

## Overseas Students Ombudsman Annual Report 2012-2013

The Overseas Students Ombudsman operates within the Office of the Commonwealth Ombudsman as a statutorily independent external complaints body for overseas students complaining about the actions or decisions of a private registered education provider.

The Overseas Students Ombudsman has three clear roles under section 19ZJ of the *Ombudsman Act 1976* legislation:

- investigate individual complaints
- report on trends and systemic issues in the sector
- work with providers to promote best practice complaint handling.

Since commencing in April 2011, the Overseas Students Ombudsman has received more than 1,000 complaints from overseas students relating to about one quarter of the more than 900 private registered providers in our jurisdiction. This includes every state and territory (except South Australia, where the Training Advocate has jurisdiction).

In investigating individual complaints, the Overseas Students Ombudsman focuses on achieving practical remedies where a student has been adversely affected by a provider's incorrect actions. We also uphold complaints in support of the provider where the provider has followed the *Education Services for Overseas Students Act 2000*, the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007 (National Code) and its own policies and procedures. In other cases, we help both parties come to a resolution where there are problems on both sides.

### Complaints at a glance

Complaints received 1 July 2011– 30 June 2013	442
Investigations commenced (including complaints received prior to 1 July 2012)	191
Investigations completed	189
Complaints resolved without the need to investigate by contacting the provider	258
Total finalised complaints	447

### *Complaint themes*

In 2012–13 we received a total of 442 complaints about private registered education providers in connection with overseas students. We started 189 complaint investigations and closed 447 complaints (including some complaints received in the previous financial year). Of the complaints received during the year, 258 were not investigated because:

- the student had not yet exhausted their provider's internal complaints and appeals process
- we transferred the complaint to another complaint-handling body better placed to deal with the issue
- an investigation was not warranted in all the circumstances, for example, we were able to form a view on the basis of the documents provided by the student without the need to contact the provider.

The top three types of complaints the Overseas Students Ombudsman received about private registered providers concerned:

- providers' decisions to report students to the Department of Immigration and Citizenship (DIAC) for failing to meet attendance requirements under Standard 11 of the National Code (112 students)
- providers' decisions to refuse a student transfer to another provider under Standard 7 (92 students), and
- disputes about a student's entitlement to a refund of pre-paid tuition fees (90 students).

Other complaints of significant proportion were fee disputes (32 students); decisions of providers to report students to DIAC for failing to meet course progress requirements under Standard 10 of the National Code (25 students); disciplinary reasons or non-payment of fees (12 students); and provider decisions to refuse deferral requests (11 students).

Most providers have willingly assisted our investigations by providing the information requested in a timely manner. We did not need to use our formal powers under section 9 of the *Ombudsman Act 1976* to compel a provider to produce documents or answer questions in 2012–13.

Under section 19ZK, the Overseas Students Ombudsman must transfer a complaint to another statutory office holder if the complaint can be more effectively dealt with by that alternative complaint handling body. In 2012–13 we transferred 22 complaints to the Australian Skills Quality Authority relating to the quality or registration of a course, and one complaint about discrimination to the Australian Human Rights Commission. We transferred 14 complaints to the Tuition Protection Service, including four complaints about provider closures and eight complaints about providers not paying refunds on time, after a student withdrew or had their Student Visa application refused.

We transfer refund complaints to the Tuition Protection Service where the student is clearly eligible for a refund. However, the Overseas Students Ombudsman investigates more complex refund complaints, where it is not clear whether the student is owed a refund or how much should be refunded. We also consider complaints that fall outside the jurisdiction of the Tuition Protection Service, for example, where it has been more than 12 months since the default date, in which case the Tuition Protection Service is precluded from considering the matter, but the Overseas Students Ombudsman has power to investigate.

## **Trends and systemic Issues**

### *Overseas student complaint statistics*

In 2012–13 the Overseas Students Ombudsman published quarterly statistics on our website at [www.oso.gov.au](http://www.oso.gov.au) showing the number of complaints received about a range of issues. This information will allow the identification of trends in complaint issues over time.

The Overseas Students Ombudsman is also working with the state and territory Ombudsman offices and the South Australian Training Advocate to explore ways to generate overseas student complaint statistics which can be compared across jurisdictions. The Overseas Student Ombudsman is taking the lead on this ongoing project.

### *Systemic issues*

In December 2012 we published a report following an ‘own motion’ investigation into a complaint from an overseas student about a refund. The report was titled *Department of Education, Employment and Workplace Relations (DEEWR) and Department of Innovation, Industry, Science, Research and Tertiary Education (DIISRTE): Administration of Student Refunds under the Education Services for Overseas Students (ESOS) Act 2000*. This followed an investigation into a complaint from an overseas student, Mr A, about a decision made by the ESOS Assurance Fund Manager.

