information about education providers' obligations to international students under 18 years old.

Figure 1: Complaints relating to students under 18 years olds received by our Office

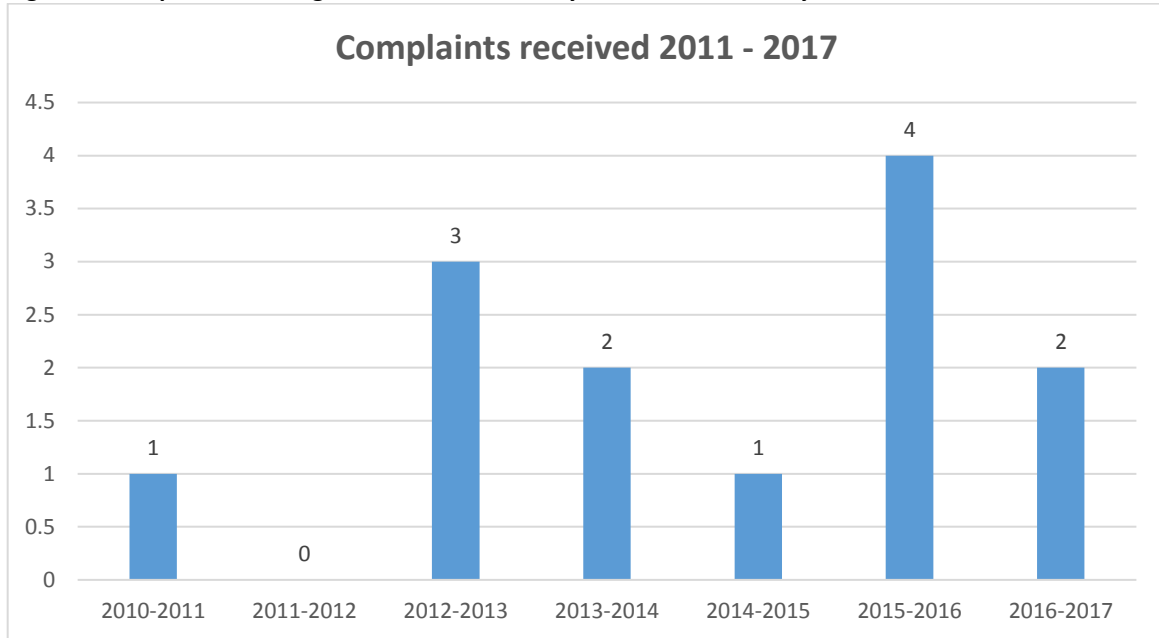


Figure 2: Issues raised in complaints received by our Office relating to students under 18 years old



Issues raised by these complaints and in our liaison with education providers and other stakeholders include:

- what constitutes appropriate accommodation, support and general welfare arrangements
- gaps in welfare arrangements which may have occurred when a student transfers between education providers
- welfare arrangements in the absence of parent or nominated relative caring for the under-18 student
- education providers confusing their obligations or homestay parents' arrangements with legal guardianship (homestay arrangements do not including guardianship, which is a legal relationship not able to be created or entered into by a provider and a homestay parent is not a legal guardian unless specifically appointed as a legal guardian through the courts by the child's parent/s/legal guardian)
- clarifying welfare arrangements in the event of provider default or closure

- what is appropriate regular and ongoing monitoring of welfare arrangements
- a lack of ongoing monitoring or regular checks to ensure maintenance of suitable welfare conditions.

Of the 14 complaints we received, eight did not proceed to investigation by our Office because:

- We formed the view that the VRQA has the function of investigating, reviewing or enquiring into action of that kind so we transferred the complaint to the VRQA (two complaints)
- the complaint had already been sent to the VRQA (one complaint)
- we referred the student back to provider because the student had not yet accessed provider's internal complaints process (one complaint)
- the approach lapsed because the student did not respond to our calls or written requests for further documents (one complaint)
- two students withdrew their approach before we began investigating
- we formed the view in one case, that an investigation was not warranted in the all the circumstances of the case.

Of the six complaints we investigated:

- Two cases related to a provider's decision to report the student for unsatisfactory attendance. In one case we supported the provider's decision. In the other case, we recommended that the provider not report the student, as the provider had not notified the student's parents of attendance issues before the attendance dropped below 80 per cent, and the provider implemented our recommendation.
- Two cases related to a provider's decision not to refund pre-paid fees after the student started with another provider. In both cases our investigation was finalised in support of the providers, as the providers had complied with their policies and all legal requirements.
- One case in which a student received a decision on their request to transfer to another school. The student had requested the transfer after moving away and wanted to start with his new school immediately. His previous school were concerned over guardianship issues so had delayed their decision on his transfer request.
- One case involved unsubstantiated claims made by an acquaintance of the child's family. After an investigation by our Office, a refund of bond and some homestay fees were provided to the student.

