



Australian Government
Australian Education International

Fact sheet – what is an appropriate independent and external appeal arrangement?

Standard 8 of the National Code requires providers to have an appropriate internal complaints handling and appeals process and arrangements for an external complaints and appeals process. Specifically, Standard 8.2 states:

“The registered provider must have arrangements in place for a person or body independent of and external to the registered provider to hear complaints or appeals arising from the registered provider’s internal complaints and appeals process or refer students to an existing body where that body is appropriate for the complaint or appeal.”

Why independent and external?

As decisions or recommendations made by external bodies appointed by providers to hear complaints or appeals may impact a person’s rights, interests or expectations, their decisions are subject to the common law principles of procedural fairness.

What is independent and external?

To be viewed as independent and impartial, the external appeals provider must be seen to be free of bias and have no conflict of interest. There should be no actual bias or appearance of bias (where there is a perception that the decision-maker allowed an interest, association, conduct or other circumstance to affect their decision).

An appearance of bias may arise from:

- some direct or indirect interest in the outcome of the proceedings (whether financial or not);
- an association (some direct or indirect relationship, experience or contact with a person or persons interested in, or otherwise involved in, the circumstances) which may be seen to influence the decision;
- conduct (including communication either in the course of, or outside, the proceedings); or
- extraneous information (where knowledge of some prejudicial fact or circumstance gives rise to the perception of bias).

As a matter of caution and best practice, providers should ensure that the person or body which hears the external complaints or appeals discloses all potentially disqualifying interests and associations, direct and indirect, including those that arise during the proceedings. This allows the other party to raise an objection. If no objection is raised, then it can be assumed that there is no perception of bias.

When reviewing their external complaints handling process, a provider should ensure it is confident of its impartiality and that its procedures are fair and open.

Examples

- Representatives of state or territory government departments (except where this conflicts with a state or territory government’s role administering the ESOS legislative framework)
- Commonwealth and state or territory offices of the ombudsman
- Private conciliators or dispute resolution counsellors

Further information

If a provider is unsure as to whether a particular choice of person or body is sufficiently external and independent, the provider should seek advice from the state or territory designated authority or DEEWR. Also refer to:

- The National Code 2007 – <http://aei.dest.gov.au/AEI/ESOS/NationalCodeOfPractice2007/>
- The Explanatory Guide – <http://aei.dest.gov.au/AEI/ESOS/NationalCodeExplanatoryGuide/>

Note: The above principles are intended as guidance only and providers may wish to obtain their own independent legal advice about whether an external person or body is sufficiently independent.