Mr A was studying with a school which closed part way through his studies. Mr A had paid \$49,000 for the course. At that time, the ESOS Act provided that when an education provider closed or ceased to offer a course to overseas students, the provider had obligations to either refund the total amount paid for the course or arrange for the student to be offered a place in a suitable alternative course. Mr A was not placed in a suitable alternative course at the time the fund manager decided to partially refund approximately \$32,500. Mr A subsequently complained to the then Department of Education, Employment and Workplace Relations about the fund manager’s decision and sought a review. After we became involved, the department liaised with the fund manager and a new decision was made to refund a further \$16,500 to Mr A.

As a result of our investigation of the department and the fund manager, the fund manager conducted a further review of some 480 payments made to other overseas students in similar circumstances and subsequently paid out \$2.1 million in refunds to 308 overseas students. In January 2011 the department made changes to the way they monitored the fund manager and their policy position on granting refunds to comply with the 1 July 2012 changes to the ESOS Act.

The Overseas Students Ombudsman did not undertake any ‘own motion’ investigations during 2012–13. We have, however, prepared an issues paper highlighting problems we have noted with a small number of private providers receiving Overseas Students Health Cover payments from overseas students but then failing to pass this money on to the health insurance company. This action leaves students without health insurance and, consequently, places those students in breach of their visa conditions. The issues paper includes de-identified case studies and will be sent to a range of government agencies to generate discussion during the first quarter of 2013–14.

Other common problems noted during 2012–13 through our complaint investigations were highlighted in our first provider e-newsletter, in the article ‘Are you making any of these mistakes?’. This is available on the Overseas Student Ombudsman’s website at [www.oso.gov.au/publications-and-media/](http://www.oso.gov.au/publications-and-media/).

### **Cross-agency issues**

The Overseas Students Ombudsman liaises with a number of Australian Government agencies involved in international education policy and programs. We met with the Australian Skills Quality Authority (ASQA), the Tertiary Education Quality Standards Agency, DIAC and the Department of Innovation, Industry, Climate Change, Science, Research and Tertiary Education throughout 2012–13 to discuss issues related to overseas students and registered providers.

The Overseas Students Ombudsman has the power to report providers of concern to the national regulators, ASQA or the Tertiary Education Quality Standards Agency.

In 2012–13 we used our power under section 35A of the *Ombudsman Act 1976*, to disclose information in the public interest, on eight occasions to disclose to ASQA details of complaints where it appeared to us that a private provider may have breached the Education Services for Overseas Students Act or the National Code, and we considered that it was in the public interest to advise the national regulator of the details. Once we provide this information to ASQA, it is up to ASQA to decide what regulatory action, if any, it should take.

We did not make any disclosures to the Tertiary Education Quality Standards Agency in 2012–13. We did meet with them in 2012–13 to discuss information sharing arrangements, which will be confirmed in a memorandum of understanding, which they are currently developing.

In March 2013 we met with DIAC to discuss the abolition of automatic and mandatory cancellation of Student Visas, which came into effect on 13 April 2013. Previously, once a provider reported an overseas student to DIAC for poor attendance or course progress, their visa could be automatically cancelled without review by the Migration Review Tribunal.

It was also mandatory for DIAC to cancel the student’s visa if they had failed too many subjects or missed too many classes. DIAC also now has more discretion not to cancel the student’s visa if compelling and compassionate circumstances apply. We met with DIAC and clarified that the student’s right to lodge an external appeal with the Overseas Students Ombudsman, objecting to their provider’s intention to report them to DIAC, remains unchanged. The Overseas Students Ombudsman will continue to investigate to ensure that providers have followed the required processes before any reporting to DIAC.

## **Submissions**

On 14 February 2013 we appeared before the House of Representatives Standing Committee on Education and Employment. We made a verbal submission and participated in discussions relating to international education. We also provided further information that was supplementary to what we had previously supplied at the international education roundtable held on 3 April 2012. The committee tabled its report, *International education support and collaboration*, on 27 May 2013.

## **Stakeholder engagement and outreach**

### *Promoting best practice complaint handling*

The Overseas Students Ombudsman promotes best practice complaint handling, including through our *Best practice complaints handling guide for education providers*, to help private registered providers resolve complaints internally. This ensures problems can be dealt with directly by providers in a timely and effective manner, giving students a satisfactory resolution and contributing to a positive study experience in Australia. If complaints are mishandled, it can damage not only the reputation of the individual provider but the reputation of the Australian international education sector as a whole. To avoid these negative impacts, the Overseas Students Ombudsman works with providers to help them improve their internal complaints and appeals processes.

