

ISSUES PAPER

OVERSEAS STUDENT HEALTH COVER

INTRODUCTION

The Overseas Students Ombudsman investigates complaints about the actions of private registered education providers in connection with intending, current or former overseas students. We have investigated several complaints from overseas students concerning the actions of private education providers in relation to the students' Overseas Student Health Cover (OSHC).

As the Overseas Students Ombudsman, our jurisdiction is limited to investigating complaints about private registered education providers. However, as the Commonwealth Ombudsman, we have jurisdiction over all Commonwealth government agencies. This gives our office a unique whole-of-government perspective, and enables us to identify problems and issues that extend across different government agencies and the private sector.

In this case, we have sought to use this whole-of-government perspective, not only to achieve remedies for the individual complainants, but to identify opportunities for strengthening the administration of the OSHC requirement by a range of government agencies.

OVERSEAS STUDENT HEALTH COVER (OSHC)

Overseas students who study in Australia do not have access to Medicare. Rather, a condition of all student visas¹ is that the student has health insurance so they can access medical treatment during their time in Australia.

Student visa condition 8501 states:

You must maintain adequate arrangements for health insurance during your stay in Australia. Note: Under policy, this means that you must maintain Overseas Student Health Cover (OSHC).

In order to comply with this condition, a student's OSHC must commence the day that they arrive in Australia, and they must maintain that cover until they leave Australia.

The Department of Health (DH) has a Deed of Agreement with four private health insurers in relation to the provision of OSHC. The four signatories to the Deed are:

- Medibank Private Ltd (who offer OSHC products under both their Medibank Private and Australian Health Management (AHM) brands)

¹ Except for students from Norway, Sweden and Belgium who are covered either by schemes from their home country or a reciprocal scheme with Australia. See: <http://www.immi.gov.au/students/health-insurance.htm>

- BUPA Australia Pty Ltd
- Lysaght Peoplecare Ltd (who subcontract their OSHC business to Allianz Global Assistance); and
- NIB Health Funds Ltd.

The Department of Immigration and Border Protection (DIBP) website states:

You can ask your education provider to organise OSHC for you, or you can select an approved OSHC provider yourself and pay the insurance.²

The DH website, on its Frequently Asked Questions about OSHC page, similarly answers the question 'How do I purchase OSHC?' this way:³

You can arrange to pay for your OSHC through your educational institution or you can purchase OSHC online by visiting the OSHC insurers' websites. You retain the right to choose your own OSHC provider even when your educational institution makes a specific recommendation because they have negotiated a preferred provider arrangement with a particular insurer.

While overseas students can purchase OSHC directly, more commonly they rely on their education provider to obtain it on their behalf. According to information provided by the Department of Education (DE), education providers arrange OSHC for more than 50 per cent of overseas students.⁴

The complaints we received from overseas students about OSHC, detailed in **Attachment A**, highlight overseas students' reliance on their education providers to do the right thing when arranging OSHC on the student's behalf. While the number of complaints we have received on this issue to date have been small, the potential negative consequences for international students left without cover makes it a high risk issue. If an education provider does not arrange OSHC as promised, or leaves a gap in that cover, an overseas student can find themselves unwittingly in breach of their visa condition, and lacking health insurance to pay for any medical treatment they need.

In order to address this vulnerability, in addition to investigating the individual complaints we received, we consulted the DE, DIBP, DH, the Australian Skills Quality Authority (ASQA), the Tertiary Education Quality Standards Agency (TEQSA), the Private Health Insurance Ombudsman (PHIO), and the approved OSHC insurers.

ISSUE ONE – WHAT INFORMATION IS PRESCRIBED

Before DIBP grants a student visa, it must be satisfied that the student has made adequate arrangements in Australia for health insurance during the period of the student's intended stay. It therefore requires evidence that the student has obtained OSHC. Where a student obtains OSHC themselves, DIBP requires them to provide a copy of their OSHC receipt, or other proof of their OSHC, which shows that the policy will be in effect from the day the student intends to arrive in Australia.

² <http://www.immi.gov.au/students/health-insurance.htm>

³ <http://www.health.gov.au/internet/main/Publishing.nsf/Content/Overseas+Student+Health+Cover+FAQ-1#purchaseoshc>

⁴ 173,419 out of 303,513 overseas students: statistics provided by the Department of Education on 29 April 2014.

However, where the student's education provider obtains the OSHC on their behalf, DIBP relies on the education provider providing the relevant information via the Provider Registration and International Student Management System (PRISMS).

PRISMS is an electronic information management system which allows education providers to record the enrolment and other details of international students and transmit this information to DE and DIBP in real time.

