



Assessing Compassionate or Compelling Circumstances

Sometimes, an international student's study journey in Australia doesn't go to plan. When that happens, international students may ask their education providers to treat their circumstances as 'compassionate or compelling'. This may arise when:

- a student requests release to transfer to another provider prior to completing 6 months of their principal course
- a student is in process of being reported for unsatisfactory course progress or unsatisfactory attendance
- a student's course duration requires extension
- a student requests deferment or suspension of studies.

In each of these scenarios, providers may need to assess a student's request under the *National Code of Practice for Providers of Education and Training 2018* (National Code), which gives allowance for compassionate or compelling circumstances.

What is meant by compassionate or compelling?

Neither term is defined in legislation, so education providers should consider their normal meanings. In this context, these meanings may be expressed as:

Compassionate circumstances: circumstances that produce a feeling of sympathy for the student's troubles.

Compelling circumstances: circumstances that are powerfully convincing.

Please note the National Code only requires the circumstances to be assessed as either compassionate **or** compelling. It does not require students to demonstrate their circumstances are both compassionate **and** compelling, although some circumstances may naturally meet both definitions.

Many education providers describe compassionate or compelling circumstances as those which are beyond the student's control and have an impact on their wellbeing or course progress. Although it may assist education providers and students to think of the requirements this way, it is important that providers do not restrict their consideration of a student's circumstances to those that fall within that description.

When developing policies and guidelines for assessing compassionate or compelling circumstances providers should be clear, not too restrictive, and allow decision makers discretion.

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Provider policies should not be too restrictive about what may be considered compassionate or compelling.

Providers should avoid placing their own assessment of a student's medical condition over that of a qualified medical practitioner.

Students have a right to choose who they share sensitive medical information with.

When the Office of the Commonwealth Ombudsman (the Office) investigates a complaint about a provider's assessment of compassionate or compelling circumstances, we look at:

- the requirements of the *National Code* – have they been accurately applied?
- the provider's policies and procedures – are they compliant? Are they fair and reasonable (not overly restrictive)? Did the provider follow them?
- how the provider made its decision – in making the decision did the provider consider the student's specific circumstances? Did it explain the decision adequately? Were appeal rights explained and accessible?

Note: If the provider appears to have thoroughly considered the request and all policies and procedures appear compliant, fair and reasonable, it is likely that the Office will uphold the provider's decision.

Evidence of compassionate or compelling circumstances

The Department of Education's [National Code Factsheets](#) for Standards 7-9 state, "When determining whether compassionate or compelling circumstances exist, registered providers should consider documentary evidence provided to support the claim and should keep copies of these documents in the overseas student's file."

The Office has observed that some providers include examples of types of acceptable documentary evidence in policies and guidelines. While the Office views this as helpful for providing guidance to students, providers must be careful not to restrict acceptable documents to those listed in the policy.

Providers must also be mindful that they do not impose overly onerous requirements for the amount or type of evidence students must provide to support their claims, such as only accepting medical evidence from specialists or requiring supporting evidence from multiple sources.

Evidence requirements for different National Code standards

The Office recognises that compassionate or compelling grounds for release may be different from compassionate or compelling grounds for other types of decision, such as deferment or attendance reporting. For release under Standard 7, a student must be able to demonstrate that their circumstances are compassionate or compelling, and their best interests would be served by studying elsewhere.

Examples the Office has seen which might meet these requirements include:

- Student has medical evidence that the physical environment at the provider's location is unsuitable for them.
- Student has medical evidence demonstrating their current course or career path has become unsuitable.
- Student has medical evidence relating to a family member and needs to change their location due to the family member's medical needs.
- Student has compelling evidence that they will gain a significant and tangible benefit from release. This could include situations like an unforeseen change in financial circumstances resulting in financial hardship, or a traumatic experience in the provider's environment.

To prevent being reported for not meeting course progress requirements under standard 8, a student would need to demonstrate that their circumstances evoke sympathy or are strongly convincing, and they adversely impact their course progress.

Medical evidence

The Office acknowledges that a medical diagnosis could be considered a compassionate or compelling circumstance in some, but not necessarily all cases. We expect providers to consider the specific medical condition described (if this information is given), as well as the nature of the medical evidence including whether it includes the professional opinion of the practitioner about appropriate ways forward for the student.

Where a medical certificate includes a medical practitioner's professional opinion, providers should be careful not to prefer their own assessment of the student's medical condition over that of the practitioner.

We also recognise that some medical certificates simply repeat the student's claims without verifying them, or without stating a professional opinion about what the practitioner believes should happen to relieve the student's medical situation.

Some medical certificates also support the student's request, but specifically ask the provider to consider the student's wishes. In such situations, the medical evidence can still support a student's claims of medical problems but may be weighed against other evidence.