Revised VRQA Guidelines

The VRQA has released a consultation draft of the revised Guidelines for the Enrolment of Overseas Students aged under 18 years (VRQA Guidelines). The revised VRQA Guidelines are intended to supplement and align with the National Code 2018 and the Child Safe Standards and support CRICOS schools in meeting the standards by providing guidance on the requirement to verify accommodation is appropriate.

The VRQA notes that the new National Code has some important measures to protect international students in the schools sector, including requirements that:

- education providers meet relevant state & territory regulatory requirements relating to child welfare and protection
- education providers that take on responsibility for approving the accommodation, support and general welfare arrangements for a student must verify that the accommodation is appropriate to the student's age and needs.

During the consultation process for the National Code 2018, the VRQA advocated for additional requirements to be included in relation to students under 18 years however, these measures were not included in the National Code 2018. The VRQA proposes to include them in the revised VRQA Guidelines.

Key changes in the consultation draft of revised VRQA Guidelines are:

- retain the existing minimum age of 13 years for students in homestay (section 3)
- clarify for schools how its obligations under the National Code relate to its obligations under the Child Safe Standards (section 4)
- clarify that a school's CAAW responsibilities are non-delegable (section 5)
- implement two new standards that currently apply to protect secondary exchange students:
 - schools to provide training to international student coordinators (section 6)
 - schools to provide students with a Safety Card with emergency contact and VRQA website details (section 8)
- provide guidance to schools on verifying accommodation is appropriate for both homestay and boarding accommodation (section 7).

Response to Terms of Reference

1. Retain the existing minimum age of 13 years for students in homestay (section 3)

We do not have any specific comment in relation to this proposal.

2. Clarify for schools how its obligations under the National Code relate to its obligations under the Child Safe Standards (section 4)

Our Office does not generally consider a provider's compliance with the Child Safe Standards, as we transfer these matters to the relevant SDA which has the function of investigating, reviewing or enquiring into action of that kind. However, we generally support any proposal to clarify how State and Commonwealth regulatory requirements, such as the Child Safe Standards and the National Code 2018, relate to each other.

3. Clarify that a school's CAAW responsibilities are non-delegable (section 5)

We support this proposal to explicitly state in the VRQA Guidelines that a school's CAAW responsibilities are non-delegable, and we note that it is the intention of Standard 5 of the National Code that these responsibilities are non-delegable.

The proposed section 5 states that 'Where the education provider has issued a CAAW letter accepting the responsibility for approving the accommodation, support and general welfare arrangements for a student is under the age of 18, the provider must not delegate, outsource or contract out that responsibility'.

We understand that this statement is intended to explain that an education provider remains responsible for CAAW requirements, even where the provider contracts the service provision to a third party agency offering guardianship services. As part of our complaint investigations we have observed several instances where an education provider has contracted with a third party to provide guardianship services for the student and, based on this arrangement, defers to the third party in relation to decision-making about the student's welfare and practical arrangements outside of school. We observe that this is particularly noticeable in schools that have fewer international students.

In one complaint we investigated the provider was not taking appropriate responsibility under Standard 5 due to use of a guardianship agency, despite signing a CAAW to accept responsibility for approving the student's accommodation, support and general welfare. In effect, the education provider considered that it had delegated the responsibility to the third party provider.

In cases where the provider had signed a CAAW, the provider required parents to sign a declaration agreeing that the provider 'does not accept any duty of care and has no liability (including liability in negligence) to any person for any loss or damage, consequential or otherwise, suffered or incurred by that person attending any premises owned or occupied by [the provider] or in relation to the services [the provider] supplies'. The provider stated that it undertakes routine checks of accommodation and guardians selected for students but does not take responsibility for the suitability of the student's accommodation, support and general welfare arrangements.

In considering this declaration, we noted in particular the references to the provider having no 'duty of care' and not taking 'responsibility for the suitability of the student's accommodation, support and general welfare arrangements'. We further noted that the form requires the guardian to nominate themselves as responsible for 'ensuring the student's accommodation that provided is safe, appropriate and that it meets the standards required'. We questioned whether the above disclaimers are consistent with the education provider's obligations under Standard 5 of the National Code. We also questioned whether the disclaimers were consistent with the wording of the CAAW letter, noting that the CAAW requires the Principal Executive Officer to confirm that appropriate accommodation and welfare arrangements have been made.

Following our investigation, we made a disclosure under the Ombudsman Act to the Australian Skills Quality Authority (ASQA)⁶ because the provider insisted that, based on their documentation, the provider did not have any liability for overseas students aged under 18.

