

## **Overseas Students Ombudsman Annual Report 2011-2012**

### **Overview**

The Overseas Students Ombudsman role was created following a recommendation by the Hon Bruce Baird in his Review of the *Education Services for Overseas Students Act 2000 (ESOS Act)*. The Baird Review found that overseas students studying with private education providers were particularly vulnerable, and would benefit from access to a statutorily independent complaint handling body such as the Commonwealth Ombudsman. Following amendment to the *Ombudsman Act 1976*, the Overseas Students Ombudsman started operation on 9 April 2011.

The Overseas Students Ombudsman has three clear roles under the legislation:

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

Within the office of the Commonwealth Ombudsman, the Overseas Students Ombudsman role complements existing jurisdiction in relation to the Department of Industry, Innovation, Science, Research and Tertiary Education (DIISRTE) and the Department of Immigration and Citizenship (DIAC). It is also relevant to the ACT Ombudsman's jurisdiction in relation to public education providers in the Australian Capital Territory.

During the period from 1 July 2011 to 30 June 2012, the office has continued to establish the Overseas Students Ombudsman role, resolving complaints for overseas students and working with education providers. We have engaged with peak bodies within the private education industry sector and those representing overseas students, and participated in, and presented at, industry conferences.

We have resolved a large number of complaints and provided advice back to providers on how to improve their compliance with legislation and the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007 (National Code) and improve their complaint handling and appeal processes. In addition, the office undertook a major investigation of the administration of the ESOS Act in relation to refund payments made from the ESOS Assurance Fund.

## Complaint themes

The Overseas Students Ombudsman is not limited in the type of complaints it can investigate, as long as the complaints are made by, or on behalf of, an intending or actual overseas student, and in connection with the actions of a private registered education provider. The Ombudsman has a particular role in conducting external reviews of providers' decisions to report students to DIAC for failing to meet course progress or attendance requirements.

The Overseas Students Ombudsman received 588 complaints related to private education providers, of which 262 investigations were undertaken where education providers were asked to explain their actions and provide documentation supporting their decisions.

The largest proportion of complaints (146) related to refunds of course fees. Issues arising from transfers between providers led to 101 complaints. External reviews of decisions to report students for failing to meet attendance (84) and progress requirements (33) were also significant. Issues relating to enrolment agreements accounted for 54 complaints.

## Complaints at a glance

Complaints received 1 July 2011 – 30 June 2012	588
Investigations commenced (including complaints received prior to 1 July 2011)	262
Investigations completed	211
Complaints resolved without the need to investigate by contacting the provider	360
Total finalised complaints	571

As a whole, providers have been quick to respond to requests for information from the Overseas Students Ombudsman and to act on recommendations made as a result of complaint investigations. The Overseas Students Ombudsman did not have to use his formal powers to compel providers to produce documents. Common themes in complaints are discussed below.

## Refunds following student default

Prior to 1 July 2012, sections 27, 28 and 29 of the ESOS Act set out the rules relating to refunds in the case of student default. Complaints in this area generally relate to delay by providers in paying refunds where a prospective student has defaulted because their visa has been refused; or to either the delay, quantum of refund, or harshness of refund policies where a student cancels or withdraws from a course for other reasons.

Delay in the payment of refunds is quite common and can be an indicator of a provider experiencing financial difficulty. Where a student is refused a visa the obligations on a provider to pay the refund within four weeks are clear, and we will generally inform the

regulator where payment is not forthcoming after our involvement, or where there are repeated failures by a provider.

Investigation of complaints relating to course withdrawals and cancellations generally require a consideration of the existence and clarity of refund provision in enrolment agreements. Often it is the case that students withdraw from courses without proper consideration of their contractual obligations and there is little to be done about their financial loss. However, with changes to the ESOS Act on 1 July 2012, the amount of money that a provider may take upfront is limited and this should help to address this issue to some extent.

### **Transfers to new providers**

A large number of the complaints received and investigated by the Overseas Students Ombudsman are about registered providers not releasing overseas students for transfer to another registered provider if the student has not completed the first six months of their principal course. A student's principal course is the highest level course, and when a student has a package of courses with a provider, this could mean that they need to stay with the one provider for two or three years before they can be released.

If an overseas student wants to be released before studying for six months of the principal course, the education provider is required to assess the request. If they refuse to issue a letter of release to the student, they must give the student written reasons for refusing the request. In respect of these decisions, Standard 7 of the National Code states:

It is expected that the student's request will be granted where the transfer will not be to the student's detriment.

This obliges providers to release students unless they have reason to suspect that the transfer to a particular provider will disadvantage the student. We understand that many providers put considerable investment into sourcing students from overseas, and that allowing them to transfer to another provider is both bad for business and a disincentive to such investment. Nonetheless, students must be allowed sufficient flexibility to enable them to meet their often changing needs.

