

# ISANA

## Professional Development Workshop



**Melita Hoskin**  
**Assistant Director**  
**Overseas Students Ombudsman**

**Canberra**  
**6 April 2016**

# Role of the OSO

- We investigate complaints/appeals from intending, current & former international students with private education providers
- We help private providers improve their internal complaints and appeals processes
- We report on trends and systemic issues  
[www.ombudsman.gov.au/about/overseas-students/oso-publications](http://www.ombudsman.gov.au/about/overseas-students/oso-publications)

# Complaint types

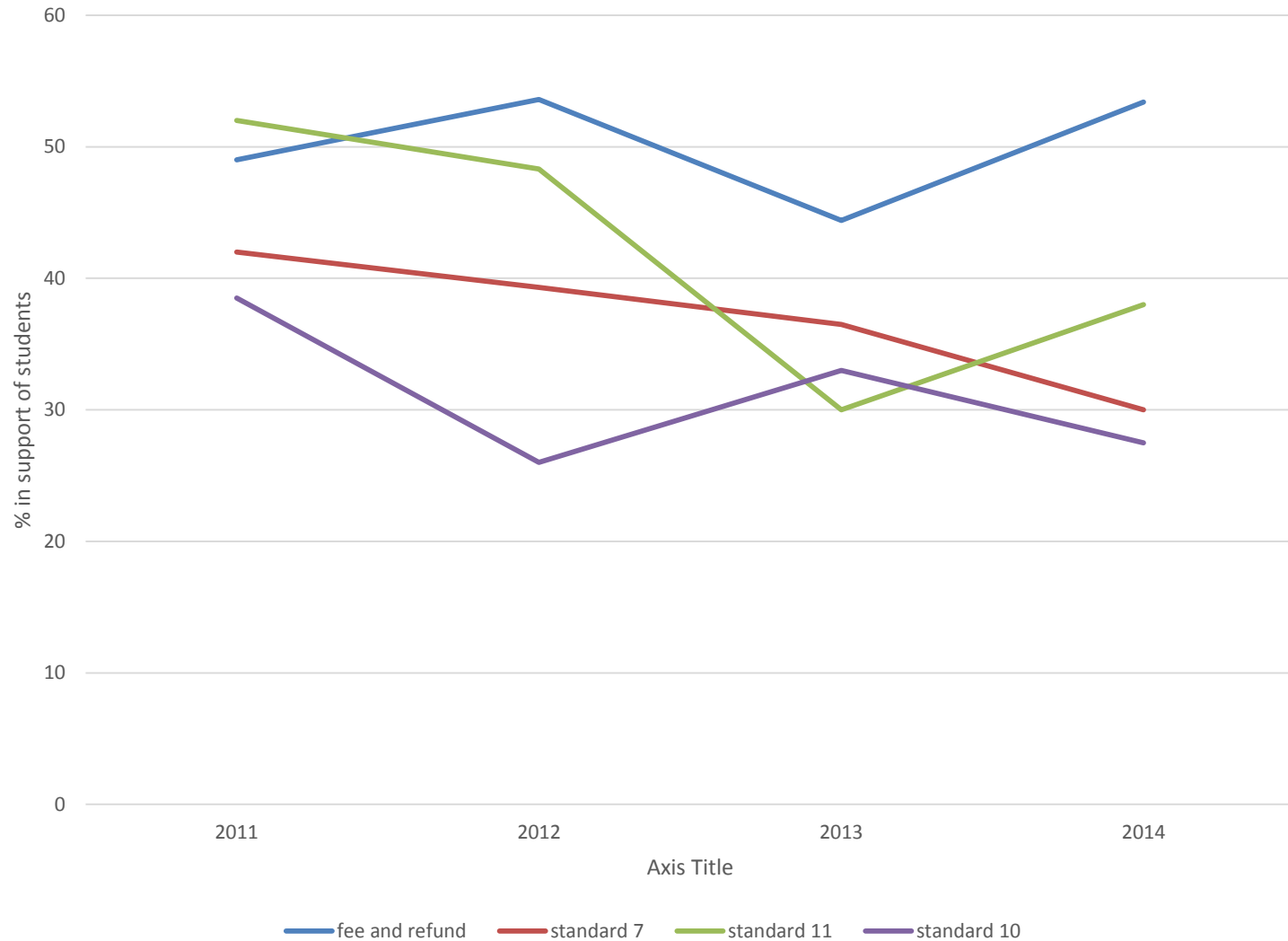
Our top four complaint issues are:

1. Refunds and fees (Standard 3)
2. External appeals about transfers between education providers (Standard 7)
3. External appeals about unsatisfactory attendance (Standard 11)
4. External appeals about unsatisfactory course progress (Standard 10)

# Complaint outcomes

- In our first four years we found in support of:
  - providers in 41% of cases
  - students in nearly 40% of cases
  - providers chose to reconsider their decision in 10% of cases while we were still investigating
  - the remainder were otherwise finalised (withdrawn, transferred to another agency)

