



# Standard 7: Overseas Student Transfers

## National Code of Practice for Providers of Education and Training to Overseas Students 2018

### Overview

Registered providers must not knowingly enrol an overseas student wishing to transfer from another registered provider's course prior to the overseas student completing six months of their principal course of study, except in certain circumstances. For the school sector, a transfer cannot happen until after the first six months of the first registered school sector course.

As the principal course of study is generally the final course of study covered by the overseas student's visa, transfer requirements apply to all courses of study prior to the overseas student's principal course.

When considering a request from an overseas student seeking to transfer, registered providers must:

- have and implement a documented policy and process for assessing overseas student transfer requests during the restriction period;
- outline in their policy the circumstances where transfers will be granted or refused;
- record all transfer request outcomes in the Provider Registration International Student Management System (PRISMS), a 'How To' guide is available at <https://prisms.education.gov.au/Information/ShowContent.ashx?Doc=How To Manage Student Transfers in PRISMS.pdf>;
- not finalise a refusal to release the overseas student until the student has had an opportunity to access the complaints and appeals process; and
- ensure where the request concerns an overseas student under the age of 18, the overseas student's parent or legal guardian has provided support for the transfer in writing.

## Key Requirements

### When an overseas student requires a release to transfer

Generally, overseas students cannot transfer between registered providers prior to completing six calendar months of their **principal** course. There is one exception for school sector students (see 'Exception: school sector courses' below).

The principal course is the main course of study to be undertaken by an overseas student where the student visa has been issued for multiple courses, and is usually the final course of study. The first six months is calculated as six calendar months from the date an overseas student commences their principal course.

This means the transfer restriction applies to a student during all courses they undertake prior to the principal course.

For an overseas student to transfer before completing six months of their principal course, the overseas student must **either** obtain a release from their registered provider, **or** meet one of the following conditions:

- the releasing registered provider, or the course in which the overseas student is enrolled, has ceased to be registered;
- the releasing registered provider has had a sanction imposed on its registration by the ESOS agency that prevents the overseas student from continuing their course with that registered provider;
- any government sponsor of the overseas student considers the change to be in the overseas student's best interests and has provided written support for the change. This usually applies where the overseas student's study in Australia is sponsored by the government of another country.

After completing six calendar months of the principal course, an overseas student can transfer without needing to meet one of these conditions.

#### ***Exception: school sector courses***

Overseas students enrolled in school sector courses cannot transfer between registered providers prior to completing six calendar months of their first **school** course (as opposed to the principal course for all other overseas students). If they wish to transfer, they must obtain a release from their registered provider or meet one of the other conditions listed above.

If the overseas student has to complete a non-school sector course prior to their first school sector course, for example ELICOS, they are restricted from transferring during this course.

Overseas students can transfer without needing a release or meeting one of the above conditions after completing six calendar months of their first registered school course.

## **Policy and process for assessing overseas student transfer requests**

The registered provider's policy for assessing an overseas student transfer request must be available to its staff and overseas students and outline:

- the steps for an overseas student to lodge a written request to transfer, including that the overseas student must have a letter of offer from another registered provider;
- the circumstances in which the registered provider will grant the transfer request because it is in the overseas student's best interests, including but not limited to, those listed in Standard 7.2.2.1 to 7.2.2.6 of the National Code;
- the circumstances which the registered provider considers to be reasonable grounds to refuse the transfer request; and
- a reasonable timeframe for assessing and replying to the overseas student's transfer request.

Registered providers have to assess the reasons provided by the overseas student, and any evidence submitted to support the transfer request, against their transfer policies.

Registered providers should specify what they consider as the student's best interest in their policies. Overseas students cannot make a general claim that a transfer will be in their best interests. Any request should be made with reference to the circumstances for granting a release outlined in the provider's transfer policy.

There are a range of circumstances detailed in the National Code where a transfer request should be granted because it is in the best interest of the overseas student. These circumstances should be included in the provider's transfer policy.

One such circumstance is where the overseas student will be reported because they are unable to achieve satisfactory course progress at the level they are studying, even after engaging with that registered provider's intervention strategy to assist overseas students. It is important to note the report on the overseas student's course progress should occur even if the transfer request is granted.

Registered providers still have discretion to refuse transfer requests from overseas students who are not genuinely engaging with an intervention strategy with the intention of failing and being released. If the overseas student subsequently intends to study at a lower Australian Qualifications Framework (AQF) level, they will need to apply for a new student visa.