It is not sufficient for providers to cite detriment to their business as a basis for denying transfers. The detriment must be to the student, and it is often the case that we overturn decisions on appeal on this basis.

### **Student visa attendance requirements**

Registered providers must report students who have breached attendance requirements to DIAC, under s 19 of the ESOS Act. Standard 11 of the National Code requires providers to record the attendance of each student and regularly assess their attendance. If a student is absent for more than five consecutive days without approval, or is at risk of not attending at least 80% of the course contact hours, the provider must contact and counsel that student.

Before reporting students, providers are required to provide an internal and external appeal opportunity. The provider is required to inform the student of their appeal rights where there is an adverse decision. In many cases we investigated we found the decision of the provider to report the student to be correct. However, there were also cases where providers failed to

adequately monitor students or notify and counsel them about the consequences of their actions. Students must take responsibility for their own attendance, but where providers have failed to meet their obligations under the National Code, and we believe that failure was a significant factor in the student not meeting their attendance requirements, we will generally recommend that the student not be reported.

## **Cross agency issues**

Both DIISRTE and DIAC have significant roles in relation to the overseas student sector. Their policies directly affect both providers and students. As Commonwealth and Overseas Students Ombudsman, we have the capacity to investigate complaints about both these departments and the providers affected by their actions. We are also in a good position to liaise with and transfer complaints, where appropriate, to better provide resolution.

In total, 23 complaints were transferred to other Commonwealth and state agencies in 2011–12 where we considered the action could be more effectively dealt with by that agency, including to the Australian Skills Quality Authority (17), the Australian Competition and Consumer Commission (1), the Australian Human Rights Commission (1) and the Western Australia Training and Accreditation Council (4).

## **Submissions**

During 2011–12 we made the following submissions:

- House of Representatives Standing Committee on Education and Employment inquiry into the Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Bill 2011, the Education Services for Overseas Students (TPS Levies) Bill 2011, the Education Services for Overseas Students (Registration Charges) Amendment Bill 2011 and the Higher Education Support Amendment Bill (No. 2) 2011. This submission referred to the first of these bills, and made general observations arising from our experiences handling complaints as the Overseas Students Ombudsman.
- The House of Representatives Standing Committee on Education and Employment held an international education roundtable on 3 April 2012, at which the Overseas Students Ombudsman made a verbal submission and participated in discussions.
- DIAC Review of the Student Visa Assessment Level Framework—This submission discussed the role of the Commonwealth Ombudsman as the Overseas Students Ombudsman and the Immigration Ombudsman, as well as addressing selected questions contained in the Review of the Student Visa Assessment Level Framework Discussion Paper of January 2012.

## **Stakeholder engagement and outreach**

The Overseas Students Ombudsman has engaged actively following the launch of the role, meeting with and presenting to state ombudsmen, regulators, provider peak bodies and student support organisations. This consultation has helped to clarify the scope of the role and its intersection with other complaint handling and support bodies and ultimately to ensure that overseas students studying with private education providers are treated fairly.

Individual advice is given to providers regarding better complaint handling as part of our contact with them while investigating complaints. Providers are also referred to our Better practice complaints guide for private education providers on our website: [www.oso.gov.au/docs/better\\_practice\\_complaint\\_handling\\_for\\_education\\_providers.pdf](http://www.oso.gov.au/docs/better_practice_complaint_handling_for_education_providers.pdf)

The following engagement and outreach to students and providers (focusing on improving complaint handling) was undertaken:*f*

- Council of International Students Australia (CISA) Conference and launch of the Overseas Students Ombudsman, 12–13 July 2011, Melbourne, Victoria
- Australian Council for Private Education and Training (ACPET) Conference, 26 August 2011, Brisbane, Queensland
- TAFE Directors Australia Conference, 6 September 2011, Sydney, New South Wales
- English Australia Conference, 23-24 September 2011, Adelaide, South Australia
- Council of International Students Western Australia (CISWA), 6 October 2011, Perth, Western Australia
- Federation of Ethnic Communities' Councils of Australia (FECCA), 17 November 2011, Adelaide, South Australia
- International Education Australia Conference, 2 December 2011, Hobart, Tasmania
- NSW Ombudsman Complaint Handling Forum, 17 February 2012, Sydney, New South Wales.

## **Looking ahead**

Priorities for the year ahead include continued liaison with industry stakeholders and education providers to help improve complaint handling, and to educate students to ensure that our role is understood and accessible.

We will continue to identify and act on opportunities to streamline referral and transfer of complaints and to make the appeals process more efficient.