General Practitioners

The Office has observed some potentially unreasonable requirements for medical evidence in provider policies, specifically relating to the use of general practitioners (GPs). Some providers state that they will not accept medical certificates issued by GPs and, instead, require students to provide evidence from medical specialists. Some providers insist on verifying a student's medical evidence by requiring the student to consult with the provider's preferred GPs or specialists.

GPs are Australia's front line medical professionals and are qualified to assess, prevent, diagnose and treat a range of health issues, including mental health. Visiting a medical specialist may not be required if a student's condition is adequately managed by a GP. Medical specialists can also be difficult to access, with long waiting times, high costs, and a GP referral usually needed. Providers should not require that students visit a specialist unless this is recommended by a GP.

Right to privacy

The Office has also observed providers insisting that students share details of their medical condition, including their formal diagnosis and/or treatment or care plan, to support their requests.

Medical information is sensitive personal information and students should not be made to share this with their education provider (or provider-appointed medical practitioner). If an education provider requires more information about the effect of a student's medical condition on their studies, they may ask the student to obtain their practitioner's professional opinion.

This right to privacy extends to a family member's medical evidence if a student provides this in support of their claim of compassionate or compelling circumstances.

Case Study

Hannah was studying a hospitality course when her mental health deteriorated due to the stress of COVID-19 and struggling with her course. Hannah requested a release from her provider, so she could move to another state with her partner and study a different course with a new provider.

The provider rejected Hannah's release request on the grounds that she was not meeting course progress requirements and could be trying to avoid being reported. Hannah appealed the provider's decision and submitted a medical certificate issued by a GP in support of her mental health issues.

The provider rejected Hannah's appeal, in part due to the medical certificate not being issued by a specialist. Its policy also required medical evidence to be verified by an independent specialist paid for by the provider. Hannah had been attempting to access a specialist but could not do so due to a lack of available appointments during COVID-19.

In this case, the Office's view was that the provider's requirement for medical evidence to be supported by a specialist doctor (rather than a GP) was too restrictive and onerous.

Provider discretion

The Office acknowledges that assessing compassionate or compelling circumstances relies on the provider's professional judgement. The National Code Factsheets for Standards 7-9 advise providers to **assess each case on its individual merits**.

When investigating a complaint, the Office will look at:

- the information and evidence the provider considered, and
- the reasons given to the student for why their individual circumstances did not satisfy the provider.

Providers should consider all the student's circumstances and not solely rely on policy. Even when it appears open to a provider to refuse a student's request under policy, applying it may not be reasonable in the student's situation. The Office may also find that the terms of the policy appear unfair or unreasonable.

Case Study

Samuel completed his secondary school education in Australia but did not meet entry requirements for his chosen career pathway in aged care. His provider persuaded him to enrol in a design course and he then returned home for the holidays. He was due to commence his design course with his provider when COVID-19 hit. Samuel chose to commence the studies online to keep busy, but he struggled with the course and was finding it difficult to keep up. While waiting for the Australian border to re-open, Samuel was also doing some work in aged care in his home country and decided this was still his preferred career path.

Samuel did not have friends or family where his provider was located and was concerned about his well-being, which had been affected by COVID-19. He wanted to study in another state where support was available.

Samuel applied for a release to study a package of aged care courses, commencing at a lower AQF level in his preferred location with a new provider. Samuel was aware that, as he was requesting a transfer to a lower-level course, he would need to apply for a new visa once his new provider issued him a Confirmation of Enrolment.

His education provider rejected his request in line with their transfer release policy, which stated that it would deny requests where a student was struggling academically and had not accessed academic support and deny requests where the student had changed their mind. Samuel appealed the decision, providing additional evidence including a medical certificate and statements from his family supporting the proposed change of course and location.

The provider upheld its original decision. The Office noted that none of the provider's outcome letters addressed the potentially compassionate or compelling circumstances Samuel had raised, that is, his mental health struggles, desire for a career in aged care, and desire to relocate for social support. The provider acknowledged it did not address these in its outcome letters, but said it believed academic intervention would resolve Samuel's academic struggles and was not persuaded that a change of course would have any impact on his medical condition.

The Office acknowledged that the education provider had followed its transfer release policy but observed that it allowed the provider to only consider reasons to *deny* Samuel's request, and not consider reasons to approve it.

As a result of the Office's recommendations, the provider amended its transfer policy to clarify that all a student's circumstances (including compassionate or compelling circumstances) would be considered, and any decision to refuse a transfer would include a detailed explanation of how these were considered.

More information is available at [ombudsman.gov.au](https://www.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. For the most up-to-date versions of cited legislation, please refer to the [Federal Register of Legislation](https://www.federalregister.gov).