



# Superseded Course Transition

This factsheet is about superseded course transition, the issues that arise in complaints to the Office about superseded courses, and what education providers need to be aware of and consider when a course they are delivering is superseded.

A course or training product is superseded when the regulator advises that it will be replaced by an updated course or training product.

**Providers have an obligation to stay aware of any changes that affect the courses they are approved to deliver.**

When a qualification is superseded, providers must teach-out or transition students within 12 months of the replacement course being listed on the national register (unless an extension has been approved).

We have observed some issues relating to international students and superseded course transition, including:

- Providers offering to deliver superseded courses to students who will not be able to complete the course during the transition period.
- Providers not informing students the course is superseded when enrolling.
- Providers only informing students close to the end of the course that they will need to transition.
- Providers charging students a fee to transition to the replacement course.
- Providers not fully informing students of their options when the provider cannot deliver the course in full in line with the student's written agreement (provider default).

## Provision of inaccurate or misleading course information

Before a student accepts a provider's offer to study, the provider must give them all the information they need to make an informed decision on the offer. This principle exists in the Standards for Registered Training Organisations 2015 (RTO Standards), the National Code of Practice for Providers of Education and Training to Overseas Students 2018 (National Code), and Australian Consumer Law (ACL).

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Providers have obligations to inform students about superseded courses.

If a provider can't deliver a course as agreed because it has been superseded, they should follow provider default processes.

Providers should give students affected by superseded courses their options as soon as possible.

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The **RTO Standards** require providers to give students current and accurate course information, including:

*“the code, title and **currency** of the training product to which the learner is to be enrolled, as published on the national register”.*

The **National Code** requires providers to ensure that the marketing and promotion of its courses:

*“... is not false or misleading, and is consistent with Australian Consumer Law.”*

In seeking to enter into written agreements with international students, providers must:

*“...not provide any false or misleading information on... its **courses** or outcomes associated with those courses.”*

## Australian Consumer Law

Enrolling a student into a superseded course or accepting payment for a superseded course may also breach ACL.

### Misleading and deceptive conduct

It is illegal for businesses to engage in conduct that misleads or deceives consumers, and this may be the case even if the business does not intend to mislead. This means that a business must disclose all relevant information, so as not to create a misleading impression about the service the business is offering.

### Accepting payment without intending to supply

A business must not accept payment for services if it knows, or should have known, it would be unable to supply the services within the specified timeframe.

### Case Study

George enrolled in an Advanced Diploma with a private education provider. Shortly after commencement the provider informed George that the course was superseded and that he was not eligible to transition to the new course as he did not meet the entry requirements. The provider was unable to keep George in the superseded version of the course as his end date was well past the course's transition date.

The provider offered George the option of enrolling in an alternative lower-level Diploma course. George declined the offer due to concerns this change of enrolment would affect his visa. George withdrew his enrolment and requested a full refund of his tuition fees.

In our view this provider's actions could be non-compliant with RTO Standards and the National Code, and inconsistent with its obligations under Australian Consumer Law, as:

1. it did not inform George prior to enrolment or commencement of studies that the course was superseded when it knew or should have known,
2. it enrolled George into a course it knew or should have known he would not meet the entry requirements for, and
3. it accepted payment for the course when it knew or should have known it would not be able to deliver it within the timeframe on the written agreement.

As they had an obligation to be aware of changes to courses within the scope of their registration, George's provider should have known about the changes to the Advanced Diploma, including the new entry requirements.

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## Provider default

The **Education Services for Overseas Students Act (ESOS Act)** states:

*“A registered provider defaults, in relation to an overseas student or intending overseas student and a course at a location, if:*

*...(ii) the course ceases to be provided to the student at the location at any time after it starts but before it is completed”.*

### Case Study

Jenny was studying a Diploma when her education provider advised that her course had been superseded. The provider gave her 2 days to choose to either complete the superseded Diploma in a much shorter timeframe, or transition to the new Diploma, which would happen even if she did not sign a new written agreement.

The new Diploma required Jenny to study an additional 6 weeks, attracting an additional fee.

In our view, **a provider defaults when it does not deliver a course in accordance with its written agreement with the student**. When a provider defaults, they should give students the options of placement in an alternative course, or a refund of unspent tuition fees and release to enrol with another education provider.

This provider’s written agreement indicated that if it defaulted, the option to enrol in an alternative course would be at ‘no extra cost’, leading the Office to conclude it was not appropriate to charge Jenny an additional fee. Even if this were allowed under the provider’s written agreement, it still may not be appropriate when the student is given little notice about the change, and it will occur regardless of the student’s agreement.

We also consider that **it is not reasonable to inform students about transition late in their enrolment or with little notice** of the transition as this may affect their visa, their continuing study if enrolled in a package of courses, and their financial circumstances if incurring additional costs to extend their stay.

## Transfer requests

**Standard 7 of the National Code** states:

*“... the registered provider will grant the transfer request because the transfer is in the overseas student’s best interests, including but not limited to where the registered provider has assessed that:*

*7.2.2.3 the registered provider fails to deliver the course as outlined in the written agreement”.*

### Case Study

Ahmed was studying an Advanced Diploma when his education provider informed him that his course was superseded, and he wouldn’t be able to complete the course within its transition period. The provider was unable to offer Ahmed the option to transfer to the new Advanced Diploma due to regulatory action against the provider. Ahmed requested release to study with another provider and applied for a refund of his tuition fees.

The provider rejected the release request, stating that Ahmed had not provided sufficient evidence to support release, and his circumstances were not sufficiently compassionate or compelling. They also informed Ahmed that he was not entitled to a refund as he had commenced the course.

We concluded that the provider had defaulted as it was unable to deliver the course according to its written agreement with the student, so Ahmed was entitled to refund of unspent tuition fees. The Office also advised the provider to release Ahmed, as they were unable to offer him enrolment in the new course.

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More information is available at [ombudsman.gov.au](http://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 Acts, please refer to [www.legislation.gov.au](http://www.legislation.gov.au).