# Complaint outcome trends



# Provider complaints analysis

- Since 2013, providers have improved their practices in course progress and provider transfers, resulting in more decisions in support of providers in those cases
- However, we have increasingly found in support of students in attendance, fee and refund complaints due to provider errors
- We are analysing the providers we most often receive complaints and appeals about to determine the reasons behind these trends

# Refunds and fee disputes

- Refund complaints and fee disputes are the most common category of complaint to the OSO
- We finalise about two-thirds of refund and fee disputes without contacting the education provider
- In those we investigate we have identified some common mistakes that providers make
- In 2014-15, we produced a Written Agreements Issues Paper and Provider Checklist to help providers avoid these mistakes

[www.ombudsman.gov.au/publications/issues-papers](http://www.ombudsman.gov.au/publications/issues-papers)

# Why written agreements matter

- They are legally required by the ESOS Act (s 22 and s 47B)
- Ensures both parties have a record of their agreed rights and responsibilities
- Providers must have compliant written agreements with students in order to enforce their refund policy
- Section 47E: If no written agreement, or non-compliant, then the provider must refund unspent tuition fees in accordance with the ESOS Calculation of Refund Specification 2014
- Failure to comply with s 47B and s 47E is a strict liability offence, and makes providers liable for regulatory action



# Refund Requests

- You should assess a refund request by applying the written agreement that you have with the student *unless*:
  - The student's visa has been refused (before or after course commencement)
  - You have defaulted (failed to provide the course at the location on the agreed start date)
  - You do not have a compliant written agreement with the student
- In the above cases, the ESOS Refund Calculation Specification 2014 sets out the refund to be paid

# ESOS Refund Calculation Specification 2014\*

Reason	Specification	Calculation
Visa refusal before commencement	9	<u>Course fees</u> minus 5% or \$500 (whichever is lesser)
Visa refusal after commencement	10	Weekly <u>tuition fee</u> times weeks in default period
No compliant written agreement	8	Weekly tuition fee times weeks in default period
Provider default	7	Weekly tuition fee times weeks in default period

\* [www.legislation.gov.au/Details/F2014L00907](http://www.legislation.gov.au/Details/F2014L00907)

# Is my written agreement compliant?

*Education Services for Overseas Students Act 2000*

- s 47B: Written agreements must:
  - (a) set out the refund requirements that apply if the student defaults in relation to a course at a location; and
  - (b) meets the requirements (if any) set out in the national code.

# Is my written agreement compliant?

National Code requirements:

Standard 3 – Formalisation of Enrolment - Outcome:

*Written agreements between registered providers and students set out the services to be provided, fees payable and information in relation to refunds of course money.*

Standard 3.1

- The provider must enter into a written agreement with the student, signed or otherwise accepted by that student (or the student's parent or legal guardian if the student is under 18 years of age), concurrently with or prior to accepting course money from the student.

# Is my written agreement compliant?

National Code requirements:

## Standard 3.1

- The agreement must:
  - a) identify the course/s in which the student is to be enrolled and any conditions on his/her enrolment
  - b) provide an itemised list of course money payable by the student
  - c) provide information in relation to refunds of course money

# Is my written agreement compliant?

National Code requirements

## Standard 3.2

- The provider must include in the written agreement, the following information, which is to be consistent with the requirements of the ESOS Act in relation to refunds of course money in the case of student and provider default:
  - a) amounts that may or may not be repaid to the student
  - b) processes for claiming a refund

# Is my written agreement compliant?

National code requirements:

Standard 3.2 (continued)

c) a plain English explanation of what happens in the event of a course not being delivered; and

d) a statement that “This agreement, and the availability of complaints and appeals processes, does not remove the right of the student to take action under Australia’s consumer protection laws”.

# Things to remember

- The required information must be expressly included in written agreements – not incorporated by reference e.g. to Student Handbook or Website.
- Sections 47B and 47E are mandatory and strict – no excuses and no discretion
- If your written agreement is not compliant, your refund policy does not apply: s 47E and the Refund Calculation Specification will apply instead



# Things to know

1. If cancellation fees are to be charged, they must be expressly provided for in the written agreement
2. Refund and cancellation fee provisions must be fair and reasonable and not operate as unfair contract terms under Australian Consumer Law
3. Important terms and conditions in your written agreement need to be clearly and transparently presented –onerous terms need to be prominent
4. Gaps, ambiguities and internal inconsistencies in the provider's written agreement must be resolved in favour of the student

# Case Study 1

- An overseas student complained that his provider had refused his refund request when he withdrew after the course commenced.
- The provider's refund policy stated no refund would be provided after course commencement.
- The OSO considered the written agreement and found that the provider had not included its refund policy in the agreement but instead referred to the student having read the refund policy in the student handbook.
- Outcome?

# Case Study 2

- A student complained that:
  - her student visa application had been refused
  - she requested a refund from her provider six weeks later
  - the provider refused to pay, stating its refund policy required the refund request to be made within 4 weeks
- The OSO considered the written agreement and found:
  - the provider had included its refund policy in the agreement
  - the refund policy stated requests for a refund due to visa refusal must be made within 4 weeks of the visa refusal date
- Outcome?