Section 19 of the *Education Services for Overseas Students Act 2000* requires education providers to give "prescribed information" via PRISMS. Under reg 3.01(k) of the *Education Services for Overseas Students Regulations 2001*, the prescribed information includes 'whether premiums have been paid for health insurance for the student (for example, overseas student health cover) *before the course starts*' (emphasis added).

Education providers do this by answering the following question when creating a Confirmation of Enrolment for a student: 'Provider arranged Overseas Student Health Cover: Yes or No'. If the provider has arranged the OSHC for the student, then they tick the 'Yes' box, and enter the OSHC start and end dates.

When the PRISMS data transfers to DIBP, its system registers whether the education provider has ticked the box to confirm that it has arranged OSHC for the student. DIBP policy requires visa processing officers to check the OSHC cover, including start and end dates, for most student visa applications. However, low risk student visa applications are auto-granted with no assessment made by a visa processing officer.

For low risk student visa applications, which are auto-granted, DIBP does not check whether the education provider has arranged the cover to start from the date the student will arrive in Australia, or from a later date. If in fact the cover starts from a later date, there will be a gap during which the student will unwittingly be in breach of their visa condition, and not be covered by insurance. We discuss this 'gap' issue further below.

The complaints we investigated were all low risk student visa cases. In these cases, the provider had indicated in PRISMS that they had arranged OSHC when they had not. In two cases the provider had also entered the OSHC start date as the date the student's course started, not the date the student intended to arrive in Australia.

Although the student is required to have OSHC from the day they arrive in Australia, our complaint investigations showed that some education providers believe OSHC is only required to start on the day the student's course starts. This is in line with the information prescribed for the purposes of s 19 – whether premiums have been paid for health insurance "*before the course starts*". The prescribed information is also unclear because it mixes past ("premiums have been paid") and future ("before the course starts") events.

The PRISMS Guide does not clarify what is required either. It only advises education providers that:

It is not mandatory for providers to organise overseas student health cover for intending students. You should only select Yes if you have received money from the student and arranged OSHC on their behalf. You should **not** select Yes if you have only sighted evidence that the student has arranged his or her own health cover. In this circumstance you should select No and [DIBP] will require the student to show evidence of their health cover.

Further, whilst PRISMS includes fields for the provider to identify the OSHC start and end dates, the regulation does not prescribe that the education provider must actually provide those details. It therefore is not clear whether a failure to provide them, or the deliberate provision of incorrect dates, would itself be a breach of s 108 of the ESOS Act, which provides it is an offence for a person to give false and misleading information in purported compliance with s 19.

Recommendation 1: That DE consider revising para (k) of Regulation 3.01 of the *Education Services for Overseas Students Regulations 2001* to include OSHC start and end dates in the prescribed information that education providers must provide, to better align these requirements with the existing PRISMS fields and the information that DIBP needs to assess whether student visa applicants have adequate arrangements in place for OSHC during their intended stay in Australia.

ISSUE TWO – THE PROVIDER FAILS TO ARRANGE OSHC

It is possible for an education provider to indicate in PRISMS that they have arranged OSHC on behalf of a student when they have not. For example, in one complaint we investigated the education provider was in financial difficulty and had kept several students' OSHC payments, rather than transferring the money to the OSHC insurer. The problem can also lie with the provider's education agent, who may also agree to arrange OSHC on the student's behalf but may not transfer the money to the OSHC insurer as promised. In each of the three complaints detailed in Attachment A, the education provider had answered 'yes' to the question in PRISMS whether they had purchased OSHC on behalf of the student, when in fact they had not. Each student only discovered the problem either when they tried to visit a medical practitioner, or after they had left Australia.

Fortunately, in the cases we investigated where the students were still in Australia, once the education providers contacted the OSHC insurer (after we began our investigation), the insurer arranged for the required OSHC to cover the student from the date of their arrival. This meant the student was able to make a claim for the medical expenses they had already incurred. In one case, the students had already left Australia and their student visas had ceased. We recommended the education provider refund the unpaid OSHC fees to the students, which it did.

Clearly, it is problematic that education providers or their agents can falsely enter in PRISMS that they have arranged OSHC for the student when they have not. As things presently exist, DE and DIBP have no way of identifying this when it occurs.

Therefore, we are of the view that DE should consider consulting education providers and agents to identify ways for providers and agents to substantiate in PRISMS that the provider or agent has in fact arranged OSHC for a student. We understand this would need to be considered in the context of the Australian Government's commitment to deregulation. However, in our view, requiring substantiation of OSHC would not increase the regulatory burden as providers are already required to enter data in PRISMS when arranging OSHC.

Recommendation 2: That DE consider consulting with education providers and agents to identify ways for providers and agents to substantiate in PRISMS that the provider or agent has arranged OSHC for a student.