We note that the [National Code 2018 DET Fact Sheet Standard 5- Younger Students](#) states that 'Registered providers should note that the CAAW responsibility they undertake cannot be delegated to any other party such as a homestay service'.

4. Implement two new standards that currently apply to protect secondary exchange students:

- schools to provide training to international student coordinators (section 6)
- schools to provide students with a Safety Card with emergency contact and VRQA website details (section 8)

We do not have any specific comment in relation to this proposal, however we generally support any measures to improve student's access to any support services.

5. Provide guidance to schools on verifying accommodation is appropriate for both homestay and boarding accommodation (section 7).

We support any guidance to providers which clarifies what constitutes 'appropriate' accommodation, support and general welfare arrangements.

⁶ ASQA is the national regulator for Australia's vocational education and training sector.
<https://www.asqa.gov.au/about>

We observe that [DET's Fact Sheet on Standard 5- Younger Students](#) states that 'In approving accommodation arrangements for the overseas student, registered providers may wish to consult best practice guidelines around provision of accommodation and homestays such as those developed by Australian Government Schools International'.

The proposed VRQA guidelines duplicate some of the requirements of the National Code and the [Australian Government International Homestay Standards](#). For example, both the National Code 2018 Standard 5.3.3 and the proposed VRQA Guidelines (Section 7) require an education provider to have documented processes for ensuring that the accommodation is appropriate to the student's age and needs prior to placement and at least every six months.

Some requirements which are not included in the National Code itself, but rather in the explanatory Fact Sheet are proposed to be included in the VRQA Guidelines. This includes a requirement that the initial approval and subsequent verifications include a site visit to the homestay accommodation.

The Homestay Standards include details about the standard of accommodation, such as cleanliness, and access to facilities such as a private bedroom and bathroom. Complaints to our Office from international students have raised a variety of related issues, for example that a student was not issued with a key to the homestay premises and needed to wait outside if the homestay provider was not at home. In another case, other adults resided in the homestay premises without prior approval of the arrangements by the child's parents. A student has also complained about being held responsible for school property which they had left behind at their homestay premises, and which was subsequently lost.

While it is not possible to anticipate all possible circumstances or issues which may arise in relation to overseas students aged under 18 year, it is a reasonable expectation that providers have clarity about the regulatory requirements with which they are required to comply. As an external complaint handler, it is sometimes difficult to assess a provider's compliance with regulatory requirements, where those requirements rely on an interpretation of 'appropriate' in the specific circumstances of the case.

Access to Complaint & Appeal Mechanisms for Students aged under 18

Education providers in Victoria must comply with the requirements of the VRQA Guidelines and National Code standards. When our Office investigates a complaint about the actions or decisions of a provider, we consider whether the provider has complied with its obligations under these standards, in relation to the student.

In particular, the education provider must comply with its obligations under Standard 10 of the National Code to ensure the students are aware of and have access to complaint mechanisms.

In November 2016 we published a [Consultation Report about External Complaint Avenues for International Students](#) which summarised the views of sector stakeholders about international students' awareness of, and access to, external complaint mechanisms. Several stakeholders noted that international students are a highly vulnerable group with multiple barriers to accessing complaint services, including lack of social support systems, limited understanding of their rights under the ESOS framework and limited English language ability. It was noted that international students have different needs and experiences to domestic students and, when an internal appeal outcome is not to their satisfaction, may feel deprived of access to justice and even discriminated against based on their nationality.

International students are subject to visa compliance requirements which do not apply to domestic students. Fear of being reported is considered an important factor for international students who may well be scared to complain and vulnerable to exploitation.

The Queensland SDA for Schools cited additional vulnerabilities with younger students (aged under 18 years) which may further impact their confidence to exercise their rights as a consumer. Students' parents (many of whom do not reside in Australia) may feel they lack the language skills needed to successfully lodge a complaint or appeal with an overseas provider or external appeal body.

Conclusion

We note that the Explanatory Guide to the VRQA Guidelines Consultation Draft⁷ states that most Victorian schools already meet or exceed the new requirements under the proposed VRQA Guidelines. Some schools may need to make changes using resources provided by VRQA. We support any steps to assist providers to understand and apply the revised guidelines in their policies and procedures, including information about how State and Commonwealth regulatory requirements relate to each other.

We support the provision of clear regulatory guidelines to assist education providers in Victoria to know and understand their obligations in the protection international students aged under 18. Given the particular vulnerabilities of these students, we also generally support measures to improve international students' awareness of, and access to, any support services, including external complaint and appeal mechanisms, such as the VRQA or our Office.

⁷ <http://www.vrqa.vic.gov.au/news/Pages/News/article6.aspx>