### *Provider newsletter*

On 2 May 2013, we sent out the first Overseas Students Ombudsman provider e-newsletter directly to the Principal Executive Officers of more than 900 private registered education providers across Australia. The newsletter provides information on the Overseas Students Ombudsman's role, promotes best practice complaint handling, and provides information to the sector on complaint issues and trends.

### *Student newsletter*

A quarterly newsletter for overseas students is due to be sent out in the first quarter of 2013–14. It will include information, advice and tips for overseas students on their rights and obligations and how to deal with problems that may arise with their private registered education provider.

### *International education conferences*

During the year staff from the Overseas Students Ombudsman attended a range of relevant international education conferences and policy briefings. They spoke to education providers, international students, government stakeholders and peak body representatives to promote the role of the Overseas Students Ombudsman and discuss particular issues and challenges faced by international students and education providers.

In 2012–13 we attended the:

- Council of International Students Australia Conference on 10 July 2012
- Australian Council for Private Education and Training Conference on 30–31 August 2012
- English Australia Conference on 20 September 2012
- NSW Ombudsman University Complaint Handling forum in Sydney on 17 February 2013
- Australian Education International’s International Education Policy Briefing on 1 March 2013.

#### *Government stakeholder liaison*

In May 2013 the Overseas Students Ombudsman attended the Joint Committee on International Education, which is the primary forum for Commonwealth, state and territory government officials to collaborate on public policy and pursue common strategic directions in supporting the sustainability of international education in Australia.

In April and June 2013, the Overseas Students Ombudsman also attended the Inter-Departmental Forum, which brings together Australian Government officials from relevant departments to discuss international education matters.

#### *Other complaint handling bodies*

The Overseas Students Ombudsman also engaged with other complaint handling bodies to share information and expertise on handling overseas student complaints. This included meetings with the Western Australian International Education Conciliator on 22 March 2013 and the state and territory Ombudsman offices—together with the South Australian Training Advocate—on 23 May 2013.

### **Looking ahead**

We will continue to engage with private providers, overseas students, peak bodies, relevant government departments and other complaint handling bodies. Key deliverables for the next year include developing an online best practice complaint handling training package for private providers and producing the first e-newsletter for overseas students.

### **Case studies**

#### *Internal appeal the first step*

An overseas student, Mr LL, contacted our office to complain that his education provider intended to report him for poor attendance. He also alleged the provider’s education services were of poor quality.

We transferred the quality aspects of his complaint to the regulator, ASQA, for consideration. We contacted the provider regarding the attendance matter and confirmed the student had not yet accessed the provider’s internal complaints and appeals process, with the deadline due to end the next day.

The provider agreed to give Mr LL a one-week extension to lodge an internal appeal. This represents good service delivery and encourages students to access their provider’s internal complaints and appeals processes to try to resolve issues directly with their provider in the first instance. They can then contact our office if they are unsuccessful.

### *Provider delays refund*

We investigated a complaint from an overseas student, Mr EE, who had been granted a conditional enrolment into Year 10 high school studies but had then failed to meet the required English language proficiency entry level after completing an English course with the same provider. He applied to withdraw and receive a refund for the high school course which he could not commence. However, the provider refused to pay him a refund, saying he had to study its English course instead.

Mr EE's brother complained to our office and we investigated the matter. We found the provider appeared to have breached several standards of the National Code of Practice for Education Providers, including accepting an enrolment agreement signed by an under-18-year-old instead of his parents and failing to release Mr EE to study at any English college he chose after he failed to meet the English entry requirement for the high school course.

We recommended the provider release Mr EE to study with another provider and pay Mr EE a refund as the enrolment agreement was invalid. The provider then took two months to pay the refund, despite our advice that they were obliged by law to do so within four weeks. We told the provider that if similar issues arise in the future, we may make a public disclosure to the regulator, ASQA.

### *Positive service delivery and speedy rectification*

An overseas student, Mr DD, contacted this office complaining that his Vocational Education and Training provider had refused his application to transfer to another education provider and was taking no action on his refund request.

We investigated and found that Mr DD had applied to transfer to a course that was not starting for more than two months, which was too big a gap to satisfy the conditions of his Student Visa. As a result, the provider had asked him to obtain another confirmation of enrolment for a course starting sooner, which he had just done.

When we contacted the provider, they had already acted on the new enrolment document, granting the transfer and approving the refund. The speed with which Mr DD's applications were processed was an example of positive service delivery by a private education provider.