ISSUE THREE – GAPS BETWEEN ARRIVAL AND OSHC START DATE

Intending overseas students, and providers arranging OSHC on their behalf, are in a bit of a 'catch 22' situation.

On the one hand, in order to apply for and be granted a visa, an intending student's OSHC must be arranged to start from the day they will arrive in Australia. On the other hand, students cannot make travel arrangements, and therefore cannot know their exact arrival date – i.e. the day their OSHC must start – until DIBP grants their visa.

In practice, therefore education providers usually do not know the student's actual arrival date at the time that they arrange OSHC on the student's behalf. To get around this, it appears that education providers routinely use the course start date as a 'proxy' for the OSHC start date.

However, as we observed earlier, students usually arrive prior to the day their course starts. This creates a gap between the student's actual arrival and the start of their OSHC policy. Their education provider's use of the course start date as a proxy for the OSHC start date means that the students are unwittingly in breach of their visa condition, and without medical insurance for part of their stay in Australia.

DE provided statistics⁵ to us that showed that 49,130 overseas students had a gap between their arrival in Australia and when their OSHC started. The average length of the gap was 50 days. This data only covered overseas students studying a single course, as it was difficult to analyse the data for students who have packaged multiple courses together. It is likely therefore that the actual number of students with a gap between arrival and the start of their OSHC is significantly greater.

Some OSHC insurers told us that, when they become aware of this gap, they backdate the OSHC start date to the student's arrival date. This ensures the students are covered for any medical expenses from their first day in Australia. However, this practice relies on the insurers' goodwill, and may not be uniform across all insurance providers. It also relies on the insurers becoming aware of the gap in individual cases.

One possible solution would be for the Deed⁶ between the Commonwealth of Australia (represented by DH) and the OSHC insurers to formalise this practice, by requiring all the insurers to provide OSHC from the date of the overseas student's arrival in Australia. It could also be a standard term in OSHC policies that the cover will commence on the date the student arrives in Australia⁷.

Another possible solution would be for DIBP to contact students whose PRISMS data indicates that there is a gap between their OSHC start date and their actual arrival date, to advise the students that they are in breach of their visa condition and need to contact their OSHC insurance provider to adjust their OSHC start date to rectify this.

⁵ Statistics provided on 29 April 2014.

⁶

[http://www.health.gov.au/internet/main/publishing.nsf/Content/6E337D28A15BB2CBCA257BF000206297/\\$File/Template%20Overseas%20Student%20Health%20Cover%20Deed%20-%201%20July%202011.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/6E337D28A15BB2CBCA257BF000206297/$File/Template%20Overseas%20Student%20Health%20Cover%20Deed%20-%201%20July%202011.pdf)

⁷ In the case of a student who is already in Australia, the cover should start on the day the student visa is granted.

DIBP advised our office that it will be undertaking an education campaign to help ensure students are aware that they must have valid OSHC for the entire duration of their stay in Australia on a student visa:

- As part of a public information campaign, a migration blog entry (migrationblog.immi.gov.au) will be published, advising students of their rights and responsibilities in relation to OSHC, and promoted on Facebook and Twitter. The studyinaustralia.gov.au website, managed by Austrade, will also provide a link to this blog.
- Visa grant notification letters, sent to every student who is granted a student visa, will shortly be updated to provide additional information about condition 8501. The advice will make it clear that the student must not arrive in Australia before their OSHC policy begins and they must not remain in Australia on a student visa after their OSHC has expired.

While we welcome these initiatives, we note that a student is not likely to know if their education provider or agent has arranged their OSHC with a start date later than their actual arrival date. Therefore, we recommend DIBP explore this issue further with DH.

Recommendation 3: That DH and DIBP work together to identify ways to ensure that a student's OSHC commences on the day that the student arrives in Australia.

CONCLUSION

Making overseas students aware of the problem

We intend to work with the Council for International Students (CISA) to raise awareness of these issues amongst overseas students. We will seek to encourage any students who have had their OSHC arranged by their education provider, but do not have their OSHC membership card, to contact their insurer to request it. If the insurer advises they do not have any cover, then we will advise students in this situation to contact the relevant Ombudsman to make a complaint. The Ombudsman can then investigate whether or not the education provider may have failed to arrange the OSHC on the student's behalf.

If an education agent arranged the cover, the Overseas Students Ombudsman can consider if that agent is formally engaged by a private education provider to represent it, in which case the Overseas Students Ombudsman can investigate the complaint through the education provider.

Reporting non-compliant education providers to the regulators

If the Overseas Students Ombudsman finds that an education provider has collected OSHC fees from the student but has failed to arrange the OSHC with the insurer, we will report the provider to the relevant regulator.