# Case Study 3

- An overseas student enrolled in a diploma course and withdrew for personal reasons before the course started. Their provider rejected their application for a refund of pre-paid fees.
- The provider's refund policy said that "a non-refundable enrolment fee of \$250 is required at the time of enrolment to guarantee your place in the course".
- No other information about refunds was included in the written agreement.
- Outcome?

# Case Study 4

- A student pre-paid 50% of their course fees, and then withdrew without notice half-way through the course.
- The provider's refund policy required one term's notice or fees would not be refunded.
- The provider pursued the student for the next term's fees.
- Outcome?

# Case Study 5

- An overseas student complained that his provider was charging him fees for the following study period, after he withdrew from the course two weeks before that study period was due to start.
- The OSO considered the written agreement and found that it required the student to give one study period's notice of withdrawal, or pay the next study period's fees
- Outcome?
- Variation: Agreement did not include the statement that "This agreement ... does not remove the right of the student to take action under Australia's consumer protection laws" ...

# Case Study 6

- A student complained that he had been refused a refund after withdrawing from a course
- We asked the provider for the written agreement and found that:
  - The student had signed an application form that included the refund policy
  - The provider then sent a ‘letter of offer’, also signed by the student, that did not include the refund policy.
- Outcome?

# Complaints Handling

Standard 8 of the National Code states providers must:

- Have an internal complaints and appeals policy for dealing with formal complaints and appeals where concerns cannot be resolved informally
- Create a written record of the complaint or appeal
- Commence the complaints process within 10 working days of the complaint being lodged
- Give the complainant an opportunity to present his or her case at minimal or no cost



# Standard 8 continued

- Provide a written statement of the outcome of the complaint, including reasons and the right to lodge an external appeal
- Provide an external complaints and appeals body
  - Must be independent and impartial
  - Preferably statutorily independent – OSO, VIC Ombudsman
- Advise students of their right to access the external appeals process at minimal or no cost
- Implement their external body's decision or recommendation if supports the student.

# Case study 1

- A number of students complained to the OSO. The students and a staff member had been arguing about their complaint by email for weeks.
- The staff member had not advised the students to lodge an internal appeal or provided a clear decision on their complaint.
- When we asked the provider if it considered the students had accessed their internal appeal process, the PEO said “no”.

**Question:** Do you think the OSO ...

- **A:** Referred the complaint back to the provider’s internal appeal process?
- **B:** Investigated the complaint itself?

# Case study 2

- A provider refused a student's deferral request even though the student had medical evidence that he was seriously ill and unable to attend class.
- The provider then sent a notice of intention to report for unsatisfactory attendance.
- The student tried to lodge an internal appeal, but the provider refused to consider the appeal on the basis that the student was behind in his fees.
- **Question:** Do you think the OSO:
- **A:** Agreed with the provider's refusal to consider the appeal?
- **B:** Disagreed?

# Case study 3

- A student lodged an external appeal with the OSO concerning her provider's intention to report her to DIBP for unsatisfactory attendance. The provider advised us that her attendance was less than 70%.
- However, the student submitted new evidence to our office, including medical certificates, that she had not previously provided to the provider. Taking this into account, her attendance was 73%, and the provider had discretion not to report her if she was making satisfactory course progress.

**Question:** Do you think the OSO:

- **A:** Recommended the provider not report her to DIBP?
- **B:** Asked the provider to consider the new evidence provided by the student?

# Case study 4

- A student complained that her provider had let her defer the previous semester to care for her seriously ill husband, but refused her request to defer a second time.
- We were unable to contact the student for some weeks due to her being overseas. When we got in contact with her, we identified that she had not lodged an internal appeal, and it was the last day for her to do so.

**Question:** Do you think the OSO:

- **A:** Made a decision on the external appeal?
- **B:** Asked the provider to allow the student to lodge an internal appeal first?

# Case study 5

- A student complained that his application to be re-admitted to a course had been denied and his internal appeal had been unsuccessful. The provider had sent the student a generic letter which did not explain the reasons for the decision or refer to the information he had submitted.
- When we investigated, the provider gave us a different set of reasons for refusing the student's re-admission application. The provider also had to ask the staff who made the internal appeal decision for their reasons, as this had not been documented at the time of the appeal decision.

**Question:** Do you think the OSO:

- **A:** Asked the provider to give the student the real reasons for the decision?
- **B:** Recommended the provider enrol the student?

# OSO publications and resources

- Better practice complaints handling guide
- Presentations on a range of topics
- Issues papers and submissions
- Annual report and quarterly statistical reports
- Brochures in English and 21 other languages
- Provider and student e-newsletters

[www.ombudsman.gov.au/about/overseas-students/oso-publications](http://www.ombudsman.gov.au/about/overseas-students/oso-publications)

**[www.ombudsman.gov.au](http://www.ombudsman.gov.au)**