Another circumstance where a transfer should be granted is where there is evidence of compassionate or compelling circumstances.

'Compassionate or compelling' circumstances are generally those beyond the control of the overseas student and which have an impact upon the overseas student's course progress or wellbeing. These could include, but are not limited to:

- serious illness or injury, where a medical certificate states that the overseas student was unable to attend classes
- bereavement of close family members such as parents or grandparents (where possible a death certificate should be provided)

- major political upheaval or natural disaster in the home country requiring emergency travel and this has impacted on the overseas student's studies; or
- a traumatic experience, which could include:
  - involvement in, or witnessing of a serious accident; or
  - witnessing or being the victim of a serious crime, and this has impacted on the overseas student (these cases should be supported by police or psychologists' reports)
- where the registered provider was unable to offer a pre-requisite unit, or the overseas student has failed a prerequisite unit and therefore faces a shortage of relevant units for which they are eligible to enrol.

These are only some examples of what may be considered compassionate or compelling circumstances.

Registered providers should outline what is considered compassionate or compelling circumstances in their own policies and use their professional judgement to assess each case on its individual merits. 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. Other circumstances in which a transfer should be granted are:

- the registered provider fails to deliver the course as outlined in the written agreement;
- there is evidence that the overseas student's reasonable expectations about their current course are not being met (such as correspondence between the overseas student and the registered provider or marketing materials given to the overseas student prior to enrolment, and setting particular expectations about the course);
- there is evidence that the overseas student was misled by the registered provider or an education or migration agent regarding the registered provider or its course, and the course is therefore unsuitable to their needs and/or study objectives.
- an appeal (internal or external) on another matter results in a decision or recommendation to release the overseas student.

### **Transfers involving students under the age of 18**

If the overseas student is under the age of 18, the registered provider must have written confirmation that the overseas student's parent or legal guardian supports the transfer. If the overseas student does not have a parent or legal guardian caring for them in Australia, the receiving provider must also confirm it accepts responsibility for the student's accommodation and welfare arrangements in accordance with Standard 5.

It is the responsibility of the receiving registered provider (under Standard 5) to ensure that there are no gaps in welfare arrangements. This may include agreeing to accept welfare responsibility at an earlier time.

### **Transfer requests and packaged courses**

If a transfer will affect the start dates of any subsequent courses covered by the visa, the overseas student must be released from those courses, or gain the subsequent registered providers' agreement to delay the start of those courses.

Registered providers should advise overseas students that changes to their preliminary courses may have ramifications for their admission to their principal course, for example if a preliminary course is a prerequisite entry requirement to the principle course.

### **Once a transfer request decision has been made**

Transfer request outcomes must be recorded in PRISMS (A 'How To' guide for recording transfer requests in PRISMS is available at

<https://prisms.education.gov.au/Information/ShowContent.ashx?Doc=How To Manage Student Transfers in PRISMS.pdf>). **As such, a hard copy release letter is not required from the releasing provider.**

Registered providers should still advise overseas students of the outcome of the transfer request. This can be done via email: a formal letter is not required. The registered provider must also encourage the overseas student to consider whether a change in enrolment breaches a visa condition. The student can refer to the Department of Home Affairs website at: <https://www.border.gov.au/Trav/Stud/More/Changing-courses>.

If a registered provider intends to refuse a release, it must not finalise the overseas student's refusal status in PRISMS until:

- any appeal against the refusal lodged by the overseas student is finalised and upholds the registered provider's decision not to release the student; or
- the overseas student did not access the registered provider's complaints and appeals processes within 20 working days of being notified of the refusal; or
- the overseas student withdraws their appeal against the refusal.

The registered provider must also notify the overseas student in writing the reason for refusing the transfer request and the overseas student's right to access the registered provider's internal complaints and appeals process (in accordance with Standard 10) within 20 working days.

All registered providers must maintain records of overseas student transfer requests for two years after the student ceases to an accepted student.

### **Disclaimer**

The Department of Education and Training provides general information and assistance to registered providers and overseas students on the National Code and the *Education Services for Overseas Students Act 2000*.

However, such information or assistance should not be relied on as legal advice or as a substitute for legal advice. Overseas students and education providers should seek independent legal advice as appropriate.

The National Code fact sheets are designed to give registered providers practical guidance in day to day operations. Registered providers should note that compliance will be measured against the requirements of the National Code, not against the fact sheets.