In the complaints we have already investigated on this issue, we found that all three education providers had failed to arrange the OSHC on behalf of the students, despite receiving the fees. We reported all three providers to ASQA, the national regulator for the Vocational Education and Training Sector (VET) and providers who deliver stand-alone English Language Intensive Courses for Overseas Students

(ELICOS). ASQA confirmed it would consider possible regulatory action against these providers.

The Overseas Students Ombudsman will continue to report any other providers found to have accepted OSHC fees from a student without arranging the OSHC as agreed. We have discussed this issue with ASQA and TEQSA who stand ready to investigate such breaches. We have also advised the State and Territory Ombudsman's offices of the issue, as they are responsible for complaints about public providers, as well as the Office of the Training Advocate, which investigates complaints about public and private education providers in South Australia.

RECOMMENDATIONS

We recommend that:

1. DE consider revising para (k) of Regulation 3.01 of the *Education Services for Overseas Students Regulations 2001* to include OSHC start and end dates in the prescribed information that education providers must provide, to better align these requirements with the existing PRISMS fields and the information that DIBP needs to assess whether student visa applicants have adequate arrangements in place for OSHC during their intended stay in Australia.
2. DE consider consulting with education providers and agents to identify ways for providers and agents to substantiate in PRISMS that the provider or agent has arranged OSHC for a student.
3. That DH and DIBP work together to identify ways to ensure that a student's OSHC commences on the day that the student arrives in Australia.

In addition to these recommendations, the Overseas Students Ombudsman will:

1. liaise with the Council for International Students (CISA) to raise awareness amongst overseas students of their right to:
 - receive their OSHC membership card, as proof of their OSHC and;
 - complain to their education provider, in the first instance, if they believe their education provider or education agent has failed to arrange their OSHC on their behalf, and;
 - complain to the relevant Ombudsman if they are not happy with their education provider's response to their complaint.
2. continue to investigate complaints about OSHC not being arranged as promised by private education providers or their education agents
3. report any private education providers or education agents found to have received OSHC fees, but failed to arrange OSHC for an overseas student, to the relevant regulator.

ATTACHMENT A: CASE STUDIES

The Overseas Students Ombudsman received a complaint about a private provider not paying Overseas Student Health Cover on behalf of four overseas students. The students enrolled in a two week English language course with one provider, followed by a nine month vocational education and training course with another provider. They paid the OSHC fees to the first provider, who recorded in PRISMS and their Confirmation of Enrolments (CoEs) that it had taken out OSHC for the full period of the students' visas.

The students completed the first course but then withdrew from the second course and returned home. Their agent sought a refund of the unused portion of their OSHC from the health fund, however, the health fund advised they had no record of any OSHC policies for these students.

The agent then contacted the first education provider, who failed to provide the students' OSHC policy numbers and despite promising to resolve the problem, took no action for four months. The agent then complained to the Overseas Students Ombudsman.

We commenced an investigation and the provider initially advised they were in financial difficulty and could not refund the OSHC premiums. However, after further contact with our office, the provider refunded the unpaid OSHC fees. The Overseas Students Ombudsman subsequently reported the provider to ASQA for a potential breach of the *Education Service for Overseas Students (ESOS) Act 2000* by failing to pay a refund within four weeks of the default day.

We then received two further complaints about two private providers who collected OSHC fees from two overseas students but then failed to pass this money to the health insurance company, leaving the students without health cover in Australia and placing them in breach of their student visa condition 8501.

The first provider created a CoE for the student stating it had arranged OSHC for her, starting on the first day of her course and finishing more than one month after she finished her course.

The student arrived in Australia and commenced her course two days later. Six weeks later she fell ill and went to see a doctor. She could not produce evidence of her OSHC so she requested her OSHC membership number from her provider. However, the student says her provider advised it did not register students with the OSHC insurers until after the students have arrived at the college and requested their health membership card. The provider advised the Overseas Students Ombudsman that OSHC is paid after the student registers for orientation and it then provides students with an OSHC membership card.

In the second case, the student paid the OSHC fees to the provider who recorded in PRISMS and her CoE that it had arranged her OSHC to start on the first day of her course and end one month after her course ended. The student requested her OSHC policy number from the provider after she arrived in Australia but was advised there was a delay in processing it. She contacted the OSHC insurer but was advised they had no record of her provider making any payment.

Her provider subsequently paid the insurer the OSHC fees more than two months after she commenced her course. The provider advised the Overseas Students Ombudsman that:

With this situation, we had only realised that the OSHC must have been applied for when COE was issued. From this situation, we have changed our OSHC application timing ... Our students services officer had uploaded the membership in February (as per our usual process), however, it had only come to our attention that the membership had not been successfully processed.

The Overseas Students Ombudsman finalised its investigation of these cases and reported all three education providers to the regulator, ASQA.