

# Overseas Students Ombudsman

Council of International Students Australia

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# Overview

- What is an Ombudsman?
- Overview of Overseas Students Ombudsman's role
- Internal complaints and appeals
- Common complaints to OSO
- What do we do with complaints?
- What we look for
- Possible outcomes
- Case studies



# What is an Ombudsman?

- An Ombudsman investigates complaints about businesses or government agencies
  - Free, impartial, independent
- Different Ombudsmen deal with different governments and industry sectors
  - Commonwealth Ombudsman – Australian Government agencies such as the Department of Immigration
  - Fair Work Ombudsman – employment issues
  - Telecommunications Industry Ombudsman – telephone and internet companies
  - Financial Services Ombudsman – banks



# The Overseas Student Ombudsman

- The OSO investigates complaints from overseas students about private education and training providers
  - State Ombudsmen investigate complaints about public providers e.g. Universities, TAFEs, government schools
- We work with providers to help them improve their internal complaints and appeals processes
- We report to government on trends and systemic issues that we see from the complaints we investigate



# The Overseas Student Ombudsman

- Australia has a strong consumer protection framework for overseas students
  - Overseas Students Ombudsman
  - Tuition Protection Service
  - Industry regulators
  - General consumer law principles
- We focus on the *Education Services for Overseas Student Act 2000* (ESOS Act) and the National Code
- We also apply general Consumer Law principles



# Complaint statistics

- We have received more than 1,700 complaints since we began operating in April 2011
- We investigated nearly 1000 of those complaints (58%)
- We decided not to investigate around 700 because:
  - the student had not yet been through the provider's internal appeals process
  - we were able to make a decision on the documents the student provided, without needing to contact the provider
  - the complaint was about the quality of the course, staff or facilities so we transferred it to the relevant regulator for consideration (ASQA or TESA)
  - the complaint was about a provider closure so we transferred it to the TPS



# Complaint issues

- Main complaint types:
  1. Refund & fee disputes (28%)
  2. Transfer/release letter external appeals (16%)
  3. Unsatisfactory attendance external appeals (11%)
  4. Unsatisfactory course progress external appeals (9%)



# Other complaints

## Other complaint types:

- grades/assessment
- graduation/completion certificates/academic transcripts
- Providers' internal complaints and appeals process
- cancellation of enrolment and deferrals
- education agents






# Provider's internal complaints and appeals process

- Providers must have a documented complaints and appeals process and must:
  - Ensure their complaints and appeals policy is easily accessible
  - Keep written records of complaints
  - Acknowledge promptly, and keep students advised of progress
  - Allow students to have a support person or representative
  - Provide students with a written statement of the outcome, including details of the reasons for the outcome



# When should overseas students complain to the OSO?

- You should try first to resolve the complaint directly with the provider
- You can complain to the OSO if:
  - The provider refuses to deal with the complaint
  - The provider doesn't finalise the complaint in a reasonable time
  - You are unhappy with the outcome



# How can students complain to the OSO?

- We receive most complaints directly from students
  - Can be a former or intending student, as well as a current student
- Students can nominate someone else to complain on their behalf (in writing)
- Complaints can be made through our online complaint form, by phone, email, post or in person



# Case Study 1

Ms L enrolled in a hospitality course at XYZ College. Soon after arriving in Australia, she realises that she has been overcharged for her course fees. One day after class Ms L mentions this to Lynn, the receptionist. Lynn says that she will tell Sue from accounts and Sue will get back to Ms L. Ms L does not hear back from the College, so two weeks later she contacts the Overseas Student Ombudsman.

- Would we investigate?
- What could Ms L do differently?



# Tips for complaining

- Read the provider's complaints and appeals policy
- Complain in writing
- Clearly identify what the complaint is about
- Clearly identify the outcome you want
- Be calm and polite
- Keep records – copies of emails, letters etc
- Persist – contact the provider if they do not contact you
- Make sure you get a written outcome



# Discussion

- What are your experiences with provider's internal complaint and appeals processes?



# When you complain to OSO

- We consider whether we can investigate your complaint
  - Is it in our jurisdiction?
    - Action taken by a private provider (not South Australia)
    - In connection with an overseas student
  - For example we can't investigate:
    - Complaints against employers about wages and conditions
    - Complaints against landlords about a student's accommodation
    - Complaints about public providers
  - If we can't investigate, is there someone else who can?
    - Fair Work Ombudsman
    - State Ombudsmen for public providers



# When you complain to OSO

- We also consider whether we should investigate your complaint:
  - Have you tried using the provider's internal complaints process?
  - Is there a possible remedy?
  - Is there a better avenue?
- Refunds:
  - Provider defaults and visa refusal refunds - refer to TPS
  - We are likely to investigate cases where the provider and the student disagree about entitlement to, or amount of, a refund





# How we investigate

- We are independent and impartial
- We investigate in private
- We ask the provider to explain what they did and why
- We give the provider an early opportunity to resolve any problems
- We try to get all relevant documents from both parties



# How we investigate

- In refund cases, we particularly look at:
  - Was the written agreement signed before course money was paid?
  - Does the written agreement:
    - Accurately state the study periods?
    - Correctly itemise the relevant fees?
    - Include the provider's refund policy?
    - Require the parent or legal guardian to sign if the student is under 18 years old?



# How we investigate

- In transfer cases, we look at whether the provider:
  - Has implemented and properly applied a student transfer policy
  - Considered whether the transfer would be detrimental to the student
- In poor course progress or attendance cases, we look at:
  - has the provider implemented and properly applied course progress and attendance policies
  - sent appropriate warnings at the right time



# How we investigate

- In almost every case, we look at whether the provider has a fair and accessible complaints and appeals policy, and has applied it properly in the particular case
- We also look for signs that other students may have been affected by the same or similar problems
  - is there a systemic issue?



# How we investigate

- When we receive all the information we need, we decide:
  - Did the provider follow the legal rules?
  - Did the provider follow their own policies and procedures?
  - Are the provider's policies and procedures fair and reasonable?
  - Did the provider act fairly and reasonably in this case?
- We give both sides an opportunity to comment before we finalise our investigation
- Where we find problems, we try to make clear and helpful recommendations to the provider



# Possible outcomes

- If the provider made a mistake or acted unfairly, we can ask them to:
  - Apologise
  - Change or reconsider a decision
  - Change their policies or procedures
  - Pay a full or partial refund
  - Not report the student to Immigration



# Possible outcomes

- If we think there is a wider systemic issue, we may investigate further and/or publish a public report
- If we consider that the provider may have breached the ESOS Act or National Code, we may notify the regulator
- If we find that the provider acted correctly, we explain why to the student



## Case Study 2

Mr A's provider told him that he would be reported to Immigration for poor course progress. When Mr A complained to our office, we agreed with the provider that Mr A's course progress was not satisfactory. However, we found that the provider had not implemented an intervention strategy to help him improve his course progress when he started failing.

- What should the OSO do?





## Case Study 3

Ms B complained that she had withdrawn from her course one week before it started, but her provider had refused to give her a refund. The provider's refund policy was included in Ms B's written agreement. The policy said that no refund would be given if a student withdrew less than four weeks before the course start date.

- Should Ms B get a refund?
- Would it be different if the refund policy had not been included in the written agreement?



## Case Study 4

- Mr C enrolled with a provider to study in Australia, but his visa was refused. Mr C then enrolled again with the same provider and this time his visa was granted. However, he withdrew from the course a few weeks after it started. He had pre-paid 50% of the course fees. The provider engaged a debt collector to pursue Mr C for the other 50%. Our investigation found that Mr C had not signed a new written agreement with the provider, which had relied on the previous agreement.
- Outcome?



## Case Study 5

Mr D enrolled in a 10-week fitness training course. The contact hours for the 10 week course were 7 hours/day, five days/week. Mr D found a part-time job that sometimes clashed with his course contact hours. After 3 weeks, the provider sent Mr D a warning that he was at risk of being reported for inadequate attendance. Mr D then read the provider's attendance policy, which required Mr D to attend 90% of course contact hours.

- Could the OSO help Mr D?
- What should Mr D have done differently?



## Case Study 6

Ms E complained to our office that her provider would not give her a letter of release allowing her to transfer to another provider. We found that Ms E did need a letter of release because she had commenced her course less than six months earlier. However, the provider had not shown that the transfer would be to Ms E's detriment.

- What should the OSO do?



## Case Study 7

Ms F's provider decided to report her to Immigration for poor attendance. The provider calculated that she had attended only 65% of the contact hours for her course, and said that reporting was mandatory under Standard 11 and its policies. We found that the provider had miscalculated the number of course contact hours, that Ms F had actually attended 78% of the unit's contact hours, and that reporting was discretionary.

- Outcome?



## Case Study 8

Mr G complained about his provider's decision to report him to Immigration for poor attendance. As part of our investigation, we asked the provider for evidence that it had sent Mr G a warning letter before his attendance fell below 80%. The provider provided proof that it had sent a warning to his home address. However, Mr G had changed address without telling his provider and Mr G never received the letter.

- Outcome?
- What difference would it make if Mr G had notified the change of address but the provider had not updated his record?



## Case Study 9

Mr H withdrew from his course before finishing and returned home. He asked his provider for his OSHC card, so that he could obtain a partial refund of the premium. He complained to us when the provider failed to send him the card in a reasonable time. We found that his provider had never paid his OSHC fees to the health fund.

- Remedy?
- Other action we could take?



# Avoiding Problems

- Before you enrol:
  - Read the written agreement carefully before you sign it
  - Read the provider's refund policy and any fee cancellation policy carefully as well, before signing the agreement
  - Know the student visa conditions
  - Read the provider's attendance and course progress monitoring policies – some are stricter than others
  - If you have problems that affect your attendance or course progress, let your provider know (student advisor, counsellor etc.)
  - Respond to any warning letters you may receive





# Avoiding Problems

- When you have enrolled:
  - Get a copy of your written agreement
  - Read your provider's policies and procedures
  - Tell your provider if you change address so that you receive any written warnings or important information
  - Get your Overseas Student Health Cover (OHSC) card right away when you arrive
  - Talk to your provider as problems arise (don't let things drift)



# Systemic issues

- **Overseas Students Health Cover (OSHC)** – problems with some private providers taking the money but not arranging the cover for the student
- Some providers start the cover too late – placing the student in breach of their student visa condition
- We worked with Education, Immigration, Health, the Private Health Insurance Ombudsman and the OSHC Insurers to explore OSHC administration issues



# Systemic issues

- Issues Paper published on 5 August 2014
- We want to work with CISA to promote students' awareness of their right to:
  - receive their OSHC membership card, as proof of their OSHC
  - 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
  - complain to the relevant Ombudsman if they are not happy with their education provider's response to their complaint.



# Systemic issues

- **Written Agreement Problems** –many providers have written agreements that do not comply with the *Education Services for Overseas Students Act 2000* (ESOS Act) or National Code requirements
- Errors result in providers having to pay refunds/forego fees
- Many providers lack a cancellation fee policy as it is not (currently) required by the ESOS Act or National Code
- Fee disputes and refund complaints are the top type of complaint to the OSO



# Systemic issues

- OSO Issues Paper sent to CISA and other stakeholders on 21 July 2014 for comment by 1 September 2014
- OSO written agreements checklist and survey sent to providers with our July provider e-newsletter
- OSO writing student e-newsletter now to go out soon with a survey for students



# Sector engagement

- We make submissions on relevant topics like the ESOS Reforms
- We present at key conferences such as CISA, ACPET, English Australia (EA), Independent Schools Council
- We deliver webinar training to education providers through the ACPET and EA professional development programs
- We meet quarterly with the regulators (ASQA & TEQSA), Education, Immigration and the Tuition Protection Service
- We liaise with the State Ombudsman and other complaint handlers to identify wider trends and promote consistent complaints handling for overseas students and education providers



# Publications and resources

- We send out a **student e-newsletter** twice a year with useful tips and advice
- We appreciate CISA distributing our student e-newsletter to overseas students
- We also send out a **provider e-newsletter** twice a year
- You can **subscribe** to our newsletters **on our website**:

[www.oso.gov.au/publications-and-media/](http://www.oso.gov.au/publications-and-media/)



# Questions ?





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